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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: November 27, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240

ATLANTA, GA

WHEN: December 12, at 9:00 a.m.
WHERE: Summit Building,
401 W. Peachtree Street,
19th Floor Conference Room,
Atlanta, GA.
RESERVATIONS: 1–800–347–1997.

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

OFFICE OF SPECIAL COUNSEL

5 CFR Parts 1800, 1810, 1820, 1830, 1840

Implementation of the Whistleblower Protection Act

AGENCY: U.S. Office of Special Counsel.

ACTION: Final rule.

SUMMARY: On November 14, 1989, the U.S. Office of Special Counsel (OSC) published interim rules of practice and procedure in Volume 54, **Federal Register**, No. 218, pp. 47341–47345. The interim rules implemented The Whistleblower Protection Act of 1989, Pub. L. No. 101–12, 103 Stat. 16, effective July 9, 1989, which established the Office of Special Counsel (formerly the Office of the Special Counsel of the U.S. Merit Systems Protection Board) as an independent agency, and made other specified changes in agency regulations. Accordingly, the OSC is adopting these interim rules as final with minor revisions.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: John Marshall Meisburg, Jr. at 202/653–7307.

SUPPLEMENTARY INFORMATION: On November 14, 1989, the U.S. Office of Special Counsel published interim regulations to implement the Whistleblower Protection Act of 1989 (Pub. L. 101–12) and to make other specified changes in agency regulations. The public was invited to comment on the interim regulations. No comments were received. Minor revisions have been made in the wording of certain regulations in the Final Rule, *i.e.*, as to the language used in §§ 1800.2 and 1820.1, to conform more closely to the provisions of the statute, and to seek telephone numbers from complainants so they may be contacted by this agency at a time and place at which they may speak in private in order to protect their confidentiality and to prevent retaliation against them for their disclosures to this agency.

List of Subjects

5 CFR Part 1800

Equal employment opportunity, Government employees, Reporting and recordkeeping requirements, Whistleblowing.

5 CFR Part 1810

Authority delegations (Government agencies), Equal employment opportunity, Government employees, Investigations.

5 CFR Part 1820

Freedom of information.

5 CFR Part 1830

Privacy, Reporting and recordkeeping requirements.

5 CFR Part 1840

Administrative practice and procedure, Government employees.

Dated: November 7, 1990.

Mary F. Wieseman,

Special Counsel.

1. For the reasons set out in the preamble, chapter VIII of title 5, Code of Federal Regulations, is amended as set forth below:

CHAPTER VIII—OFFICE OF SPECIAL COUNSEL

The portion of the interim rule establishing chapter VIII in title 5 of the Code of Federal Regulations, published on November 14, 1989, at 54 FR 47341, is adopted as final without change.

PART 1800—FILING OF COMPLAINTS AND ALLEGATIONS

The portion of the interim rule adding part 1800, published on November 14, 1989, at 54 FR 47341, is adopted as final with the following change:

1. The authority citation for part 1800 continues to read as follows:

Authority: 5 U.S.C. 1212(e).

2. Section 1800.1 is amended by revising paragraphs (b) introductory text, and (b)(1) to read as follows:

§ 1800.1 Filing complaints of prohibited personnel practices or other prohibited activities.

* * * * *

(b) Complaints, allegations, and information may be submitted in any written form, but should include:

(1) The name, mailing address, and telephone number(s) of the complainant(s), and a time when the person(s) making the disclosure(s) can be safely contacted, unless the matter is submitted anonymously;

* * * * *

3. Section 1800.2 is amended by revising paragraphs (b) introductory text, and (b)(1), to read as follows:

§ 1800.2 Filing disclosures of information.

* * * * *

(b) Information may be submitted in any written form, but should include:

(1) The name, mailing address, and telephone number(s) of the person(s) making the disclosure(s), and a time when that person(s) can be safely contacted by this agency, unless the matter is submitted anonymously;

* * * * *

PART 1810—INVESTIGATIVE AUTHORITY OF THE SPECIAL COUNSEL

The portion of the interim rule adding part 1810, published at November 14, 1989, at 54 FR 47342, and corrected on December 7, 1989, at 54 FR 50749, is adopted as final without change.

PART 1820—PUBLIC INFORMATION

The portion of the interim rule adding Part 1820, published on November 14, 1989, at 54 FR 47342, is adopted as final with the following change:

1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552(a)(3), 552(a)(4), 1212(g), 1219.

2. Section 1820.1(a) is revised to read as follows:

§ 1800.1 Public list and reports.

(a) Pursuant to 5 U.S.C. 1219, the Special Counsel maintains and makes available to the public a list of:

(1) Noncriminal matters referred to heads of agencies under 5 U.S.C. 1213 (c) and (g)(1), and reports received as a result of such referrals;

(2) Matters referred by the Special Counsel to heads of agencies under 5 U.S.C. 1215(c)(2); and

(3) Matters referred to heads of agencies under 5 U.S.C. 1214(e), together with certifications from the heads of agencies under such subsection.

* * * * *

PART 1830—PRIVACY

The portion of the interim rule adding part 1830, published on November 14, 1989, at 54 FR 47344, is adopted as final without change.

PART 1840—SUBPOENAS

The portion of the interim rule adding part 1840, published on November 14, 1989, at 54 FR 47345, is adopted as final without change.

[FR Doc. 90-27092 Filed 11-15-90; 8:45 am]

BILLING CODE 7400-02-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[FV-90-206-FR]

Expenses and Assessment Rate for Walnuts Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for 1990–91 marketing year under Marketing Order No. 984 for walnuts produced in California. Funds to administer this program are derived from assessment on handlers. This action is needed in order for the Walnut Marketing Board (Board), the agency responsible for the administration of the order to have sufficient funds to meet the expenses of operating the program. This facilitates program operations. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture (Department) for approval.

EFFECTIVE DATE: August 1, 1990, through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 984 (7 CFR part 984), as amended, regulating the handling of walnuts grown in California. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 65 handlers of walnuts grown in California who are subject to regulation under the walnut marketing order and approximately 5,000 producers of walnuts in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of walnut producers and handlers may be classified as small entities.

The walnut marketing order requires that the assessment rate for a particular marketing year shall apply to all assessible walnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the Department for approval. The Board consists of handlers, producers, and a non-industry member. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of walnuts. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Board shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Board will have funds to pay its expenses.

The Board met on September 14, 1990, and unanimously recommended 1990–91 marketing order expenditures of $1,703,505 and an assessment rate of $0.0088 per kernelweight pound of walnuts. Assessment income for the 1990–91 marketing year is estimated at $1,711,370 based on a merchantable supply of 194,474,000 kernelweight pounds of walnuts. Comparative actual expenditures in 1989–90 were $1,321,415 and the assessment rate of $0.0085 per kernelweight pound of walnuts. Estimated assessment income in 1989–90 was $1,539,707 based on a merchantable supply of 181,142,000 kernelweight pounds of walnuts.

Major budget categories for the 1990–91 marketing year are $855,000 for the domestic market research and development program, $346,382 for walnut production research, $126,840 for administrative and office salaries, and $40,000 for walnut crop estimates. Comparable actual expenditures for the 1989–90 marketing year were $664,368, $298,122, $121,654, and $37,000, respectively. The domestic market research and development program increase from $664,368 to $855,000 is due to the Board's recommendation to further expand and improve existing markets and create new markets for California walnuts.

The increase from $298,122 to $346,382 for walnut production research is due to seven new additional research projects that were recommended by the Board. The majority of these studies concern various methods to control codling moths which cause walnut tree damage. The increase in the administrative and office salaries category reflects a 4.7 percent raise in administrative and office salaries which was recommended by the Board.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the

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

This action adds a new § 984.342 and is based on Board recommendations and other information. A proposed rule on the expenses and assessment rate was published in the October 15, 1990, issue of the **Federal Register** (55 FR 41694). Comments on the proposed rule were invited from interested persons until October 25, 1990. No comments were received.

After consideration of the information and recommendation submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This rule should be expedited because the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Board at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication of the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 984

Marketing agreements, Reporting and recordkeeping requirements, and Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

1. The authority citation for 7 CFR part 910 continues to read as follows:

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

PART 984—WALNUTS GROWN IN CALIFORNIA

2. A new § 984.342 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 984.342 Expenses and assessment rate.

Expenses of $1,703,505 by the Walnut Marketing Board are authorized, and an assessment rate of $0.0088 per kernelweight pound of merchantable walnuts is established for the 1990–91 marketing year ending on July 31, 1991. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: November 13, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–27051 Filed 11–15–90; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 312, 329, and 381

[Docket No. 89–006F]

RIN 0583–AB10

Product Detentions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat and poultry products inspection regulations by deleting the requirement of issuing a Preliminary Notice of Detention to the owner, agent, or custodian of detained meat or poultry articles and by requiring only the issuance of a Notice of Detention. This rule also revises the references to the detention tags and notices to reflect current FSIS form numbers. This action eliminates an unnecessary recordkeeping requirement for FSIS and expedites the product detention process.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Richard T. Van Blargan, Director, Evaluation and Enforcement Division, Compliance Program, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–5643.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule will expedite the product detention process by relieving FSIS of an unnecessary paperwork step and updates detained tag and notice form numbers.

Background

Section 402 of the Federal Meat Inspection Act (21 U.S.C. 672) provides, in part, that "Whenever any carcass, part of a carcass, meat or meat food product * * * or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules, or other equines is found by any authorized representative of the Secretary upon any premises where it is held for purposes of, or during or after distribution, in commerce or otherwise subject to title I or II of this Act, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of title I of this Act or of any other Federal law or the laws of any State or Territory, or the District of Columbia, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under section 403 of this Act (21 U.S.C. 673) or notification of any Federal, State, or other governmental authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by such representative." Section 19 of the Poultry Products Inspection Act (21 U.S.C. 467A) contains similar provisions for poultry and poultry products.

Part 329 and part 381, subpart U, of the Federal meat and poultry products inspection regulations (9 CFR parts 329 and 381, subpart U) prescribe, among other things, the procedures for detaining meat and poultry products. Upon finding product to be detained, an authorized representative of the Secretary (hereinafter referred to as an FSIS representative) detains the product by affixing an official U.S. Detained Tag (Form MP–483) to such product. At this time, the FSIS representative provides oral notification and a Preliminary Notice of Detention (Form MP–479) to the owner of the detained product, whenever possible, or to the owner's agent or the immediate custodian of the detained product. If the detention is to continue after 48 hours, the regulations further require that a Notice of Detention (Form MP–484) be provided to the owner or the owner's agent or the custodian of the detained product. Unless seizure action is initiated against the product, the FSIS representative must terminate the detention within 20

days of detaining the product. Detentions are terminated when it has been determined that proper disposition of the detained product has been made. Disposition includes returning the product to an official establishment for reinspection, proper product denaturing or identification prior to further movement or use for animal food, or destroying the product for human food purposes. When terminating a detention, the FSIS representative provides a Notice of Termination of Detention (Form MP–487) to the person receiving the Preliminary Notice of Detention. Until termination of the detention is made, the detained product cannot be moved from the premises where it was located when so detained, except that the FSIS representative may approve movement of the product to another location for refrigeration, freezing, or storage. During any such movement, the product must be maintained under continuous detention.

Proposed Rule

On March 2, 1990, FSIS published a proposed rule (55 FR 7499) to amend the Federal meat and poultry products inspection regulations by eliminating the issuance of a Preliminary Notice of Detention and requiring issuance of only a Notice of Detention at the time product is detained. In most instances, the owners, agents, and other custodians of detained products took immediate action when products were detained and the preliminary notice was issued. By the time the Notice of Detention reached the owner, agent, or custodian, disposition of the product had normally already occurred. As previously stated, the Notice of Detention was issued if the detention was to continue after 48 hours.

FSIS did not receive any comments in response to the proposal.

Final Rule

Therefore, FSIS is amending §§ 329.3 and 381.212 of the Federal meat and poultry products inspection regulations (9 CFR 329.3 and 381.212) by eliminating the issuance of Form MP–479, Preliminary Notice of Detention.

The rule also updates the detention form numbers referenced in the Federal meat and poultry products inspection regulations (9 CFR 312.9, 329.2, 329.3, 329.5, 381.211, 381.212, and 381.214). All detention forms were renumbered under a new form numbering system instituted by the Agency in 1985. However, the regulations were not changed to reflect this fact. The Notice of Detention is FSIS Form 8080–1, the Notice of Termination of Detention is FSIS Form 8400–1, and the U.S. Detained tag is FSIS Form 8400–2. In addition, amendments to §§ 329.3, 329.5, 381.211, and 381.212 now require an authorized representative of the Secretary to furnish copies of completed "Notice of Detention" and "Notice of Termination of Detention" to the immediate custodian and to the owner, or the owner's agent, if the owner is not the custodian. Sections 329.5 and 381.212 are further modified to require that an authorized representative of the Secretary give oral notification of detention termination to the custodian prior to furnishing a completed "Notice of Termination of Detention" to persons notified when the product is detained. Finally, the rule divides §§ 329.3, 329.5, 381.211, and 381.212 into subparagraphs for clarity.

List of subjects

9 CFR part 312

Marks and devices, Meat inspection.

9 CFR part 329

Detention, Meat inspection.

9 CFR part 381

Detention, Poultry products inspection.

For the reasons set out in the preamble, FSIS is amending parts 312, 329, and 381 of the Code of Federal Regulations, title 9, as set forth below.

PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

1. The authority citation for part 312 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Section 312.9 is revised to read as follows:

§ 312.9 Official detention marks and devices.

The official mark for articles and livestock detained under part 329 of this subchapter shall be the designation "U.S. Detained" and the official device for applying such mark shall be the official "U.S. Detained" tag (FSIS Form 8400–2) as prescribed in § 329.2 of this subchapter.

PART 329—DETENTION; SEIZURE AND CONDEMNATION; CRIMINAL OFFENSES

3. The authority citation for Part 329 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k.

4. Section 329.2 is revised to read as follows:

§ 329.2 Method of detention; form of detention tag.

An authorized representative of the Secretary shall detain any article or livestock to be detained under this part, by affixing an official "U.S. Detained" tag (FSIS Form 8400–2) to such article or livestock.

5. Section 329.3 is revised to read as follows:

§ 329.3 Notification of detention to the owner of the article or livestock detained, or the owner's agent, and person having custody.

(a) When any article or livestock is detained under this part, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the article or livestock detained, and

(2) Promptly furnish a copy of a completed "Notice of Detention" (FSIS Form 8080–1) to the immediate custodian of the detained article or livestock.

(b) If the owner of the detained article or livestock, or the owner's agent, is not the immediate custodian at the time of detention and if the owner, or owner's agent, can be ascertained and notified, an authorized representative of the Secretary shall furnish a copy of the completed "Notice of Detention" to the owner or the owner's agent. Such copy shall be served, as soon as possible, by delivering the notification to the owner, or the owner's agent, or by certifying and mailing the notification to the owner, or the owner's agent, at his or her last known residence or principal office or place of business.

6. Section 329.5 is amended by redesignating the first sentence as paragraph (a) and the remainder of the text as paragraphs (b) and (c). Newly redesignated paragraphs (b) and (c) are revised to read as follows:

§ 329.5 Movement of article or livestock detained; removal of official marks.

(a) * * *

(b) Upon terminating the detention of such article or livestock, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the released article or livestock, and

(2) Furnish copies of a completed "Notice of Termination of Detention" (FSIS Form 8400–1) to the persons notified when the article or livestock was detained. The notice shall be served by either delivering the notice to such persons or by certifying and mailing the notice to such persons at their last known residences or principal offices or places of business.

(c) All official marks may be required by such representative to be removed from such article or livestock before it is released unless it appears to the satisfaction of the representative that the article or livestock is eligible to retain such marks.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

7. The authority citation for part 381 continues to read as follows:

Authority: 21 U.S.C. 463, 468; 7 CFR 2.17 (g) and (i), 2.55.

8. Section 381.211 is revised to read as follows:

§ 381.211 Method of detention; form of detention tag.

An authorized representative of the Secretary shall detain any poultry or other article to be detained under this subpart, by affixing an official "U.S. Detained" tag (FSIS Form 8400–2) to such article.

9. Section 381.212 is revised to read as follows:

§ 381.212 Notification of detention to the owner of the poultry or other article, or the owner's agent, and person having custody.

(a) When any poultry or other article is detained under this Subpart, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the poultry or other article detained, and

(2) Promptly furnish a copy of a completed "Notice of Detention" (FSIS Form 8080–1) to the immediate custodian of the detained poultry or other article.

(b) If the owner of the detained poultry or other article, or the owner's agent, is not the immediate custodian at the time of detention and if the owner, or owner's agent, can be ascertained and notified, an authorized representative of the Secretary shall furnish a copy of the completed "Notice of Detention" to the owner, or the owner's agent. Such copy shall be served, as soon as possible, by delivering the notification to the owner, or the owner's agent, or by certifying and mailing the notification to the owner, or the owner's agent, at his or her last known residence or principal office or place of business.

10. Section 381.214 is amended by redesignating the first sentence as paragraph (a) and the remainder of the text as paragraphs (b) and (c). Newly redesignated paragraphs (b) and (c) are revised to read as follows:

§ 381.214 Movement of poultry or other article detained; removal of official marks.

(a) * * *

(b) Upon terminating the detention of such article, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the released article, and

(2) Furnish copies of a completed "Notice of Termination of Detention" (FSIS Form 8400–1) to the persons notified when the article was detained. The notice shall be served by either delivering the notice to such persons or by certifying and mailing the notice to such persons at their last known residences or principal offices or places of business.

(c) All official marks may be required by such representative to be removed from such article before it is released unless it appears to the satisfaction of the representative that the article is eligible to retain such marks.

Done at Washington, DC, on October 19, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90–26966 Filed 11–15–90; 8:45 am]

BILLING CODE 3410–DM–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0700.]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is amending the portion of Regulation Y, 12 CFR part 225, implementing the Change in Bank Control Act (the "CIBC Act") to remove the current regulatory requirement that a person that has already received regulatory clearance to acquire 10 percent or more of the voting shares of a state member bank or bank holding company file additional notices under the CIBC Act for subsequent acquisitions resulting in ownership of between 10 and 25 percent of the shares of the bank or bank holding company. This amendment is intended to reduce the regulatory burden under the CIBC Act without impairing the Board's ability to properly evaluate acquisitions under the statutory factors set forth under the CIBC Act.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Assistant General Counsel (202/452–3583), Mark J. Tenhundfeld, Attorney (202/452–3612), or Elizabeth Thede, Attorney (202/452–3274), Legal Division; or Sidney M. Sussan, Assistant Director (202/452–2638), or Beverly L. Evans, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452–2573). For the hearing impaired only, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

A. *Background.* Under the CIBC Act, 12 U.S.C. § 1817(j), persons acting directly or indirectly or through or in concert with one or more other persons to acquire control of any state member bank or bank holding company must provide the Board with 60 days prior written notice describing the proposed acquisition. The transaction may proceed at the end of the 60-day period unless the Board disapproves the transaction or extends the notice period. Alternatively, an acquisition may proceed prior to the expiration of the 60-day review period if the Board issues a written statement of its intent not to disapprove the transaction.

Regulation Y identifies certain transactions that are presumed to constitute the acquisition of control and require the filing of prior notice with the Board. In particular, § 225.41(b)(2) of Regulation Y establishes a regulatory presumption requiring the filing of a notice under the CIBC Act if, after an acquisition, any person or group of persons acting in concert will own, control, or hold with power to vote 10 percent or more of a class of voting securities of a bank or bank holding company and if either: (i) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (5 U.S.C. § 781), or (ii) no other person will own a greater percentage of that class of voting securities immediately after the transaction. 12 CFR 225.41(b)(2).

Under this regulation, a person must make CIBC Act filings for each acquisition of additional voting shares of the bank or bank holding company until the person acquires 25 percent or more of the shares of the bank or bank holding company. The Board's regulations provide that a shareholder that continuously controls 25 percent or more of a class of voting securities and that has received regulatory approval for that acquisition is generally not required to file further notices under the CIBC Act to acquire additional voting shares. 12 CFR 225.42(a).

Many of the notices currently filed with the Board under the CIBC Act involve situations where a shareholder that has already been subject to the regulatory review process under the CIBC Act seeks to acquire a small number of additional shares with a minimal expenditure of funds. In other instances, a person that has already received regulatory clearance to own less than 25 percent of the shares of a bank or bank holding company may be required by the Board's current regulations to file a notice in connection with a redemption by the bank or bank holding company of shares of another shareholder, even though the percentage ownership of the individual increases only minimally and the individual expends no funds and acquires no additional shares.

On July 2, 1990 (55 FR 28,216 (July 10, 1990)), the Board sought public comment on a proposal to amend subpart E of Regulation Y, which implements the CIBC Act, to eliminate the filing requirement under the CIBC Act for most acquisitions of shares of a state member bank or bank holding company where the shareholder has already received regulatory clearance to control 10 percent or more of the voting shares of the bank or bank holding company and, after the proposed acquisition, the shareholder would control less than 25 percent of the voting shares of the bank or bank holding company. The Board received 40 comments from interested individuals and organizations regarding this proposal. The principal issues raised by the comments are discussed below.

Comments in support of the proposed amendment. All but three of the commenters favored adoption of the Board's proposal. Most of these comments concluded that the current regulation requires filings that are unnecessary in connection with *de minimis* acquisitions. A number of commenters stated that the proposed amendment would reduce the regulatory burden on banks and bank holding companies without impairing the Board's ability to evaluate persons that have acquired control of a state member bank or bank holding company.

Comments in opposition to the proposed amendment. Three commenters opposed the proposed amendment. One of these commenters stated that the acquisition of additional shares above 10 percent could increase the ability of an individual to control a bank or bank holding company and, therefore, the ability of such an individual to disrupt the target institution. Another commenter suggested that the Board's review of a notice to acquire 10 percent of the voting shares of an institution could be less critical than would be its review of a notice to acquire 24 percent. In this commenter's view, the holder of 24 percent of an institution's voting shares would have greater ability and incentive to control the institution, thereby making a closer review of the financial resources and character of the shareholder more important than if the shareholder intended to acquire only 10 percent of the shares for investment purposes. The remaining commenter opposed to the proposal argued that each acquisition of voting shares should remain subject to regulatory review in order to assure that there has been no adverse change in circumstances since the time the person was permitted to acquire 10 percent of the company's shares. This commenter also suggested that the proposed amendment will place small financial institutions whose stock is not registered under the Securities Exchange Act of 1934 at a disadvantage because these institutions rely on the public notice provided under the CIBC Act to monitor acquisitions of the company's shares in the 10 to 25 percent range.

Modifications to Address Comments. The Board has reviewed the public comments and, in light of the entire record, has determined to amend its regulation as proposed, with the modifications discussed below. In the Board's experience, the requirement for additional filings by a person that has already been subject to regulatory review and seeks to control less than 25 percent of the voting shares of the same bank or bank holding company imposes significant burdens on the acquiring person without identifying significant financial, managerial, competitive, or other problems.

Under this amendment, in considering proposals to acquire between 10 and 25 percent of the voting shares of a bank or bank holding company, the Board will review the financial, managerial, competitive and other statutory factors under the CIBC Act to determine whether any of these factors warrant a requirement that the notificants file additional notices for subsequent acquisitions under 25 percent of the shares of the bank or bank holding company. The Board also retains supervisory authority over bank holding companies and state member banks that the Board believes is adequate to address situations where a change in circumstances would make additional acquisitions by a current owner unsafe or unsound for the bank or bank holding company. Moreover, the Board continues to require the filing of a notice under the CIBC Act when a person (or persons acting in concert) intends to acquire 25 percent or more of the voting shares of a bank or bank holding company. The amended regulation is similar to the approach taken by the Comptroller of the Currency and the Federal Deposit Insurance Corporation, both of which permit a shareholder that has already received clearance under the CIBC Act for an acquisition above 10 percent of the voting shares of a bank to make additional acquisitions of voting shares without further filings under the CIBC Act.

The Board has made several modifications to its original proposal to address concerns raised by commenters. First, the Board has clarified in the final rule that the exception proposed in the amendment is available to persons whose acquisition of shares has been reviewed in connection with a transaction approved under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) ("BHC Act") or section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) ("FDI Act"). This modification is consistent with the Board's current regulations that provide an exception from the CIBC Act notice requirements for transactions that are subject to review under section 3 of the BHC Act or section 18(c) of the FDI Act. In this regard, in connection with its review of proposals under section 3 of the BHC Act or under 18(c) of the FDI Act, the Board currently applies the standards of the CIBC Act to persons that will control 10 percent or more of the voting shares of the acquiring bank or bank holding company, including conducting a name check of the shareholder where appropriate. Because this review is conducted as part of the review under the BHC Act or the FDI Act, the Board believes that it is appropriate to permit a person subject to this review the same exemption as is available to persons whose initial acquisition is reviewed under the CIBC Act. A person that acquired between 10 and 25 percent of the voting securities of a company in connection with an application under section 3 of the BHC Act or section 18(c) of the FDI Act still must file a notice under the CIBC Act if the person seeks to acquire additional voting shares sufficient to raise the person's aggregate shareholdings to 25 percent or more of any class of securities of the bank or bank holding company, or if the person is notified at the time the application is approved by the Board or Reserve Bank that additional filings are otherwise required.

Another commenter suggested that the proposed amendment apply to additional acquisitions by person that acquired ownership of between 10 and 25 percent of a bank holding company prior to the effective date of this amendment. The Board intends that this amendment will apply to all persons that have received approval under the CIBC Act or, as explained above, through section 3 of the BHC Act or section 18(c) of the FDI Act, to hold between 10 and 25 percent of the voting shares of a bank or bank holding company, regardless of when the approval was granted, unless further acquisitions by these persons have been limited by the Board or appropriate Reserve Bank. The final regulation adopts this interpretation by *not* including a provision that the amendment applies only to persons that have obtained regulatory clearance after the effective date of this amendment.

Another commenter suggested that a person should be allowed to acquire up to 100 percent of the shares of a bank or bank holding company without filing any additional notice under the CIBC Act where the person is the largest shareholder and has received approval to acquire 10 percent or more of the bank or bank holding company. The Board continues to believe that it is appropriate to require a single additional notice under the CIBC Act by such a person (or persons acting in concert) prior to the person's acquisition of 25 percent or more of the bank or bank holding company. At the time such an acquisition is proposed, the Board will evaluate whether the acquiror has sufficient financial and managerial resources to acquire up to 100 percent of a class of voting securities of the bank or bank holding company, and whether other relevant statutory factors are consistent with a decision not to disapprove the acquisition of all of the shares of the bank or bank holding company by the acquiror.

Another commenter requested clarification as to how the proposed amendment would treat additional acquisitions by persons acting in concert. Specifically, the commenter sought clarification of whether persons that have filed a joint notice under the CIBC Act to acquire less than 25 percent of the voting shares of a bank or bank holding company would be permitted by the proposed amendment to make additional acquisitions without further filings under the CIBC Act so long as the aggregate of all such acquisitions by the persons acting in concert remained below 25 percent. The Board intends that persons filing a joint notice will be covered by this amendment so long as the persons collectively do not acquire 25 percent or more of the voting shares of the bank or bank holding company. The Board notes, however, that any person that is a member of a group acting in concert and has not received approval to acquire, in his or her individual capacity, 10 percent or more of the voting shares of the bank or bank holding company continues to be required to file a notice under the CIBC Act prior to acquiring 10 percent or more of the company's voting shares individually.

One of the commenters opposing the Board's proposed amendment recommended that, as an alternative to the proposed amendment, the Board should require a notice when a specific increment of stock is acquired (for instance, five percent) or, in the alternative, when a certain amount of time (for instance, 12 months) has expired since the date of last approval. Similarly, another of the commenters opposing the Board's proposed amendment recommended that the Board revise the proposed amendment to authorize only a 5 percent increase in the ownership of shares beyond what the Board has authorized a person to hold.

The Board notes that, under its amendment, the Federal Reserve System retains the authority to require filings under the CIBC Act for additional acquisitions where the Board or Reserve Bank believes that the financial and managerial resources or other circumstances of a proposed acquiror indicate that monitoring of additional acquisitions in a specific case is appropriate. In these cases, the Board or the Reserve Bank will notify a bank, bank holding company, or acquiring shareholder at the time the initial notice (or application under section 3 of the BHC Act or section 18(c) of the FDI Act) is approved that additional notices under the CIBC Act would be required for subsequent acquisitions of shares resulting in the ownership or control of between 10 and 25 percent of the voting securities of the bank or bank holding company.[1] In light of this, and for the reasons discussed above, the Board believes that it is unnecessary to require in all instances additional notices under the CIBC Act for acquisitions of between 10 and 25 percent of the voting shares of a bank or bank holding company by persons that have received approval under the CIBC Act to acquire 10 percent or more of the bank or bank holding company.

[1] Failure to file additional notices after having been informed that such notices are required will be treated as a violation of the Board's regulation and, as such, may result in the Board or the Reserve Bank initiating enforcement proceedings.

Regulatory Flexibility Act Analysis

This amendment to the Board's Regulation Y will decrease the burden on small companies by narrowing the circumstances under which shareholders of small banks and bank holding companies must file notices under the CIBC Act. No additional regulatory burden will be placed on such companies. Moreover, the amendment will not impose any additional regulatory burden on banks or bank holding companies of any size that are targets of a proposed change in control. Thus, the proposal is not expected to have any adverse economic impact on small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act Analysis

This amendment reduces the number of instances in which notices must be filed with the Federal Reserve System under the CIBC Act. Accordingly, the regulation will lessen the paperwork burden for individuals, small businesses, and other "persons," as defined in the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set out in this document, and pursuant to the Board's authority under section 13 of the Change in Bank Control Act (12 U.S.C. 1817(j)(13)), the Board amends 12 CFR part 225 as follows:

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. In § 225.42, paragraph (a) is redesignated as paragraph (a)(1), the heading to paragraph (a)(1) is revised, and new paragraph (a)(2) is added to read as follows:

§ 225.42 Transactions not requiring prior notice.

* * * * *

(a)(1) *Increase of previously authorized acquisitions above 25 percent.* * * *

(2) *Increase of previously authorized acquisitions between 10 percent and 25*

percent. Unless the Board or Reserve Bank otherwise provides by order, the acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of 10 percent or more of that class of voting securities either after filing the notice required under § 225.41(b)(2) of this subpart to acquire voting securities of the bank or bank holding company or in connection with an application approved under section 3 of the Bank Holding Company Act or section 18(c) of the Federal Deposit Insurance Act, if the aggregate amount of voting securities held following the acquisition is less than 25 percent of any class of voting securities of the institution.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 9, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-26984 Filed 11-15-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-95-AD; Amendment 39-6809]

Airworthiness Directives; Boeing Model 737-200, -300, and -400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires a visual inspection for H-11 bolts and replacement, if necessary, with A286 stainless steel bolts. This amendment is prompted by reports of H-11 steel bolts used instead of A286 stainless steel bolts to attach the outboard flap forward support fitting to the wing structure. This condition, if not corrected, could lead to fracture of the fastener in the fitting attachment, which could result in a loss of the outboard flaps.

EFFECTIVE DATE: December 24, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2775. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 737 series airplanes, which requires a visual inspection for H-11 bolts and replacement, if necessary, with A286 stainless steel bolts, was published in the **Federal Register** on August 14, 1990 (55 FR 33101).

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

The Air Transport Association (ATA) of America commented on behalf of its members. One member operator requested that a provision be added which would allow for delayed bolt replacement until the next fuel tank entry. This member stated that this request is similar to a request for alternate means of compliance to AD T89-18-51, which was approved by the Seattle Aircraft Certification Office. This commenter also stated that Boeing issued guidance material (Boeing Telex M-7272-5344, dated September 8, 1989) which describes how long bolt replacement could be deferred, depending on the number of incorrect bolts found. This member believes that similar relief should be provided for the proposed rule as well. The FAA does not concur. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required inspection and necessary replacement during normal maintenance schedules. In light of these factors, as well as the service history pertaining to the failure rates of H-11 bolts, the FAA has determined that 12 months represents the maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. Although for certain isolated cases, the FAA has approved requests to delay bolt replacement until the next fuel tank entry, it is the FAA's intention to continue to address this issue on a case-by-case basis through alternate means of compliance procedures provided for by paragraph B. of this AD. As for the Boeing telex referenced by the commenter, the FAA notes that the guidance material contained in that telex is applicable to a different problem with the attachment hardware of the flap track support assembly. (Specifically, that telex deals with a production problem where understrength hardware was known to have been installed.)

Another ATA member indicated that a torque check of an H-11 bolt may prove misleading if corrosion is present and requested that another bolt check procedure be developed instead of that proposed. The FAA does not concur that a different procedure is necessary. The FAA has determined that the bolts are located in an area that is well protected from the environment and corrosion should not be a significant factor in the torque check.

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

There are approximately 1,438 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 623 airplanes of U.S. registry will be affected by this AD, that it will take approximately 51 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,270,920.

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

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

Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 737–200 series airplanes, listed in Boeing Alert Service Bulletin 737–57A1206, dated April 12, 1990; and Model 737–300 and 737–400 series airplanes, listed in Boeing Alert Service Bulletin 737–57A1208, dated March 29, 1990; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fastener fracture in the fitting attachment which could result in a loss of the outboard flap, accomplish the following:

A. Prior to the accumulation of 5,000 flight hours or within 12 months after the effective date of this AD, whichever occurs later, perform a visual inspection of the outboard flap support fitting attach bolts in accordance with Boeing Alert Service Bulletin 737–57A1206, dated April 12, 1990, or Boeing Alert Service Bulletin 737–57A1208, dated March 29, 1990, as applicable.

1. If the bolts are confirmed as BACB30LE6 or BACB30US6, no further action is required at that location.

Note: A bolt head marking of BACB30LE6, BACB30US6, B30LE6, or B30US6 confirms the correct bolt installation. Oversize bolts BACB30LE7 or BACB30US7 may be installed and are acceptable.

2. If a bolt BACB30MT is found, prior to further flight, and thereafter at intervals not to exceed 1,000 flight hours, perform torque inspections in accordance with Boeing Alert Service Bulletin 737–57A1208, dated March 29, 1990, or Boeing Alert Service Bulletin 737–57A1206, dated April 12, 1990, as applicable. If the bolt turns at or below the specified torque range, prior to further flight, replace it with BACB30LE or BACB30US in accordance with the previously mentioned service bulletins. Replacement of any bolt with bolt BACB30LE or BACB30US constitutes terminating action for the repetitive torque inspections for that bolt.

3. If a bolt other than the one listed in paragraph A.1. or A.2. of this AD is found, prior to further flight, replace the bolt with bolt BACB30LE or BAC30US in accordance with Boeing Alert Service Bulletin 737–57A1208, dated March 29, 1990, or Boeing Alert Service Bulletin 737–57A1206, dated April 12, 1990, as applicable.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle Aircraft Certification Office (ACO), and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 24, 1990.

Issued in Renton, Washington, on November 6, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–27000 Filed 11–15–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–222–AD; Amendment 39–6806]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 90–21–11, which was previously made effective as to all known U.S. owners and operators of British Aerospace Model ATP series airplanes by individual letters. This AD requires a one-time inspection of the normal operating linkage to ensure that 2BA bolts Part No. A59–4C are installed, and installation of these bolts, if necessary; and repetitive operational tests of the hydraulic landing gear change-over valve mechanism. This action is prompted by reports of difficulty in lowering the landing gear using the normal and auxiliary systems. This condition, if not corrected, could result in a gear-up landing.

DATES: Effective November 29, 1990, as to all persons except those persons to whom it was made immediately effective by priority letter AD 90–21–11, issued October 12, 1990, which contained this amendment.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: On October 12, 1990, the FAA issued priority letter AD 90–21–11, applicable to all British Aerospace Model ATP series airplanes, which requires a one-time inspection of the normal operating linkage to ensure that 2BA bolts Part No. A59–4C are installed, and installation of these bolts, if necessary; and repetitive operational tests of the hydraulic landing gear change-over valve mechanism. That action was prompted by reports of difficulty in lowering the landing gear using the normal and auxiliary systems. The difficulties were traced to installation of an improper bolt which caused binding in the normal operating system lingage for the landing gear, and corrosion and lack of lubrication in the actuator system for the change-over selector valve. This condition, if not corrected, could result in a gear-up landing.

British Aerospace has issued Alert Service Bulletin A–ATP–32–26, Revision 1, dated September 25, 1990, which describes procedures for a one-time inspection of the normal operating linkage to ensure that 2BA bolts, Part Number A59–4C, are installed, and installation of these bolts, if necessary; and repetitive operational tests of the hydraulic landing gear change-over valve mechanism. The United Kingdom Civil Aviation Authority has classified this service bulletin as mandatory, and has issued CAA Airworthiness Directive 013–09–90 addressing this subject.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires a one-time inspection of the normal operating linkage to ensure that 2BA bolts Part No. A59–4C are installed, and installation of these bolts, if necessary; and repetitive operational tests of the hydraulic landing gear change-over valve mechanism, in accordance with service bulletin previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 12, 1990, to all known U.S. owners and operators of British Aerospace Model ATP series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

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

The Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

British Aerospace: Applicable to all Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure proper operation of the landing gear and to prevent a gear-up landing, accomplish the following:

A. Within 24 hours after the effective date of this AD, perform an inspection of the normal operating linkage to determine if 2BA bolts Part Number A59–4C are installed. If any other part-numbered bolts are installed, prior to further flight, remove those bolts and replace them with Part Number A59–4C bolts, in accordance with British Aerospace Alert Service Bulletin A–ATP–32–26, Revision 1, dated September 25, 1990.

B. Within 24 hours after the effective date of this AD, and thereafter at intervals not to exceed 30 hours time-in-service, perform an operational test of the hydraulic landing gear change-over valve mechanism, in accordance with British Aerospace Alert Service Bulletin A–ATP–32–26, Revision 1, dated September 25, 1990. Any binding or stiffness must be corrected prior to further flight, in accordance with instructions in the manufacturer's maintenance manual.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 29, 1990, as to all persons, except those persons to whom it was made immediately effective by priority letter AD90–21–01, issued October 12, 1990, which contained this amendment.

Issued in Renton, Washington, on November 2, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–27001 Filed 11–15–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–ANE–32; Amendment 39–6812]

Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney Canada (PWC) PW123 and PW124B turboprop engines, which requires a repetitive inspection program for the turbomachinery magnetic chip detector (MCD), and MCD system functional check. A one-time inspection of the rear inlet case oil system is also required. This amendment is prompted by a bearing failure event which caused the low pressure turbine (LPT) stub shaft to fracture, resulting in an LPT overspeed condition and an uncontained LPT disk failure. This condition, if not corrected, could result in an LPT overspeed event, uncontained disk failure, and damage to the aircraft.

DATES: Effective November 16, 1990.

Comments for inclusion in the docket file must be received on or before December 14, 1990.

ADDRESSES: Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, attn: Rules Docket No. 90–

ANE–32, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorian, Longueuil, Quebec J4G1A1. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7094.

SUPPLEMENTARY INFORMATION: There has been one bearing failure event which caused the LPT integral stub shaft to fracture, resulting in an LPT overspeed and an uncontained LPT disk failure. The noted bearing failure was caused by oil starvation due to a plugged oil supply tube. This condition, if not corrected, could result in an LPT overspeed event, uncontained disk failure, and damage to the aircraft.

The FAA has reviewed and approved PWC Service Bulletins (SB) No. 20938, dated October 12, 1990, and SB No. 20939, dated October 12, 1990, which describe a repetitive inspection program of the turbomachinery MCD and the MCD system, and a one-time borescope inspection of the rear inlet case oil system, respectively.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires repetitive inspection of the MCD for metallic chips, and the MCD system for operation. A one-time borescope inspection of the rear inlet case oil system to determine system cleanliness is also required. This action will help ensure that the oil system passages are open, and will help detect metal contamination of the engine oil due to bearing deterioration.

Since this condition could result in an uncontained disk failure and damage to the aircraft, there is a need to minimize the exposure of revenue service aircraft to this uncontained failure mode. Therefore, safety in air transportation requires adoption of this regulation without prior notice and public comment. In addition, based on the above and the need to inspect the MCD to identify impending bearing failure as soon as practicable, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure are impracticable, and good cause exists for the adoption of the amendment without public comment, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the FAA, Office of the Assistant Chief Counsel, attn: Rules Docket No. 90–ANE–32, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedure of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transporation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) PW123 and PW124B turboprop engines, installed on, but not limited to, DeHavilland of Canada DHC–8 Series 300, Canadair CL–215T, and Aerospatiale ATR–72 type aircraft.

Compliance is required within 5 days from the effective date of this AD, unless already accomplished.

To prevent an LPT overspeed event, uncontained disk failure, and damage to the aircraft, accomplish the following:

(a) For engines with less than 100 hours time in service since new on the effective date of this AD, borescope inspect the rear inlet case oil system in accordance with appendix I of this AD.

(b) Perform a turbomachinery magnetic chip detector (MCD) inspection in accordance with part A of appendix II of this AD

(c) Perform an MCD system functional check in accordance with part B of appendix II of this AD

(d) For PW123 engines only, perform an MCD airframe circuitry check in accordance with part C of appendix II of this AD

(e) Thereafter, perform the MCD inspection specified in paragraph (b) above at intervals not to exceed 25 flight hours since last inspection

(f) Thereafter, perform the MCD system functional check specified in paragraph (c above, at intervals not to exceed 300 flight hours since last inspection

(g) Thereafter, for PW123 engines, perform the MCD airframe circuitry check specified in paragraph (d) above, at intervals not to exceed 300 flight hours since last inspection

(h) Remove from service, prior to further flight, engines having MCD indications exceeding serviceable limits in accordance with appendix II of this AD

(i) Repair, prior to further flight, the MCD electrical indicating system, if found not functional during inspections in accordance with appendix I of this AD.

(j) Aircraft may be ferried in accordance with the provision of FAR 21.197 and 21 199 to a base where the AD can be accomplished

(k) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method

of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

Appendix I

Engine Turbine Turboprop Rear Inlet Case Oil System-Borescope Inspection

1. Effectivity:

—All PW123 (BS707) engines prior to Serial Number (S/N PC-E123121.

—All PW124B (BS724/726) engines prior to S/N PC-E124405 excluding PC-E124411.

2. Reason: To verify cleanliness of the oil system.

3. Description: A PWC representative is to borescope the rear inlet case oil passages on affected engines with less than 100 flight hours since new. Reference: PWC Service Bulletin 20939, dated October 12, 1990.

4. Reference:

—Model PW123; Maintenance Manual P/N 3036432, Chapter 72-01-50.

—Model PW124; Maintenance Manual P/N 3037332, Chapter 72-01-50.

—Model PW100; Service Bulletin 20939 (10-12-90).

5. Accomplishment Instructions:

A. Remove No. 1 and 2 bearing oil feed tube in accordance with referenced maintenance manual.

B. Remove accessory gearbox (AGB) oil feed tube in accordance with reference maintenance manual.

Warning: When using compressed air for cleaning, wear goggles for face shield to protect eyes.

C. Ensure that no oil remains in oil cavities by flushing with compressed air via No. 1 and 2 oil feed cavity Collect any ejected oil by covering AGB feed tube cavity with absorbent shop rags.

D. Remove T6 trim thermocouple in accordance with reference maintenance manual.

E. Inspect oil cavities, A, B, C, and D for cleanliness and blockage using borescope. Insert borescope into cavities as far as possible or until No. 1 bearing outer race or carbon seal housing is seen. Cavities A and B are inspected by inserting borescope probe through T6 trim thermocouple office. If debris is found, replace engine.

F Install T6 trim thermocouple in accordance with referenced maintenance manual.

G Disconnect oil transfer tube between AGB and angle drive box in accordance with referenced maintenance manual.

H. Inspect strainer for cleanliness. If debris is found, replace engine

I. Connect AGB port with a flexible hose to a suitable container

J. Ensure engine oil tank is empty

K. Remove oil tank sight glass.

L. Insert borescope proble into oil tank through sight glass opening. Direct probe upward into strut adjacent to oil jet pump and bend probe tip toward No. bearing.

M. Apply pressurized oil to No. 1 and 2 bearing feed port and check that oil flows through No. 1 bearing jets. If oil does not flow, replace engine.

N. Check oil flowing out of angle drive feed port.

O. Bend borescope tip toward No. 2 bearing.

P. Re-apply pressurized oil to No. 1 and 2 bearing feed port and check that oil flows through No. 2 bearing jets. If oil does not flow, replace engine.

Q. Re-install No. 1 and 2 bearing oil feed line and T6 trim thermocouple in accordance with referenced maintenance manual.

R. Install transfer tube between AGB and angle drive in accordance with referenced maintenance manual.

S. Install oil tank sight glass in accordance with referenced maintenance manual.

T. Reidentify rear inlet case by marking SB 20939 using vibropeen method of marking.

U. Annotate engine log to include PWC SB 20939 (PW100-TP-72-853).

Appendix II

Engine Turbine/Turboprop Turbomachinery Chip Detector Continuity & Circuitry Checks

1. Effectively:

—All PW123 (BS707)

—All PW124B (BS724/BS726)

2. Reason: To check for oil system contamination.

3. Description:

A. Perform a turbomachinery chip detector continuity check (Part A).

B. Perform a chip detector functional check (Part B).

C. Perform a chip detector airframe circuitry check (Part C) for PW123 (SB707) engines.

D. Reference: PWC SB 20938, dated October 12, 1990.

4. References:

A. PW123; Maintenance Manual P/N 3036432, Chapter 72-01-50.

B. PW124B; Maintenance Manual P/N 3037332, Chapter 72-01-50.

C. PW100; Service Bulletin 20938 (10-12-90).

5. Accomplishment Instructions:

Part A

A. Perform turbomachinery chip detector continuity check in accordance with aircraft maintenance manual. For PW123 (BS707) Installations perform an engine condition panel flag check.

B. If the turbomachinery chip detector circuit is completed:

(1) Remove and inspect chip detector in accordance with referenced maintenance manual.

(2) If chip detector is contaminated, remove main oil filter and chip detector strainer, and visually inspect for debris.

(3) Debris is classified as follows:

(a) *Allowable:* Material which is due to normal wear of engine and may also be residual machining swarf, etc. following manufacture. Unrestricted operation of engine is applicable.

(b) *Non-allowable:* Material which indicated potential abnormal conditions in the engine. Restrictions on further engine operation are applicable.

Note: Pratt & Whitney Canada (PWC) recommends that any non-allowable debris be spectrographically analyzed by a qualified laboratory If bearing material (AMS 6444 (52100) of AMS 6491 (M-50)) is identified, replace turbomachinery module.

(4) Categorize debris using magnifying glass or microscope into "allowable" or "non-allowable".

(a) *Allowable:* Small quantity of hair like filaments or powder, spiral curls (machining swarf) and silver plating. If machining swarf is found, have them properly identified with engine S/N and module and forward them to the local PWC representative.

(b) *Non-allowable:* 1. Large quantity of hair like filaments (fuzz) or powder.

Note: Large quantity is considered when chip detector magnetic poles are completely covered by fuz and/or powder.

2. Dark irregular magnetic chips (minimum dimension 0.010 in. (0.254 mm).

Note: Thin shiny flakes with feathered edges and more than .020 in. (0.508 mm) in size are generated when bearing surfaces break down due to excessive load (spalling). The outer surface of the flakes is highly polished and may show parallel impressions. The inner surface has a rough, vary or granule texture. After the bearing surface breaks down, the underlying material disintegrates and chips having a dark, course and irregular shape are produced.

3. Identifiable fragments (i.e. keywasher keys, tooth segments, etc.).

Note: Replace affected module if identifiable fragments are found.

4. Small clusters of magnetic flakes (three or more).

(5) If allowable debris is found, clean and reinstall chip detector, strainer and main oil filter in accordance with referenced maintenance manual. The aircraft may be returned to normal operation. The occurrence should be recorded for trend monitoring purposes.

(6) If non-allowable debris is found:

a. Clean and reinstall chip detector strainer and filter in accordance with referenced engine maintenance manual.

b. Run engine at 80% torque for 10 minutes in accordance with referenced engine maintenance manual.

c. Remove and inpsect chip detector for debris in accordance with referenced maintenance manual.

d. If no debris is found, aircraft may be returned to normal operation. The occurrence should be recorded for trend monitoring purposes.

e If debris is found:

(1) Remove main oil filter and associated chip detector strainer from turbomachinery module in accordance with referenced maintenance manual.

(2) Remove debris from pressure oil filters using patch procedure.

(3) Identify patch with engine S/N and hours run.

(4) Transfer chip detector debris into clean plastic bag in accordance with referenced engine maintenance manual.

(5) Flush engine in accordance with referenced engine maintenance manual and power plant (Ref. Airframe Maintenance Manual) oil system as applicable.

(6) Install clean chip detector, strainer and oil filter in accordance with referenced engine maintenance manual.

(7) Fill engine oil system with new oil in accordance with referenced engine maintenance manual and power plant (Ref. Aircraft Maintenance Manual).

(8) Run engine at 80% torque for 10 minutes in accordance with referenced engine maintenance manual.

(9) Remove and inspect chip detector in accordance with referenced maintenance manual.

(10) If debris is found, replace turbomachinery module.

(11) If no debris is found, engine may be returned to normal operation.

(12) If no debris is found, aircraft may be returned to normal operation. The occurrence should be recorded for trend monitoring purposes.

C. Annotate engine log to include PWC SB 20938 Part A (PW100–TP–72–854).

Part B

A. At 300 flight hour intervals or less, perform chip detector functional check in accordance with applicable engine maintenance manual. If chip detector fails functional check, proceed as follows:

(1) Remove and inspect chip detector in accordance with reference engine maintenance manual.

(2) If no debris is found, engines may be returned to normal operation, however, chip detector must be removed and inspected at 25 flight hour intervals, or less until a function chip detector is installed.

(3) If debris is found, follow instructions from: Part A; B(2).

B. Annotate engine log to include PWC 20938 Part B (PW100-TP–72–854).

Part C

A. At 300 flight hour intervals or less, perform a chip detector airframe circuitry check in accordance with aircraft maintenance manual.

B. Annotate engine log to include PWC SB 20938 Part C (PW100–TP–72–854).

Note: The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorian, Longueuil, Quebec J4G1A1. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective November 16, 1990.

Issued in Burlington, Massachusetts, on November 6, 1990.

Jack A. Sain,

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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 25

[Docket No. [70871–0121]]

RIN 0690–AA14

Program Fraud Civil Remedies

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule will implement the Program Fraud Civil Remedies Act of 1986, which authorizes the Department of Commerce (and certain other federal agencies) to impose through administrative adjudication civil penalties and assessments against persons making false claims or statements to it.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Wayne Weaver, Counsel to the Inspector General, room 7989–C, 14th & Constitution Avenue NW., Washington, DC 20230 (202) 377–5992.

SUPPLEMENTARY INFORMATION:

I. Background

This rule will implement the Program Fraud Civil Remedies Act (the Act), which was enacted on October 21, 1986 as sections 6103–6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509, 100 Stat. 1874), and codified at 31 U.S.C. 3801–3812. The Act establishes an administrative remedy against anyone who makes a false claim or written statement to any of certain Federal agencies, including the Department of Commerce (the Department). In brief, any person who submits a claim or written statement to an affected agency knowing or with reason to know that it is false, fictitious, or fraudulent, is liable for a penalty of up to $5,000 per claim or statement and, in addition, with respect to claims, for an assessment of up to double the amount falsely claimed.

The Act requires each affected Federal agency to promulgate rules and regulations necessary to implement the provisions of the Act. 31 U.S.C. 3809. The Senate Governmental Affairs Committee stated in its report on the Act that it "expects that the regulations would be substantially uniform throughout government." S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985). In keeping with that expression, in November, 1986 the President's Council on Integrity and Efficiency (PCIE) requested the Department of Health and Human Services (HHS) to form a task force to develop model regulations for implementation of the Act by all affected Federal agencies. HHS was asked to lead the task force because it has since 1983 been administering a statute similar to the Act, the Civil Monetary Penalty Law, 42 U.S.C. 1320a–7a. (The Civil Monetary Penalty Law authorizes the Secretary of HHS to impose penalties and assessments against those who submit false claims to the Medicare, Medicaid, or the Maternal and Child Health Block Grant Programs.) The task force completed a model set of regulations on March 6, 1987, and the PCIE recommended that all affected Federal agencies adopt them.

A notice of proposed rulemaking was published in the **Federal Register** on July 6, 1989 (54 FR 28430). A 30-day comment period was provided. No comments were received.

Therefore, the Department will adopt without substantive change the final model regulations recommended by the PCIE, incorporating, where appropriate, definitions and procedures specific to the Department's organization.

II. General Description of the Statutory Scheme

The Act provides for administrative adjudication of cases where a person makes a claim or written statement to the Department that the person knows, or has reason to know, is false, fictitious, or fraudulent. Liability attaches under the Act for any false, fictitious, or fraudulent claim for property, services, or money and for any written statement that is false, fictitious, or fraudulent with respect to any claim, contract, bid, proposal for contract, grant, loan or benefit.

If a person making such a claim or statement to the Department does so with actual knowledge or deliberate ignorance of its falsity, or acts with reckless disregard for the truth of falsity of the claim or statement, he or she can be held liable for a penalty of up to $5,000 per claim or statement. In addition, with respect to claims, the person may be subject to an assessment of up to double the amount falsely claimed.

Role of Major Actors in Bringing Cases

The Act prescribes roles for four major actors within the Department in bringing cases under the Act: The investigating official, the reviewing official, the presiding official, and the authority head.

The *investigating official* is vested with the authority to investigate all allegations of liability under the Act,

including the power to subpoena documents and other information. If the investigating official concludes that an action under the Act is warranted, he or she submits a report of the investigation to the reviewing official.

The *reviewing official* must be someone within the Department independent of the investigating official. The reviewing official reviews the investigative report to determine whether there is adequate evidence to believe that the person named in the report is liable under the Act. If so, the reviewing official sends to the Department of Justice a written notice of intent to issue a complaint. The Act then gives the Attorney General, or a designated Assistant Attorney General, 90 days to approve or disapprove the issuance of a complaint.

If the appropriate Justice Department official approves a case, the reviewing official may serve a complaint on the respondent. The respondent may request a hearing by filing an answer within 30 days of receiving the complaint. If the respondent does so, the reviewing official sends the complaint and answer to a presiding officer.

The *presiding official* serves a notice of hearing upon the respondent, supervises discovery, rules on motions, conducts the hearing, and issues an initial decision. The initial decision will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed. Any respondent who is determined to be liable for a civil penalty or assessment in an initial decision, may appeal that decision to the authority head.

The *authority head* may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment. Should the authority head determine that the respondent is liable for a penalty or assessment, the respondent may obtain judicial review of such determination in an appropriate United States District Court.

This rule names as the investigating official the Inspector General of the Department, or a designee within the Office of Inspector General (OIG) compensated at or above the basic rate of pay for grade GS–16 under the General Schedule. The General Counsel or a designee within the Office of General Counsel, also compensated at or above that rate, will act as the reviewing official. Administrative Law Judges (ALJs) will be presiding officials, and the Secretary of the Department, or designee, will function as the authority head.

III. Discussion of Major Issues

1. Definitions

Most of the definitions set forth in 15 CFR 25.2 come directly from the Act.

2. Basis for civil penalties and assessments

For the most part, language contained in 15 CFR 25.3 comes directly from the Act or the legislative history. However, the regulation provides that liability for assessments is joint and several among all respondents; whereas, each respondent may be held liable separately for a penalty of up to $5,000 per claim or statement.

3. Investigation

The regulation at 15 CFR 25.4 provides that the investigating official must submit a report to the reviewing official only where he or she concludes that action under the Act may be warranted. This section also prescribes basic procedures for the investigating official to follow in issuing investigatory subpoenas under the Act for documents or other information. In addition, this section makes it clear that the Act does not prevent the investigating official from exercising the subpoena powers that he or she may have under other authorities or from pursuing other remedies.

4. Review by reviewing official

Section 3809 of title 31 requires the reviewing official to determine that there is a reasonable prospect of collecting the amount of penalties and assessments for which a person may be liable. The regulation at 15 CFR 25.5 will not interpret this to require the reviewing official to determine that a respondent could pay the statutory maximum, but rather that the respondent could pay an "appropriate amount."

5. Prerequisites for Issuing a Complaint

Most of the language contained in 15 CFR 25.6 is derived directly from the Act. Under 31 U.S.C. 3803(c)(1), the remedies provided in the Act do not apply with respect to any claim if the amount of money (or value of property or services) falsely demanded or requested in such claim or in a group of related claims submitted at the same time exceeds $150,000. This section interprets the term "related group of claims submitted at the same time" narrowly to prevent attempts to evade liability under the Act.

The regulation also makes it clear that the reviewing official may join in a single complaint claims that are unrelated or that were not submitted at the same time, even if the total amount of money (or value of property or services) falsely claimed exceeds $150,000.

6. Issuance of Complaints

The regulation specifies what must be included in a complaint (15 CFR 25.7) and an answer by which a respondent requests a hearing (15 CFR 25.9). 15 CFR 25.8 specifies the means by which service of the complaint is made.

7. Default Upon Failure To File an Answer

15 CFR 25.10 requires the ALJ (after another notice to the respondent) to impose penalties and assessments at the statutory maximum whenever the facts alleged in the complaint establish liability under the Act and the respondent fails to file a timely answer. An initial decision of the ALJ becomes the final decision of the Department and will not be subject to further challenge unless the respondent demonstrates that extraordinary circumstances prevented the filing of a timely answer.

8. Hearings

The provisions at 15 CFR 25.14 through 25.16 are designed to ensure the fairness of a hearing by (a) providing for the separation of functions among those within the agency investigating, litigating, and deciding these cases, (b) prohibiting ex parte contacts with the ALJ on any matters in issue, and (c) providing a mechanism for the disqualification of either a reviewing official or an ALJ.

9. Rights of Parties; Authorities of the ALJ

The provisions at 15 CFR 25.17 and 25.18 list the rights of the parties and the authorities of the ALJ not specifically provided in other sections of the regulation.

10. Prehearing Conferences

The ALJ may order a prehearing conference at his or her discretion, but must order at least one on the request of either party. Prehearing conferences may be held over the telephone at the ALJ's discretion. (15 CFR 25.19).

11. Disclosure of Documents

The Act requires the disclosure of certain types of materials to the respondent. 31 U.S.C. 3803(e) (1) and (2). Generally speaking, these materials consist of any relevant and material documents and other materials that relate to the allegations in the complaint and upon which the findings and conclusions of the investigating official

under 15 CFR 25.4(b) are based, unless such materials are subject to a privilege under Federal law. In addition, the respondent may also obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint. (15 CFR 25.20).

12. Discovery

Congress has provided for limited discovery in these proceedings. The Act provides only for such discovery as the ALJ determines is "necessary for the expeditious, fair, and reasonable consideration of the issues * * * " 31 U.S.C. 3803(g)(3)(B)(ii). In addition, the Senate Governmental Affairs Committee stated:

> In the ordinary case, the committee anticipates that the timely exchange of proposed exhibits, witness lists and witness statements will constitute sufficient discovery. It is clearly the committee's hope that this alternative administrative mechanism will not become entangled in the unchecked "discovery wars" that render many court cases excessively costly and time-consuming.

S. Rep. No. 99–212, *supra*, at 15.

In order to ensure that discovery is reasonably controlled, the regulation (15 CFR 25.21) provides that all discovery must be approved by the ALJ, unless the parties agree otherwise. The burden of proof with respect to a discovery request is on the proponent of that request.

13. Exchange of Witness Lists, Statements, and Exhibits

15 CFR 25.22 provides for the exchange of certain documents before the hearing, including witness lists, copies of prior statements of witnesses, and copies of hearing exhibits. The ALJ may exclude witnesses and documents in instances where a party did not receive such documents before the hearing. In addition, any documents so exchanged would be deemed authentic for purposes of admissibility at the hearing unless a party objected before the hearing.

14. Subpoenas

15 CFR 25.23 prescribes procedures for the ALJ to issue, and for parties and prospective witnesses to contest, subpoenas to appear at the hearing, as authorized by 31 U.S.C. 3804(b). 15 CFR 25.24 permits parties and prospective witnesses to seek protective orders to restrict discovery or to limit the disclosure of information at the hearing.

15. Sanctions

The regulation at 15 CFR 25.29 expressly recognizes an ALJ's authority to sanction parties and their representatives for failing to comply with regulations or orders of the ALJ. These sanction provisions are modeled on those of the Merit Systems Protection Board at 5 CFR 1201.43.

16. The Hearing and Burden of Proof

15 CFR 25.30 requires that the Department has the burden of proof on the issues of liability and the existence of any factors that might aggravate or increase the amount of penalties and assessments that may be imposed. Conversely, the respondent has the burden of proof on any affirmative defenses and any factors that might mitigate or reduce the amount of penalties and assessments.

17. Determining the Amount of Penalties and Assessments

The Act authorizes the imposition of penalties ranging up to $5,000 for each false claim or statement, and in addition, with respect to claims, an assessment ranging up to twice the amount falsely claimed. However, the Act is silent on how the appropriate amount of penalties or assessments should be determined. The regulation at 15 CFR 25.31 would provide guidance to the ALJ and the Secretary in exercising this discretion. The regulation notes that because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others, a significant penalty and double damages ordinarily should be imposed. It then lists factors that should be considered, but notes that the list is not exhaustive. The ALJ and Secretary remain free to consider other factors that may aggravate or mitigate the amount of penalties and assessments as such factors are presented in particular cases.

18. Witnesses

Under 15 CFR 25.33, the ALJ allows testimony to be admitted in the form of a written statement or deposition so long as the opposing parties have a sufficient opportunity to subpoena the person whose statement is being offered.

Cross-examination may, at the discretion of the ALJ, exceed the scope of direct examination. The provisions in subparagraphs (c) and (e) are derived from Rule 611 of the Federal Rules of Evidence.

19. Evidence

Paragraphs (a) through (d) of 15 CFR 25.34 were included to comply with the recommendations of the Administrative Conference of the United States in Recommendations 86–2, 1 CFR 305.86–2, 51 FR 25,641 (July 16, 1986). The Federal Rules of Evidence are not, with some exceptions, generally binding on the ALJ. However, the ALJ may apply the Federal Rules of Evidence to exclude unreliable evidence.

20. Post-Hearing Briefs

It is within the ALJ's discretion to order post-hearing briefs, although parties are entitled to file one if they desire. (15 CFR 25.36).

21. Initial Decision

15 CFR 25.37 provides that within 90 days of the filing of final post-hearing briefs, the ALJ shall serve on the parties an initial decision making specific findings of fact and conclusions of law on whether the claims or statements alleged in the complaint violate the Act and the appropriate amount of penalties and assessments considering any aggravating or mitigating factors in the case. The initial decision would become final within 30 days unless stayed by the filing of an appeal or a motion for reconsideration.

22. Reconsideration of Initial Decision

15 CFR 25.38 permits any party to file with the ALJ a motion to the ALJ for reconsideration of the initial decision, allowing the primary decision-maker an opportunity to correct any errors in the initial decision.

23. Appeal to Authority Head

15 CFR 25.39 prescribes procedures for a respondent who has been found liable for penalties and assessments in an initial decision to appeal that decision to the authority head, as guaranteed by 31 U.S.C. 3803(i)(2). The rule provides that there is no appeal of an ALJ's interlocutory orders.

24. Miscellaneous

15 CFR 25.40 through 25.46 largely reiterate statutory provisions, except § 25.41, which provides that there will be no administrative stay of the authority head's final decision.

25. Limitation

The Act provides that the ALJ must serve a notice of hearing within six years of the date the claim or statement is made. The regulation (15 CFR 25.47) provides that service of a notice of intent to issue an initial decision in the event of default would be deemed to meet this statutory requirements

IV. Rulemaking Requirements

Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish regulatory impact analysis for major rules. A major rule is defined as any regulation that is likely to: (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, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. In general, the rule establishes procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit false claims or statements to the Department. As such, this rule has no direct effect on the economy or on Federal or State expenditures. Consequently, we have concluded regulatory impact analysis is not required.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 604(a)), we prepare and publish an initial regulatory flexibility analysis for regulations unless the General Counsel certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, regulations would not have a significant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, we do not anticipate that a substantial number of these small entities would be significantly affected by this rule-making. Therefore, the General Counsel certified to the Chief Counsel for Advocacy, Small Business Administration, that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 (Pub. L. 96–511), all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. It has been determined that this rule-making does not contain specific information collection requirements and would not increase the Federal paperwork burden on the public and private sector.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 25

Administrative Practice and Procedure, Fraud, Investigations, Organizations and functions (Government agencies) and Penalties.

For the reasons stated in the preamble, title 15 of the Code of Federal Regulations, subtitle A, is amended by adding a new part 25, to read as follows:

PART 25—PROGRAM

Fraud Civil Remedies

Sec.

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25.46 Compromise or settlement.
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Authority: Secs. 6101–6104, Pub. L. 99–509, 100 Stat. 1874 (31 U.S.C. 3801–3812).

Fraud Civil Remedies

§ 25.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Public Law 99–509, section 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 25.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of Commerce.

Authority head means the Secretary of the Department of Commerce, or designee.

Benefit means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or

to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Compliant means the administrative complaint served by the reviewing official on the respondent under § 25.7.

Department means the Department of Commerce.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §§ 25.10 or 25.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Commerce or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberative ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization and includes the plural of that term.

Representative means any attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Respondent means any person alleged in a complaint under § 25.7 to be liable for a civil penalty or assessment under § 25.3.

Reviewing official means the General Counsel of the Department or his or her designee who is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 25.3 Basis for civil penalties and assessments.

(a) *Claims.*

(1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, ficitious, or fraudulent;

(ii) Includes, or is supported by, any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes, or is supported by, any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of the section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has

made payment (including transferred property or provide services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 25.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official, or the person designated to receive the documents, a certification that—

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefore; or

(iii) Such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 25.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 25.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 25.3, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 25.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of § 25.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 25.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 25.7 only if—

(1) The Department of Justice approved the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 25.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money, or the value of property or services, demanded or requested in violation of § 25.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 25.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the respondent, as provided in § 25.8.

(b) The complaint shall state—

(1) The allegations of liability against the respondent, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the respondent may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the respondent's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the respondent with a copy of these regulations.

§ 25.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name of address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the respondent or his or her representative.

§ 25.9 Answer.

(a) The respondent may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the respondent—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the respondent intends to rely;

(3) May state any reasons why the respondent contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the respondent to act as respondent's representative, if any.

§ 25.10 Default upon failure to file an answer.

(a) If the respondent does not file an answer within the time prescribed in § 25.9(a), the reviewing official may refer the complaint to the ALJ along with the proof of service, as provided in § 25.8(b).

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the respondent in the manner prescribed in § 25.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 25.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the respondent waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the respondent files motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the respondent from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the respondent can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the respondent an opportunity to answer the complaint.

(g) A decision of the ALJ denying a respondent's motion under paragraph (e) of this section is not subject to reconsideration under § 25.38.

(h) The respondent may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the respondent files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the respondent's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the respondent's failure to file a timely answer, the authority head shall remand the case of the ALJ with instructions to grant the respondent an opportunity to answer.

(l) If the authority head decides that the respondent's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 25.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 25.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the respondent in the manner prescribed by § 25.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the respondent, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 25.13 Parties to the hearing.

(a) The parties to the hearing shall be the respondent and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 25.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) The reviewing official shall, after consulting with the Inspector General, designate the representative for the Government, who shall be an attorney with either the Office of General Counsel or the Office of the Inspector General. The reviewing official's decision is final.

§ 25.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 25.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 25.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 25.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 25.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 25.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the respondent may review any relevant and material documents, transcripts, records, and other materials that related to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 25.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the respondent may obtain copies of such documents.

(b) Upon written request to the reviewing official, the respondent also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 25.5 is not discoverable under any circumstances.

(d) The respondents may file a motion to compel dosclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 25.9.

§ 25.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 25.22 and 25.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within two days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 25.34.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery

(5) The ALJ may grant discovery subject to a protective order under § 25.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 25.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 25.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 25.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 25.23 Subpoena for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefore not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown: Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 25.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 25.24 Protective order.

(a) A party of a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as direct by the ALJ.

§ 25.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Department of Commerce, a check for witness fees and mileage need not accompany the subpoena.

§ 25.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and one copy.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party of the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by deliverying or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 25.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 25.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 25.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 25.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the respondent is liable for a civil penalty or assessment under § 25.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove respondent's liability and any aggravating factors by a preponderance of the evidence.

(c) The respondent shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 25.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted ordinarily double assessment, in lieu of damages, and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the respondent's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such program;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude such misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State directly or indirectly; and

(16) The need to deter the respondent and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 25.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the respondent resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the respondent and the ALJ.

(b) Each party shall have the opportunity to present arguments with respect to the location of the hearing

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 25.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statements must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 25.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 25.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and inmaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 25.24.

§ 25.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 25.24.

§ 25.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 25.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 25.3.

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 25.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permittted) has expired. The ALJ shall as the same time serve all respondents with a statement describing the right of any respondent determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ

§ 25.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the

ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 25.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 25.39.

§ 25.39 Appeal to authority head.

(a) Any respondent who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b) (1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 25.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 day period for an additional 30 days if the respondent files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the respondent files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there was reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a respondent has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the respondent with a copy of the authority head's decision, a determination that a respondent is liable under § 25.3 is final and is not subject to judicial review.

§ 25.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process and it shall be resumed only upon receipt of the written authorization of the Attorney General.

§ 25.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 25.42 Judicial review.

Section 3805 of title 31, United States Code, authorized judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 25.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 25.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §§ 25.42 and 25.43, or any amount agreed upon in a compromise or settlement under § 25.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the respondent.

§ 25.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 25.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision. If the designated representative of the Government is not with the Office of General Counsel, the representative shall forward all settlement offers to the reviewing official and cannot negotiate a compromise or settlement with the respondent except as directed by the reviewing official.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 25.42 or during the pendency of any action to collect penalties and assessments under § 25.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 25.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 25.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 25.8 within 6 years after the date on which such claim or statement is made.

(b) If the respondent fails to file a timely answer, service of a notice under § 25.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated: October 3, 1990.

Robert A. Mosbacher,

Secretary, Department of Commerce.

[FR Doc. 90-26750 Filed 11-15-90; 8:45 am]

BILLING CODE 3510-GJ-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM91-2-000; Docket Nos. RP86-119-000, TA84-2-9-015, and TA85-1-6-003]

Tennessee Gas Pipeline Co.; Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs

Issued: November 1, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on remand staying collection of take-or-pay fixed charges and directing filing of revised tariff provisions.

SUMMARY: The Federal Energy Regulatory Commission is staying the authority of certain pipelines to collect fixed take-or-pay charges based on a purchase deficiency allocation method. Specifically, this order stays the effectiveness of each tariff provision under which the affected pipelines bill such charges. The order also states that pipelines may file revised tariff provisions to replace the stayed provisions. The order does not prescribe a particular method for allocating and recovering the amounts previously recovered through the stayed tariff provisions, but sets forth principles that the Commission will use to evaluate revised allocation methods. Pipelines filing revised tariff provisions must at the same time file some plan for crediting, distributing, or allocating amounts previously collected under the stayed tariff provisions. A pipeline that does not file revised tariff provisions within 120 days of the November 1, 1990 issuance of Order No. 528 must file a refund report showing its distribution of all amounts collected under the stayed provisions, except that pipelines which have been billed fixed charges by upstream pipelines need not file a refund report until 30 days after the upstream pipeline files its refund report. Finally, the order states that the December 31, 1990 sunset date applicable to the special recovery mechanisms set out in 18 CFR 2.104 (1990) does not apply to the filings pipelines must make pursuant to this order.

EFFECTIVE DATE: The stay provided in this order is effective December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., (202 208-1274), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 28, 1989, the United States Court of Appeals for the District of Columbia Circuit vacated and remanded the Commission's orders in the Tennessee Gas Pipeline Company proceedings listed above, concluding that the purchase deficiency method for allocating a portion of Tennessee's take-or-pay settlement costs violates the filed rate doctrine.[1] On October 9, 1990, the Supreme Court of the United States denied the petition for certiorari filed by the Solicitor General on behalf of the Commission in those proceedings.[2] The court of appeals decision became effective on October 17, 1990, when the court of appeals issued its mandate in *AGD II*. Since there are many other contested proceedings in which parties have raised objections to the purchase deficiency allocation method of other pipelines, the Commission is issuing this generic order to deal not only with the remanded Tennessee proceedings, but also with all other such contested proceedings.

The purchase deficiency allocation method was a feature of the policy formulated in Order No. 500 [3] under which interstate pipelines could allocate to their customers the costs of settling take-or-pay liabilities with the pipelines' gas suppliers. The costs so allocated could be recovered through fixed charges. Under that policy, if pipelines absorbed from 25 to 50 percent of the amounts paid to producers to settle take-or-pay liabilities, or to reform or terminate contracts with take-or-pay provisions, the pipelines could recover an equal amount from their firm sales customers in the form of fixed charges. Any balance could be recovered in the form of a volumetric surcharge on all throughput (sales and transportation volumes).

The amounts to be recovered through fixed charges were allocated on the basis of each customer's "purchase deficiency." The purchase deficiency was calculated by measuring the customer's purchases in the "deficiency period," the period during which the pipeline incurred the bulk of the take-or-pay liability in question, against the customer's purchases in a prior "base period." Thus customers were assigned a portion of the pipeline's take-or-pay costs in proportion to the extent their purchases declined during the deficiency period.

The petitioners in the Tennessee proceedings (*AGD II*) argued that the purchase deficiency method of allocating such costs violated the filed rate doctrine [4] because the fixed charges, even though recovery of a current cost, were in fact charges for purchases during the deficiency period. The Court of Appeals concurred and remanded those proceedings to the Commission, stating,

> [T]he relevant question is not which costs are "current" and which are "past." Rather, the appropriate inquiry seeks to identify the purchase decisions to which the costs are attached. After making this inquiry, we have little doubt that the mechanism at issue violates the filed rate doctrine.[5]

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[1] Associated Gas Distributors v. FERC, 893 F.2d 349 (D.C. Cir. 1989) (AGD II).

[2] FERC v. Associated Gas Distributors, 59 U.S.L.W. 3271 (Oct. 9, 1990).

[3] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 52 FR 30,334 (Aug. 14, 1987) (Interim Rule), FERC Stats. & Regs., Regulations Preambles ¶ 30,761, *extension granted*, Order No. 500-A, FERC Stats. & Regs., Regulations Preambles ¶ 30,770, *modified*, Order No. 500-B, FERC Stats. & Regs., Regulations Preambles ¶ 30,772, *modified further*, Order No. 500-C, FERC Stats. & Regs., Regulations Preambles ¶ 30,786 (1987), *modified further*, Order No. 500-D, FERC Stats. & Regs., Regulations Preambles ¶ 30,800, *reh'g denied*, Order No. 500-E, 43 FERC ¶ 61,234, *modified further*, Order No. 500-F, FERC Stats. & Regs., Regulations Preambles ¶ 30,841 (1988), *reh'g denied*, Order No. 500-G, 46 FERC ¶ 61,148 (1989), American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989) (remanding interim rule), Order No. 500-H, FERC Stats. & Regs., Regulations Preambles ¶ 30,867 (1989) (Final Rule), *modified*, Order No. 500-I, FERC Stats. & Regs. ¶ 30,880 (1990), *aff'd in part & remanded in part*, American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990).

[4] Under the filed rate doctrine, a pipeline may charge only the rate on file with the Commission for that service during the period in question and rates can be changed only on 30 days advance notice to the Commission. *See* Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 578 (1981), and Columbia Gas Transmission Corp. v. FERC, 831 F.2d 1135 (D.C. Cir. 1987), *modified on reh'g*, 844 F.2d 879 (D.C. Cir. 1988).

[5] Associated Gas Distributors v. FERC, 893 F.2d 349, 355.

The court's ruling addressed only the method for allocating the amount recovered in a fixed charge. The court did not address the lawfulness of the Commission's policy of allowing recovery of take-or-pay costs through fixed charges, or of requiring pipelines to absorb a portion of those costs as a requisite to their recovery through fixed charges. These features of Order No. 500 are unaffected by the court's *AGD II* decision.

Since the *AGD II* decision, the court of appeals has generally upheld the Commission's final rules in Order No. 550–H and I.[6] Specifically, the court upheld the Commission's decision not to act under Section 5 of the Natural Gas Act with respect to pipeline-producer contracts and approved in most respects the Commission's take-or-pay crediting rules. Thus what emerges from *AGD II* and *AGA II* is that the Commission's overall plan for addressing the take-or-pay situation is valid. It is against this background that certain pipelines must develop a revised method for allocating the costs included in their fixed charges.

At the same time, the Commission is mindful that the gas industry has changed dramatically over the past several years. The gas market is more competitive today than ever. And while the transition has not always been easy, the Commission remains committed to fostering to the greatest extent possible, competition in the gas industry. Currently, this is occurring in the implementation of the Commission's rate design policy statement, its policies on GICs and streamlining as much as possible the process by which new pipeline capacity is certificated. Thus, in developing the approach set out below the Commission seeks to minimize the disruption to this ongoing process while providing an equitable allocation method that allows the recovery of these transitional costs.

Some pipelines have settlements approved by the Commission under which their customers have agreed to the allocation of take-or-pay costs and waived any objections on the basis of the filed rate doctrine (or the similar doctrine prohibiting retroactive ratemaking). Such proceedings are not affected by the court's remand or this order. Costs to be recovered under such settlements, and under filings approved by Commission orders that have become final and nonappealable, constitute a large portion of the total take-or-pay settlement costs on an industry-wide basis.

A total of 23 pipelines have filed to recover approximately $9 billion in settlement costs under Order No. 500. Of these pipelines, six have entered into settlements with their customers, which the Commission has approved and which have become effective.[7] Another four pipelines have recovery mechanisms which have become final and nonappealable.[8] Two additional pipelines have filed settlements concerning their recovery of take-or-pay costs that are currently pending before the Commission.[9] The six pipelines with approved settlements account for approximately $3 billion of the $9 billion total settlements costs filed by all pipelines. The four pipelines whose mechanisms have not been appealed account for about $50 million. The two with pending settlements account for another approximately $2 billion. Thus, the Commission's order here currently applies to the allocation of take-or-pay settlement costs on 13 primary pipelines [10] and on all downstream pipelines, including those downstream of the ten primary pipelines with settlements or whose mechanisms have not been appealed.

II. Stay of Authority to Collect Fixed Charges and Direction to Refile

A Stay of Existing Tariff Provisions

Effective 30 days after publication of this order in the **Federal Register**, the authority of all pipelines (except those listed in Appendix A as not affected by this order) to collect fixed charges based on a purchase deficiency allocation method is stayed. Specifically, the Commission is staying the effectiveness of each tariff provision under which the pipelines bill such charges. All billing of fixed charges under such tariff provisions is stayed effective 30 days after publication of this order in the **Federal Register**. Refunds of amounts collected under such tariff provisions prior to issuance of this order are not required at this time. However, each pipeline will be required to provide data showing the amounts directly billed when it files either a revised allocation method in accordance with this order, or a refund report within 120 days of this order if it does not file a revised method. Existing volumetric surcharges to collect take-or-pay settlement costs under currently effective tariff provisions may continue to be assessed.

The Commission recognizes that pipelines may file revised tariff provisions before the stay takes effect. The Commission will act upon any such filings within the statutory 30 day notice period. The Commission does not intend to waive the 30 day notice requirement. Any tariff filings to recover additional take-or-pay settlement costs filed on or after the date of this order will be evaluated as a proposal for a new recovery mechanism under the principles set forth below. This order shall by published in the **Federal Register** and shall constitute notice under sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c and d, to all potential customers that take-or-pay settlement costs may be collected through Commission approved rates, filed in response to this order, by means of one or more of the methodologies described in this order, or through another methodology that makes use of current or test year contract demand or some other measure of usage of the pipeline system. Thus, a pipeline proposal filed in response to this order may seek to recover take-or-pay costs that were previously being recovered under a fixed charge mechanism that has been invalidated by the court of

[6] American Gas Association v. FERC, No. 87–1588 (D.C. Cir. Aug. 24, 1990).

[7] Columbia Gas Transmission Corp., 49 FERC ¶ 61,074 (1989), *reh'g denied, clarification granted,* 51 FERC ¶ 61,194 (1990); CNG Transmission Corp., 49 FERC ¶ 61,034 (1989); Northern Natural Gas Co., 49 FERC ¶ 61,437 (1989), *reh'g denied,* 51 FERC ¶61,157 (1990); Sea Robin Pipeline Co., 51 FERC ¶ 61,046 (1990); Southern Natural Gas Co., 46 FERC ¶ 61,336, at p. 62,026 (1989); and Transcontinental Gas Pipe Line Corp., 48 FERC ¶ 61,442 (1990), *order on reh'g and clarification,* 50 FERC ¶ 61,442 (1990).

[8] These are Colorado Interstate Gas Co., Questar Pipeline Co., West Texas Gathering Co., and Valero Interstate Transmission Company.

These are the pipelines which fit into this category that the Commission has been able to identify to date. There may be other pipelines or specific filings by other pipelines which also fall into this category and would be unaffected by this order. Any pipeline which believes it belongs in this category should file with the Commission indicating that and the basis for its position.

[9] The pipelines are El Paso Natural Gas Co. and United Gas Pipeline Co.

To the extent that a settlement was entered into prior to the denial of certiorari in AGD II, the Commission believes it is in the public interest to assess this settlement as agreed to by the parties. The Commission expects all parties to honor their agreements. If a party has not claimed that the settlement violated the file rate doctrine, the Commission does not believe it would be appropriate for a party to change unilaterally its position because of events that have occurred subsequent to the entering of the settlement.

[10] The pipelines are: ANR Pipeline Co., Arkla Energy Resources Co., El Paso Natural Gas Co., Natural Gas Pipeline Company of America, Northwest Pipeline Co., Panhandle Eastern Pipe Line Co., Tennessee Gas Pipeline Co., Texas Gas Transmission Corp., Transwestern Pipeline Co., Trunkline Gas Co., United Gas Pipe Line Co., Williams Natural Gas Co., and Williston Basin Interstate Pipeline Co.

appeals. A proposal may also seek to recover take-or-pay costs that accrue during the interim period between the effective date of the stay and when a new allocation method becomes effective.

B. Filing of New Recovery Provisions

Pipelines subject to this order may file new tariff provisions to replace the stayed provisions. Pipelines choosing not to file new tariff provisions to replace the stayed provisions will be subject to a stay of their fixed charge recovery mechanism and will be required to file a refund report showing the distribution of all amounts previously collected under the stayed provisions (as detailed in section II.A.). Pipelines must meet with and negotiate with their customers and other affected parties (including downstream pipelines, producers, end-users and other shippers) concerning proposals for a new allocation method for the recovery of the take-or-pay settlement costs currently included in the fixed charge. The Commission recognizes that pipelines may file before they have an opportunity to meet with affected parties. The Commission is aware, however, that many pipelines have been in the process of netogitating take-or-pay recovery in the context of other proceedings and expects parties to continue those negotiations after filing revised tariff provisions.

Since pipeline systems and the composition of parties affected by each pipeline differ, the Commission will entertain proposals for allocating the fixed charge that are tailor-made for each pipeline and its situation, subject to evaluation in light of the guidelines described below. Negotiations related to these tariff filings should take place as soon as possible; in any event take-or-pay settlement cost tariff filings do not have to be made by December 31, 1990. That date had been established in Order No. 500–H as the deadline for filing to recover take-or-pay costs under the special recovery mechanisms set out in § 2.104 of the regulations, including the purchase deficiency method. 18 CFR 2.104 (1990). Since the sunset date applied only to the special recovery mechanism invalidated by the court in *AGD II*, the sunset date does not apply to the filings that pipelines must make under this order.

In negotiating revised allocation methods, pipelines and their customers must consider how to handle the take-or-pay settlement costs previously recovered through fixed charges, *i.e.*, whether to provide for refunds of amounts collected under the stayed mechanism or for crediting of such amounts against liabilities under the proposed mechanism. The pipelines must file some plan for crediting, distributing, or allocating amounts previously collected in fixed charges when they file tariff sheets to implement a new recovery mechanism. Generally, the Commission does not allow a party's refund obligation under one proceeding to be offset against amounts due the same party under another proceeding, and a United States Court of Appeals has reversed a Commission decision allowing such offsets. *Interstate Natural Gas Association of America* v. *FERC*, 756 F.2d 166 (D.C. Cir. 1985). However, here the refunds would be in the same proceeding so that pipelines may seek to implement some form of crediting as a means of reconciling liabilities under one recovery method with liabilities under a different method.

The process of developing new allocation methods for the fixed charge necessitates pipelines meeting with all affected parties to discuss and negotiate the provisions of the new allocation proposals. The Commission encourages parties to negotiate the provisions of such a method together with any other issues in contention that feasibly can be addressed, and to resolve take-or-pay issues as part of comprehensive settlements that deal generally with the restructuring of the pipelines' rates and services.[11] In order to accommodate these discussions, the Commission may convene technical conferences or the discussions could take place within the context of a pipeline's existing rate case. The administrative law judges should extend existing schedules in pending rate cases, if necessary, to allow parties time to engage in such negotiations. However, the Commission does not envision that the filings to revise the take-or-pay fixed charge allocation method will be automatically consolidated with a pipeline's pending rate case, simply that a pending rate case may be a convenient forum for the parties to discuss the relevant issues.

If a pipeline fails to file an alternative proposal within 120 days of the issuance of this order, it must file within that time a refund report for all amounts previously collected under the fixed charge provisions of its tariff, except that pipelines billed fixed charges by an upstream pipeline need not file a refund report until 30 days after the refund report of the upstream pipeline is filed. In such cases, all refunds must be paid by upstream and downstream pipelines to the customers that actually paid the fixed charges, notwithstanding any other provision in the pipeline's existing tariff. In addition, if the pipeline has not filed an alternative proposal, it will be ordered to remove the stayed provisions from its tariff when it files its refund report.

The Commission urges all of the pipelines, customers and affected parties to bargain in good faith, in light of the Commission's policies on these issues. The Commission reiterates its conviction that *all* segments of the industry must share the responsibility for paying for these transition costs. However, the Commission also acknowledges that the time has come to afford parties the maximum flexibility possible to achieve equitable and individual resolutions of this problem. Accordingly, the Commission will give consideration to any proposal for allocating the fixed charge—whether contested or uncontested, in whole or in part—that satisfies the court's concerns in *AGD II* and is generally consistent with the principles set out below. As the Commission has previously said in § 2.104(d)(2) of the policy statement concerning the passthrough of take-or-pay settlement costs: the Commission intends to exercise its authority to the full extent permitted by the Natural Gas Act to approve take-or-pay settlements. However, nothing in this order is intended to disturb or change the Commission's Order No. 500 take-or-pay policy settlement or the precedents established in subsequent cases, except with respect to the method by which pipelines recover the costs currently collected through the fixed charge.

III. Guidelines for Acceptable Allocation Methods for Fixed Charge

A. Principles

Although the Commission is not prescribing a particular method for allocating the fixed charge, there are several principles that the Commission will use to evaluate revised allocation methods:

1. *The costs must be spread as broadly as possible throughout the industry.* The Commission reaffirms the principle that all segments of the industry—pipelines, producers, LDCs, industrial end-users, and other consumers—should contribute to funding the pipelines' take-or-pay costs.

[11] To secure agreement of customers to a new allocation method for the fixed charges, a pipeline could offer, for example, changes in service, a moratorium on filing rate increases while remaining take-or-pay costs are being collected, or to negotiate other rate adjustments that meet the needs of its customers. *See* Columbia Gas Transmission Corp., 49 FERC ¶ 61,074 (1989), *reh'g denied, clarification granted*, 51 FERC ¶ 61,194 (1990); and Transcontinental Gas Pipe Line Corp., 48 FERC ¶ 61,442 (1990), *order on reh'g and clarification*, 50 FERC ¶ 61,442 (1990).

No single segment of the industry is to blame for the take-or-pay problems and all segments should share in the costs of making the transition to a more competitive market, since all segments are benefitting from the transition.

To this end, the Commission urges state commissions to use the full extent of their authority to equitably allocate between LDCs and retail customers take-or-pay costs that flow through an interstate pipeline's rates. As the Commission stated in Order No. 500–H,[12] to ensure that all segments of the industry share in contributing towards the resolution of the take-or-pay problem,

> state regulators may consider reclassifying, as commodity costs, take-or-pay costs billed to an LDC as a fixed charge and incorporating such costs into LDC sales or transportation rates, or both, thereby spreading such costs to the maximum extent possible and subjecting them to market forces. Furthermore, state regulatory agencies may implement, as some have, an equitable sharing mechanism similar to that established by the Commission which requires LDCs to absorb a portion of the costs if they desire to assess a fixed charge.

In the Commission's view nothing precludes a state commission from requiring an LDC to absorb a share of the costs as the Commission is requiring of interstate pipelines here.

The Commission intends by separate letter to request information from each state regulatory commission on how it has addressed recovery of take-or-pay costs at the state level; what guidelines the state commission used in developing its allocation plans; and whether, as a general matter, the state commission expects any changes to its schemes as a result of the invalidation of the purchase deficiency allocation method. The Commission will request to receive this information within 30 days so it has time to analyze fully the wellhead to burner tip impact of any pipeline proposals filed in response to this order.

2. *The pipeline must absorb a significant portion of the costs.* While the commission firmly believes that all segments of the induistry should share in paying the costs of resolving the take-or-pay problem, the Commission only has jurisdiction over the rates of the interstate pipelines. Consistent with the principle that all segments of the industry should share in paying the costs of resolving the take-or-pay problem, interstate pipelines also must share in paying a portion of the costs. Thus, absent agreement with its customers and all other affected parties, the Commission will continue to require absorption as provided in Order No. 500 and the cases decided after Order No. 500. Therefore, absent agreement, a pipeline must continue to absorb the same amount of its take-or-pay settlement costs as it is currently absorbing under its existing passthrough mechanism.

As the court of appeals has recognized in a case where the Commission disallowed a pipeline's recovery of the costs of a failed gas supply project,[13]

> we therefore assume that the natural gas pipeline and its ratepayers were equally blameless for the losses at issue. That assumption, however, need not lead to the conclusion that Natural's ratepayers must, through the utility's cost of service, make good on all or any part of the money Natural lost. The Natural Gas Act simply does not guarantee the shareholders of even a prudently managed utility that ratepayers can always be stuck with the bill for supply projects that turn out to be total failures, however, praiseworthy the utility's motives for undertaking those projects may have been.

Here, just as with failed supply projects, the Commission needs to spread the costs of pipeline take-or-pay settlements equitably between the pipelines and other segments of the industry.

3. *Minimize burdens on the pipelines' captive sales customers, especially small customers.* The Commission is concerned that the captive sales customers—namely residential and small commercial gas users—should not bear a disproportionate share of take-or-pay costs. These customers, including small municipalities, generally serve a primarily residential market, and may lack the ability to make a substantial contribution towards paying the pipelines' take-or-pay costs without a substantial adverse economic impact. An allocation methodology that shifted a disporportionate amount of costs to these customers would be inconsistent with the Commission's goals of spreading take-or-pay costs as broadly as possible. It is in this regard that actions taken by state regulatory agencies can be specially helpful. The Commission strongly encourages state regulatory commissions to use the full extent of their authority to allocate equitably between LDCs and retail customers take-or-pay costs that flow through an interstate pipeline's rates.

4. *Pipelines and producers should abide by existing settlement agreements.* A substantial amount of progress has been made to date by producers and pipelines in renegotiating contracts to reflect the current realities of the pipelines' sales markets. The Commission does not want to reverse or upset the substantial progress to resolving the take-or-pay problem that has been achieved to date. The action taken here with respect to the recovery of take-or-pay costs through the fixed charge is not intended to serve as the basis for any pipeline or producer to disturb take-or-pay settlements previously entered into between pipelines and their producer suppliers.

B. *General examples of acceptable allocation methods*

While the Commission intends to consider any method for allocating the fixed charge filed by the pipeline that is consistent with the general principles set forth above and the court's decision in *AGD II*, the Commission offers here a few general examples of allocation methods that would be acceptable. These are intended to serve as a guide to the parties.

1. *Fixed charges based on some current measure.* The fixed charge portion of take-or-pay settlement costs could be allocated on the basis of some current measure of demand or usage. For example, pipelines may seek to allocate the portion of their take-or-pay costs to be recovered through fixed charges:

- *Contract Demand.* First, the fixed charge could be allocated on the basis of current contract demand. Fixed charges could be assessed on the basis of both sales and transportation contract demand.
- *Actual Throughput.* Second, the fixed charge could be allocated among all firm sales and firm transportation customers pro rata on the basis of actual throughput during the most recent rate case test period or other current period for which data are available.
- *Three-Day Peak.* Third, the fixed charge could be allocated on the basis of actual average demands of firm customers on the three peak days during the test period.
- *Other Measure of Annual Usage.* Finally, the fixed charge could be allocated on the basis of some other measure of annual usage, such as the D–2 component of a two part demand charge.

Regardless of the allocation method chosen, the fixed charge could be subject to an annual periodic adjustment to reflect customers' altered levels of throughput or demand, or lost or added firm customers.

2. *Volumetric surcharges.* Pipelines may seek to recover the amounts

[12] FERC Stats. & Regs., Regulations Preambles ¶ 30,867 at pp. 31,575–6 (1989) (Order No. 500–H); *see also, Id.* ¶ 30,880 at p. 31,723 (1990) (Order No. 500–I).

[13] Natural Gas Pipeline Company of America v. FERC, 765 F.2d 1155, 1163–1164 (D.C. Cir. 1985).

previously recovered through the fixed charge by volumetric surcharges alone.

3. *Combination fixed charges and volumetric surcharges.* Pipelines may use a combination of fixed charges and volumetric surcharges as in the Order No. 500 mechanisms or any combination of allocation methods to allocate the portion previously direct billed on some basis other than purchase deficiencies, as discussed above.

4. *Any agreed upon methodology.* Finally, to reiterate, pipelines can propose any other allocation method that the pipeline and the users of its system agree to use, that is generally consistent with the principles set forth above. The Commission reiterates, however, that following discussion between pipelines and affected parties, the Commission will consider any proposal that is generally consistent with the principles established here.

The Commission orders:

(A) The effectiveness of tariff provisions of pipelines that provide for assessment of fixed charges or direct bills to recover take-or-pay settlement costs on the basis of a purchase deficiency allocation method are stayed 30 days after publication of this order in the **Federal Register**. The tariff provisions of the pipelines listed in Appendix A, are not affected by this ordering paragraph.

(B) If any pipeline affected by the stay in ordering paragraph (A) above has not filed tariff provisions superseding those stayed in paragraph (A) within 120 days after the issuance of this order, it shall file by that date a refund report showing its distribution of all amounts collected under the stayed provisions, except that pipelines which have been billed fixed charges by upstream pipelines need not file a refund report until 30 days after the upstream pipeline files its refund report.

(C) The effectiveness of this order is made subject to leave of court for the pipelines, listed in Appendix B, for which an appeal is pending in the court of appeals concerning their take-or-pay passthrough mechanism.

By the Commission. Commissioner Trabandt concurred in part and dissented in part with a separate statement attached.

Lois D. Cashell,

Secretary.

Appendix A—Pipelines That Are Not Subject To The Stay *

1. CNG Transmission Corp., Docket Nos. RP89–124–000, RP90–56–000, and RP90–152–000.

2. Colorado Interstate Gas Co., Docket Nos. RP89–98–000, RP89–133–000, and RP90–95–000.

3. Columbia Gas Transmission Corp., Docket Nos. RP88–207–000 and RP89–116–000.

4. Northern Natural Gas Co., Docket Nos. RP89–136–000 and RP90–82–000.

5. Questar Pipeline Co., Docket No. RP89–120–000.

6. Sea Robin Pipeline Co., Docket Nos. RP89–141–000 and RP90–129–000.

7. Southern Natural Gas Co., Docket No. RP86–63–000.

8. Transcontinental Gas Pipe Line Corp., Docket Nos. RP88–68–000, RP89–122–000, RP89–163–000, RP90–99–000, and RP90–179–000.

9. Valero Interstate Transmission Co., Docket No. RP89–43–000.

10. West Texas Gathering Co., Docket No. RP89–121–000.

Appendix B—Cases in Which Leave of Court Will Be Requested

1. Alabama Tennessee Natural Gas Company, D.C. Cir. No. 88–1864 et al.
   Involves Alabama Tennessee's passthrough of costs in Docket No. RP88–205 billed by an upstream pipeline.
2. Arkla Energy Resources, Inc., D.C. Cir. No. 90–1130
   Involves Arkla's recovery in Docket No. RP89–135 of the costs of its own settlements with producers.
3. Baltimore Gas & Electric Company, D.C. Cir. No. 88–1161
   Involves United Gas Pipe Line Company's recovery in Docket No. RP88–27–000 of the costs of its own settlements with producers.
4. Columbia Gas Transmission Corporation, D.C. Cir. No. 88–1568
   Involves Texas Eastern Transmission Corporation's pass through in Docket No. RP89–154 of settlement costs billed by an upstream pipeline.
5. Columbia Gas Transmission Corporation, D.C. Cir. No. 89–1569
   Involves Texas Eastern's passthrough in Docket No. RP89–153–000 of settlement costs billed by an upstream pipeline.
6. Columbia Gas Transmission Corporation, D.C. Cir. No. 89–1750
   Involves Texas Gas Transmission Corporation's recovery of the costs of its own settlements with producers in Docket No. TM89–3–18–000.
7. Columbia Gas Transmission Corporation, D.C. Cir. No. 89–1567
   Involves Texas Eastern's passthrough in Docket No. RP89–150–000 of settlement costs billed by upstream pipeline.
8. Columbia Gas Transmission Corporation, D.C. Cir. No. 89–1646 and 89–1658
   Involves Texas Eastern's passthrough in Docket No. RP89–184–000 of settlement costs billed by an upstream pipeline.
9. Columbia Gas Transmission Corporation, D.C. Cir. No. 89–1738
   Involves United's recovery in Docket No. RP89–138 of the costs of its own settlements with producers.
10. Chattanooga Gas Company, D.C. Cir. No. 90–1185
    Involves East Tennessee Natural Gas Company's passthrough of settlement costs in Docket No. RP88–201 billed to it by an upstream pipeline.
11. Consolidated Edison Company of New York, D.C. Cir. No. 89–1028
    Involves Texas Eastern's passthrough in Docket No. RP88–251–000 of costs billed to it by an upstream pipeline.
12. Consolidated Edison Company of New York, D.C. Cir. No. 90–1315
    Involves Texas Eastern's passthrough of costs in Docket No. RP90–73–000 billed to it by an upstream pipeline.
13. Equitable Gas Company, D.C. Cir. No. 88–1848
    Involves Texas Eastern's passthrough in Docket No. RP88–223–000 of costs billed it by an upstream pipeline.
14. Equitable Gas Company, D.C. Cir. No. 88–1485
    Involves Texas Eastern's passthrough of costs in Docket No. RP88–80–000 billed to it by an upstream pipeline.
15. Illinois Power Company, D.C. Cir. No. 88–1410
    Involves Mississippi River Transmission Corporation's passthrough in Docket No. TA88–2–25 of costs billed to it by an upstream pipeline.
16. Illinois Power Company, D.C. Cir. No. 89–1418
    Involves Natural Gas Pipeline Company's recovery in Docket No. RP88–94–000 of the costs of its own settlements with producers.
17. Indiana Gas Company & Ohio River Pipeline, D.C. Cir. No. 88–1704
    Involves Texas Gas' passthrough in Docket No. RP88–115–000 of costs billed to it by an upstream pipeline.
18. Kansas Power & Light Company, D.C. Cir. No. 89–1155
    Involves Transwestern Pipeline Company's recovery in Docket No. RP88–198–000 of costs of its own settlements with producers.
19. Kansas Power & Light Company, D.C. Cir. No. 89–1680
    Involves Williams Natural Gas Company's passthrough in Docket No. TM89–2–43–000 of the costs billed by an upstream pipeline.
20. Kansas Power & Light Company, D.C. Cir. No. 89–1675
    Involves Arkla's recovery in Docket No. RP89–135–000 of the costs of its own settlement with producers.
21. Kansas Power & Light Company, D.C. Cir. No. 89–1766
    Involves Williams Natural Gas Company's passthrough in Docket No. RP89–233–000 of costs billed by an upstream pipeline.
22. Kansas Power & Light Company, D.C. Cir. No. 89–1437
    Involves Williams Natural Gas Company's passthrough in Docket No. RP89–40–000 of the costs billed by an upstream pipeline.
23. Laclede Gas Company, D.C. Cir. No. 89–1575
    Involves Mississippi River Transmission Corporation's passthrough in Docket No.

* These are the pipelines which the Commission has been able to identify to date. There may be other pipelines or specific filings which also fall into this category. Any pipeline which believes that it belongs on this list should file with the Commission indicating that and the basis for its position.

RP89–158 of costs billed to it by an upstream pipeline.

24. Michigan Consolidated Gas Company, D.C. Cir. No. 88–1904
Involves Trunkline Gas Company's passthrough in Docket No. RP88–239 of its own costs of settling with producers.

25. Michigan Consolidated Gas Company, D.C. Cir. No. 88–1906
Involves Panhandle Eastern Pipe Line Company's recovery in Docket No. RP88–240–000 of the costs of its own settlements with producers and of downstream costs billed it by Trunkline.

26. Michigan Consolidated Gas Company, D.C. Cir. No. 89–1464
Involves Trunkline Gas Company's passthrough in Docket No. RP88–239 of its own costs of settling with producers.

27. Michigan Consolidated Gas Company, D.C. Cir. No. 89–1465
Involves Panhandle Eastern Pipe Line Company's abandonment of certain customers in Docket No. CP88–490.

28. Michigan Consolidated Gas Company, D.C. Cir. No. 89–1442
Involves ANR Pipeline Company's recovery in Docket No. RP89–45–000 of the costs of its own settlements with producers.

29. Columbia Gas Transmission Corp., D.C. Cir. No. 90–1422
Involves United's recovery in Docket No. RP90–91 of the costs of its own settlements with producers.

30. Michigan Consolidated Gas Company, D.C. Cir. No. 89–1669
Involves ANR Pipeline Company's recovery in Docket No. RP89–45–000 of the costs of its own settlements with producers.

31. Mississippi River Transmission Corp., D.C. Cir. No. 89–1157
Involves Mississippi River Transmission Corporation's passthrough in Docket No. RP89–13–000 of costs billed to it by an upstream line

32. Mississippi River Transmission Corp., D.C. Cir. No. 89–1255
Involves Mississippi River Transmission Corporation's passthrough in Docket No. RP89–13–000 of costs billed to it by an upstream line

33. Northern Illinois Gas Company, D.C. Cir. No. 88–1488
Involves Natural Gas Pipeline Company's recovery in Docket No. RP88–94–000 of the costs of its own settlements with producers.

34. Tennessee Gas Pipeline Company, D.C. Cir. No. 88–1680
Involves Tennessee's compliance filing in Docket No. RP88–191–000 to recover the costs of its own settlements with producers sought in the main *AGD II* case (RP86–119–00).

35. Texas Gas Transmission Corporation, D.C. Cir. No. 89–1037
Involves United's recovery in Docket No. RP88–27–000 of the costs of its own settlements with producers.

36. Texas Gas Transmission Corporation, D.C. Cir. No. 89–1690
Involves United's recovery in Docket No. RP88–27–000 of the costs of its own settlements with producers.

37. Transwestern Pipeline Company, D.C. Cir. No. 89–1630
Involves Transwestern's recovery in Docket No. RP89–130–000 of its costs of its own settlements with producers.

38. Consolidated Edison Company of New York, D.C. Cir. No. 90–1435
Involves Texas Eastern's passthrough in Docket No. RP90–96–000 of costs billed it by an upstream pipeline.

39. Columbia Gas Transmission, D.C. Cir. No. 90–1445
Involves Texas Eastern's passthrough in Docket No. TA90–7–017 of costs billed it by an upstream pipeline.

40. Wisconsin Fuel and Light Co., D.C. Cir. No. 89–1759
Involves ANR Pipeline Company's recovery in Docket No. RP88–127–000 of the costs of its own settlements with producers.

41. Missouri Public Service Corp., D.C. Cir. No. 89–1463
Involves Williams Pipeline's recovery in Docket No. RP89–140–000 of its own settlement with producers.

42. Northern Illinois Gas Company, D.C. Cir. No. 88–1488
Involves Natural Gas Pipeline's recovery in Docket No. RP88–94–000 of its own settlement with producers.

43. North Penn Gas Company, D.C. Cir. No. 88–1539
Involves North Penn's passthrough in Docket No. TA88–1–27–000 of costs billed it by upstream pipelines.

44. Peoples Natural Gas Company, D.C. Cir. No. 89–1002
Involves CNG Transmission Co.'s recovery in Docket No. RP88–217–000 of its own settlements with producers.

45. South Georgia Natual Gas Company, D.C. Cir. No. 89–1460
Involves South Georgia's passthrough in Docket No. RP88–267–000 of costs billed it by an upstream pipeline.

46. Michigan Consolidated Gas Company, D.C. Cir. No. 90–1279
Involves Trunkline's recovery in Docket No. RP88–239–000 of its own settlements with producers.

47. Michigan Consolidated Gas Company, D.C. Cir. No. 89–1698
Involves ANR's recovery in Docket No. RP89–127–000 of its own settlements with producers.

48. Arkla Energy Resources, Inc., D.C. Cir. No. 89–1787
Involves Arkla's recovery in Docket No. RP89–135–000 of the costs of its own settlements with producers.

49. Arkla Energy Resources, Inc., D.C. Cir. No. 90–1131
Involves Arkla's challenge in Order Nos. 500H and I (RM 87–34–000) to the absorption requirement.

50. Peoples Light and Coke Co., D.C. Cir. No. 88–1743
Involves Midwestern Gas Transmission Co.'s passthrough of costs in Docket No. RP88–193–000 billed by an upstream pipeline.

51. Boston Gas Company, D.C. Cir. No. 90–1452
Involves CNG Transmission Corporation's settlement in Docket No. RP89–124–000 under which the pipeline would recover a portion of the monies it paid producers as well as monies billed by upstream suppliers.

52. Baltimore Gas and Electric Co., D.C. Cir. No. 88–1779
Involves Columbia Gas Transmission Corporation's passthrough, in Docket No. RP88–187–000 of costs billed by upstream pipelines.

Mechanisms For Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs, and Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.

[Docket Nos. RM91–2–000; and RP86–119–014, TA84–2–9–015, TA85–1–6–003]

Issued November 1, 1990.

TRABANDT, Commissioner, *Concurring in Part and Dissenting in Part:*

I concur in part and dissent in part with the instant order on procedural and substantive grounds. I dissent in part because of the Commission's failure to seek public comment before acting in these dockets and also because of several substantive features of the action taken in this order. I concur in part as to the remainder of the action taken, albeit with particular comments on certain specific procedural and substantive aspects of the order. I will develop those conclusions in the body of this separate opinion in the hope of sharpening the focus of this debate for all interested parties in the rehearing process.

I. Opportunity for Public Comment

The majority here has rejected the formal requests of numerous parties from various sectors, including the Interstate Natural Gas Pipeline Association of America, the Independent Producers Association of America, and the bipartisan leadership of the U.S. Senate Committee on Energy and Natural Resources, for prior public comments before the Commission takes any action in these dockets. In the famous words of former President Reagan, "there *we* go again" in yet another immediately effective order on the take-or-pay issue without public comment. In an ultimately fruitless fit of enthusiasm for public comment and current data for analysis before final action here, I recommended an alternative approach in the form of a Notice of Proposed Policy Statement (NOPPS) prior to the Commission meeting of October 24, 1990. For record purposes and for purposes of comparison in subsequent discussion, that NOPPS with slight modifications is attached hereto as Appendix A.

Ironically, there is no real necessity for immediate action today in the absence of public comment. I do not believe that action by November 1 is necessary to satisfy the court remand in these dockets, because there is ample precedent, as INGAA and individual pipelines persuasively point out, for fashioning an alternative passthrough allocation mechanism for directly billed buyout and buydown costs with the benefit of public comment *before* terminating the existing mechanism, as long as that effort is completed in a reasonable time. Certainly, the U.S. Court of Appeals for the District of Columbia Circuit has made unambiguously clear its disdain for commission action to

pressure the participants in the natural gas industry to dispose of the take-or-pay problem without the Commission first taking a final, reasoned position on how this should be done, particularly where it has done so in a manner that may be highly prejudicial to the bargaining power of pipelines which were facing a deadline. As that distinguished American philosopher, Yogi Berra said, "this may be deja vu all over again."

Second, I am not persuaded that the Commission has to act now at all, in the first place, or secondly cannot act now by seeking public comment on a proposed course of action, as in a NOPPS, in order to support the Commission's position on Order No. 451 now pending further judicial review before the Supreme Court. The Supreme Court is well aware that *certiorari* was just denied last month and the Circuit Court mandate only issued on October 17. Consequently, I believe it is rather unpersuasive to argue that, but for the issuance of the instant order today, the Commission's position on the take-or-pay aspects of the Fifth Circuit's opinion is undercut. And, I take that view as an original participant in the development of the Notice of Proposed Rulemaking in 1985 that led to the adoption of Order No. 451 and a strong supporter of that Commission initiative, then and now. Rather, this relatively arbitrary deadline has served to limit Commission and public consideration of this proposal.

Third, it is noteworthy that the Commission has received a flood of formal filings and communications from various parties potentially affected by this order in response to the public discussion of the original staff proposal at the October 24, 1990 Commission meeting. It is slightly astonishing from a procedural due process perspective that the instant order nonetheless fails to acknowledge the existence of those highly relevant formal filings, let alone address the procedural and substantive protests argued in opposition to the original proposal and the action taken here. And, rather than a proposed rule or an interim rule subject to public comment, the instant order is final and immediately effective, subject only to the statutorily mandated rehearing requirement.

Perhaps, in the end, the Commission quite simply will never learn the procedural lessons of our relatively sad Order No. 500 experience and the distinct advantages of prior public comment as a critical element in the eventual resolution of the take-or-pay problem. That would be an unfortunate conclusion, indeed. The practical reality, however, is that the majority here does not support seeking public comment at this time. Thus, the question must become the substance of action to be taken now in the absence of any public comment. The balance of this opinion, therefore, addresses the substantive merits of the instant order.

II. Instant Order

A. Original Staff Proposal

In order to analyze the substantive merits of the instant order, it is perhaps useful to grasp the basic concepts of the original staff proposal, for which the NOPPS alternative in Appendix A was intended as the counterpoint for Commission debate at the October 24 meeting. The original proposal would use a similar 120 day procedural approach as in the instant order, but with a number of significant differences. Direct billing using the deficiency based allocation formula would be terminated as of the date of issuance. Pipelines would be authorized and virtually directed to negotiate new, individual take-or-pay recovery mechanisms, involving all aspects of the recovery of take-or-pay costs. Those aspects could include any number of issues previously resolved since issuance of Order No. 500, including significantly the requirement for absorption by pipelines of a minimum of 25 percent of the eligible take-or-pay buyout and buydown costs. Also, such key elements of current policy as what costs are eligible for recovery and how the PGA mechanism can be used would be "up for grabs" in negotiations.

In essence, any form of alternative recovery mechanism would likely be acceptable as a part of a settlement in these dockets. That result, of course, would reopen the entire Order No. 500 debate on a case-by-case, pipeline-by-pipeline basis, with no continuing direct billing in the interim and under the threat of a refund requirement in 120 days. These new take-or-pay cases would be consolidated with ongoing section 4 cases, many of which are Rate Design Policy Statement cases underway for many months and ripe in many dockets for near term decision.

At the same time, there would be no new sunset date for pipelines filing new take-or-pay costs in the future. Thus, as a practical matter, the alternative passthrough mechanism originally established in Order No. 500 as a short-term, transitional mechanism would now be a permanent program without any limitation in time and, therefore, in total dollars subject to passthrough by this means. That feature of the original proposal is retained in the instant order, as discussed below.

The proposal also would require for the first time absorption by downstream pipelines, which would involve literally hundreds of new downstream absorption cases and would reverse all prior precedents. The proposal again would press state public utility commissions to impose absorption requirements on local distribution companies subject to their jurisdiction and request individual PUC responses as to their response. The proposal also would attempt to enforce filed, but unapproved, settlements on pipelines and their customers and also attempt to prevent renegotiation of existing producer-pipeline take-or-pay settlements.

B. Problems with the Original Proposal

1. The approach inevitably would engender further delay in rate design policy cases, GIC-related cases, and restructuring cases, among others. Of necessity, the affected pipelines and their customers would have to stop all other proceedings to address the broad based reconsideration of the entire take-or-pay recovery mechanism.

2. There would be no "baseline" recovery methodology in place, as under Order No. 500 and under the NOPPS alternative, for purposes of implementation in the absence of a settlement or to be used as the basis for negotiating some flexibility from the baseline, as occurred in the Columbia and Transco settlements. Thus, we would have a free-form, *ad hoc* negotiation without a concrete, Commission imposed starting point. I would characterize the approach as a regulatory Hulk Hoganesque tag-team wrestling match without any rules or limits on participation.

3. Once again, as in "is there no end," we would go into yet another winter heating season with a large uncertainty as to the billing of take-or-pay related costs and the rates for affected services. At the same time, pipelines would face the inevitable financial community "fallout" of immediately terminated direct billing and the threat of enormous refunds on March 1, 1991. I am persuaded that the Commission would be on solid legal ground to allow continuation of current direct billing for a few months, while seeking public comment, and then adopting and implementing an alternative to deficiency based allocation of direct billing. Thus, any such uncertainty or financial "fallout," in my judgment, would be a "self-inflicted wound" by the Commission.

4. As discussed above, the entire take-or-pay recovery mechanism would be "up for grabs," whereas the remand as a legal matter need only focus on the narrow issue of a replacement for the deficiency based allocation formula. This issue is discussed in more detail in, and is a central alternate feature of, the NOPPS proposal in Appendix A.

5. There is no compelling reason to reconsider at this eleventh hour the requirement for absorption by pipelines of a minimum of 25 percent of the eligible costs under the equitable shaving formulation of Order No. 500. If that were not a primary objective of the original proposal, it was the clear and present result of the procedural approach and substantive discussion throughout the draft order.

6. There was some confusion as to what pipeline would be affected by the original proposal, and if so or if not, on what theory of law or policy. That confusion, in fairness, was a function of the speed of development of the original proposal and has been corrected, at least in part, in the instant order. In any event, I believe that the Commission has an obligation to articulate the criteria for designating affected pipelines and making an initial cut to reduce uncertainty under this order.

7. There was some confusion and inconsistency as to the exact nature of the refund requirement, as between refund reports, plans, and informational filings, as a function of the individual pipeline's situation at any point in time. That confusion and inconsistency also has been corrected, at least in part, in the instant order. Again, I believe the Commission has an obligation to be quite precise as to the exact nature of the refund obligations imposed on pipelines and the mechanics by which those obligations and related requirements may be satisfied, given the magnitude of the dollars potentially subject to refund and the financial impact of such refunds, as well as any uncertainty that may be created.

8. The mandated consolidation of the numerous upstream and new downstream

take-or-pay cases with other pending cases for affected pipelines would materially disrupt many, if not most, other pending policy matters for the foreseeable future, as discussed above. Thus, for example, the flow of Rate Design Policy Statement cases would come to a screeching halt and remain dead in their tracks, while pipelines, customers and other interested parties pursued urgent negotiations driven by already terminated direct billing and impending total refunds.

9. The requirement for downstream pipeline absorption would add hundreds of new absorption sub-cases to current dockets in a massive complication of the Commission's administrative process. That requirement quite conceivably could have added months of brand new negotiation as a completely new element of the process. Also, apart from the reverential invocation of the equitable sharing principle, there is no compelling legal or policy rationale to support reversing past decisions in opposition to downstream absorption already subjected to judicial review. Also that reversal would be doubly difficult if the upstream pipeline absorption obligation was reduced or removed, as discussed above.

10. The renewed pressure on PUCs to require absorption by jurisdictional LDCs appears to be equally misplaced, particularly in the light of the new flexibility on upstream pipeline absorption. Furthermore, the real legal and policy questions are more properly focused on the narrow issue of replacement of the deficiency based allocation formula for direct billing, rather than any broad-based, wholesale reconsideration of the alternative recovery mechanism under Order No. 500. Again, the only proffered rationale for the renewed pressure on the PUCs is the invocation of the equitable sharing principle. I am satisfied that Orders No. 500–H and 500–I have disposed of this issue and it does not need further attention at this juncture.

11. The original proposal invoked the Commission's abandoned plant policy in electric power regulation as a new rationale to support the notion of equitable sharing and some amount of absorption by all parties. That policy, particularly as refined in 1988, directly reflected Commission decisions in Order No. 500 made in 1987, so at least to that extent the new argument was somewhat circular, at best.

12. The proposal stated rather categorically that pipelines and producers should remain bound by their existing take-or-pay settlements unless the settlements expressly provided for renegotiation as a result of these events. That directive was apparently intended to preemptively negate any suggestion that producers might wish to re-open take-or-pay negotiations now that one of the fundamental assumptions for the original negotiations (that the pipeline would have to absorb at least 25 percent of the negotiated buyout and buyout costs) was subject to *ad hoc*, case-by-case reconsideration. Also, to the extent that a pipeline had assumed that at least 25 percent of those costs could be directly billed to customers on a purchase deficiency allocation basis, the pipeline might now wish to reopen the settlement, so the theory went.

Those settlements are not jurisdictional in the first instance, and in any event, it would seem quite presumptuous for the Commission to attempt to direct those parties to remain bound by the settlements, even if the Commission decides to allow wholesale renegotiation of the pipeline's recovery mechanism for the eligible costs resulting from the prior producer-pipeline settlements, which were premised on the cost recovery mechanism under Order No. 500. Similarly, and unacceptably for analogous reasons, the original proposal sought to bind parties to settlements not yet finally approved by the Commission between pipelines and customers for the recovery under variations of Order No. 500 of buyout and buydown costs.

13. The practical effect of the draft order taken as a whole was to reopen the many settled issues related to the take-or-pay alternative recovery mechanism, as discussed above, such as eligible costs, prudence, non-jurisdictional customers, interruptible customers, etc. That reopening would not support early or effective Commission review of the many (hundreds?) of individual upstream and downstream cases that would have to be decided by the Commission in the many, many months ahead. Thus, take-or-pay would once again appear to be, and perhaps actually would be, intractable as the Commission would have to replow the old ground and confront the same difficult, hard decisions under new flexible rules.

14. There were too many identified options and express invitations for any and every conceivable new approach to take-or-pay recovery. The proposal was replete with statements such as the "time has come for maximum flexibility * * * and we will give consideration to any proposal contested or uncontested, in whole or in part." I characterized this approach to equitable sharing under Order No. 500 as a "predictably unlimited negotiating task" or PUNT by the Commission as a matter of policy.

15. There was no reflection of the Order No. 94 cost recovery issue and its relationship to the direct billing allocation mechanism under the instant order for those pipelines affected by both remands. I believe the Commission is obligated to provide those affected pipelines the opportunity to address both Order No. 94 and Order No. 500 cost recovery and provide some appropriate guidance in that regard.

C. Improvements in the Instant Order

1. The Order No. 500 upstream absorption requirement is categorically restored, as in the NOPPS. However, the retained flexibility for options may invite some challenge to that requirement in a particular case.

2. Downstream pipeline absorption is removed, as in the NOPPS.

3. Consolidation of the new direct billing cases with existing cases is not mandatory, but still possible, as in the NOPPS.

4. There is somewhat more specificity with regard to the nature of the refund obligations and requirements.

5. There is somewhat more precision as to the criteria for designation and the identification of affected pipelines.

6. Direct billing will be continued for about 45 days (30 days after publication of this order in the **Federal Register**) during which pipelines can file and the Commission can accept, to be effective at the same time as direct billing terminates, reasonable alternative direct billing allocations, subject to further review. The practical effect approximates the NOPPS, but would be less direct.

7. The issue at hand has been narrowed from the entire alternative recovery mechanism under Order No. 500 to the specific allocation of direct billing costs, as in the NOPPS. However, the retained flexibility for options may invite broader formulations affecting other aspects of take-or-pay recovery, such as volumetric surcharges and absorption.

8. The use of the Commission's abandoned plant policy as a new rationale is removed.

9. The discussion about producer-pipeline take-or-pay settlements has been modified to remove the directive nature.

10. The order expressly saves all prior Order No. 500 precedents except those expressly related to allocation of direct billing and affected by this order, as in the NOPPS. However, the retained flexibility in options may invite challenges to certain precedents in a particular case.

D. Remaining Problems in the Instant Order

1. There is no sunset for pipelines filing new take-or-pay buyout and buydown costs for recovery under the Order No. 500 program. Thus, the program is no longer transitional in nature, but rather it is now permanent. Consequently, as a matter of law and a matter of policy, the Commission has institutionalized the take-or-pay problem as a permanent fixture in the regulation of interstate pipelines, without any regard to whether that's needed or not and any concern about the impact on other related Commission policies. That result is a significant reversal of past Commission policy first enunciated in August, 1987 in Order No. 500 and reiterated as recently as this year in Order No. 500–I. And, it is a reversal clearly not required by the Court's opinion in *AGA–II*.

2. The Commission does not adopt a specific baseline method for allocation of direct billing costs to replace deficiency based allocation. Thus, there is no "baseline" for further negotiation by the parties or for use by the Commission in reviewing the pipeline proposals.

3. There still is too much flexibility indicated with some of the same language noted above, and with the express suggestion that almost any methodology could be acceptable under the PUNT theory. We will only know how flexible the Commission will eventually be after the individual cases are decided on an *ad hoc* basis.

4. There would be far less uncertainty and far more regulatory predictability if the Commission, as suggested in the NOPPS, simply required affected pipelines with deficiency based allocations of direct billing to make a section 4(e) filing within 15 days, to be effective on December 1 with waivers or January 1, 1991 without waivers, with a new direct billing allocation methodology developed in accordance with the guidelines

and accompanied by a refund plan based on the new allocation methodology. I see no legal or policy basis for the indirect approach, with an approximate 45 day delay in the stay of direct billing and the threat of immediate refunds in 120 days. There is no persuasive reason why the Commission can't and shouldn't just simply require affected pipelines to make the necessary filings and proceed in an orderly, predictable and rational fashion to replace the deficiency-based allocation formula with a new formula, since funds already collected were collected subject to refund and the court decision. And, if we don't have the authority to do just that, I fail to see how we have the authority to use the approach in the instant order.

5. The renewed pressure on PUCs to require LDC absorption remains in a slightly modified way.

6. There is no reflection of the Order No. 94 cost recovery issue and its relationship to the Order No. 500 direct billing allocation method, despite more recent pleadings seeking such action.

E. Related Comments

1. I would urge the Commission to consider promptly the virtually inevitable requests for stay, clarification and rehearing of this order. In light of the magnitude of the costs at issue in these cases, their impact on the financial situation of affected parties and the ramifications for other Commission policies and many pending cases, I do not believe that it would be appropriate to take the "business-as-usual" tack of tolling and deferring such requests for some extended period. Also, we tested the tolerance of the D.C. Circuit Court of Appeals on that score in the Order No. 500 series and lost badly as a result in certain cases. We need not repeat that mistake here.

2. There are a number of examples in this case of highly debatable legal arguments driving policy decisions. For example, the purported significance of the November 1 deadline, the requirement to stop direct billing immediately, the threat of refunds in 120 days, the total opposition to any sunset date at any point in the future (1995?), the new found flexibility on absorption (now rejected), among others, have been premised as legal requirements under one possible judicial review scenario or another. A similar assertion of "legal requirements" formed the basis for the Interim Rules associated with construction certification and the section 311 "on behalf of" test. I believe the Commission needs to do a better job of sifting the legal wheat from the policy chaff, and distinguish those decisions which are fundamentally policy decisions from those driven truly by legal considerations, if not requirements.

III. The Big Picture and Broader Policy Implications

A. General Take-or-Pay Issue

Now is decidedly *not* the time to reopen the entire take-or-pay cost recovery issue or the equitable sharing mechanism. All that's needed as a matter of law is a replacement for the deficiency based allocation for direct bill. What we do not need, as a matter of national policy, is an instant replay of the take-or-pay wars in the natural gas industry. The industry does not need and, in my judgment, really cannot stand a new round of financial uncertainty and regulatory unpredictability caused by a wholesale reconsideration of the entire take-or-pay issue at this time. If natural gas is going to take its appropriate place in the North American energy economy in the early 1990's, the natural gas industry and regulators should not willingly precipitate again the perception that take-or-pay remains an intractable, unmanageable and unsolvable problem.

Rather, we must act promptly to demonstrate that the natural gas industry really can (1) tell potential customers what services will be available and how they will be priced, and (2) tell the financial community what the proverbial bottom line will be with take-or-pay largely resolved; without once again extensively footnoting the tariff sheets and the financial reports to reflect new uncertainty about the recovery of massive take-or-pay costs. We quite simply do not need to prove the naysayers about natural gas correct on the take-or-pay issue; *i.e.*, it is a snake that will never die and an albatross that never leaves. That's why a permanent program with a PUNT approach just is not acceptable. Rather, we need to adopt promptly a largely self-executing, completely predictable, and narrow, surgical replacement for the deficiency based allocation formula, preferably with the benefit of prior public comments to ensure that we make a well-informed and well-reasoned decision.

B. Non-discriminatory Open Access Transportation

I remain concerned that the multi-option approach could lead to a plethora of separate take-or-pay mechanisms on affected interstate pipelines, since there will be no Commission-approved baseline approach. That result may serve to complicate further the Commission's efforts to complete the necessary regulatory steps to finish the transition and make non-discriminatory open access transportation a permanent reality in the U.S. natural gas industry. Also, as a legal matter, we must finally satisfy the D.C. Circuit Court of Appeals that we have resolved the outstanding take-or-pay issues in order to relieve the open access transportation program of that continued constraint. Both of those considerations argue forcefully for a quick, narrow, and surgical response to the *AGD–II* court remand. Additionally, there is some reason to believe that a permanent take-or-pay program with a rather free-form recovery approach could lessen support for gas inventory charges, or their functional equivalent, and reduce the drive to comparable firm transportation services and new rate designs more consistent with the 1989 Rate Design Policy Statement. Thus, progress towards a competitive and permanent open access transportation system could be slowed or stalled on substantive merits, as well as by the fact that there inevitably will be delays in other cases while the interested parties of an affected pipeline seek a negotiated settlement (and even longer because of the multiple option approach, in lieu of a baseline approach).

Earlier this week, at the 1990 American Gas Association Annual Meeting, I expressed concern that for other reasons the Commission appeared to be moving in a policy direction that would introduce new uncertainty as to (1) *when* the transition to permanent open access will be complete, and (2) *what* the permanent open access transportation result will really be. The multiple-option approach here could add a major new element to that additional uncertainty, as we proceed case-by-case over the months ahead. Also, it's now a real horse race between the end of the natural gas "bubble" and the completion of the regulatory transition to permanent open access transportation.

My own view is that the Commission could complete that regulatory transition and make the open access program permanent by administrative action in the coming year, if we were committed to that result at this time. However, if the new multi-option and permanent take-or-pay program combines with those other factors to frustrate our achieving that objective, then it may be time to see appropriate Congressional action to statutorily mandate the open access program. I have always believed that FERC had ample authority to complete the transition without legislation and I think the courts have generally supported that view, even with the take-or-pay problem. So I continue to hope that the Commission will exercise its administrative authority to resolve in the near term this matter and the other remaining issues to make permanent open access transportation, without having to resort to legislation as the only viable option.

IV. Conclusion

I have set forth as comprehensively as time would allow the specific details associated with the development of the instant order, including the alternative NOPPS. (In that regard, I apologize to the reader for the rather unrefined nature of this narrative.) I cannot support the procedural result of no public comments prior to the adoption of this new take-or-pay direct billing allocation policy. I also have significant concerns about the substantive aspects of the new policy, as discussed openly above. At the same time, there have been substantial improvements introduced into the instant order by comparison to the original staff proposal, as noted previously. The critical and, at this point, largely unanswerable question is whether this multi-option approach will work without serious financial dislocations and negative operational impacts as we begin the winter heating season, as well as without negative impact on permanent open access transportation. Only time will tell as the industry responds to this immediately effective directive from the Commission in the months ahead and the Commission makes case-by-case decisions. As Casey Stengel once quipped, "if you don't know where you're going, you're liable to end up someplace else." In sincerely hope that where this order takes the Commission and the industry is a relatively quick and effective resolution of the direct billing allocation issue

and a major positive step towards permanent open access transportation.

For these reasons, I concur in part and dissent in part.

Charles A. Trabandt,

Commissioner.

Appendix A—Commissioner Trabandt's Suggestion for PR–1

1. Notice of Proposed Policy Statement (NOPPS)

In response to *AGD–II*, Commission proposes to modify § 2.104 *Mechanisms for passthrough of pipeline take-or-pay buyout and buydown costs* in PART 2—General Policy and Interpretations of the Commission's regulations.

Pipelines which have settlements approved by the Commission under which their customers have agreed to the allocation of take-or-pay costs and waived any objections on the basis of the filed rate doctrine (or the similar doctrine prohibiting retroactive ratemaking) would *not* be affected by the court's remand or the modifications proposed in this Notice of Proposed Policy Statement. The discussion here would pick up the specifics from the staff draft of PR–1 on those settlements and the pipelines that would and would not be affected (see pp. 5, 6, 7 and nn. 7, 8, 9, 10).

There would be no stay of existing tariff provisions for take-or-pay recovery at this time for affected pipelines. Rather, as Tennessee argued in its petition, the Commission would allow those tariff provisions to continue in force for a relatively brief additional period of a few months while seeking public comment on the modifications necessitated by *AGD–II*. The final revised Policy Statement would be issued promptly after review of the public comments (no later than January, 1991).

The proposed modifications would make clear that the Commission does not intend to change in any material way our Order No. 500 program, except as to the allocation methodology for direct billing required by *AGD–II* and a slight adjustment to the percentage ranges allowable for absorption/direct bill/volumetric surcharge under the alternative mechanism. Thus, the bulk of all past and otherwise settled case-by-case precedents for Order No. 500 would remain in force. All of this, of course, would facilitate the ultimate objective of equitably getting take-or-pay behind us ASAP.

2. Sec. 2.104 would be proposed to be revised to achieve the following effects (with appropriate technical language)

a. General Policy

The Commission as a matter of policy will provide two distinct mechanisms for passthrough of take-or-pay buyout and buydown costs of interstate natural gas pipelines. The first is pursuant to existing, general policy and practice. Under this method, the pipelines may pass through prudently incurred take-or-pay buyout and buydown costs in their sales commodity rates. The second method is available to pipelines which agree to an equitable sharing of take-or-pay costs and which transport under part 284 of this chapter * * *. Qualifying pipelines may utilize the alternative passthrough mechanisms described in this section. Where a pipeline agrees to absorb from 25 to 40 percent of take-or-pay buyout and buydown costs, the Commission will permit the pipeline to recover through a fixed charge an amount equal to (but not greater than) the amount absorbed. A minimum of 20 percent of take-or-pay buyout and buydown costs must be recovered either through a commodity rate surcharge or a volumetric surcharge on total throughput. Any remaining costs up to 50 percent of total buyout and buydown costs (above 20 percent minimum and not recovered by a fixed charge) also may be recovered either through a commodity rate surcharge or a volumetric surcharge on total throughput. Thus, recovery by the alternative means could vary from (i) 25 percent absorption, 25 percent fixed charge, and 50 percent commodity rate or volumetric surcharge to (ii) 40 percent of absorption, 40 percent fixed charge, and 20 percent commodity rate or volumetric surcharge.

b. Cost Allocation Procedures

A pipeline's volume-based surcharges must be based on the volumes which underlie its most recent Commission-approved rates. Fixed charges shall not be based on the customer's purchase deficiency in recent years measured in relation to that customer's purchases during a representative base period, because that allocation method was invalidated in *AGD–II*. Rather, fixed charges must be based on each customer's combined sales and transportation contract demand quantities relative to all other customer's combined contract demands. The initial allocation of fixed costs would be subject to an adjustment at a point in time 50 percent through the amortization term for the fixed charges (as opposed to annual or other periodic basis) to adjust the direct bill charges to reflect any changes in contract demand amounts or to reflect lost or added customers.

c. Implementing Procedures

(1) Pipelines acting pursuant to this section may submit on or before *December 31, 1991*, a non-PGA rate filing under sec. 4(e) of the NGA. Pipelines may include in their filings a fixed charge and a volumetric surcharge to recover buyout and buydown costs actually paid as of the date of filing plus similar costs which are known and measurable within the following nine months, etc., etc.

d. Prudence

The prudence policy as developed under Order No. 500 would remain in effect pursuant to the cases interpreting § 2.104(d) without any change, with one exception. Any *new* filings by pipelines for recovery under the alternative mechanism could be challenged on prudence grounds in the procedural manner set forth in prior cases.

e. Flowthrough by Downstream Pipelines

Downstream pipelines shall not use the purchase deficiency basis for allocation of the flowthrough of approved take-or-pay fixed charges. Rather, the flowthrough of fixed charges must be based on each customer's combined sales and transportation contract demand relative to all other customers combined contract demands. There would be *no* new requirements for downstream pipelines to absorb a percentage of fixed costs.

f. Ongoing Proceedings

The current policy on ongoing proceedings in § 2.104(f) would be continued.

g. Scope

The current statement in § 2.104(g) would be revised to reflect the current status of issues addressed therein (e.g., take-or-pay prepayments and Title I pricing provisions of the NGPA).

h. Reallocation of Fixed Charge Costs

A new section would be added specifying that a pipeline with past recovery by means of fixed charges would be required to file a reallocation report with the Commission. To the extent that customers previously billed under the purchase deficiency allocation method would remain responsible for fixed costs under the new combined contract demand allocation method, the pipeline is authorized to retain the past fixed charge payments as a credit to offset that customer's new fixed charge billings. To the extent that a customers previously billed under the purchase deficiency allocation method would have no responsibility for fixed charges under the new allocation method, the pipeline would have to refund the payments with interest. There would be no requirement for reallocation or refund of past volumetric surcharges payments by customers. Pipelines would be authorized to continue billing already approved until the new Policy Statement is final. Thus, the *status quo* would be maintained until a final Policy Statement is adopted in this docket.

i. Existing Policy

A new section would state that all prior policy and guidelines that have been articulated in the individual passthrough cases, unless expressly modified in this Proposed Policy Statement, remain in full force and effect (see discussion in 500–H at pp. 196–199). Thus, all prior decisions on eligible costs, relationship to PGA, prudence challenges, downstream passthrough, state commission/consumer counsel rights, etc. would continue to govern the rights and obligations of all parties, except as expressly modified here. That approach would provide legal and policy certainty for the revised program.

j. Settlements

A new section would discuss the flexibility allowed by the Commission in various settlements of the recovery of take-or-pay under Order No. 500 and § 2.104, such as *Columbia, Transco, Northern Natural, SoNat*, and indicate our willingness to entertain similar flexibility in settlement involving full participation of all interested parties and widely supported by affected parties. There would not, however, be any suggestion that there could be a wholesale revamping of the recovery mechanism. Additionally, the general principles developed in those settlement cases would provide guidance as to the type and degree of flexibility the Commission would be likely to entertain. Thus, nothwithstanding *AGD–II*, the

Commission still intends to adhere to the general direction developed heretofore in case-by-case development of the take-or-pay buyout and buydown cost recovery policy under Order No. 500 (stated in a most respectful way for the court).

3. The discussion in the NOPPS would indicate that the Commission believes that the industry and American natural gas consumers are best served by preserving as much of the existing Order No. 500 body of law, policy, practice, and passthrough of buyout and buydown cost in order to provide maximum legal certainty and regulatory predictability, while still responding to the decision in *AGD–II* with regard to deficiency based allocation. The use of a CD allocation methodology would be defended on the basis of the January options paper and the fact that the Commission told the court that CD allocation would be the likely alternative (but to no avail). The new requirement for a minimum of 20 percent volumetric surcharge would be offered as a partial mitigation measure to the potential hardship/windfalls that would *possibly* flow from a simple, one-to-one substitution of CD allocation for purchase deficiency allocation and a 50 percent absorption/50 percent direct bill (as under Order No. 500).

Current direct billing would continue, subject to refund and subject to this NOPPS, for a short additional period of time (a few months) while the Commission reviewed public comments on the proposed policy statement. Once the new policy statement was final, the pipelines would proceed to implement the reallocation procedures with resulting offsets and refunds, where required.

5. Public Comment

Initial Comments in 30 days.

Reply comments in 15 days, if deemed necessary.

6. Sunset Date of December 31, 1991

In the absence of *some* sunset date for new filings of take-or-pay buyout and buydown costs, pipelines can continue to use the direct billing mechanism in perpetuity. While the court has made clear that December 31, 1990, would be "novel" and difficult to defend, the real test is whether pipelines would have a reasonable opportunity to negotiate settlements and file for recovery after *AGA–II* settled the section 5 issue and this proposed policy statement responds to *AGD–II* on the type fo authorized allocation mechanism for direct billing. That is particularly so, since the new mechanism would be very similar to the old mechanism insofar as the rights of the pipeline to recover buyout and buydown costs. In effect, the only changes are

(1) The CD allocation method and

(2) The minimum requirement for 20/30 percent volmetric surcharage. Otherwise, the pipeline itself sees no change (and most recent filings have had at least 20 or 30 percent volumetric surcharge, in any event).

7. Order No. 94

The Commission also would seek comment on the relationship of handling of Order No. 94 costs and take-or-pay buyout and buydown costs for those pipelines affected by both court remands.

[FR Doc. 90–26883 Filed 11–15–90; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 85N–0053]

Additional Standards for Viral Vaccines; Measles Virus Vaccine Live, Mumps Virus Vaccine Live, Rubella Virus Vaccine Live, and Measles Live and Smallpox Vaccine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations governing clinical trials for three viral vaccines: Measles Virus Vaccine Live, Mumps Virus Vaccine Live, and Rubella Virus Vaccine Live. The amendments are intended to make the clinical testing requirements for these viral vaccines more flexible and consistent with current scientific knowledge. FDA is also amending the regulations by removing one of the tests for Mumps Virus Vaccine Live as the remaining tests provide adequate assurances of safety; by removing the additional standards for Measles Live and Smallpox Vaccine, as all licenses for this combined viral vaccine are revoked and no future licenses are anticipated; by removing the reference to the use of Measles Virus Vaccine Live with gamma globulin; and by increasing manufacturers' flexibility to use alternative cell lines for the propagation of Rubella Virus.

DATES: This rule is effective for currently licensed vaccines with the new production lots initiated on December 17, 1990. New vaccines manufactured and clinically tested in accordance with the revised regulations will be eligible for licensure on December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne Binkley, Center for Biologics Evaluation and Research (HFB–130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8188.

SUPPLEMENTARY INFORMATION:

I. Introduction

The regulations to qualify Measles Virus Vaccine Live, Mumps Virus Vaccine Live, and Rubella Virus Vaccine Live for license require that the antigenicity of these vaccines be determined by clinical trials conducted with five consecutive lots of vaccine which have been manufactured by the same methods, each of which has shown satisfactory results in all prescribed tests. In the **Federal Register** of February 3, 1989 (54 FR 5497), FDA proposed to remove the requirement that the lots of these vaccines used in clinical trials be consecutively manufactured because the requirements is unnecessary to ensure the safety, purity, and potency of the vaccines and is an unnecessary burden on manufacturers conducting clinical studies. Any five lots of vaccine manufactured with the same methodology regardless of the sequence may, in some cases, be appropriate for use in clinical trials to demonstrate antigenicity. Manufacturers of a licensed vaccine will still be required to demonstrate consistency of manufacture of the vaccine by producing consecutive lots of each virus seed strain for neurovirulence tests in monkeys. The amendments in this rule only remove the requirement for consecutive lots in the clinical trials of an unlicensed, investigational vaccine and correspondingly remove the reference to the lots used in the clinical trials in the amendment to the neurovirulence test.

The agency also proposed to eliminate the requirement that each lot of the vaccine used in clinical trials show satisfactory results in all prescribed tests. The elimination of this requirement would permit the use of alternative test procedures as long as the tests continue to ensure the safety and effectiveness of the vaccine.

Under the applicable requirements of FDA's investigational new drug regulations (21 CFR part 312), FDA will continue to require that all investigational vaccines are shown by appropriate methods to be suitable for administration to humans before permitting their use in clinical trials in the United States. In addition, 21 CFR 601.2 requires that to obtain a license, manufacturers must submit "* * * data derived from nonclinical laboratory and clinical studies which demonstrate that the manufactured product meets prescribed standards of safety, purity, and potency * * *."

Thus, FDA proposed to amend § 630.31 (21 CFR 630.31) by removing the word "consecutive" and the phrase "each of which has shown satisfactory results in all prescribed tests." Because *§ 630.51 Clinical trials to qualify for license* of Mumps Virus Vaccine Live and *§ 630.61 Clinical trials to qualify for*

license of Rubella Virus Vaccine Live of the regulations require the manufacturers to "* * * follow the procedures prescribed in § 630.31 * * *," the meaning of these sections would also be changed (21 CFR 630.51 and 630.61). Consistent with the amendment to § 630.31 and the change in meaning of §§ 630.51 and 630.61, FDA proposed the following: To amend § 630.30(c)(1) by removing the reference to § 630.31; to amend § 630.50(c)(1) by removing the reference to § 630.51; and to amend § 630.60(e)(1) by removing the reference to § 630.61.

FDA also proposed to amend the current requirement in § 630.31, that the vaccine be administered by subcutaneous injection, to permit the use of alternative routes of administration. Other routes of administration, such as by aerosol, have been used experimentally, and in the future an alternative route of administration may be shown to be effective.

Years ago, Measles Virus Vaccine Live was administered with human gamma globulin. Currently, licensed Measles Virus Vaccine Live is no longer administered with human gamma globulin. Accordingly, FDA proposed to amend § 630.31 by removing the phrase "i.e., either with or without human gamma globulin".

FDA proposed to amend the regulation for Mumps Virus Vaccine Live in § 630.55(a)(4) by removing the phrase "and in chick embryo liver" from the second sentence. The safety tests performed in chick embryo kidney, in addition to the remaining safety tests in § 630.55(a), provide adequate assurances of safety. FDA believes that testing in chick embryo liver is unnecessary and provides no additional assurance of the safety of the product.

FDA proposed to amend the regulation for Rubella Virus Vaccine Live in § 630.62(a) by inserting the phrase "or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter." This change adds flexibility to the regulation by allowing changes of the cell substrate for culturing vaccine virus consistent with scientific knowledge.

FDA proposed to remove the additional standards for Measles Live and Smallpox Vaccine in §§ 630.80 and 630.86 (21 CFR 630.80 through 630.86). The remaining product license for the Measles Live and Smallpox Vaccine was revoked at the request of the licensed manufacturer (Merck, Sharp, and Dohme; License No. 2), on March 12, 1987. FDA does not believe any licenses will be issued for this product in the future.

II. Comments

FDA provided interested persons 60 days to submit written comments on the proposal. FDA received a written request from one manufacturer for an extension of the comment period. A 2-week extension to the comment period was granted and a memorandum announcing the extension was placed in the public file at FDA's Dockets Management Branch under Docket No. 85N–0053.

FDA received one letter of comment from a licensed manufacturer of viral vaccines, listing the specific changes the firm supported. The firm expressed concerns regarding the remaining changes set forth in the proposed rules. The firm requested that FDA proceed with these amendments only after scientific documentation is developed demonstrating that the safety, purity, and potency of the vaccines will not be compromised and that FDA should provide further discussion and documentation of the effect of the proposed changes on safety and efficacy of the vaccines.

The following discussion provides additional information regarding the changes in the proposed rules. The agency finds that the amendments will not adversely affect the safety or efficacy of viral vaccines, and indeed may contribute to their safety and efficacy. Because the firm did not specifically list the amendments causing concern, FDA discusses below each of the amendments not specifically supported by the letter of comment.

A. The "Consecutive Manufacture" Amendment

FDA proposed to amend § 630.31 by striking the word "consecutive" so that the five lots of virus vaccine used in clinical trials need not be consecutively manufactured. Consistent with the amendments to § 630.31, FDA proposed to amend §§ 630.30(c)(1), 630.50(c)(1), and 630.60(e)(1) by striking the corresponding references to §§ 630.31, 630.51, and 630.61, respectively. To improve clarity, FDA has edited §§ 630.30(c)(1), 630.50(c)(1), and 630.60(e)(1) of the final rule.

The "consecutive manufacture" requirement was intended to ensure that the manufacturer can control the virus manufacturing process. The agency has concluded, however, that the use of five consecutive lots for clinical trials is not always necessary to assure the safety, purity, and potency of the vaccine and could be the cause of a waste of effort and vaccine by a manufacturer conducting clinical studies in the United States or abroad. However, the agency will continue to monitor manufacturers' ability to consistently produce a safe and effective vaccine. There are numerous means to demonstrate this ability, including using a specified number of consecutive lots in clinical trials.

The agency believes that, in some cases, any five lots of virus vaccine manufactured using the same methods, regardless of the sequence of manufacture, may be appropriate for use in clinical trials to demonstrate antigenicity. In some cases, there may be scientific advantages to conducting clinical trials using vaccine that has been manufactured over a long period of time. Using vaccine lots manufactured over several years, rather than several months, may provide a better indication of the manufacturer's ability to consistently produce a safe and consistently antigenic vaccine.

In addition to ensuring the continued safety, purity, and potency of vaccine used in clinical trials, the amendment will provide manufacturers greater flexibility in scheduling clinical trials. The opportunity to conduct clinical trials of a vaccine is often limited by such factors as difficulty in identifying a suitable, nonimmunized test population, and a shortage of qualified clinical scientists to conduct the trials. By removing the consecutive lot requirement, the sponsoring manufacturer will have greater flexibility in selecting the appropriate times and opportunities for conducting the required clinical trials.

The agency further notes that, since the agency first issued § 630.31, a number of clinical studies have been performed in other countries to demonstrate the antigenicity of various viral vaccines. Some of the studies were performed to qualify the vaccine for approval in the host nation, or to demonstrate that the vaccine continues to display adequate antigenicity in humans. FDA believes that many of these clinical studies may provide an appropriate demonstration of the antigenicity and safety of the vaccine. Because many of these studies were not performed on five consecutive lots of vaccine, the studies would not meet the requirements of § 630.31. This amendment gives FDA the flexibility to ascertain whether or not the data from these clinical trials may be the basis for approving U.S. licensure.

B. The "Testing" Amendment

FDA is also amending § 630.31 by removing the provision that the five lots

of viral vaccine used in the required clinical trials each show satisfactory results in all prescribed tests. In some cases it may continue to be appropriate to require satisfactory results in all tests prescribed in FDA's standards to confirm the safety and effectiveness of the vaccine. However, safety and efficacy can be shown by other means. For example, a firm that has been manufacturing vaccine for a number of years for use in other countries, but not licensed for U.S. distribution, will have a long record of vaccine production. The vaccine has been tested according to that country's standards, which may or may not be consistent with the tests prescribed by FDA in its regulations. Prior to licensure in the U.S., extensive data will be required to document the safety and efficacy of the vaccine. FDA will review the data to determine the adequacy of the testing of the vaccine used in clinical trials. Based on FDA's review, the agency may find that tests other than the tests prescribed in FDA's regulations, are appropriate to ascertain the safety and efficacy of the vaccine. While this amendment will allow the manufacturer additional flexibility, it does not diminish vaccine safety and efficacy. Any vaccine licensed by FDA must still be manufactured according to appropriate standards which assure the safety and efficacy of the vaccine. Accordingly, FDA is adopting the proposed regulation without change.

C. The "Cell Line" Amendment

FDA is amending § 630.62(a) by inserting "or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter." To promote uniformity and to standardize the information that each manufacturer is required to submit to FDA concerning cell lines, the agency issued a final rule in the **Federal Register** of December 10, 1986 (51 FR 44451). This final rule added § 610.18(c) that requires information adequate to document the safety of a cell line used in the manufacture of a biological product.

FDA shares the concern that there be adequate documentation of a cell line before it is used for vaccine production. FDA has found several vaccines manufactured using approved cell lines to be safe and effective. FDA will continue to require the adequate data to document the safety of a cell line used in the production of a new vaccine. Therefore, FDA is adopting the above regulation as proposed.

III. Economic, Environmental, and Paperwork Considerations

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Public Law 96–354). The rule removes unnecessary restrictions in the regulations governing clinical trials of three viral vaccines and removes standards that have no applicability. No additional burdens are imposed upon manufacturers. Therefore, the agency concludes that this rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. Also, this rule does not impose any additional record keeping or reporting requirements on the regulated industry. The reporting and record keeping requirements of this rule are governed by the current good manufacturing practice for finished pharmaceuticals regulations in 21 CFR part 211 (OMB Control No. 0910–0139).

List of Subjects in 21 CFR Part 630

Biologics, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 630 is amended as follows:

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

1. The authority citation for 21 CFR part 630 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

2. Section 630.30 is amended by revising the introductory text of paragraph (c)(1) to read as follows:

§ 630.30 Measles virus vaccine live.

* * * * *

(c) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The test.* A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated measles virus used in the manufacture of measles virus vaccine. For this purpose and to establish consistency of manufacture of the vaccine, vaccine from each of five consecutive lots shall be tested separately in the following manner:

* * * * *

3. Section 630.31 is revised to read as follows:

§ 630.31 Clinical trials to qualify for license.

To qualify for license, the antigenicity of the vaccine shall have been determined by clinical trials of adequate statistical design, by a suitable route of administration of the product. Such clinical trials shall be conducted with five lots of measles virus vaccine which have been manufactured by the same methods. There shall be a demonstration under circumstances in which adequate clinical and epidemiological surveillance of illness has been maintained to show that the measles virus vaccine, when administered as recommended by the manufacturer, is free of harmful effect upon administration to approximately 1,000 susceptible individuals, in that there were no detectable neutralizing antibodies before vaccination and there was serological conversion after vaccination. The five lots of vaccine shall be distributed as evenly as possible among the 1,000 individuals tested. Demonstration shall be made of immunogenic effect by the production of specific measles neutralizing antibodies (i.e., sero-conversion from less than 1:4 to 1:8 or greater) in at least 90 percent of each of five groups of measles susceptible individuals, each having received a virus vaccine dose which is not greater than that which was demonstrated to be safe in field studies (§ 630.30(b)) when used under comparable conditions. Such clinical trials shall be conducted in compliance with part 56 of this chapter unless exempted under § 56.104 or granted a waiver under § 56.105, and with the requirements for informed consent set forth in part 50 of this chapter.

4. Section 630.50 is amended by revising the introductory text of paragraph (c)(1) to read as follows:

§ 630.50 Mumps Virus Vaccine Live.

* * * * *

(c) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The*

test. A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated mumps virus used in the manufacture of mumps vaccine. For this purpose and to establish consistency of manufacture of the vaccine, vaccine from each of five consecutive lots shall be tested separately in monkeys shown to be serologically negative for mumps virus antibodies in the following manner:

* * * * *

5. Section 630.55 is amended by revising paragraph (a)(4) to read as follows:

§ 630.55 Test for safety.

(a) * * *

(4) *Inoculation of other cell cultures.* The mumps virus pool shall be tested for adventitious agents in the volume and following the procedures prescribed in § 630.35(a)(3), in rhesus or cynomolgus monkey kidney, in whole chick embryo, and in human cell cultures. In addition, each virus pool shall be tested in chick embryo kidney in the same manner except that the volume tested in each cell culture shall be equivalent to 250 human doses or 25 milliliters, whichever represents a greater volume. The mumps virus pool is satisfactory only if results equivalent to those in § 630.35(a)(3) are obtained.

* * * * *

6. Section 630.60 is amended by revising the introductory text of paragraph (e)(1) to read as follows:

§ 630.60 Rubella Virus Vaccine Live.

* * * * *

(e) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The test.* A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated rubella virus used in the manufacture of rubella vaccine. For this purpose and to establish consistency of manufacture of the vaccine, vaccine from each of five consecutive lots shall be tested separately in monkeys shown to be serologically negative for rubella virus antibodies in the following manner:

* * * * *

7. Section 630.62 is amended by revising paragraph (a) to read as follows:

§ 630.62 Production.

(a) *Virus cultures.* Rubella virus shall be propagated in duck embryo cell cultures, rabbit renal cultures, or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter.

* * * * *

§§ 630.80 through 630.86 [Removed]

8. Part 630 is amended by removing subpart I consisting of §§ 630.80 through 630.86.

Dated: October 18, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–26996 Filed 11–15–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 720

[SECNAVINST 5820.9]

Compliance With Court Orders

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule establishes policy and procedures for requesting the return of Department of the Navy (DON) members and employees serving outside the United States, and family members accompanying them, in compliance with court orders. The publication of this DON instruction will assist members of the public in requesting the return of these individuals. It implements Department of Defense (DoD) Directive 5525.9 of December 27, 1988, codified in 32 CFR part 146, regarding the compliance with court orders of Department of Defense members, employees, and family members outside the United States.

EFFECTIVE DATE: May 29, 1990.

FOR FURTHER INFORMATION CONTACT: Jan Gnerlich, Counsel, Office of Civilian Personnel Management, Department of the Navy, 800 Quincy Street, Arlington, VA 22203–1998, telephone 703–696–4717.

SUPPLEMENTARY INFORMATION: This rule implements DoD Directive 5525.9 of December 27, 1988, codified in 32 CFR part 146. It establishes policy and procedures for requesting the return to the United States of DON members and employees serving outside the United States, and family members accompanying them, in compliance with court orders. In addition to providing an orderly means for requesting the appearances of these individuals pursuant to court order, its provisions also protect the interests of the United States by allowing for denial of requests when a member's return is inconsistent with mission requirements, the provisions of applicable international agreements, and ongoing DoD investigations and courts-martial. This rule assigns points of contact for requests, and designates responsible officials for acting on requests to return. It also establishes time limitations for completion of action on requests for return. This rule is not subject to public comment. 32 CFR part 296 states that the implementation by a subordinate component of a regulation adopted by DoD does not fall within the scope of the obligation to invite public comment on its provisions.

List of Subjects in 32 CFR Part 720

Courts, Government employees.

For the reasons set out in the preamble, in 32 CFR part 720, subpart D (720.40–720.47) is added to read as follows:

Subpart D—Compliance With Court Orders by Department of the Navy Members, Employees, and Family Members Outside the United States

Sec.

720.40 Purpose.
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Authority: DoD Directive 5525.9, 54 FR 296, 32 CFR part 146.

Subpart D—Compliance With Court Orders by Department of the Navy Members, Employees, and Family Members Outside the United States

§ 720.40 Purpose.

This instruction:

(a) Implements 32 CFR part 146.

(b) Establishes policy and procedures for requesting the return to the United States of, or other action affecting, Department of the Navy (DON) personnel and employees serving outside the United States, and family members accompanying them, in compliance with court orders.

§ 720.41 Definitions.

Court. Any judicial body in the United States with jurisdiction to impose criminal sanctions on a Department of the Navy member, employee, or family member.

Employee. A civilian employed by the Department of the Navy or a component service, including an individual paid from non-appropriated funds, who is a citizen or national of the United States.

Family member. A spouse, natural or adopted child, or other lawful dependent of a Department of the Navy employee or member accompanying the Department of the Navy member or employee assigned to duty outside the United States.

Felony. A criminal offense that is punishable by incarceration for more than one year, regardless of the sentence that is imposed for commission of that offense.

Member. An individual on active duty in the Navy, Naval Reserve, Marine Corps, or Marine Corps Reserve.

Request for return. Any request or order received from a court, or from federal, state or local authorities concerning a court order, for the return to the United States of members, employees, or family members, for any reason listed in § 720.42.

Respondent. A member, employee, or family member whose return to the United States has been requested, or with respect to whom other assistance has been requested under this instruction.

Responsible Official. Officials designated in this instruction to act on a request to return, or take other action affecting, members, employees or family members to the United States under this instruction.

United States. The 50 states, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

§ 720.42 Policy.

(a) It is Department of the Navy policy to cooperate, as prescribed in this instruction, with courts and federal, state and local officials in enforcing court orders. The Department of the Navy will cooperate with requests when such action is consistent with mission requirements (including operational readiness), the provisions of applicable international agreements, and ongoing Department of Defense (DoD) investigations and courts-martial.

(b) Every reasonable effort will be made to resolve the matter without the respondent returning to the United States, or other action being taken against the respondent under this instruction.

(c) Requests to return members for felonies or for contempt involving unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or other person awarded custody by a court order will normally be granted, but only if the member cannot resolve the issue with the court without return to the United States. When the member's return is inconsistent with mission requirements, applicable international agreements, or ongoing DoD investigations or courts-martial, DoD approval of denial will be requested.

(d) For all other requests involving members, return will be based on the circumstances of the individual case as provided in this instruction.

(e) Members will normally be returned on a temporary additional duty (TAD) basis unless there are compelling reasons the return should be a permanent change of duty station (PCS).

(f) The involuntary return of employees or family members in response to a request for return is not authorized. However, the following action will be taken:

(1) Employees will be strongly urged to comply with court orders. Failure to comply with court orders involving felonies or contempt involving unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or other person awarded custody by a court order will normally require processing for adverse action, up to and including removal from federal service. Failure to comply with other court orders may require adverse action, depending on the circumstances of the individual case.

(2) Family members will be strongly encouraged to comply with court orders. Family members who fail to comply with court orders involving felonies or contempt involving unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or other person awarded custody by a court order will normally have their command sponsorship removed. Failure to comply with other court orders may also result in removal of command sponsorship, depending on the circumstances of the individual case.

(g) To facilitate prompt resolution of requests for return of members, minimize the burden on operating units, and to provide consistency during initial implementation of this new program, a limited number of responsible officials, designated in § 720.44, will respond to requesting officials.

§ 720.43 Points of contact.

(a) Authorities issuing requests for return or for other action under this instruction may contact the following activities:

(1) Chief of Naval Personnel (Pers–14), Washington, DC 20370–5000 (For Navy members and their family members).

(2) Commandant, U.S. Marine Corps (Code JAR), Washington, DC 20380–0001 (For Marine Corps members and their family members).

(3) Director, Office of Civilian Personnel Management (Code OOL), 800 N. Quincy Street, Arlington, VA 22203–1998 (For civilian personnel, including non-appropriated fund employees and their family members).

(b) Upon receipt of a request for action under this instruction, the Office of Civilian Personnel Management will forward the request to the appropriate responsible official for action in accordance with § 720.44.

§ 720.44 Responsible Officials.

The following officials are designated responsible officials for acting on requests to return or to take other action affecting members, employees or family members to the United States.

(a) The Chief of Naval Personnel (CHNAVPERS) for requests involving Navy members and their family members who are not employees. The CHNAVPERS may delegate this authority within his headquarters, not below the 0–6 level for routine matters and not lower than the flag officer level for decisions to deny the request for return.

(b) The Commandant of the Marine Corps (CMC) for requests involving Marine Corps members and their family members who are not employees. The CMC may delegate this authority within his headquarters, not below the 0–6 level for routine matters and no lower that the general officer level for decisions to deny the request for return.

(c) The local commanding officer or officer in charge for requests involving employees and their family members who are not active duty military members.

(d) The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN(M&RA)) for requests not covered by §§ 720.44 (a) through (c).

§ 720.45 Procedures.

(a) If the request pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, and the matter cannot be resolved with the court without the respondent returning to the United States:

(1) For members: The responsible official shall direct the commanding officer or officer in charge to order the member to return to the United States. Failure to comply will normally be the basis for disciplinary action against the member.

(2) For employees, military and civilian family members: The responsible official shall strongly

encourage the respondent to comply. Failure to comply may subject employees to adverse action, to include removal from the Federal service, and subject military and civilian family members to withdrawal of command sponsorship.

(b) For all other requests when the matter cannot be resolved with the court without returning the respondent to the United States, the responsible official shall take the action described in this instruction when deemed appropriate with the facts and circumstances of each particular case, following consultation with legal staff.

(c) When a member's return is inconsistent with mission requirements, the provisions of applicable international agreements, or ongoing DoD investigations and courts-martial, the Department of the Navy will ask DoD to approve denial of the request for the military members's return. To initiate this action, there must be an affirmative showing of articulable harm to the unit's mission or violation of an international agreement.

(d) When a responsible official has determined a request for return is apparently based on an order issued by a court of competent jurisdiction, the responsible official shall complete action on the request for return within 30 days of receipt of the request for return by the responsible official, unless a delay is authorized by the ASN(M&RA).

(e) When a delay to complete the action is warranted, the ASN(M&RA) will grant a 45 day delay, and provide a copy of that approval to the Assistant Secretary of Defense (Force Management & Personnel (ASD(FM&P)) and the General Counsel, DoD. The 45 day period begins upon request by the responsible official of the request for return. Conditions which, when accompanied by full supporting justification, will warrant the granting of the 45 day delay are:

(1) Efforts are in progress to resolve the matter to the satisfaction of the court without the respondent's return to the United States.

(2) To provide sufficient time for the respondent to provide evidence to show legal efforts to resist the request or to show legitimate cause for noncompliance.

(3) To provide commanding officers an opportunity to detail the specific effect on command mission and operational readiness anticipated from the loss of the member or Department of the Navy employee, and to present facts relating to any international agreement, or ongoing DoD investigation or courts-martial.

(f) A commanding officer or officer in charge who receives a request for the return of, or other action affecting, a member, family member, or employee not of his/her command will forward the request to the appropriate commanding officer or officer in charge, copy to the responsible official, and advise both of them by message that a request for return or other action has been forwarded to them.

(g) A commanding officer or officer in charge who receives a request for the return of, or other action affecting, a member, family member, or employee of his/her command will:

(1) Notify the respondent of the right to provide evidence to show legal efforts to resist the request, or to show legitimate cause for noncompliance for inclusion in the submission to the responsible official.

(2) For members and their family members who are not employees, forward the request immediately to the appropriate responsible official, together with:

(i) Any information the individual desires to provide to show legal efforts to resist the request, or otherwise to show legitimate cause for noncompliance.

(ii) Facts detailing the specific impacts on command missions and readiness anticipated from loss of the member.

(iii) Facts relating to any international agreements or ongoing DoD investigations or courts-martial involving the respondent.

(iv) Information regarding conditions expected to interfere with a member's return to the command after completion of proceedings. If, in the opinion of the commanding officer, there are compelling reasons for the member to be returned to the United States PCS, provide full justification to support that recommendation to the cognizant officer.

(3) If a delay in processing is warranted under § 720.42 or § 720.45(e), make a recommendation with supporting justification to the responsible official.

(4) Monitor, and update as necessary, information provided to the responsible official.

(h) The responsible official shall:

(1) Determine whether the request is based on an order issued by a court of apparent competent jurisdiction and if so, complete action on the request no later than 30 days after its receipt by the responsible official. If a conflicts of law issue is presented between competing state interests, or between a state and a foreign host-nation, or between two different foreign nations, the matter shall be referred to the ASN(M&RA) on the first issue and to the Judge Advocate General (Code 10) on the second and third issues.

(2) Encourage the respondent to attempt to resolve the matter to the satisfaction of the court or other requesting authority without return of or other action affecting the member, employee, or family member.

(3) When a delay to complete action under this section is warranted, request the delay from ASN(M&RA) with full supporting justification.

(4) Examine all information the respondent desires to provide to show legal efforts to resist the request, or otherwise to show legitimate cause for noncompliance.

(5) Requests for exception from the requirements of this instruction shall be submitted, with supporting justification, to the ASN(M&RA) for submission to the ASD(FM&P).

(6) If a member will be ordered to return to the United States, determine if the member will be ordered TAD or PCS and advise the member's commanding officer of the determination.

(7) If a member will be ordered to return to an appropriate port of entry to comply with a request, ensure:

(i) The requesting officer has given official notification to the responsible official that the requesting official or other appropriate party will initiate action with the receiving jurisdiction to secure the member's delivery/extradition, as appropriate, per chapter 6 of the Manual of the Judge Advocate General, and provide for all costs incident thereto, including any escort if desired.

(ii) If applicable, the necessary accounting data are provided to the commanding officer of the member or orders are issued.

(iii) The member has arranged satisfactory foster care for any lawful minor dependents who will be left unaccompanied overseas upon the member's return to the United States.

(8) Notify the requesting official at least 10 days before the member's return to the selected port of entry.

(9) In the case of an employee or of a family member, the commanding officer or officer in charge of the activity to which the family member's sponsor is attached, or by which the employee is employed, will carry out the following steps:

(i) An employee shall be strongly encouraged to comply with the court order or other request for return. Failure to comply may be the basis for adverse action to include removal from Federal service. Adverse action should only be taken after coordination with the

cognizant civilian personnel office and legal counsel and in compliance with Civilian Personnel Instruction 752.

(ii) If a family member of either a member or an employee is the subject of a request for return, the family member shall be strongly encouraged to comply with the court order. Failure to respond may be the basis for withdrawal of command sponsorship of the family member.

(10) Report promptly to the ASN(M&RA) any actions taken under § 720.45 (a) or (b).

(i) The ASN(M&RA):

(1) May grant delays of up to 45 days from the date of a request for delay in accordance with § 720.45(e).

(2) Will report promptly all delays of requests for the return of members to the ASD(FM&P) and to the General Counsel of the Department of Defense.

(3) Will request from the ASD(FM&P), when warranted, exception to the policies and procedures of DoD Directive 5525.9 of December 27, 1988.

(4) Consolidate and forward reports of action taken under § 720.45 (a) or (b) to the ASD(FM&P) and the General Counsel, DoD as required by DoD Directive 5525.9 of December 27, 1988.

§ 720.46 Overseas Screening Program.

The Chief of Naval Operations (CNO) and the CMC shall incorporate procedures requiring members and employees to certify they have legal custody of all minor dependents accompanying them outside the United States into service overseas screening programs.

§ 720.47 Report.

The report requirement in this instruction is exempt from reports control by SECNAVINST 5214.2B.

Dated: November 6, 1990.

Wayne T. Baucino,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90-27066 Filed 11-15-90; 8:45 am]

BILLING CODE 3810-AE-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-46; RM-7145]

Radio Broadcasting Services; Ketchum, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of LeeMay Broadcasting Company, Inc., substitutes Channel 298C1 for Channel 298C2 at Ketchum, Oklahoma, and modifies its license for Station KGND to specify operation on the higher powered channel. See 55 FR 7345, March 1, 1990. Channel 298C1 can be allotted to Ketchum in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.5 kilometers (29.5 miles) northwest to avoid a short-spacing to Stations KAYI, Channel 295C, Muskogee, Oklahoma, KMOQ, Channel 296A, Baxter Springs, Kansas, and KLMK, Channel 297C, Poteau, Oklahoma, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 298C1 are North Latitude 36-46-33 and West Longitude 95-27-15. LeeMay is also to submit an application to relocate the transmitter of its co-owned Station KWFN at Fredonia, Kansas, to avoid prohibited overlap of the 3.16mV/m contours of the two stations. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report Order, MM Docket No. 90-46, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 298C2 and adding Channel 298C1 at Ketchum.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27084 Filed 11-15-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-140; RM-7197]

Radio Broadcasting Services; Pierre, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Robert E. Ingstad, substitutes Channel 224C1 for Channel 224A at Pierre, South Dakota, and modifies his license for Station KGFX-FM to specify operation on the higher powered channel. See 55 FR 11412, March 28, 1990. Channel 224C1 can be allotted to Pierre in compliance with the Commission's minimum distance separation requirements and can be used at the presently licensed site of Station KGFX-FM. The coordinates for Channel 224C1 are North Latitude 44-22-15 and West Longitude 100-24-17. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-140, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 224A and adding Channel 224C1 at Pierre.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27085 Filed 11-15-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-509; RM-6816]

Radio Broadcasting Services; Denison-Sherman, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 269C3 for Channel 269A at Denison-Sherman, Texas, and modifies the license for Station KDSQ(FM) to specify operation on the higher class channel, as requested by Transcontinental Broadcasting Co. See 54 FR 48652, November 24, 1989. The coordinates for Channel 269C3 and 33-41-24 and 96-40-28.

EFFECTIVE DATE: December 28, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-509, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 269A and adding Channel 269C3 at Denison-Sherman.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27089 Filed 11-15-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-218; RM-C086]

Radio Broadcasting Services; Black River Falls, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 259C3 for Channel 259A at Black River Falls, Wisconsin, and modifies the construction permit of WWIS Radio, Inc. for Channel 259A to specify operation on Channel 259C3. The coordinates for Channel 259C3 are 44-19-11 and 90-53-31. See, (cite to FR summary for notice) 54 FR 26 220, June 22, 1989. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1990.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-218, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Wisconsin by removing Channel 259A and adding Channel 259C3 at Black River Falls.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27090 Filed 11-15-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 9011910291]

RIN 0648-AD69

Taking and Importing of Marine Mammals

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

ACTION: Interim final rule with request for comment.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, issues this interim final rule which establishes a provision for timely consideration and granting of an affirmative finding under the yellowfin tuna importation regulations to a nation which prohibits its vessels from making intentional purse seine sets on marine mammals in the course of harvesting yellowfin tuna by purse seine in the eastern tropical Pacific Ocean (ETP). With an affirmative finding, yellowfin tuna and tuna products from the harvesting nation can be imported into the United States.

DATES: This interim final rule is effective November 15, 1990. Comments are invited and must be received on or before January 2, 1991.

ADDRESSES: E. Charles Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, NMFS, Phone: (213) 514-6196.

SUPPLEMENTARY INFORMATION: On March 30, 1990, NMFS promulgated a final rule (55 FR 11921) to implement portions of the Marine Mammal Protection Act (MMPA) Amendments of 1988. This rule governs the importation of yellowfin tuna and tuna products.

The 1988 amendments require that a harvesting nation must meet a two-part test to determine whether its marine mammal program is comparable to that of the United States before its yellowfin tuna and yellowfin tuna products are allowed to enter this country. A nation must provide documentary evidence that it has a regulatory program for taking marine mammals in the fishery which is comparable to the program of the United States and that the average rate of incidental mortality of marine mammals in the fishery is comparable to

the rates for the U.S. fleet as specified in the 1988 amendments. A harvesting nation failing to meet these requirements receives a negative finding which results in a prohibition on the nation's yellowfin tuna and tuna products entering the United States. A ban is also imposed within 90 days on the entry of any yellowfin tuna and tuna products from any intermediary nations trading with the embargoed nation and the United States if the intermediary nation fails to ban entry of the tuna from the embargoed harvesting nation within 60 days.

On April 12, 1990, the three major U.S. tuna canners announced they would no longer purchase tuna caught in association with marine mammals. This "dolphin safe" policy was supported by NMFS and major environmental groups as a means of eliminating marine mammal mortality in the tuna purse seine fishery. The "dolphin safe" policy applied to the United States and other nations harvesting yellowfin tuna in the ETP and selling their catch to U.S. processors.

The Government of Ecuador, wishing to avoid rejection of its yellowfin tuna catches from international markets in the future, issued Resolution No. 203 on May 10, 1990, prohibiting Ecuadorian flag, or foreign vessels operating in association with or leased to domestic companies, from fishing on tunas associated with marine mammals. The Government of Panama passed similar legislation on October 15, 1990. The final rule (55 FR 11921) does not include specific provisions for a nation which prohibits its vessels from making intentional purse seine sets on marine mammals to obtain an affirmative finding to allow its yellowfin tuna and tuna products to enter the United States.

These regulations provide, consistent with the purposes and policies of the MMPA, specific criteria for issuing initial, and subsequent affirmative findings to a harvesting nation which implements a prohibition against the intentional purse seine sets on marine mammals by its vessels. The nation must also have an acceptable compliance program which uses observers approved by the Assistant Administrator for Fisheries or which are under the direction of the Inter-American Tropical Tuna Commission (IATTC) to monitor every fishing trip of vessels of greater than 400 tons carrying capacity. The nation must submit statements by the observers, within 30 days after completion of each trip and verified by the IATTC, certifying that no intentional purse seine sets were made on marine mammals during the trips. The nation must also submit a list of purse seine vessels greater than 400 tons when initially seeking a finding under this regulation, and a list of changes to that list within 30 days of when a change occurs. For an initial affirmative finding under this provision, the comparable rate tests are deemed to be met.

Additionally, for a renewal of an affirmative finding, an annual report must also be submitted to the Assistant Administrator for review, which must include: (1) The total number of observed trips; (2) the percent observer coverage of all purse seine fishing trips; (3) the total number, if any, of observed purse seine sets on marine mammals; and (4) the number by species of any marine mammals killed or seriously injured, if any. These data will be reviewed for compliance with this rule and, if necessary, comparability to United States mortality rates.

If a vessel is found to have set on marine mammals as documented by an observer, the Assistant Administrator immediately will impose a 180-day probationary period on the harvesting nation. If during the probationary period there are any sets on marine mammals, the Assistant Administrator will impose a ban on the importation of yellowfin tuna and tuna products into the United States from the harvesting nation. This embargo will remain in force until the harvesting nation requests reconsideration and obtains an affirmative finding. The Assistant Administrator will make an affirmative finding upon request for reconsideration only if; (1) the harvesting nation provides documentation that there have not been any intentional purse seine sets on marine mammals for a minimum period of 90 days preceding the request for reconsideration; and (2) the comparability tests of the current rule are met for total marine mammal mortality (kill-per-set rate) and the mortality percentage limitations for eastern spinner and coastal spotted dolphin.

If a harvesting nation's purse seine vessel is determined to have left port on a fishing trip in the ETP without an approved observer, the Assistant Administrator will impose a 1 year probationary period on the harvesting nation effective upon the date the vessel returns to port to unload. If during that probationary period, a second purse seine vessel returns to port to unload tuna and it is determined that an approved observer was not aboard the vessel during a trip in the ETP, the Assistant Administrator will immediately revoke the harvesting nation's affirmative finding. Although there is no provision for a reconsideration of a revocation of a finding for failure to impose 100 percent observer coverage, harvesting nations may apply for reconsideration under the general findings provision of the regulations.

Classification

This rule is being published as an interim final rule without opportunity for prior public comment and without a delayed effectiveness period because it involves a foreign affairs function of the United States. If NOAA provided an opportunity for prior public comment, there clearly would be an adverse impact on our relations with those nations wishing to qualify under this rule because they would not have sufficient time to enact the necessary legislation to comply with this rule before the expiration of their current findings on December 31, 1990. Public comment is solicited until January 2, 1991, and comments received will be considered in preparing a final rule.

The Assistant Administrator has determined that the procedural changes to be made at 50 CFR 216.24(e) by this rule will not have a significant impact on the human environment. This determination is based on the impact analysis provided in the Environmental Assessment (EA) prepared for the interim final yellowfin tuna import rule which was published on March 7, 1989. Therefore, an environmental impact statement is not required. The EA is available upon request (see **ADDRESS**).

This interim final rule is not subject to review under Executive Order 12291 because it involves a foreign affairs function of the United States (section 1(a)(2)). Likewise, because this rule is being published as an interim rule rather than a proposed rule, the requirements of the Regulatory Flexibility Act do not apply. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act and since no other law requires that notice and opportunity for comment be given for this rule, under section 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis has to be or will be prepared.

This rule does not contain collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) The information that is required to be provided will be collected by professional observers from an international program and transmitted to the United States Government by the harvesting nation's government.

Therefore, this rule does not impose additional reporting burdens on individuals or industries. Related collections of information have been approved by the Office of Management and Budget under OMB Control Number 0648–0040.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: November 9, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons stated above, 50 CFR part 216 is amended as follows:

PART 216—[AMENDED]

1. The authority for part 216 continues to read as follows:

Authority: 16 U.S.C. 1367 *et. seq.* unless otherwise stated.

2. Section 216.3 is amended by adding in alphabetical order a definition of "intentional purse seine set" to read as follows:

§ 216.3 Definitions.

* * * * *

"Intentional purse seine set" means that a tuna purse seine vessel or associated vessels chase marine mammals and subsequently make a purse seine set.

* * * * *

3. Section 216.24 is amended by revising the introductory text of paragraph (e)(5)(i), redesignating paragraphs (e)(5)(vii), (e)(5)(viii) and (e)(v)(ix) as (e)(5)(xii), (e)(5)(xiii) and (e)(5)(xiv), and adding new paragraphs (e)(5)(vii), (e)(5)(viii), (e)(5)(ix), (e)(5)(x) and (e)(5)(xi) to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) * * *

(5) * * *

(i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(i) of this section, from harvesting nations whose vessels of greater than 400 short tons carrying capacity operate in the ETP tuna purse seine fishery as determined by the Assistant Administrator, may not be imported into the United States unless the Assistant Administrator makes an affirmative finding under either paragraph (e)(5)(v) or (e)(5)(ix) of this section and publishes the finding in the Federal Register that:

* * * * *

(vii) *Application for Finding.* The Assistant Administrator's determination on a nation's application for a finding will be announced and published in the **Federal Register.** A harvesting nation which has implemented a regulatory program which prohibits the intentional setting of any purse seine net to encircle marine mammals and desires an initial finding under these regulations that will allow it to impost into the United States those products listed in paragraph (e)(2)(i) of this section must provide the Assistant Administrator with the following:

(A) Documentary evidence establishing that its regulatory program includes:

(*1*) A law prohibiting the intentional setting of purse seine nets on marine mammals (a copy of the law must be submitted);

(*2*) A requirement that a certificate from an observer be obtained within 30 days of the completion of each and every trip of the nation's purse seine vessels greater than 400 short tons carrying capacity, stating that the observer was aboard the vessel during the entire trip and that there were no intentional purse seine sets on marine mammals;

(B) A complete list of the nation's vessels and any certified charter vessels of greater than 400 short tons carrying capacity which purse seine for yellowfin tuna in the ETP, indicating the status of each vessel (i.e., actively fishing in the ETP, in port for repairs, etc.), and a list of changes to this fleet within 30 days when changes occur.

(viii) *Application for Renewal.* A harvesting nation, which has in effect an affirmative finding under this section, may request renewal of its finding for the subsequent calendar year by providing the Assistant Administrator an annual report by November 1, covering the previous October 1 to September 30 period, which includes the following:

(A) Vessel summary data to include:

(*1*) The total number of observed trips;

(*2*) The percentage of all purse seine fishing trips that carried observers under a program approved by the Assistant Administrator;

(*3*) The total number, if any, of observed purse seine sets on marine mammals;

(*4*) A summary of the number and species, if any, of all marine mammals killed or seriously injured in intentional purse seine sets on marine mammals;

(*5*) A complete list of the nation's vessels and any certified charter vessels of greater than 400 tons carrying capacity which purse seine for yellowfin tuna in the ETP, indicating the status of each vessel as of October 1.

(B) A summary, with copies of relevant laws, of any changes in the nation's laws or regulatory program regarding marine mammals for the purse seine fishery in the ETP;

(C) A summary of any enforcement actions taken to ensure compliance with the nation's marine mammal protection laws.

(ix) *Review of Finding.* The Assistant Administrator will renew an affirmative finding obtained under paragraph (e)(5)(viii) of this section if:

(A) The harvesting nation has provided all of the information required by paragraph (e)(5)(viii) of this section and the conditions under which the original finding was made under paragraph (e)(5)(vii) continue to exist; and

(B) Either 100 percent observer coverage is provided for all purse seine vessels as required by paragraph (e)(5)(vii)(A)(*2*) of this section; or the harvesting nation is in a probationary status in accordance with paragraph (e)(5)(x)(B)(*1*) of this section; and

(C) The harvesting nation meets the criteria of paragraphs (e)(5)(v)(E), and (e)(5)(v)(G) of this section; and

(D) Certificates have been provided to the Assistant Administrator within 30 days of the completion of each and every trip of the nation's purse seine vessels greater than 400 short tons carrying capacity from an observer approved by the Assistant Administrator or under the direction of the Inter-American Tropical Tuna Commission, and verified by the Inter-American Tropical Tuna Commission, stating that the observer was aboard the vessel during the entire trip and that there were no intentional purse seine sets on marine mammals or the nation received a positive reconsideration for an affirmative finding under paragraph (e)(5)(xi)(A) of this section.

(x) *Probation and Revocation.* (A)(*1*) If it is determined that during any trip, a purse seine was intentionally set on marine mammals, the nation will enter into a probationary status for 180 days effective upon the date the vessel returns to port to unload.

(*2*) If during the probationary period of 180 days there are any additional intentional purse seine sets made on marine mammals, the Assistant Administrator will immediately revoke the affirmative finding.

(B)(*1*) If it is determined that during any trip an observer is not aboard a nation's purse seine vessel greater than

400 short tons carrying capacity fishing in the ETP, that nation will enter into a probationary status for 1 year effective upon the date the vessel returns to port to unload.

(2) If during the 1 year probationary period, a nation's purse seine vessel returns to port to unload and, it is determined that an observer was not aboard the vessel during a trip in the ETP, the Assistant Administrator will immediately revoke an affirmative finding made under paragraphs (e)(5)(vii) or (e)(5)(ix) of this section.

(xi)(A) *Reconsideration.* The Assistant Administrator will reconsider a revocation of an affirmative finding upon request from a harvesting nation which had its affirmative finding revoked under paragraph (e)(5)(x)(A) if:

(1) the number of marine mammals taken in purse seine nets that were intentionally set on marine mammals does not exceed the comparability standards established in paragraphs (e)(5)(v)(E) and (e)(5)(v)(G) and;

(2) that nation provides documentary evidence that no additional purse seines were intentionally set on marine mammals during the 90 day period immediately preceding the request for reconsideration.

(B) A harvesting nation which had its affirmative finding revoked under paragraph (e)(5)(x)(B) or its reconsideration under paragraph (e)(5)(xi)(A) denied, may request reconsideration for an affirmative finding under paragraph (e)(5)(xiii) of this section.

* * * * *

[FR Doc. 90–26985 Filed 11–15–90; 8:45 am]
BILLING CODE 3519–22–M

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50 CFR Parts 672 and 675

[Docket No. 900813–0213]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Extension of an emergency interim rule.

SUMMARY: An emergency interim rule, which is in effect from August 14 through November 10, 1990 (55 FR 33715), exempts certain hook-and-line fisheries and the use of jigging gear and pot gear from existing closures that were implemented when the prohibited species catch (PSC) mortality limit for Pacific halibut by hook-and-line gear for 1990 was reached in the Gulf of Alaska (GOA). The emergency rule also defines pelagic trawl gear for use in the GOA and the Bering Sea and Aleutian Islands (BSAI) and applies the new definition of pelagic trawl to existing closures of the "DAP other fishery" in the BSAI area. Finally, the emergency rule requires halibut exclusion devices on pot gear used in the GOA. The Secretary of Commerce (Secretary) extends the emergency interim rule from November 11, 1990, through December 31, 1990. This action is necessary to limit the effects of the closures to just those fisheries that have significant bycatch mortality of halibut. The intended effect of this action is to promote the fishery management objectives of the Fishery Management Plans for Groundfish of the Gulf of Alaska and Groundfish of the Bering Sea and Aleutian Islands.

EFFECTIVE DATE: The interim regulations published on Friday, August 17, 1990 (55 FR 33715), that suspended and added portions of §§ 672.2, 672.20, 672.24, 675.2, and 675.21 through November 10, 1990, is extended through December 31, 1990.

ADDRESSES: Copies of the environmental assessment may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: The Secretary promulgated an emergency interim rule under section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) applicable to the groundfish fisheries in the GOA and in the BSAI area (55 FR 33715, August 17, 1990). This rule is effective from August 14, 1990, through November 10, 1990, and includes the following measures:

(1) Exempts the demersal shelf rockfish fishery with hook-and-line gear in the Southeast Outside District of the Eastern Regulatory Area in the GOA;

(2) Exempts the use of pot gear in the GOA groundfish fisheries;

(3) Exempts the use of jigging gear, including rod-and-reel, troll gear, and jigging machines in the GOA groundfish fisheries;

(4) Requires the restrictions of pot openings to specific dimensions with the use of halibut exclusion devices;

(5) Redefines pelagic trawl gear as clarified at 55 FR 41191 (October 10, 1990);

(6) Amends a current regulation (§ 675.21(c)(2)(iv)) applicable to the BSAI area by prohibiting the directed fishery for Pacific cod and pollock in the aggregate with other than pelagic trawls, rather than prohibiting the use of bottom trawls in the directed fishery; and amends closure notices of the "DAP other fishery" when the primary halibut PSC was reached on May 30, 1990 (55 FR 22919, June 5, 1990), and when the secondary halibut PSC was reached on June 30, 1990 (55 FR 27643, July 5, 1990).

At its meeting of September 24–29, 1990, the North Pacific Fishery Management Council (Council) reviewed the conditions warranting the emergency interim rule and recommended that it should be extended through December 31, 1990.

The Secretary finds that conditions justifying the emergency action remain unchanged and concurs with the Council's recommendation. The Secretary is extending the effectiveness of the emergency rule from November 11 through December 31, 1990, under section 305(e)(3)(B) of the Magnuson Act. Further background and descriptive information is contained in the preamble of the original promulgation of this emergency rule.

Lists of Subjects in 50 CFR Part 672 and 675

Fisheries.

Authority: (16 U.S.C. 1801 *et seq.*)

Dated: November 9, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90–26973 Filed 11–9–90; 3:43 pm]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 222
Friday, November 16, 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 90-187]

Importation of Sandpears From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations by specifying definite areas (Provinces) in Chile which the Administrator of the Animal and Plant Health Inspection Service believes to be free from certain injurious insect pests and from which sandpears (*Pyrus pyrifolia*) may be imported without treatment for these pests. This action would allow the importation in accordance with the regulations of this fruit from the specified definite areas.

DATES: Consideration will be given only to comments received on or before December 3, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90-187. 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.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6799.

SUPPLEMENTARY INFORMATION: The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed within and throughout the United States.

Section 319.56-2 (e)(4) and (f) provides requirements for importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet criteria designed to ensure that it is free from all or certain injurious insects, and other criteria.

Section 319.56-2(e)(4) allows importation of a fruit or vegetable that is imported from a definite area that is free from certain injurious insects provided that all other injurious insects have been eliminated by treatment or other prescribed procedures. Additionally, criteria of paragraph (f) must be met.

Paragraph (f) of § 319.56-2 contains the criteria by which the Administrator designates definite areas or districts. These criteria include: (1) Within the past 12 months, the plant protection service of the country of origin has established the absence of infestations of injurious insects known to attack fruits or vegetables in the definite area or district based on surveys performed in accordance with requirements approved by the Administrator as adequate to detect these infestations; (2) the country of origin has adopted and is enforcing requirements to prevent the introduction of injurious insects known to attack fruits and vegetables into the definite area or district of the country of origin that are deemed by the Administrator to be at least equivalent to those requirements imposed under 7 CFR chapter III to prevent the introduction into the United States and interstate spread of injurious insects; and (3) the plant protection service of the country of origin has submitted to the Administrator written detailed procedures for the conduct of surveys and the enforcement of requirements under this § 319.56-2(f) paragraph to prevent the introduction of injurious insects.

Recently the Minister of Agriculture of Chile requested that we consider allowing the entry of sandpears from certain areas in Chile. The Administrator of the Animal and Plant Health Inspection Service believes that all Provinces in Chile except Arica, Iquique, and Parinacota meet all the criteria contained in § 319.56-2 (e)(4) and (f) for importation of fruit from definite areas free from Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) (*Wiedemann*).

The criteria of § 319.56-2(e)(4) appear to be met in that the designated areas are free from the insect pest Medfly. The criteria of paragraph (f) appear to be met with regard to the Medfly (as discussed below), and any other insect pests would be eliminated by inspection in accordance with 7 CFR part 319.

Specifically, the criteria contained in § 319.56-2(f) appear to be met in the following ways. Surveys in Chile during the past 12 months have shown that no Mediterranean fruit flies exist in areas from which sandpears would be imported. The plant protection service of Chile (Servicio Agricola Y Ganadero (SAG)) has submitted written detailed procedures for the conduct of surveys and the enforcement of requirements for preventing the movement of Medflies into the designated areas.[1] Chile prevents the introduction of Medflies into these areas through internal and international quarantine systems. Control stations staffed by SAG officials have been established to inspect land, air, and maritime vehicle traffic entering the Medfly-free areas of Chile from other areas. Vehicles, luggage, and cargo are inspected for signs of Medfly. Agricultural shipments are allowed to enter the designated areas only if they are accompanied by SAG paperwork authorizing the movement and indicating that the products have undergone fumigation or other procedures required by SAG to ensure that the articles are free of Medfly.

Based on the procedures submitted by the Chilean Ministry of Agriculture, we believe that sandpears may be imported from Chile without significant pest risk and without treatment for Medfly. Therefore, we propose to add a new paragraph (j) to § 319.56-2 to read as follows:

(j) The Administrator has determined that all Provinces in Chile except Arica, Iquique, and Parinacota meet the criteria

[1] This data is available upon written request from the Administrator, c/o Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

of § 319.56–2 (e) and (f) with regard to the insect pest Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) (Wiedemann). Sandpears may be imported from these areas without treatment for Medfly. Sandpears from Arica, Iquique, and Parinacota may be imported only if they are treated for Medfly in accordance with § 319.56–2d or § 319.56–2n.

Public Comment

Dr. James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. This comment period would allow the Agency to promulgate and implement a final rule on an expedited basis. Earlier implementation of a final rule would allow procedures to be in place for importation of sandpears from Chile in time for the next harvest and shipping season. This would provide an additional source of sandpears for consumers, and would benefit interested U.S. importers, shippers, and distributors by allowing them the opportunity to import Chilean sandpears during the next harvest season.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed 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 proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would 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.

We are proposing to allow the importation of sandpears from certain provinces in Chile, without treatment for the Mediterranean fruit fly. Although there are no published U.S. production statistics, most sandpears are grown in California, and production is very limited. Rough estimates from officials of that State indicate that between 2,300 and 4,500 tons are currently produced per year. If Chile is allowed to export sandpears to the United States, estimates from the government of Chile indicate that approximately 900 tons would be sent during the first growing season.

While these figures represent 20% to 40% of U.S. sandpear production per growing season, Chilean sandpears would be exported to the United States from mid-January through the end of February. U.S. production occurs from August to October. Since there is no overlap in production seasons, U.S. sandpear growers will probably be unaffected by this change. Chilean sandpear exports could substantially increase the quantity of sandpears imported to the United States during the winter months. These exports represent less than 0.1% of total U.S. pear production. It is unlikely that this regulatory change will significantly affect the U.S. pear industry.

It is also unlikely that there will be an impact on U.S. producers of other fruits (e.g., apples and citrus fruits) since the quantity of sandpears to be imported from Chile is minuscule in comparison with U.S. production. Sandpears are also considerably more expensive than apples and most citrus fruits and will probably appeal to a limited number of consumers. Thus, newly imported sandpears would not act as direct substitutes for traditional fruits.

Therefore, there appear to be few, if any, adverse effects on U.S. producers of sandpears, other pears, or other fruits. U.S. consumers will benefit from this action, as will U.S. sandpear importers, since a greater quantity will be available at a time of year when there is no domestically produced supply.

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

Paperwork Reduction Act

This proposed rule contains no new 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 the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we propose to amend 7 CFR part 319 as follows:

1. The authority citation for 7 CFR part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.56–2, a new paragraph (j) is added to read as follows:

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(j) The Administrator has determined that all Provinces in Chile except Arica, Iquique, and Parinacota meet the criteria of § 319.56–2 (e) and (f) with regard to the insect pest Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) (Wiedemann). Sandpears may be imported from these areas without treatment for Medfly. Sandpears from Arica, Iquique, and Parinacota may be imported only if they are treated for Medfly in accordance with § 319.56–2d or § 319.56–2n.

Done in Washington, DC., this 9th day of November.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–26978 Filed 11–15–90; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–232–AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which would require repetitive visual inspections to detect damaged wires in the primary flight control cables in the fuselage and the wings, and repair or replacement, if necessary. This proposal is prompted by reports of increased wear in the primary flight control cables. This condition, if not corrected, could result in failure of the primary control

cables and reduced controllability of the airplane.

DATES: Comments must be received no later than January 9, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-232-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address; FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing data for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-232-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Model ATP series airplanes. There have been recent reports of increased wear of cables resulting in broken wires in the cables of the primary flight control systems. Worn cables or cables with broken wires can result in failed or frayed cables. Failed cables or jammed, frayed cables could render a control surface inoperative. This condition, if not corrected, could result in failure or jamming of a primary flight control cable and reduced controllability of the airplane.

British Aerospace has issued Service Bulletin ATP-27-26, dated April 5, 1990, which describes procedures for repetitive visual inspections of the primary flight control cables in the fuselage and wings, and repair of broken wires, or replacement of cables, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, and AD is proposed which would require repetitive visual inspections to detect damaged wires in the primary flight control cables in the fuselage and wings, and repair of broken wires or replacement of cables, if necessary, in accordance with the service bulletin previously described.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on those figures, the total cost impact of the AD on U.S. operators is estimated to be $120,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

British Aerospace: Applies to all Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect damaged wires in the primary flight control cables, accomplish the following:

A. For airplanes In Pre-Modification 10060A configuration:

1. Within 250 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 125 hours time-in-service, perform a visual inspection of the aileron primary control cables in the wings for wear and broken wires, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-27-26, dated April 5, 1990.

2. Prior to the accumulation of 2,500 hours time-in-service or within 200 hours airplane time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 hours time-in-service perform a visual inspection of the fuselage primary control cables for wear and broken wires, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-27-26, dated April 5, 1990.

Note: The repetitive inspection intervals shown herein should not be interpreted as

extending the published life limits of any control cables being inspected.

B. For airplanes in Post-Modification 10060A configuration: Within 125 hours time-in-service after the effective date of this AD, or within 750 hours time-in-service following accomplishment of Modification 10060A, whichever occurs later, and thereafter at intervals not to exceed 250 hours time-in-service, perform a visual inspection of the aileron primary control cables in the wings for wear and broken wires, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-27-26, dated April 5, 1990.

C. If defective wires are found as a result of the inspections required by this AD, prior to further flight, accomplish the following in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-27-26, dated April 5, 1990.

1. In the event of a single wire break, the ends must be trimmed to lie flush with the cable assembly and a full and free check of control travel must be carried out to ensure that the wire ends do not "snag". If cables do "snag", the cable must be replaced prior to further flight, in accordance with the service bulletin.

2. If two or more wires are found to be broken, prior to further flight, replace the damaged cable and replace any associated damaged fairlead rollers, in accordance with the service bulletin.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 6, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27004 Filed 11-15-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-221-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires external inspections of the circumferential fuselage splices and internal inspections of certain bonded doublers for delamination, cracking, corrosion, and repair, if necessary. This action would expand the applicability of the AD, expand the area of inspection, and update the inspection procedures. This proposal is prompted by reports from operators of additional skin cracks, corrosion, and delamination between the skin and doubler. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: Comments must be received no later than January 9, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-221-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2775. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-221-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On October 27, 1988, the FAA issued AD 88-22-12, Amendment 39-6060 (53 FR 44160, November 1, 1988), to require external inspections of the circumferential fuselage splices and internal inspections of certain bonded doublers on Model 737 series airplanes for delamination, cracking, and corrosion. That action was prompted by two reports of cracking on the circumferential fuselage skin splice and several reports for delamination of the bonded doubler. This condition, if not corrected, could result in rapid decompression of the airplane.

Since issuance of the AD, operators have reported additional skin cracks, corrosion, and delamination between the skin and doubler. Also, the FAA has determined that airplanes with line numbers 465 through 519 must also be inspected because these airplanes were assembled using the hot bonding process on the doublers, but were manufactured before the incorporation of the improved surface preparation which resulted in a more reliable bonding.

The FAA has reviewed and approved Boeing Service Bulletin 737-53-1076, Revision 2, dated February 8, 1990, which describes procedures for visual, ultrasonic, high frequency eddy current, and low frequency eddy current inspections; repair; and a terminating modification consisting of replacement of fasteners with protruding head fasteners.

Additionally, the FAA has re-evaluated the fatigue life of repairs made using blind fasteners. The FAA

has determined that such repairs should be repetitively inspected for cracks and loose or missing fasteners every 3,000 flight cycles, and must be replaced prior to the accumulation of 10,000 flight cycles.

Since the unsafe condition, described above, is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 88–22–12 with a new airworthiness directive that would expand the applicability of the existing AD to include airplane line numbers 465 through 519; and expand the area requiring ultrasonic inspections to detect disbonding to include all non-riveted areas of bonded doublers around each major skin cut-out and bonded doubler in the area from body station (BS) 360 and BS 420 between stringer (S)–15L to S–25L; in accordance with the service bulletin previously described. This action would also revise the interval for repetitive inspections of blind fasteners from 1,000 to 3,000 flight cycles; and the interval for replacement of blind fasteners from 3,000 to 10,000 flight cycles.

There are approximately 519 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 213 airplanes of U.S. registry would be affected by this AD, that it would take approximately 262 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,232,240.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6060 (53 FR 44160, November 1, 1988), AD 88–22–12, with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, listed in Boeing Service Bulletin 737–53–1076, Revision 2, dated February 8, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent decompression of the airplane, accomplish the following:

A. Within 1,000 flight cycles or 3 months after the effective date of this AD, whichever occurs first, unless accomplished within the last 12 months, perform an external close visual inspection for corrosion or evidence of delamination in all circumferential skin butt splices from body station (BS) 259.5 to BS 1016, and in the areas of the bonded internal doublers around the major skin cutouts for entry, cargo, nose landing gear, overwing exit doors, and in the area from BS 360 to BS 420 between stringer (S)–15L to S–25L, in accordance with Boeing Service Bulletin 737–53–1076, Revision 2, dated February 8, 1990 (hereinafter called "the Service Bulletin").

1. If no corrosion or evidence of delamination is found, repeat the external close visual inspection at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first.

2. If corrosion is found, prior to further flight, repair in accordance with paragraph D. of this AD. Following repair, continue to repeat the external close visual inspection at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first.

3. If delamination is found, prior to further flight, repair in accordance with paragraph E. of this AD. Following repair, continue to repeat the external close visual inspection at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first.

B. Within 500 flight cycles after the effective date of this AD; or prior to the accumulation of 40,000 flight cycles for Group 1 airplanes and 60,000 flight cycles for Group 2 airplanes; whichever occurs later, unless accomplished within the last 4,000 flight cycles; accomplish the following:

1. Perform the following inspections:

a. An external high frequency eddy current (HFEC) inspection for cracks in the skin common to the forward-most and aft-most row of fasteners in the circumferential skin splice over the crown from S–10L to S–10R, in accordance with the Service Bulletin.

b. An external close visual inspection for skin cracks, corrosion, delamination, and loose or missing fasteners in all circumferential skin butt splices from BS 259.9 to BS 1016, in accordance with the Service Bulletin.

c. An external close visual inspection for skin cracks, corrosion, and delamination in the area of the bonded internal doublers around the skin cutouts for entry, galley, cargo, nose landing gear, overwing exit doors, and in the area from BS 360 to BS 420 between S–15L to S–25L, in accordance with the Service Bulletin.

2. As a result of the inspections required by this paragraph:

a. If no cracks, corrosion, or delamination is found, repeat the inspections required by B.1. of this AD at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first; or accomplish the terminating action in accordance with the Service Bulletin.

b. If corrosion is found, prior to further flight, repair in accordance **Federal Register** with paragraph D. of this AD. Following repair, continue to inspect in accordance with paragraph B.1. of this AD at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first.

c. If cracks or delamination is found, prior to further flight, repair in accordance with paragraph E. of this AD. Following repair, continue to inspect in accordance with paragraph B.1. of this AD at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first.

3. Replacement of all fasteners in the forward-most and aft-most row of fasteners with standard oversize protruding head solid fasteners at all circumferential fuselage splices, in accordance with the Service Bulletin, constitutes terminating action for the inspections required by this AD.

C. For Group 1 airplanes, within the next 4,500 flight cycles of 15 months after the effective date of this AD, which ever occurs first; or prior to the accumulation of 40,000 flight cycles; whichever occurs later; unless previously accomplished within the last 7,500 flight cycles; accomplish the following:

1. Perform the following inspections:

a. An internal close visual inspection for corrosion and delamination of the bonded doublers at each circumferential butt splice joint from BS 277 through GS 1016, and in the area from BA 360 to BS 420 between S–15L to S–25L, in accordance with the Service Bulletin.

b. An internal close visual inspection and ultrasonic inspection for corrosion and delamination of all non-mechanically fastened areas of the bonded internal doublers around each major skin cutout for the entry, galley, cargo, nose landing gear, and overwing exit doors, in accordance with the Service Bulletin.

2. As a result of the inspections required by this paragraph:

a. If no cracks, corrosion, or delamination is found, repeat the inspections required by paragraph C.1. of this AD at intervals not to exceed 12,000 flight cycles or 4 years, whichever occurs first.

b. If corrosion is found, prior to further flight, repair in accordance with paragraph D. of this AD. Following repair, continue to inspect in accordance with paragraph C.1. of this AD at intervals not to exceed 12,000 flight cycles or 4 years, whichever occurs first.

c. If cracks or delamination is found, prior to further flight, repair in accordance with paragraph E. of this AD. Following repair, continue to inspect in accordance with paragraph C.1. of this AD at intervals not to exceed 12,000 flight cycles or 4 years, whichever occurs first.

D. In areas where corrosion is found, but evidence of cracking is NOT found, as a result of the inspections required by paragraphs A., B., and C. of this AD, prior to further flight, perform a low frequency eddy current (LFEC) inspection to determine the amount of material loss.

1. If material loss is less than 10% of this skin or doubler thickness, prior to further flight, accomplish either subparagraph a. or b., below:

a. Accomplish the repair in accordance with the Service Bulletin; or

b. Conduct repetitive LFEC inspections thereafter at intervals not to exceed 2,250 flight cycles or 6 months, whichever occurs first, until the repair is accomplished.

2. If material loss is equal to or greater than 10% of the skin or doubler thickness, prior to further flight, repair in accordance with the Service Bulletin.

E. In areas where cracks or delamination are found as a result of the inspections required by paragraphs A., B., and C. of this AD, prior to further flight, repair in accordance with the Service Bulletin.

1. Blind fasteners may be used as a temporary repair only. Repairs using blind fasteners must be repetitively inspected for loose or missing fasteners at intervals not to exceed 3,000 flight cycles following installation, and replaced with protruding head solid fasteners within 10,000 flight cycles following installation.

2. Repairs previously installed with blind fasteners prior to the effective date of this AD must be inspected for loose or missing fasteners within 1,000 flight cycles after the effective date of this AD and thereafter at intervals not to exceed 3,000 flight cycles. Blind fasteners must be replaced with protruding head solid fasteners within 10,000 flight cycles following installation.

3. If any loose or missing blind fasteners are found, prior to further flight, replace with solid type fasteners in accordance with the Service Bulletin.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 6, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27005 Filed 11-15-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-ANE-31]

Airworthiness Directives; Pratt & Whitney Canada (PWC) PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to PWC PW115, PW118, PW118A, PW120, PW120A, PW121, PW123, PW124, PW124A, PW124B, PW125B, and PW126A turboprop engines, which would require installation of a new design fuel filter cover assembly. This proposal is prompted by two events of significant fuel leakage from the fuel filter cover due to improper installation. This condition, if not corrected, could result in a fire hazard in the engine nacelle.

DATES: Comments must be received on or before December 14, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to FAA, New England Region, Office of the Assistant Chief Counsel, attn: Rules Docket No. 90-ANE-31, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorian, Longueuil, Quebec J4G1A1, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Office, ANE-140, FAA, New England Region, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 273-7085.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specificially invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 90-ANE-31." The postcard will be date/time stamped and returned to the commenter.

Discussion

There have been two events of significant fuel leakage from the fuel filter cover assembly on PW100 series turboprop engines. One event resulted in an inflight fire. It has been determined that fuel filter cover O-ring damage can occur during normal engine operation if the cover assembly is not properly torqued. The O-ring damage can allow fuel to leak from the fuel filter cover and collect in the engine nacelle. The proposed rule would require installation of a new design fuel filter cover

assembly, which is less likely to experience O-ring damage and fuel leakage in the event of improper torquing of the filter cover. To incorporate this modification, one model is required to have a newer design fuel pump installed. This condition, if not corrected, could result in a fire hazard in the engine nacelle.

The FAA has reviewed and approved PWC Service Bulletins (SB) 20897, dated August 20, 1990, and JB 20907, dated August 20, 1990, which concern installation of a new fuel filter cover assembly; and SB 20355, Revision 1, dated August 1, 1990, which concerns installation of a new fuel pump.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is proposed which would require installation of a new design fuel filter cover assembly in accordance with the service bulletins previously described.

There are approximately 558 PW100 series engines of the affected design in the U.S. fleet. It is estimated that it would take approximately one manhour per engine to install the new fuel filter cover, and approximately 6 manhours to install the new fuel pump, and that the average labor cost would be $40 per manhour. The required fuel filter cover hardware is being supplied by the manufacturer at no cost, however, the required fuel pump cost is estimated to be $11,500 per engine. Approximately 20% of affected engines will require installation of the new fuel pump. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be approximately $1,350,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) PW115, PW118, PW118A, PW120, PW120A, PW121, PW123, PW124, PW124A, PW124B, PW125B and PW126A turboprop engines installed on, but not limited to, Aerospatiale ATR–42 and ATR–72, British Aerospace ATP, DeHavilland of Canada DHC–8, Embraer EMB–120, Fokker F–50, and Canadair CL–215T type aircraft.

Compliance is required within the next 1,200 hours time in service after the effective date of this AD, unless already accomplished.

To prevent fuel leakage from the fuel filter cover assembly which could result in a fire hazard in the engine nacelle, accomplish the following:

(a) For PWC PW115, PW118, PW118A, PW120, PW120A, PW121, PW124, PW124A, PW124B, PW125B and PW126A engines, incorporate new fuel pump filter cover assembly in accordance with either PWC Service Bulletin (SB) No. 20897, dated August 20, 1990, *or* PWC SB No. 20907, dated August 20, 1990, as applicable.

(b) For PWC PW123 engines, incorporate a new fuel pump in accordance with PWC SB No. 20355, Revision 1, dated August 1, 1990.

(c) For PWC PW123 engines, incorporate a new fuel pump filter cover assembly in accordance with PWC SB No. 20897, dated August 20, 1990.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD, or adjustments to the compliance schedule specified in this AD, may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorian, Longueuil, Quebec J4G1A1. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on November 5, 1990.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90–27003 Filed 11–15–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to address the concerns of other State and Federal agencies, to enhance the clarity of Illinois' rules, and to meet State codification rules and guidelines. It concerns changes made to the Illinois Administrative Code (IAC), title 62, Mining, chapter I. This notice sets forth the times and locations that the Illinois program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on December 17, 1990. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on December 11, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on December 3, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield

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

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495

Illinois Department of Mines and Minerals, 300 West Jefferson Street, suite 300, Springfield, Illinois 62791, Telephone: (217) 782–4970

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office; (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23882). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Discussion of Proposed Amendment

Illinois by letter dated July 17, 1989 (Administrative Record No. IL–1075), submitted a proposed amendment to its program. On April 10, 1990 (Administrative Record No. IL–1100), Illinois submitted additional changes to this proposed amendment. This Illinois program amendment was approved, with certain exceptions, by the Director on August 29, 1990 (55 FR 35301). On July 26, 1990 (Administrative Record No. IL–1104), Illinois submitted to OSM the adopted version of the amendment, which contained the following changes from the version approved by OSM. Most of these changes were made by the Illinois Department of Mines and Minerals pursuant to comments and direction received from the Illinois Joint Committee on Administrative Rules.

At 62 IAC 1700.11, a heading of "Existing structures" for subsection (d) and a heading of "Effective dates" for subsection (e) were added.

At 62 IAC 1761.11(a) the word "future" was added before the word "guidelines."

At 62 IAC 1761.12, a heading of "Federal recreational systems; public buildings; cemeteriers" for subsection (b), a heading of "Occupied dwellings" for subsection (d), and a heading of "Publicly owned parks; places included in the National Register of Historic Places" for subsection (e) were added.

At 62 IAC 1772.12(b)(8)(D), the phrase, "based upon consultation with the Illinois State Historic Preservation Agency" was added after the word "resources."

At 62 IAC 1773.15(b)(1), the phrase, "as defined in 62 Ill. Adm. Code 1843.11(b)," was added after the word "orders" in the second line and the phrase," as defined in 61 Ill. Adm. Code 1843.11(a)," was added after the word "orders" in the third line.

At 62 IAC 1773.20(b)(2)(B), the phrase, "pursuant to 62 Ill. Adm. Code 1843 or 1845, or in accordance with like procedures in other regulatory jurisdictions," was added following the word "appeal" in the first line.

At 62 IAC 1773.20(c)(2), the words, "a reasonable," was changed to "the specified."

At 62 IAC 1773.21(b), the phrase, "including, but not limited to, maintenance and monitoring," was added after the word "measures."

At 62 IAC 1778.13(b), the word "Federal" was added before the word "employer."

At 62 IAC 1778.13(c)(5), the phrase, "State or Federal" was added before the word "identifier."

At 62 IAC 1778.13(j), the word "any" was changed to the word "the."

A revision was made at 62 IAC 1778.13(i) and 62 IAC 1778.14(e) to specify that information submitted as a change shall be evaluated in the same manner as the original application.

At 62 IAC 1778.14(c), the citation, "(Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.)," was added after the phrase "the Federal Act."

At 62 IAC 1779.12 the original subsection designations were deleted and two paragraphs created labelled "a" and "b."

Section 1779.12(b) was amended to: (a) Add the sentence, "Indications of cultural, archeological, and historical resources shall be based upon such factors including, but not limited to, topographic and physiographic characteristics and other cultural, archeological, and historical resource data for the proposed permit or adjacent areas," after the first sentence; (b) add the phrase, "if such field investigation will provide the information required by subsection (a)," after the word "Agency;" and (c) add the sentence, "A field investigation is a pedestrian archeological survey supplemented by shovel testing, where appropriate," at the end of this subsection.

At 62 IAC 1780.16(a)(1)(B)(i), the phrase, "pertinent unpublished," was added after the word "other."

At 62 IAC 1780.21(f)(3)(C), the phrase, "such as recreational and fish and wildlife uses" was added after the word "purposes."

At 62 IAC 1780.21(f)(3)(D)(v), the phrase, "based upon public comment, Interagency Committee comment, and the Department's technical review," was added after the word "Department."

The Illinois regulation at 64 IAC 1780.31(a)(1) was amended by adding, "caused by surface mining related activities including, but not limited to, loss or destruction of historic artifacts and damage to historic structures or property;" after the phrase "adverse impacts."

Section 1780.31(b) was changed by adding, "taking into account mining plans and the amount of materials present," after the phrase "permit issuance" in the second sentence; and by deleting the word "reasonable" and by deleting the word ", taking" and inserting in its place the phrase, "that takes," in the last sentence of the subsection.

At 62 IAC 1783.12, the subsection label (b)(1) was removed and the information was added to subsection (a) and subsection (b)(2) was changed to subsection (b). Subsection (a) was amended by changing the word "features" to "sites." Subsection (b) was amended by: (a) Changing the subsection reference from (b)(1) to (a); (b) changing the word "provided" to "available;" (c) adding the word, "shadow" after the word "permit" in the first sentence; (d) adding the sentence, "Indications of cultural, archeological and historical resources shall be based upon such factors including, but not limited to, topographic and physiographic characteristics, and other cultural, archeological, and historical resource data for the proposed permit, shadow, and adjacent areas," as the second sentence; (e) adding the phrase, "in consultation with the Illinois State Historic Preservation Agency, if such field investigations will provide the information required by subsection (a)," after Department in the third sentence; and (f) adding a new sentence, "A field investigation is a pedestrian archeological survey supplemented by

shovel testing, where appropriate," at the end of the subsection.

At 62 IAC 1784.14(e)(3)(C)(v), the phrase, "based upon public comment, Interagency Committee comment and the Department's technical review," was added after the word "Department."

At 62 IAC 1784.17(a)(1), "adverse impacts" was clarified by adding the phrase, "caused by surface mining related activities including, but not limited to, loss or destruction of historic artifacts and damage to historic structures or property."

Section 1784.17(b) was amended by adding the phrase, "taking into acount mining plans and the amount of materials present," after the word "issuance" in the second sentence; and by deleting the word "reasonable" and the comma after "time" and changing the word "taking" to the phrase "that takes" in the last sentence.

The Illinois regulation at 62 IAC 1784.21(a)(1)(B)(i) was changed by adding the phrase, "pertinent unpublished," before the word "information."

At 62 IAC 1784.21(a)(2)(C), the phrase, "State or Federal law," was deleted and "the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) or the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1987, ch. 8, par. 331 *et seq.*)" was inserted.

At 62 IAC 1800.21(d), a heading "Bond value of collateral," was added.

At 62 IAC 1800.40(a)(2), a sentence, "The operator shall submit a certification of publication for such advertisement prior to the Department's final administrative decision releasing bond," was added at the end of the section.

Sections 1800.40(a)(2), 1800.40(b)(1), 1800.40(b)(2), and 1800.40(e) were amended by deleting the July 17, 1989, proposed time periods and returning to the original time periods in order to be consistent with the Act.

At 62 IAC 1816.49(a)(1) and 62 IAC 1817.19(a)(1), "(1989)" was added after "30 CFR 77.216" in the first sentence and "30 CFR 77.216 does not include any later editions or amendments," was inserted as the second sentence.

A cross-reference to the Department's rules on bond release at 62 IAC 1800.40 was provided at 62 IAC 1816.49(a)(10) and 62 IAC 1817.49(a)(10).

The Illinois regulations at 62 IAC 1816.67 and 62 IAC 1817.67 were amended by adding a heading "Air blast limits" for subsection (b) and a heading "Air blast monitoring" for subsection (c).

The Illinois regulations at 62 IAC 1816.97(b) and 62 IAC 1817.97(b) were amended to include a citation to the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1987, ch. 8, par. 331 *et seq.*) immediately after the citation to the Federal Act.

A heading "Blasting prohibitions" was added at 62 IAC 1817.66(d). At 62 IAC 1843.11, a heading "Imminent harm and danger" for subsection (a) and a heading "Failure to abate" for subsection (b) were added.

Illinois labelled the three definitions at 62 IAC 1846.5 as "a," "b," and "c."

At 62 IAC 1846.14(a)(3), the word "demonstrated" was changed to the word "determined."

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15.

If the amendments are deemed adequate, they will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on December 3, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

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

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

Public Meeting

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

List of Subjects in 30 CFR Part 913

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

Dated: November 8, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 90-27080 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-05-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Board of Review; Office of Administrative Hearings

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed amendments to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern proposed changes to the Code of Maryland Administrative Regulations (COMAR) and are intended to incorporate regulatory changes initiated by the State. The proposed amendments would abolish the Board of Review of the Department of Natural Resources and create an Office of Administrative Hearings as an independent unit in the Executive Branch.

This notice sets forth the times and locations that the Maryland program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that

will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on December 17, 1990. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on December 11, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on December 3, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland program are contained in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Proposed Amendments

Perceived inconsistencies and ambiguities in the standards and procedures of many of the Maryland State agencies prompted the Maryland Executive Office in 1987 to appoint a Task Force on Administrative Hearing Officers to explore the possibility of establishing one central agency. The task force recommended the creation of an independent agency to combine hearing examiners, with few exceptions, into one office within the Executive Department. Senate Bill (SB) 658, enacted during the 1989 legislative session, created the Office of Administrative Hearings which "organizes the State's scattered network of hearing examiners into a centralized corps of professional administrative law judges legally trained to hear cases in a number of areas." It is intended that the new "agency should lend consistency, uniformity and efficiency to the administration of Maryland's administrative contested case hearings in a cost effective manner" (Administrative Record No. MD–466).

Under current Maryland State Law, there exists within the Department of Natural Resources (DNR) a Board of Review which provides an avenue of administrative appeal for contested cases at the DNR, including the Maryland Bureau of Mines' (MDBOM) surface mine regulatory program. The composition, authority and duties of the DNR Board of Review are defined in the Natural Resources Article, Sections 1–106 and 1–107 of the Annotated Code of Maryland (1989 replacement volume).

On September 28, 1990, the MDBOM proposed the following statutory changes to Maryland's federally approved program (Administrative Record No. MD–469).

Under the authority of SB 658, the duties of the DNR Board of Review now fall within the purview of the Maryland Office of Administrative Hearings. Accordingly, SB 144 of the 1990 legislative session repealed Sections 1–106 and 1–107 of the Natural Resources Article of the Maryland Annotated Code, thus eliminating the possibility of a redundant Administrative appeals system under the Maryland surface mine regulatory program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(b), OSM is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.17. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on December 3, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

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

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

Public Meeting

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

List of Subjects in 30 CFR Part 920

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

Dated: November 7, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 90–27079 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3851-5]

South Coast Air Quality Management District and Yolo-Solano Air Pollution Control District; California State Implementation Plan Revision

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is soliciting public comments on this notice of proposed rulemaking to approve rule revisions submitted to EPA from the California Air Resources Board (CARB) on February 7, 1989. The rule revisions effect the South Coast Air Quality Management District (AQMD) and the Yolo-Solano Air Pollution Control District (APCD) and involve reorganizing and strengthening of administrative and non-prohibitory rules. EPA proposes to approve these rule revisions in order to maintain and strengthen the California State Implementation Plan (SIP).

DATES: Comments must be received on or before December 17, 1990.

ADDRESSES: Comments may be mailed to: Colleen McKaughan, Environmental Protection Agency, Region 9, Air and Toxics Division, State Implementation Plan (A-3-2), 1235 Mission Street, San Francisco, CA 94103.

Copies of the rule revisions and EPA's evaluation reports for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Post Office Box 2815, Sacramento, CA 95814

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

Yolo-Solano Air Pollution Control District, 323 First Street #5, P.O. Box 1006, Woodland, CA 95695

FOR FURTHER INFORMATION CONTACT: Doris Lo (A-2-3), State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, CA 94103, telephone: (415) 556-5244, FTS: 556-5244.

SUPPLEMENTARY INFORMATION:

Background

The following revised rules were submitted by the CARB on February 7, 1989 for incorporation into the SIP. The rule revisions have been evaluated for consistency with ERA policy. These are administrative and non-prohibitory rules and appear to be noncontroversial in nature.

South Coast AQMD

Rule 102, Definition of Terms
Rule 110, Rule Adoption Procedures to Assure the Protection and Enhancement of the Environment
Rule 219, Equipment Not Requiring a Permit Pursuant to Regulation II

Yolo-Solano APCD

Rule 3.7 (e,f), Information

EPA Evaluation

Rule 102: The submitted rule as compared to the federally approved SIP rule involves the following revisions:

(1) The addition of the first paragraph which references basic definitions found in Division 26 of the Health and Safety Code.

(2) The following definitions have been reorganized into Rule 102 from the federally approved SIP Rule 2, Definitions, for Los Angeles County, Orange County, Riverside County and San Bernardino County:

Air Contaminant
Basic Equipment
Combustible Refuse
Combustible Contaminants
Dusts
Multiple-Chamber Incinerator
Oil-Effluent Water Separator
Orchard Heaters
Particulate Matter
Persons
Process Weight
Process Weight Per Hour

These revisions to 102 were originally submitted to EPA in April of 1976 and were never acted upon. It appears that during the merger of the above counties to form the South Coast AQMD, these definitions were intended to be reorganized from each county's Rule 2 to the South Coast AQMD's Rule 102 in order to maintain the District's rules. The February 7, 1989 submittal of Rule 102 contains these definitions. EPA has evaluated and compared the above definitions in Rule 102 to the same definitions in Rule 2 for each of the counties and is now proposing to approve the above definitions into Rule 102 in order to maintain the SIP.

(3) The addition of the following definitions to the current federally approved SIP Rule 102:

Agricultural Operations
Breakdown
Compliance Schedule
Control Equipment
District
Equipment
Gasoline
Hearing Board
Increments of Progress
Motor Vehicle
PPM
Receptor Area
Reduction of Animal Matter
Schedule of Increments of Progress
Solid Particulate Matter
Source Area
Standard Conditions
Submerged Full Pipe
Vehicle

Similar to the definitions found in part (2) of this discussion, the above definitions were originally submitted in April of 1976 and never acted upon by EPA, but unlike the definitions found in part (2), these definitions were not previously a part of the federally approved SIP Rule 2 definitions for each of the merging counties. The above definitions are found in the February 7, 1987 submittal, and EPA has evaluated these definitions for consistency with EPA policy and plans to approve them into Rule 102 in order to maintain and strengthen the SIP.

(4) Finally, the revision of the Small Business definition in order to bring consistency to all the District's small business definitions. The federally approved SIP Rule 102 defines small businesses for manufacturers as having 25 employees or fewer, or annual receipts less than $1,000,000 and for non-manufacturers as having 50 employees or fewer, or annual receipts less than $5,000,000. The revised rule defines small businesses as having 10 employees or less and total annual receipts of $500,000 or less. EPA plans to approve this revision as it strengthens the small business definition found in the federally approved SIP Rule 102.

Rule 110: The revisions in this rule consist of minor language changes regarding the District staff reports and environmental impact report preparation. It appears that the changes have been made for clarification. EPA is proposing to approve these revisions in order to maintain the SIP.

Rule 219: This is an administrative rule that lists the types of equipment that do not require a permit because of minimal emissions output. The revisions made in the rule involve the deletion of certain equipment and processes from the rule's current list of exemptions, a decrease in the threshold values for current exemptions and the addition of certain equipment currently requiring permits. These revisions should lead to the issuance of approximately 18,000 new permits and will eliminate the need for approximately 800 permits. There are also some language changes for clarification. The revisions are necessary in order to keep up with

changes in technology and industrial processes. These rule revisions should lead to a more comprehensive emission inventory of sources and possible emissions reductions for the District. EPA is proposing to approve the revisions as they should strengthen the existing SIP rule.

Yolo-Solano APCD

Rule 3.7e: This is an addition to Rule 3.7 which allows the District to inspect any source that has been issued a permit to operate without providing prior notice to the source. The revision improves the enforceability of the rule for the District. Thus, EPA is proposing to approve this rule revision into the SIP.

Rule 3.7f: This amendment to Rule 3.7 requires a permitted source to conduct a source test if the source's emissions have been found to be equal to or greater than 90% of the new source review best available control technology (BACT) level. This addition should improve the enforceability of the rule, and EPA is proposing to approve this revision into the SIP.

Proposed Action

The rules listed above have been evaluated for consistency with section 110 of the Clean Air Act, 40 CFR part 51, and EPA policy. The rules were found to be consistent with those requirements and are being proposed for approval in the **Federal Register**. Copies of the rules and of EPA's evaluation report for each rule are available at EPA's Regional Office in San Francisco. EPA is soliciting comments for a 30-day period beginning on the date of publication of this notice.

The above proposed changes related to operating permit rules in the South Coast AQMD involve minor strengthening revisions to rules in the existing SIP. Today's action does not constitute proposed approval of or action on an operating permit program pursuant to 40 CFR 51.66(b)(17) (54 FR 27281) with respect to the federal enforceability of operating permits under the Federal New Source Review rules.

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

Regulatory Process

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

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

List of Subjects in 40 CFR Part 52

Air Pollution control, Hydrocarbons, Particulate matter, and Reporting and recordkeeping requirements

Authority: 42 U.S.C. 7401–7642.

Dated: September 17, 1990.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 90—27029 Filed 11–15–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–5–36, RM–7528]

Radio Broadcasting Services; Claxton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Evans Broadcasting Company, Inc., requesting the substitution of Channel 297C3 for Channel 296A at Claxton, Georgia, and modification of its license for Station WCLA(FM) to specify the higher powered channel. Channel 297C3 can be allotted to Claxton in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.8 miles) northwest, in order to avoid a short-spacing to Station WCRJ(FM), Channel 297C1, Jacksonville, Florida, and Station WKQB, Channel 298C, St. George, South Carolina. The coordinates are North Latitude 32–10–20 and West Longitude 81–55–09. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Claxton or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 4, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Edward W. Hummers, Jr. and Estella Salvatierra, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., suite 400, Washington, DC 20036 (Attorneys for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–536, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27088 Filed 11–15–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–535, RM–7520]

Radio Broadcasting Services; Bowling Green, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Daily News Broadcasting Company requesting the substitution of channel 252C3 for Channel 252A at Bowling Green, Kentucky, and modification of its license for Station WDNS(FM) to specify the higher powered channel. Channel 252C3 can be allotted to Bowling Green in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates are North Latitude 36–59–18 and West Longitude 86–27–18. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Bowling Green or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 4, 1991, and reply comments on or before Janaury 22, 1991.

ADDRESSES: Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Guttman, Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006 (Attorney for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–535, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27087 Filed 11–15–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–534, RM–7519]

Radio Broadcasting Services; Mount Olive, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Radio Latino seeking the allotment of Channel 287A to Mount Olive, Illinois, as that community's first local FM service. The coordinates for this proposal are North Latitude 39–04–20 and West Longitude 89–43–38.

DATES: Comments must be filed on or before January 4, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bradford D. Carey, Marjorie R. Esman, Walker, Bordelon, Hamlin, Theriot and Hardy, 701 South Peters Street, New Orleans, Louisiana 70130 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–534, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, international Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–927086 Filed 11–15–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 245

Department of Defense Acquisition Regulations; Reports of Government Property

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council published a proposed rule on October 18, 1990 (55 FR 42222). The original date for receipt of comments expired on November 19, 1990. This document extends the comment period because of numerous requests from the public.

DATES: Comments on the proposed rule should be submitted on or before December 19, 1990, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Col (sel) Nancy L. Ladd, Director, DAR System, ODASD(P), c/o OUSD(A) (M&RS), Room 3D139, Pentagon, Washington, DC 20301–3062. Please cite DAR Case 90–006 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Col (sel) Nancy L. Ladd, 703–697–7266.

Authority: (5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3).

Nancy L. Ladd,

Colonel (sel), USAF, Director, Defense Acquisition Regulatory System.

[FR Doc. 90–27185 Filed 11–15–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 901184-0284]

Foreign fishing; Groundfish of the Gulf of Alaska

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

ACTION: Notice of proposed quantities for (a) 1991 initial specifications of groundfish, (b) apportionment of reserves, (c) assignment of sablefish total allowable catch (TAC), (d) quarterly allocations of pollock TAC, (e) prohibited species catch (PSC) limits for fully utilized species, (f) halibut PSC limits and allocation; and request for comments.

SUMMARY: NOAA proposes initial harvest specifications or groundfish and management measures in the Gulf of Alaska for the 1991 fishing year. This action is necessary to inform the public about the harvest specifications and management measures and to solicit public comments. The measures are intended to carry out management objectives contained in the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP).

DATE: Comments are invited on or before December 10, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802, or be delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Bert (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

This FMP, developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act, is implemented by regulations appearing at 50 CFR 611.92 and part 672. This notice publishes the following proposals for the 1991 fishing year: (1) Establishment of TACs for each category of groundfish in the Gulf of Alaska and apportionments thereof among domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves; (2) apportionments of reserves to DAP; (3) assignments of the sable fish TAC to authorized fishing gear users; (4) quarterly apportionments of the pollock TAC; (5) prohibited species catch (PSC) limits relevant to fully utilized groundfish species; (6) halibut PSC limits; and (7) seasonal allocations of the halibut PSC limits.

1. Establishment of TACs and Apportionments Thereof Among DAP, JVP, TALFF, and Reserves

Regulations implementing the FMP provide the following process for implementing groundfish specifications. Under § 672.20(c)(1), the Secretary of Commerce (Secretary), in consultation with the Council, publishes a notice in the **Federal Register** proposing specifications of preliminary annual TAC, DAP, JVP, and TALFF for each target species, "other species" category, and species determined to be fully utilized by DAP fisheries. Under § 672.20(a)(2)(i), the sum of the TACs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000–800,000 metric tons (mt). According to § 672.20(c)(1), comments on the amounts specified in this notice are invited from the public for 30 days after this notice is filed for public inspection at the Office of the Federal Register. After consultation with the Council, the Secretary will publish a final notice in the **Federal Register** specifying the final PSC amounts, annual TACs, and apportionments for the new fishing year. These amounts will replace the corresponding amounts for the previous year.

The TACs are apportioned initially among DAP, JVP, TALFF, and reserves for each species under § 611.92(c)(1) and § 672.20(a). The DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors; JVP amounts are intended for joint ventures in which U.S. fishermen deliver these catches to foreign processors at sea; and TALFF amounts are intended for harvest by foreign fishermen.

Under § 672.20(a)(2)(i), the reserves for the Gulf of Alaska are 20 percent of the sum of the TACs for pollock, Pacific cod, flounder (flatfish species), and "other species." Under § 672.20(a)(2)(ii) and (d)(1)(i), these reserve amounts may be set aside, if necessary, for possible reapportionment to DAP and/or to JVP if the initial apportionment prove inadequate. Reserves which are not reapportioned to DAP or JVP may be reapportioned to TALFF. Other groundfish target species, including sablefish, "other rockfish," pelagic shelf rockfish, demersal shelf rockfish, and thornyhead rockfish are fully utilized by DAP and no reserves are established.

Amendment 21 to the FMP was adopted by the Council and submitted to the Secretary for review and approval under section 304 of the Magnuson Act. Regulations are proposed at 55 FR 38347, September 18, 1990. One measure included in the proposed amendment stipulates that one-fourth of the preliminary TACs and apportionments among DAP, JVP, TALFF, and reserves adopted by the Council at its annual September meeting would be implemented on an interim basis on January 1 of a new fishing year. Seasonal apportionment of TACs under provisions of other regulations may be superseded by this interim stipulation.

The Council met September 25–29, 1990, to review the best available scientific information concerning groundfish stocks. At the time of the Council meeting, no new information was available on the status of groundfish stocks relative to current information used for management by the NMFS Regional Director during the 1990 fishing year. A Stock Assessment and Fishery Evaluation Report for the 1990 Gulf of Alaska Groundfish Fishery (SAFE Report) was prepared and presented to the Council by the Gulf of Alaska Plan Team, summarizing 1990 information contained in the November 1989 SAFE Report. That information is also summarized in the **Federal Register** notice that implemented the 1990 groundfish specifications (January 31, 1990, 55 FR 3223). Except for the quantities specified for Pacific cod, the Council proposes the same groundfish specifications in 1991 as specified for the 1990 fishing season. The Council adopted the Advisory Panel's recommendations for a proposed Pacific cod TAC of 60,500 mt. This amount, also recommended by the Plan Team for the 1991 fishing year, is based on fishing mortality equal to Fmsy. (Fmsy is the fishing mortality rate that would yield maximum sustainable yield for the fishery under current environmental conditions). TACs for each species are summarized in Table 1.

TABLE 1

[Preliminary ABCs, TACs, one-fourth TACs, DAPs, and one-fourth DAPs of groundfish (metric tons) for the Western/Central (W/C), Western (W), Central (C), and Eastern (E) Regulatory Areas and in the West Yakutat (WYK), Southeast Outside/East Yakutat (SEO/EYK), Gulf-Wide (GW), and Southeast Outside (SEO) Districts of the Gulf of Alaska. Amounts specified as joint venture processing (JVP) and total allowable level of foreign fishing (TALFF) are proposed to be zero and are not shown in this table. Reserves are proposed to be apportioned to DAP on January 1 and are included in these amounts.]

Species	Area[1]	ABC	TAC–DAP–DAH	¼ TAC–DAP
Pollock	W/C	63,750	63,750	15,938
	Shelikof	6,250	6,250	1,562
	E	3,400	3,400	850
Total		73,400	73,400	18,350
Pacific cod	W	29,500	19,800	4,950
	C	59,500	39,700	9,925
	E	1,000	1,000	250
Total		90,000	60,500	15,125
Flatfish (deepwater)[2]	W	16,300	3,650	912
	C	77,700	15,300	3,825
	E	14,400	3,050	763
Total		108,400	22,000	5,500
Flatfish (shallow water)[3]	W	30,200	3,570	892
	C	52,200	6,180	1,545
	E	2,100	250	63
Total		84,500	10,000	2,500
Arrowtooth flounder	W	27,000	4,450	1,112
	C	141,000	23,170	5,793
	E	26,600	4,380	1,095
Total		194,600	32,000	8,000
Sablefish	W	3,800	3,770	942
	C	11,800	11,700	2,925
	WYK	4,600	4,550	1,138
	SEO/WYK	6,000	5,980	1,495
Total		26,200	26,000	6,500
Other Rockfish[4,5]	W	4,300	4,300	1,075
	C	7,700	7,700	1,925
	E	5,700	5,700	1,425
Total		17,700	17,700	4,425
Pelagic shelf rockfish[6]	W	1,400	1,400	350
	C	5,800	5,800	1,450
	E	1,000	1,000	250
Total		8,200	8,200	2,050
Demersal shelf rockfish[7]	SEO	Unknown	470	118
Thornyhead rockfish	GW	3,800	3,800	950
Other Species[8]	GW	N/A	14,179	3,545
Total		606,800	268,249	67,063

[1] See figure 1 of § 672.20 for description of regulatory areas/districts.
[2] The category "deepwater flatfish" means rex sole, Dover sole, and flathead sole.
[3] The category "shallow-water flatfish" means flatfish not including rex sole, Dover sole, flathead sole, or arrowtooth flounder.
[4] The category "other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat and East Yakutat Districts includes Slope rockfish and Demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District includes Slope rockfish.
[5] The category slope rockfish includes *Sebastes polyspinis* (Northern rockfish), *S. alutus* (Pacific ocean perch), *S. aleutianus* (Rougheye), *S. zacentrus* (Sharpchin), S. borealis (Shortraker), *S. aurora* (Aurora), *S. melanostomus* (Blackgill), *S. goodei* (Chilipepper), *S. crameri* (Darkblotch), *S. elongatus* (Greenstriped), *S. variegates* (Harlequin), *S. wilsoni* (Pygmy), *S. babcocki* (Red banded), *S. jordani* (Shortbelly), *S. diploproa* (Splitnose), *S. saxicola* (Stripetail), *S. miniatus* (Vermillion), and *S. reedi* (Yellowmouth)
[6] The category pelagic shelf rockfish includes *Sebastes melanops* (Black) *S. mystinus*, (Blue) *S. ciliatus* (Dusky) *S. entomelas* (Widow), and *S. flavidus* (Yellowtail)
[7] The category demersal shelf rockfish includes *Sebastes paucispinis* (Bocaccio), *S. nebulosus* (China), *S. caurinus* (Copper), *S. maliger* (Quillback), *S. proriger* (Redstripe), *S. helvomaculatus* (Rosethorn), *S. brevispinis* (Silvergrey), *S. nigrocinctus* (Tiger), *S. ruberrimis* (Yelloweye), *S. pinningera* (Canary).
[8] The category "other species" includes Atka mackerel, sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC is equal to 5 percent of the TACs of the target species.

The sum of the TACs proposed by the Council is 268,249 mt, which falls within the OY range specified by the FMP. The Council, after adopting the TACs, then proposed the 1990 apportionments of the TACs for each species among DAP, JVP, TALFF, and reserve. New information was not available from the U.S. processing industry regarding industry processing capacity and the extent to which that capacity will be used for groundfish species in 1991. No TALFF or JVP specifications were established in the Gulf of Alaska during the 1990 fishing year, the Council proposed no TALFF or JVP specifications for the 1991 fishing year at this time.

The Secretary has reviewed the Council's recommendations for TAC specifications and apportionments and hereby proposes these specifications under § 672.20(c)(1). The Secretary recognizes that public comment and new information may be forthcoming that could cause the Council to change its recommendations at its December 1990 meeting.

2. Proposed Apportionment of Reserves to DAP

The FMP stipulates that 20 percent of each TAC for pollock, Pacific cod, flounder (flatfish species), and the "other species" category be set aside in a reserve for possible reapportionment at a later date (§ 672.20(a)(2)(i) and (d)). Although surveys of DAP processing intent are not yet available under

§ 672.20(d)(2), the Secretary is proposing to reapportion reserves for each species category to DAP, anticipating that domestic harvesters and processors will need all the DAP amounts so specified. The Secretary has reapportioned all the reserves effective on January 1 for the preceding 3 years, including 1990. Specifications of DAP shown in Table 1 of this notice reflect apportioned reserves.

3. Assignments of the Sablefish TAC to Authorized Fishing Gear Users

Under § 672.24(b), which was temporarily redesignated as § 672.24(c) through November 10, 1990, sablefish TACs for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC is assigned to hook-and-line gear and 20 percent is assigned to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear and 5 percent is assigned to trawl gear. Vessels in the Eastern Regulatory Area using gear types other than hook-and-line and trawl gear must treat any catch of sablefish as a prohibited species. Table 2 shows the proposed assignments of sablefish TACs to each gear type.

TABLE 2.—PROPOSED ASSIGNMENT OF SABLEFISH TAC TO GEAR TYPES

[All values are in mt]

Area/district	TAC	Hook-and-line share	Trawl share
Western	3,770	3,020	750
Central	11,700	9,360	2,340
West Yakutat	4,550	4,320	230
Southeast Outside/East Yakutat	5,980	5,680	300
Total	26,000	22,380	3,620

4. Quarterly Apportionments of Pollock TAC

Amendment 19 to the FMP, if approved, would require apportionment of the pollock TAC into equal calendar quarters under § 672.20(a)(2)(ii) of the proposed rule (55 FR 37907, September 14, 1990). If this rule is approved and implemented by the Secretary and the TAC remains the same as in 1990, the proposed quarterly allowances of the pollock TAC will be those listed in Table 3.

TABLE 3.—QUARTERLY ALLOCATION OF POLLOCK TAC

[All values are in mt]

Quarter	Western and central regulatory area	Shelikof Strait
1	11,250	6,250
2, 3, 4	17,500 each quarter including catches in Shelikof Strait.	

According to the proposed § 672.20(a)(2)(ii), the TAC of pollock for the Central and Western regulatory areas will be divided equally into four calendar quarters. Within any fishing year, any unharvested amount of a quarterly allowance will be added in equal proportions to the quarterly allowances of the remaining quarters of that fishing year. Within any fishing year, harvests in excess of a quarterly allowance will be deducted in equal proportions from the quarterly allowances of the following quarters of that fishing year. The TAC for pollock in the Eastern Regulatory Area of 3,400 mt will not be allocated quarterly.

The Regional Director will separately close the pollock directed fishing season in the Western/Central Regulatory Area or the Shelikof Strait District during the first quarter when the TAC for that area or district is reached. He will close the pollock directed fishing season in the Western/Central Regulatory Area, including the Shelikof Strait District, at 12:00 noon, Alaska local time (A.l.t.), on a date during the first calendar quarter when the pollock harvest reaches 17,500 mt in the Western/Central Regulatory Area and the Shelikof Strait District combined.

He will reopen the directed fishing season for pollock in the Western/Central Regulatory Area, including the Shelikof Strait District, at 12:00 noon, A.l.t., during the second, third, and fourth calendar quarters on April 1, July 1, and September 30, respectively. He then will close the pollock directed fishing season during each quarter when the harvest reaches the assigned quarterly apportionment.

Because pollock bycatches will be counted against TAC, the Regional Director intends to manage the pollock harvest during the fourth quarter such that the total annual catch, including any bycatch amounts taken in other directed fisheries during the year, does not exceed the TAC.

5. PSC Limits Relevant to Fully Utilized Species

Under § 672.20(b)(1), if the Secretary determines after consultation with the Council that the TAC for any species or species group will be fully utilized in the DAP fishery, he may specify for each calendar year the PSC limit applicable to the JVP and TALFF fisheries for that species or species group. Any PSC limit specified shall be for bycatch only. Species with a PSC limit shall be treated in the same manner as prohibited species under § 672.20(e) and cannot be retained. Under § 672.20(c)(6), if the Regional Director determines that a PSC limit applicable to a directed JVP or TALFF fishery has been or will be reached, the Secretary will publish a notice of closure in the **Federal Register** prohibiting all further JVP or TALFF fishing in all or part of the regulatory area concerned. The Council has proposed that DAP equal TAC for each species category; therefore, no amounts of groundfish are available for JVP or TALFF.

6. Halibut Prohibited Species Catch Limits

Under § 672.20(f)(2)(i), the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying proposed Pacific halibut PSCs for JVP vessels and DAP vessels. The Council has proposed the following Pacific halibut PSC mortality limits: JVP, 0 mt; DAP, 2,750 mt.

The proposed rule implementing Amendment 21 to the FMP establishes separate limits for hook-and-line and pot gear (55 FR 38347; September 18, 1990). The Council has proposed that DAP Pacific halibut PSC mortality limits be apportioned as follows: trawl, 2,000 mt; hook-and-line, 700 mt; and pot gear, 50 mt. Although the Secretary has not yet made a decision to approve that part of Amendment 21, comments are invited on these proposed apportionments.

The Council is not constrained to any particular PSC limit for the Gulf of Alaska Management Area (GOA). The International Pacific Halibut Commission recommended that (1) halibut bycatch mortality not exceed 6,000 mt in the North Pacific, (2) halibut bycatch mortality in the Bering Sea and Aleutian Islands Management Area be limited to 4,000 mt, and (3) halibut bycatch mortality in the GOA be limited to 2,000 mt.

During each year from 1986 through 1989, the Council has recommended a 2,000 mt bycatch mortality limit for Pacific halibut in the GOA. Only fishing with bottom trawls would have been

affected if this limit had been reached in those years.

In 1990, however, the Council recommended an additional bycatch mortality limit of 750 mt for fixed gear. An emergency rule published on August 17, 1990 (55 FR 33715), that is in effect until November 12, 1990, exempted pot gear from the fixed gear halibut PSC mortality limit because observer data indicated that bycatch rates in groundfish pot fisheries were very low. Accordingly, all 750 mt was allocated to hook-and-line gear.

Under § 672.20(f)(2), the Secretary is proposing the Council's recommendations for Pacific halibut PSC limits applicable to DAP for 1991. He will base final determinations on the annual halibut PSC limits upon the following information required by this section:

(A) Estimated halibut bycatch in prior years

In the preliminary SAFE Report, total halibut bycatch mortalities through August 25, 1990, attributed to each gear category were as follows: trawl, 1,493 mt; hook-and-line, 954 mt; and pot gear, 22 mt. This mortality is based on bycatch information obtained from observers during the 1990 fishing year and extrapolated to total bycatches of halibut by these three gear categories.

Some halibut die after being caught and discarded at sea. Rates of halibut mortality for the various DAP fisheries are assumed to be 50 percent for halibut caught with trawl gear, 13 percent for halibut caught with hook-and-line gear, and 12 percent for halibut caught with pot gear. Information on the condition of halibut will be obtained from the NMFS Observer Program Office and will be reviewed by the Council's Plan Team for consideration by the Council at its December 1990 meeting. Comments are invited from the public, however, on the appropriateness of the above listed mortality rates.

(B) Expected changes in groundfish catch and (C) expected changes in groundfish biomass

At this time, no information is available on expected changes in groundfish catch or biomass.

(D) Current estimates of halibut biomass and stock condition

The SAFE Report indicates that, although the condition of halibut stocks is good, a general coast-wide annual decline of about 5 percent in halibut biomass is apparent. In the Gulf of Alaska, annual biomass decline is about 15 percent in Area 2C (Southeast Alaska). In Area 3A, however, no decline in biomass is apparent.

(E) Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S. Halibut Fisheries; (F) Methods Available for and Costs of Reducing Halibut Bycatches in Groundfish Fisheries; and (G) other Biological and Socioeconomic Information That Affects the Consistency of Halibut PSC Limits With the Objectives of This Part

Information for (E), (F), and (G) is not available at this time, although relevant information will be available for public comment at the December 3–7, 1990, meeting of the Council in Anchorage, Alaska. The public also is invited to provide information about all the above types. The Secretary will make all relevant information available when he makes final determinations on PSC limits.

7. Seasonal Allocations of the Halibut PSC Limits

Under § 672.20(f)(2) of the proposed rule implementing Amendment 21 to the FMP, the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying the final halibut PSC limits and seasonal allocations thereof, as well as target fishery categories for the next year. Although the Secretary has not yet made a decision to approve that part of Amendment 21, comments are invited on these proposed allocations. The Council recommended that the PSC limits be seasonally allocated among trawl, hook-and-line, and pot gear as listed in table 4.

TABLE 4.—PROPOSED SEASONAL ALLOCATION OF HALIBUT PSC LIMITS BETWEEN GEAR TYPES AND SEASONS.

[All values are in mt]

Gear	Quarter	Percentage	Amount
Trawl	1	20	400
	2	30	600
	3	30	600
	4	20	400
Total			2,000
Hook-and-line	1	20	140
	2	30	210
	3	30	210
	4	20	140

TABLE 4.—PROPOSED SEASONAL ALLOCATION OF HALIBUT PSC LIMITS BETWEEN GEAR TYPES AND SEASONS.—Continued

[All values are in mt]

Gear	Quarter	Percentage	Amount
Total			700
Post	1,2	50	25
	3,4	50	25
Total			50

Under § 672.20(f)(2) of the proposed rule implementing Amendment 21 top the FMP, the Secretary will make final determinations on seasonal allocations of halibut PSC based on the following types of information:

(A) Seasonal distribution of halibut,

(B) Seasonal distribution of target groundfish species relative to halibut distribution,

(C) Expected halibut bycatch needs on a seasonal basis relevant to changes in halibut biomass and expected catches of target groundfish species,

(D) Expected variations in bycatch rates throughout the fishing year,

(E) Expected changes in directed groundfish fishing seasons,

(F) Expected start of fishing effort, and

(G) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

At this time, these types of information are not available. Again, relevant information will be available for public comment at the December 3–7, 1990, Council meeting in Anchorage, Alaska. Comments are invited, which the Secretary may use when making his final determinations.

Classification

This action is taken under § 611.92 and § 672.20 and complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: November 8, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90–26880 Filed 11–9–90; 5:06 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 222
Friday, November 16, 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

Forms Under Review by Office of Management and Budget

November 9, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) How often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin, Bldg., Washington, DC 20250, (202) 447–2118.

Reinstatement

• Farmers Home Administration
7 CFR 1956–B, Debt Settlement—Farmer Programs and Housing FmHA 1956–1
On occasion
Individuals or households; State or local governments; farms; businesses or other for-profit; small businesses or organizations; 29,900 responses; 14,825 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Emergency

Forest Service
36 CFR part 223—Disposal of National Forest Timber/Timber Export and Substitution Restrictions
Recordkeeping; one time only
Businesses or other for-profit; Federal agencies or employees; small businesses or organizations; 400 responses; 965 hours; not applicable under 3504(h)
Ron Lewis (202) 475–3755

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 90–27016 Filed 11–15–90; 8:45 am]
BILLING CODE 3110–01–M

Animal and Plant Health Inspection Service

[Docket No. 90–224]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

PLACE, DATES, AND TIMES OF MEETING: The meeting will be held at the United States Department of Agriculture, Room 3854, South Building, 14th and Independence Avenue SW., Washington, DC, on December 5, 1990, from 9 a.m. to 4:30 p.m. The meeting will reconvene the following day, December 6, from 9 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Dr. Irvin L. Peterson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, Room 771, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7768.

SUPPLEMENTARY INFORMATION: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan (Committee). The Committee makes recommendations to the Department concerning the poultry industry and the poultry improvement regulations contained in 9 CFR Parts 145 and 147.

Topics to be discussed at the meeting include:

1. Status of *Salmonella enteritidis* control in the egg industry.
2. Review of actions developed during the Biennial Conference.
3. Review of mycoplasma programs and availability of mycoplasma reagents.
4. Plans for the National Poultry Improvement Plan and possible changes in the program's format.

The meeting will be open to the public. Those interested in expressing their views concerning the above topics or other aspects of the National Poultry Improvement Plan should send their written comments, prior to or following the meeting, to Dr. Irvin L. Peterson at the address listed under **"FOR FURTHER INFORMATION CONTACT."** The Committee will also accept written comments at the time of the meeting. Please refer to Docket Number 90–224 when submitting your comments.

Written comments received by Dr. Peterson may be inspected in Room 771 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 9th day of November.

A. Strating,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 90–26979 Filed 11–15–90; 8:45 am]
BILLING CODE 3410–34–M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.
Date and Time: December 6, 1990, 8:30 a.m.–5:00 p.m.; December 7, 1990, 8:30 a.m.–12:00 Noon.
Place: Hacienda del Sol, 5601 N. Hacienda del Sol Road, Tucson, Arizona 85718.
Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person listed below.
Purpose: To evaluate and recommend proposals for cooperative research on

problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State Agricultural Experiment Stations.

Contact Person for Agenda and More Information: Dr. John A. Naegele, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 328, Aerospace Building, Washington, DC 20250–2200, Telephone: 202–401–4587.

Done at Washington, DC this 2nd day of November, 1990.

John Patrick Jordan,

Administrator Cooperative State Research Service.

[FR Doc. 90–27052 Filed 11–15–90; 8:45 am]

BILLING CODE 3410–22–MT

Food Safety and Inspection Service

[Docket No. 90–024N]

SLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public memoranda issued by the Standards and Labeling Division (SLD), Regulatory Programs, Food Safety and Inspection Service (FSIS), which contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION: FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear approved labels may not be distributed in commerce.

FSIS's prior label approval program is conducted by label review experts within SLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts or regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists four SLD policy memoranda which were issued during the period of April 1, 1990, through October 1, 1990.

Persons interested in obtaining copies of the following SLD policy memoranda, or in being included on a list for automatic distribution of future SLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
041A	Labeling of Boneless Ham Products, August 2, 1990.	Under what circumstances are the product names for ham products acceptable without qualification and when must the product names be qualified?	(Supersedes Policy Memo 041); 9 CFR 317.2(b)(13).
090A	Protective Coverings, September 26, 1990	Under what circumstances can immediate containers be considered protective coverings?	(Supersedes Policy Memo 090); 9 CFR 318.17.
098B	Labeling and Use of Beef Cheek Meat and Beef Head Meat, and Pork Cheek Meat and Pork Head Meat, August 1, 1990.	What guidelines should be followed for the labeling and use of beef cheek meat and/or beef head meat, and pork cheek meat and/or pork head meat?	(Supersedes Policy Memo 098A); 9 CFR 319.15, 319.81, 319.100, 319.300, 319.301, and 319.303.
120	Sausage Type Products with Fruits and Vegetables, August 1, 1990.	What are the standards and labeling requirements for sausage type products that contain unexpected ingredients, such as fruits, vegetables, wild rice, or nuts?	Policy Memos 010 and 011.

The SLD policy specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by a future memoranda or more formal Agency actions. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington, DC, on: November 13, 1990.

Ashland L. Clemons,

Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service.

[FR Doc. 90–27030 Filed 11–15–90; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Establishment of Guatay Mountain Purchase Unit, San Diego County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Guatay Mountain Purchase Unit.

SUMMARY: The Secretary of Agriculture has established the Guatay Mountain Purchase Unit in San Diego County, California.

EFFECTIVE DATE: Establishment of the Guatay Mountain Purchase Unit was effective October 11, 1990.

FOR FURTHER INFORMATION CONTACT: Gordon H. Small, Director, Lands, USDA, Forest Service, P.O. box 96090, Washington, DC 20090–6090, (202) 453–8248 or Ralph Bauman, Director, Lands and Real Estate Management, 630 Sansome Street, San Francisco, California 94111, (415) 705–2744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority under section 17, Public Law 94–588 (90 Stat. 2949), the Secretary of Agriculture has established the 522-acre Guatay Mountain Purchase Unit in San Diego County, California. The Guatay Mountain Purchase Unit is adjacent to the Cleveland National Forest.

A copy of the Secretary's establishment document which includes the legal description of the lands within the Guatay Mountain Purchase Unit appears at the end of this notice.

November 2, 1990.

F. Dale Robertson,

Chief, Forest Service.

Guatay Mountain Purchase Unit San Diego County, California

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949) a 521.99-acre purchase unit is being established as described in Exhibit A attached hereto.

These 521.99 acres, more or less, are adjacent to the Cleveland National Forest boundary created under the Organic Administration Act of June 4, 1897.

In addition to the watershed suitability of the lands described in Exhibit A, the area is vital for the production and preservation of the Tecate cypress, a State of California listed rare species.

Dated: October 11, 1990.

Clayton Yeutter,

Secretary.

Exhibit A—Legal Description of Proposed Purchase Unit Guatay Mountain, Cleveland National Forest

Being a portion of land adjacent to the administrative boundary of the Cleveland National Forest, within San Diego County, located within the Cuyamaca Rancho, in Township 15 South, Range 4 East, San Bernardino Meridian, more particularly described as follows:

Beginning at the intersection of the Easterly Right-of-Way limit of State Highway 79 and the most Southerly boundary line of the Cuyamaca Rancho (which is coincidental with the North section line of section 30, T.15S., R.4E., S.B.M.); thence, Northeasterly along the Easterly Right-of-Way limit of State Highway 79 to the junction of State Highway 79 and Old Highway 80 (now known as Forest Road 16S06); thence, along the Southerly Right-of-Way limit of Old Highway 80 to a point on the intersection of the Southerly Right-of-Way of Old Highway 80 and the Easterly boundary of the Cuyamaca Rancho (which is coincidental with the Westerly section line of Section 21, T.15S., R.4E., S.B.M.); thence, S 36° 05' 10" W, 4104.47 feet along the Easterly boundary of said rancho to Corner Number 9 of the said rancho; thence, N 87° 07' 53" W, 3926.21 feet along the Southerly boundary of said rancho to the point of beginning; land is also described in Deeds 90–013385, 87–052553 and 83–062111 in the Book of Official Records, San Diego County, California.

Contains 521.99 acres, more or less.

[FR Doc. 90–26793 Filed 11–15–90; 8.45 am]

BILLING CODE 3410–1–M

Soil Conservation Service

Lick Creek Watershed, Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Lick Creek Watershed, Russell, Wise, and Dickinson Counties, Virginia.

FOR FURTHER INFORMATION CONTACT: George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone 804/771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federallyy assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention and critical area treatment. The planned works of improvement include two small dams, approximately 4,000 feet of channel clearing, and snagging and stream bank stabilization.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting William H. Farmer, Jr., 4405 Bland Road, suite 205, Raleigh, North Carolina 27609, telephone 919/790–2698.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: November 7, 1990.

George C. Norris,

State Conservationist.

Introduction

Lick Creek Watershed is proposed for federal assistance under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was developed along with the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies, as well as interested organizations and individuals. Data developed during the assessment is available for public review at the following location: United States Department of Agriculture, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240–9999.

Recommended Action

The recommended plan consists of two floodwater retarding structures, approximately 4,000 feet of clearing and snagging, and approximately one-half acre of stream bank stabilization. The flood prevention structures will be constructed of roller compacted concrete, and will store rainfall runoff from a 100-year, 24-hour storm.

Effects of Recommended Action

The proposed action will reduce floodwater damages in the Dante, Virginia, community. Quality of life in the area will be enhanced along with a significant reduction of threat of loss of life.

During the scoping process there were very few environmental effects that appear to be of concern. One concern was the amount of sediment that will enter the streams during construction. This issue was resolved by informing the Virignia Department of Game and Inland Fisheries that erosion and sediment control measures will be practiced prior to, during, and after construction of the dams. Concrete mixing will occur a safe distance from the stream so as to avoid spills into the water body. Specifications for such measures will be part of the contractor's package. An herbaceous plant mixture selected to provide habitat value to wildlife will be established in areas affected by construction. In addition, scattered plantings of wildlife shrubs will be established to replace the limited loss of habitat.

The direct effect of constructing a floodwater retarding structure on both Sawmill Hollow and Straight Hollow will be the loss of 3,168 feet of free flowing stream of limited habitat diversity. In addition, 10 acres of poor quality upland wildlife habitat will be converted to permanent water dams, and access roads.

Impoundments on Sawmill Hollow and Straight Hollow are expected to improve downstream water quality by settling out sediments and the attached pollutants carried in the inflow. Organic material and other nutrients will also settle out or be utilized by riparian vegetation and the plant life and organisms in the water profile.

The State Historic Preservation Office has been contacted to verify if any known historical or archaeological resources exist at the project sites. In addition, Geneva Mullens, president of the local historical society, in consultation with local references has been contacted. No historical or archaeological sites are known to exist in the project area.

Alternatives

Alternatives to the recommended action are:

1. No action.
2. Construction of one structure only

Consultation—Public Participation

Input and involvement of the public have been solicited throughout the planning of the project.

On September 14, 1988, a public meeting was held at the Dante firehouse to discuss public solutions to flood problems and the role and process of the Public Law 83–566 program. The NC/VA Watershed Planning staff presented results of hydrologic, hydraulic, economic, and engineering studies. The meeting participation indicated a strong support for potential solutions and identified additional problems with the lack of adequate sewage treatment and the need for a water supply.

In addition, an interagency scoping meeting was held on February 28, 1990, with federal, state, and local agencies to surface any environmental concerns regarding the project. Those agencies invited are listed below.

US Army Corps of Engineers
US Fish and Wildlife Service
US Environmental Protection Agency
US Forest Service
Virginia State Water Control Board
Virginia Department of Game and Inland Fisheries [1]
Virginia Department of Transportation [1]
Virginia State Historic Preservation Office
Clinch Valley Soil and Water Conservation District [1]
Russell County Board of Supervisors [1]
Intergovernmental Review Office
Council on the Environment

On August 8, 1990, a public meeting was held at the Dante Elementary School to answer questions about the recommended project. The meeting was well attended and generated frank discussions. A video illustrating how the project would appear upon completion was shown to all attenders.

Conclusion

The environmental assessment summarized for Lick Creek Watershed indicates that this federal action will have no significant adverse local, regional, or national impacts on the environment, and further documented action under NEPA guidelines is not needed.

Dated: November 7, 1990.

George C. Norris,

State Conservationist.

[FR Doc. 90–27069 Filed 11–15–90; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Request for Bilateral Consultations with the People's Republic of Bangladesh

November 9, 1990.

[1] Denotes agencies attending the February 28, 1990, scoping meeting.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 31, 1990, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on July 31, 1986, the Government of the United States requested consultations with the Government of the People's Republic of Bangladesh concerning cotton shop towels in Category 369–S (only HTS number 6307.10.2005), produced or manufactured in Bangladesh.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the People's Republic of Bangladesh, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton shop towels in Category 369–S, produced or manufactured in Bangladesh and exported during the twelve-month period which began on October 31, 1990 and extends through October 30, 1991, at a level of not less than 688,801 kilograms.

A summary market statement concerning Category 369–S follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 369–S, or to comment on domestic production or availability of products included in Category 369–S is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230, Attn: Public Comments.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 369–S. Should such a solution be reached in consultations with the Government of the People's Republic of Bangladesh, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Import Situation and Conclusion

U.S. imports and the cotton shop towels, Category 369–S, from Bangladesh reached 22,153,750 units in the year ending July 1990, 16 times the 1,380,000 units imported a year earlier. During the first seven months of 1990, Bangladesh shipped 18,242,500 units, 35 times their January-July 1989 level and four times their total calendar year 1989 level. Bangladesh is the largest supplier of cotton shop towels accounting for 19 percent of total Category 369–S imports during January-July 1990. In calendar year 1989, Bangladesh was the ninth largest supplier accounting for 3 percent of total Category 369–S imports.

The sharp and substantial increase of Category 369–S imports from Bangladesh is disrupting the U.S. market for cotton shop towels.

Import Penetration and Market Share

U.S. production of cotton shop towels dropped to 148,000,000 units in calendar year 1989, 10 percent below the calendar year 1988 level. U.S. production containued to decline in 1990, dropping 6 percent in the first six months of 1990 compared to the same period of 1989. In contrast, U.S. imports of Category 369–S from all sources increased 19 percent in calendar year 1989. Imports continue to increase in 1990, up 11 percent in the

first seven months of 1990 over the January-July 1989 level.

The U.S. producers' share of the cotton shop towel market dropped 7 percentage points, falling from 61 percent in 1988 to 54 percent in 1989. The drop in the U.S. producers' market share continued in 1990, falling to 49 percent during the first half of 1990, the lowest level on record. The ratio of imports to domestic production increased from 65 percent in 1988 to 86 percent in 1989 and reached a record level of 104 percent during January-June 1990.

Duty-Paid Value and U.S. Producers' Price

Category 369–S imports from Bangladesh entered under HTSUSA number 6307.10.2005, cotton shop-towels. These shop towels entered the U.S. at duty paid landed value below the U.S. producers' price for comparable shop towel.

[FR Doc. 90–26977 Filed 11–15–90; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from the Procurement List commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 17, 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.

Additions

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 the Procurement List:

Commodities

Pin, Ground Safety
1730–00–917–1051

Mask, Surgical
6515–00–982–7493
(Remaining Government Requirement)

Wrapper, Sterilization
6530–01–036–0398

Deck, Covering
7220–00–205–0389

Toothbrush
8530–01–293–1387
8530–01–293–1388

Services

Commissary Warehousing
Nellis Air Force Base, Nevada
Janitorial/Custodial
Federal Building
1st & Oak Streets
Port Angeles, California

Relooping of Link Tube Carriers
Savanna Army Depot Activity
Savanna, Illinois

Deletion

It is proposed to delete the following commodity from the Procurement List:

Creeper, Mechanic's
4910–00–106–7834

Beverly L. Milkman,
Executive Director.

[FR Doc. 90–27077 Filed 11–15–90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 17, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 31, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 35708) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified workshop to produce these commodities at a fair market price, the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 52–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:

Portfolio
7510–00–579–8554
7510–00–616–0787

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. 90–27078 Filed 11–15–90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 26–27 November 1990 from 0830 until 1700 both days in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1982)), it has been

determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 13, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-27013 Filed 11-15-90; 8:45 am]

BILLING CODE 3180-01-M

Department of the Air Force

Intent To Prepare Environmental Impact Statement for Disposal/Reuse of Mather AFB, CA

The United States Air Force will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of disposal and reuse of the property that is now Mather Air Force Base (AFB) near Sacramento, California. On May 14, 1990 the Air Force signed a Record of Decision (ROD) for closure of Mather AFB.

The disposal/reuse EIS will address disposal of the property to public or private entities and the potential impacts of reuse alternatives. All available property will be disposed of in accordance with provisions of the Base Closure and Realignment Act, Public Law 100-526, and applicable federal property disposal regulations.

The Air Force is planning to conduct a scoping and screening meeting on December 5, 1990 at 6:30 p.m. in the Sacramento Board of Education meeting room located at 9738 Lincoln Village Drive, Rancho Cordova, CA. The purpose of the meeting is to determine the environmental issues and concerns to be analyzed, to solicit comments on the proposed action and to solicit proposed reuse/alternatives that should be addressed in the EIS. In soliciting disposal/reuse inputs, the Air Force intends to consider all reasonable alternatives to the proposed action offered by any Federal, State, and local government agency and any Federally-sponsored or private entity or individual with an interest in acquiring available property at Mather AFB. These alternatives will be analyzed in the EIS. The resulting environmental impacts will be considered in making disposal decisions to be documented in the Air Force's Final Disposal Plan for Mather AFB.

To ensure the Air Force will have sufficient time to consider public inputs on issues to be included in the disposal/reuse EIS and disposal alternatives to be included in the Final Disposal Plan, comments and reuse proposals should be forwarded to the address listed below by December 21, 1990. However, the Air Force will accept comments at the address below at any time during the environmental impact analysis process.

For further information concerning the study of Mather AFB disposal/reuse and EIS activities, contact: Lt Col Tom Bartol, AFRCE-BMS/DEV, Norton AFB, CA 92409-6448, (714) 382-4891.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-26867 Filed 11-15-90; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Construction and Operation of an Optical Interferometer, Monterey County, CA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of proposed construction and operation of an optical interferometer in Monterey County, California.

The optical interferometer is a type of astronomical telescope which would provide high accuracy measurement of exact star positions. This instrument would provide important new information on the diameters and position of stars. Data obtained would be used in military and civilian navigation, the space program, and many fields of astronomical science.

The optical interferometer requires very stable atmospheric conditions in order to operate efficiently. Based on atmospheric test data, three alternative sites have been identified for evaluation in the EIS:

1. Adjacent to the existing U.S. Air Force satellite tracking station on Anderson Peak, Los Padres National Forest, Monterey County, California.

2. Adjacent to an existing private observatory on Chew's Ridge, Los Padres National Forest, Monterey County, California.

3. Adjacent to the existing Naval Observatory near Flagstaff, Coconino County, Arizona.

The facility would consist of three small buildings totalling 1,020 square feet (each about 340 square feet) to house optical mirrors; an underground optical facility of about 4,025 square feet for mirrors, measurement equipment and electronic equipment; and an operations support building of about 4,760 square feet for computer equipment, offices, optical shop/lab, mechanical equipment, storage spaces, and sleeping and dining space for transient personnel. Total constructed area would be about 10,600 square feet of building and parking area; a fence encompassing three to five acres would provide physical security. Access to the site would be provided by existing roadways. The facility would generate minimal traffic as facility staff would consist of no more than six scientists.

The U.S. Forest Service has agreed to act as a cooperating agency pursuant to 40 CFR 1501.6. Should a site on land administered be the Forest Service by selected for construction of the proposed facility, the Forest Service would issue a special use permit for construction, operation and maintenance of the proposed facility.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on December 11, 1990, beginning at 6:30 pm, in the Big Sur Lodge Conference Center, Julia Pfeiffer Burns State Park, Monterey, California. This meeting will be advertised in Monterey County area newspapers.

A formal presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address.

While a scoping meeting will not be held in the Flagstaff area, the public is encouraged to provide written comment on this proposed action. Written statements and or questions regarding the scoping process should be mailed no later than January 15, 1990 to Ms. Patricia Duff (telephone (415) 244-3715), Western Division, Naval Facilities

Engineering Command, P.O. Box 727, San Bruno, California 94066.

Dated: November 13, 1990.

Wayne Baucino,

LT, JAGC, USNR,, Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90–27194 Filed 11–15–90; 8:45 am]

BILLING CODE 3810–AE–M

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Energy Task Force will meet December 10, 1990 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in strategic defense architecture, and related intelligence. The entire agenda for the meeting will consist of discussions of key issues regarding strategic defense systems in support of U.S. national security. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense, and, are in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this matter, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: November 2, 1990.

Wayne T. Baucino,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90–27050 Filed 11–15–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreements involves approval of the following retransfers: RTD/JA(NO)–4, for the transfer from Norway to Japan of 7 irradiated test fuel rods for post irradiation examination and re-irradiation. The fuel rods contain 1,730 grams of uranium, enriched to approximately 2.54 percent in the isotope uranium-235, and 29 grams of plutonium.

RTD/JA(NO)–5, for the transfer from Norway to Japan of 6 irradiated test fuel rods for post irradiation examination. The fuel rods contain 2,170 grams of uranium, enriched to approximately 1.43 percent in the isotope uranium-235, and 17 grams of plutonium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on November 13, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90–27056 Filed 11–15–90; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement, Peaceful Uses of Atomic Energy

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SD(EU)–59, for the retransfer of 5,460 fuel spheres, containing 32.626 kilograms of uranium, enriched to 16.75 percent in the isotope uranium–235, from the Federal Republic of Germany to Switzerland, for research at the PROTEUS critical experimental facility.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on November 13, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90–27507 Filed 11–15–90; 8:45 am]

BILLING CODE 6450–01–M

Response Actions at a FUSRAP Site in Maywood, NJ: Intent To Prepare a Remedial Investigation/Feasibility Study-Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare a Remedial Investigation/Feasibility Study-Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), as part of its Formerly Utilized Sites Remedial Action Program (FUSRAP), intends to conduct a comprehensive environmental review and analysis of the Maywood site to determine the nature, extent, and environmental impacts of existing contamination at the site and to evaluate alternative response actions. The Maywood site is comprised of the Maywood Interim Storage Site (MISS) and various vicinity properties—including the adjacent Stepan Company property and numerous residential, commercial, and governmental (Federal, State, and municipal) properties in Maywood, Rochelle Park, and Lodi, New Jersey. The environmental review and analysis will integrate the requirements of both the National Environmental Policy Act (NEPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA)—hereafter referred to as CERCLA. The environmental impact statement (EIS) requirements under NEPA will be incorporated into the remedial investigation/feasibility study (RI/FS) requirements of CERCLA. The resulting report will be the RI/FS–EIS. DOE also announces its intent to conduct a public scoping meeting.

ADDRESSES: Comments or suggestions on the scope of the RI/FS–EIS and requests to speak at the scoping meeting discussed below in the Scoping section should be addressed to: Mr. Lester K. Price, Director, Technical Services Division, U.S. Department of Energy, Oak Ridge Operations Office, Post Office Box E, Oak Ridge, Tennessee 37831, (615–576–0948).

FURTHER INFORMATION: For further information on DOE's EIS process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202–586–4600).

For further information on DOE's RI/FS process, please contact: Ms. Kitty Taimi, Director, Office of Environmental Compliance, EH–22, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202–586–9024)

DATES: Written comments or suggestions postmarked on or before December 17, 1990 will be considered in the course of implementing the integrated CERCLA/NEPA process and its documentation. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. A scoping meeting will be held at the Nellie K. Parker School, 261 Maple Hill Drive, Hackensack, New Jersey 07601, on December 6, 1990, at 7:00 p.m. local time. Requests to speak at this meeting should be forwarded to Mr. Price at the above address by December 3, 1990. Requests to speak may also be made during registration for the meeting.

SUPPLEMENTARY INFORMATION:

Background.

The FUSRAP was established in 1974 by the Atomic Energy Commission (AEC), a predecessor agency of the DOE. The primary objective of FUSRAP is to identify and decontaminate sites where radioactive contamination remains from the early years of the nation's atomic energy program or from commercial operations causing conditions that Congress has mandated DOE to remediate. The goals of decontamination under FUSRAP are to (1) control radioactive contamination at the sites, in compliance with applicable or relevant and appropriate requirements for the protection of human health and the environment, and (2) to the extent possible, certify the sites for use without radiological restrictions following decontamination.

The Maywood site is in a highly developed area that is north-northwest of downtown Manhattan (New York City) and northeast of Newark, New Jersey. The site is located within the borough of Maywood, the borough of Lodi, and the township of Rochelle Park, New Jersey. The Maywood site includes the MISS; the Stepan Company property (former Maywood Chemical Works), a vicinity property; and numerous other vicinity properties (residential, commercial, Federal, State, and municipal). (A vicinity property is an area, not owned or controlled by DOE, that is radioactively contaminated above DOE guidelines for residual radioactive material as a result of previous processing of radioactive materials.) The MISS and Stepan Company property are adjacent to each other on the site of the former Maywood Chemical Works property. The MISS contains an interim storage pile. The Stepan Company property contains three sites on which radioactive processing wastes, left from past Maywood Chemical Works operations, were buried by the Stepan Company. The other vicinity properties are roughly to the south and west of the MISS in Maywood, Lodi, and Rochelle Park.

The Maywood site became radioactively contaminated as a result of thorium processing at the former Maywood Chemical Works. In addition, some properties in the borough of Lodi became contaminated as a result of materials being removed from the Maywood site for fill or stream deposits being carried by Lodi Brook, which originates at the Maywood Chemical Works. Radioactive contaminants identified for the Maywood site are those associated with the thorium-232 and uranium-238 radioactive decay chains.

The Maywood Chemical Works was established in 1895. In 1916, the company began processing monazite sand to extract thorium for use in manufacturing gas mantles for various lighting devices and to extract rare earth metals. The company continued extraction operations until 1956 and processing operations with stockpiles until 1959. Process wastes from manufacturing operations were pumped to areas surrounded by earthen dikes on property west of the plant. Subsequently, some of these contaminated wastes migrated onto adjacent properties. In 1932, New Jersey Route 17 was built through the Maywood Chemical Works property over the earthen dikes, separating the property into two areas. Tunnels were constructed under Route 17, apparently to allow continued access between the two areas.

In 1954, the AEC (now the Nuclear Regulatory Commission) issued a license to the Maywood Chemical Works to possess, process, manufacture, and distribute radioactive materials, specifically thorium. The Stepan Company (at that time the Stepan Chemical Company) purchased the Maywood facility in 1959 but has never been involved in the manufacture or processing of any radioactive materials at this facility. In 1961, the AEC issued the Stepan Company a license for storage of radioactive materials because of the contaminated wastes buried on-site. Beginning in 1963, the Stepan Company began to stabilize or excavate and rebury radioactive materials on-site. A number of radiological surveys of the property and its vicinity have been conducted to identify the locations of radioactive contamination resulting from past manufacturing and processing activities. Limited chemical sampling has also been performed.

In December 1982, the Environmental Protection Agency (EPA) proposed to include the Maywood site (i.e., the former Maywood Chemical Works site) on its National Priorities List under CERCLA; this listing occurred on September 8, 1983, under the designation, "Maywood Chemical Company Site."

Subsequently, DOE was authorized to undertake a decontamination research and development project at the Maywood site under the FUSRAP by the Energy and Water Development Appropriations Act of 1984, Public Law No. 98–50. In September 1985, a 4.7-ha (11.7-acre) portion of the Stepan Company property was transferred to DOE for use as a storage facility for contaminated materials in order to expedite the cleanup of properties associated with Maywood Chemical Works contamination. This piece of property was designated as the Maywood Interim Storage Site or the MISS.

In 1984, DOE began a program to identify, survey, and designate vicinity properties for cleanup, and then characterize and conduct decontamination actions on the designated properties. To date, 82 vicinity properties have been designated for cleanup. Of the 82 designated properties, 25 have been fully and 1 partially decontaminated, 47 have been characterized, and 9 have been designated but not yet characterized. Designation for cleanup is currently being considered for 10 additional properties.

Soil excavated during decontamination of the 26 fully or partially decontaminated vicinity properties is currently stored on the

MISS pending a decision on its final disposition. The interim storage pile at the MISS contains about 27,000 m^3 (35,000 yd^3) of contaminated materials. Removal actions at designated but not yet decontaminated properties would result in the excavation and storage of additional contaminated materials at the MISS. Decontamination efforts have been suspended pending resolution of issues with the borough of Maywood.

The Maywood site—i.e., the MISS, Stepan Company property, and other vicinity properties—may also be contaminated with nonradioactive contaminants. The EPA is conducting a separate RI/FS to determine the nature and extent of nonradioactive contaminants at the Stepan Company property and adjacent properties and to evaluate alternative response actions. At the MISS, limited chemical characterization has detected low levels of volatile organic compounds and one semivolatile organic compound in groundwater. Several metals at levels above background and various organic compounds at low levels were detected in the soil; however, no characteristic hazardous waste, as defined in 40 CFR part 261 (subpart C), has been identified. The EPA has performed additional chemical characterization at the Stepan Company site and adjacent properties. Volatile and semivolatile contaminants were detected at low levels, but no characteristic hazardous waste has been identified.

The responsibility for cleanup of contamination identified at the Maywood site will be divided between DOE and the EPA, based upon DOE's assigned responsibility under the 1984 congressional authorization and a negotiated Federal Facilities Agreement (FFA) between DOE and EPA Region II. The FFA was executed by both parties on September 19, 1990 and is currently available for public review and comment. The public comment period expires on November 19, 1990. The final agreement shall become effective after resolution of significant public comments, if any. Under the FFA, DOE will assume responsibility for:

- All contamination, both radioactive and chemical, whether commingled or not, at the MISS,
- All radioactive contamination occurring on any vicinity property that is above DOE action levels and is related to thorium processing at the former Maywood Chemical Works, and
- Any chemical or nonradioactive contamination on vicinity properties that
  - —Is mixed or commingled with radioactive contamination above DOE action levels, or
  - —Originated at the MISS, or
  - —Was associated with specific thorium manufacturing or processing activities at the former Maywood Chemical Works that resulted in the radioactive contamination.

The FFA does not assign responsibility to DOE for managing areas, other than the MISS, that are only chemically contaminated with no connection to processing or radioactive materials at the former Maywood Chemical Works.

Environmental Review Process

The DOE intends to conduct a comprehensive environmental review and analysis to meet the requirements of CERCLA and NEPA for implementing response actions at Maywood and three other New Jersey sites for which DOE has responsibility for remediation under FUSRAP. The three other sites—located at Wayne, Middlesex, and New Brunswick—have similar contaminants and environmental issues. The Wayne site is located 21 km (13 mi) west of the Maywood site in Passaic County, and the Middlesex and New Brunswick sites are located 50 km (31 mi) southwest of the Maywood site in Middlesex County. The Maywood site involves about 260,000 m^3 (340,000 yd^3) of contaminated materials whereas the Wayne site involves 83,000 m^3 (109,000 yd^3) and the Middlesex site 68,000 m^3 (88,000 yd^3). The New Brunswick site is a recently assigned FUSRAP site and, as such, specific information (i.e., site description, estimated waste volume, and waste characteristics) has not yet been incorporated into planning documents for the new Brunswick site. Because the four sites are not located near each other, DOE is planning to conduct separate response actions under CERCLA at each site.

The CERCLA environmental review and analysis process has two major phases, a remedial investigation and a feasibility study, which are also the titles or partial titles of the reports resulting from these phases. It is DOE policy to integrate the requirements of the CERCLA and NEPA processes for remedial actions at sites for which it has responsibility. Under the integrated policy, the CERCLA process is supplemented, as appropriate, to meet the procedural and documentational requirements of NEPA.

The integrated CERCLA/NEPA process begins with a scoping and planning phase that culminates in a series of planning documents, including the RI/FS work plan. In the work plan, the problems at a site are scoped by analyzing existing data, identifying the contaminants of concern, projecting potential exposure routes, identifying any additional specific information that is available, and specifying tasks required throughout the entire remediation process to fully remediate the site problem.

From the work plan, a field sampling plan is written to obtain the required data. Companion documents include the health and safety plan, the quality assurance project plan, and the community relations plan. The health and safety plan specifies the procedures needed to protect workers and the general public. The quality assurance project plan specifies the procedures, detection levels, and data quality checks to be used in laboratory analyses. The community relations plan outlines procedures to ensure that the public is kept informed and given an opportunity to offer input.

The RI phase of the remediation decision-making process includes activities associated with site investigations, sample analyses, and data evaluation, which are performed to characterize the site and determine the nature and extent of contamination. In addition, applicable or relevant and appropriate requirements must be identified to determine what standards, criteria, regulations, or other constraints should be applied to the proposed action; and bench-scale or pilot studies may be performed to test potentially applicable technologies. The RI phase also includes a baseline risk assessment, i.e., a quantitive assessment of the primary health and environmental threats under various scenarios, including a no-action scenario.

The FS phase is based upon the RI results and includes screening of remedial technologies, identification and screening of response alternatives, development of general performance criteria for each alternative, and detailed evaluation and comparison of plausible alternatives (consistent with both CERCLA and NEPA). Alternatives to be considered include (1) no action; (2) treatment and disposal of wastes either on-site or off-site (off-site disposal would be considered generically, not specifically); and (3) containment or instititional control alternatives that control the threats posed by the hazardous substances and/or prevent exposure.

Examples of specific alternatives for the Maywood site that could be retained through screening include, but are not limited to: (1) no action, (2)

decontamination of the site, and (3) in-site stabilization of the wastes at the site. (The no-action alternative will be developed, as required under NEPA and CERCLA, to provide a baseline for assessing the impacts of the alternatives being considered.

The RI and FS phases can be carried out concurrently. The data collected during the RI phase influence the development of the remedial alternatives in the FS phase, which in turn affects the data needs and scope of treatability studies and can result in additional field investigations.

The RI/FS process will be supplemented as necessary to satisfy NEPA and Council on Environmental Quality regulations (40 CFR parts 1500–1508). The DOE has determined that an EIS is the appropriate NEPA document for the Maywood site. It is DOE policy to prepare an EIS implementation plant to record the results of the NEPA scoping process and to present the approach for preparation of an EIS. An EIS implementation plan will be prepared following the scoping meeting and will be appended to the work plan for Maywood.

The DOE intends to use the RI/FS-EIS for the Maywood site as a lead document for CERCLA/NEPA compliance for the four New Jersey FUSRAP sites. The Maywood RI/FS-EIS will address common issues and cumulative impacts associated with response actions at all of the sites. The CERCLA-NEPA documents for the other sites will present site-specific impacts and summarize, reference, and update the information presented in the lead Maywood document as appropriate.

In addition to the RI/FS for the Stepan Company property, EPA Region II is currently conducting an RI at the Lodi municipal well field in Lodi, New Jersey. The RI/FS-EIS for the Maywood site will include an assessment of the potential impacts of remedial activities proposed for the Lodi well field the Stepan property. Any cumulative impacts identified will be factored into development of the final remedy for the Maywood site.

Nothing in this NOI or in other documents to be prepared is intended to represent a statement on the legal applicability of NEPA to remedial actions under CERCLA.

Preliminary List of Potential Issues

Potential issues related to response actions at the Maywood site include potential environmental impacts as well as factors that may result from or be influenced by implementation of one or more of the remedial alternatives. The preliminary list that follows is based on issues that have been raised relative to other DOE proposals of this nature. Interested parties are invited to participate in the scoping process discussed below and to help refine this list to arrive at the significant issues to be analyzed in depth in the integrated CERCLA/NEPA process and to eliminate from detailed study the issues that are not significant.

The potential major issues that may require analysis in the integrated CERCLA/NEPA process are as follows:

1. Potential radiological impacts in terms of both radiation doses and resulting health risks:
   - –On people, including workers and the public, i.e., individuals and the total population, children and adults, present and future generations;
   - –Along transportation routes and near other sites relevant to the proposed alternatives;
   - –Associated with routine operations and accidents
   - –Associated with various pathways to humans, including surface waters, groundwaters, gases, dusts, particulates, and biota;
   - –Due to natural forces such as erosion and flooding; and
   - –Associated with human intrusion into the contaminated materials.
   - –2. Potential chemical impacts in terms of does and resulting health risks:
   - –On people, including workers and the public; i.e., individuals and the total population, children and adults, present and future generations;
   - –Along transportation routes and near other sites relevant to the proposed alternatives;
   - –Associated with routine operations and accidents;
   - –Associated with various pathways to humans, including air, soil, surface waters, groundwaters, and biota;
   - –Due to natural forces such as erosion and flooding; and
   - –Associated with human intrusion into the contaminated materials.
   - –3. Potential engineering and technical issues:
   - –The most reasonable engineering options for each type of waste/residue;
   - –Probable duration of isolation;
   - –Rates and magnitude of loss of containment;
   - –Related to site-specific geohydrology and ecology;
   - –Related to site-specific wind dispersion patterns; and
   - –Site characterization and research and development work necessary before the decision or before actual implementation of an alternative.
   - –4. Potential issues relative to mitigative measures and monitoring:
   - –Health-physics procedures for workers; and
   - –Control measures for erosion, gases, and dusts.

5. Potential institutional issues:
   - Project-specific criteria for decontamination, effluents, environmental concentrations, and release of a site for use without radiological restrictions;
   - Future institutional controls (monitoring and maintenance); and
   - Institutional issues that need to be resolved before an alternative can be implemented.

6. Potential socioeconomic issues:
   - Effects on land uses, values, and marketability; and
   - Effects on local transportation systems.

7. Cumulative impacts associated with issue categories 1–6 above for the remedial actions proposed to be taken or reasonably foreseeable at the Maywood, Wayne, Middlesex, and New Brunswick sites and at the Lodi well field.

8. Issues related to the CERCLA criteria for selection of a remedial action:
   - Overall protection of human health and the environment;
   - Compliance with applicable or relevant and appropriate requirements;
   - Long-term effectiveness and permanence;
   - Reduction of waste toxicity, mobility, and volume through treatment;
   - Short-term effectiveness;
   - Implementability;
   - Cost;
   - State acceptance; and
   - Community acceptance.

Scoping

The results of the integrated CERCLA/NEPA assessment process for the Maywood site will be presented in the RI/FS-EIS. The draft work plan and companion documents, fact sheets, technical reports, and other information related to DOE activities at the Maywood site have been placed in the Maywood Borough Library at the address noted below. When information repositories are established for the other New Jersey sites, Maywood documents related to those sites will also be placed there.

The scoping process will involve all interested agencies (Federal, State, and local), groups, and members of the public. Comments are invited on the alternatives and the issues t be considered in the integrated CERCLA/NEPA process, as discussed in this NOI and in the draft RI/FS-EIS work plan. A public scoping meeting is scheduled starting at 7 p.m., to be held on December 6, 1990 in Nellie K. Parker School, 261 Maple Hill Drive, Hackensack, New Jersey 07601. This will be an informal meeting but a complete record will be taken and copies of the transcript will be made available as detailed below.

The meeting will be presided over by an independent facilitator, who will explain DOE procedures for conducting the meeting. The meeting will not be conducted as an ev dentiary hearing,

and those who choose to make statements will not be subject to cross examination by other speakers. However, to facilitate the exchange of information and to clarify issues, the DOE and its representatives may respond by answering questions and making short clarifying statements, as necessary or appropriate. To ensure that everyone who wishes to speak has a chance to do so, 5 minutes will be allotted for each speaker and speakers are encouraged to submit a written summary of comments. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations; persons wishing to speak on behalf of an organization should identify the organization in their request.

Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting; they will be called on to present their comments if time permits. Written comments or suggestions will also be accepted at the meeting or should be sent to Mr. Lester K. Price at the address given above in the Addresses section, postmarked no later than 30 days after the publication of this notice. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. Oral and written scoping comments will be given equal weight.

Copies of the scoping meeting transcript, CERCLA/NEPA documents, and major references used in preparing the documents will be available during normal business hours at the Maywood Borough Library, 459 Maywood Avenue, Maywood, NJ. 07607, and at other locations as appropriate. Certain materials have already been placed at the library, e.g., the DOE/Stepan cooperative agreement, contamination surveys and yearly monitoring reports, documentation of the basis for waste volume estimates, information on NRC-licensed burial sites, and draft project plans. The transcript of the scoping meeting will be retained by DOE and a copy will be made available for inspection at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C. 20585, during business hours, Monday through Friday. In addition, anyone may make arrangements with the recorder to purchase a copy. When the draft RI/FS-EIS is available, a notice will be published in the **Federal Register** and local newspapers to announce the locations where the documents can be reviewed.

Those interested parties who do not wish to submit comments or suggestions during the scoping period but who would like to receive a copy of the draft RI/FS-EIS for review and comment should notify Mr. Lester K. Price at the address given above in the Addresses section.

By mid-summer 1993, DOE expects to issue the final RI/FS-EIS, which will include the proposed plan and responses to public comments received on the draft RI/FS-EIS (responsiveness summary). The DOE will select a remedial action alternative for the site in the Record of Decision to be issued no sooner than 30 days after the final RI/FS-EIS is issued.

Issued in Washington, DC., this 9th day of November, 1990.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90-27053 Filed 11-15-90; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the 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 collections 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 on or before December 17, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 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. Federal Energy Regulatory Commission.
2. FERC-577(A).
3. 1902-0161.
4. Gas Pipeline Certificates: Environmental Impact Statements, Re Interim Rule in Docket No. RM90-14-000, Revisions to Regulations Governing the Replacement of Facilities under the NGA and Construction of Facilities under NGPA Sec. 311, or until Final Rule in Docket No. RM90-1-000 (NOPR) terminates FERC-577(A) information collection.
5. Extension.
6. On occasion.
7. Mandatory
8. Business or other for-profit.
9. 55 respondents.
10. 4 responses.
11. 4 hours per response.
12. 880 hours.
13. The Interim Rule in Docket No. RM90-14-000 requires natural gas pipelines to provide at least 30 days notice to the Commission prior to replacing certain facilities or the construction of facilities pursuant to Section 311 of the NGPA. This request is for a two-year extension of existing authority through November 30, 1992.

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, November 13, 1990.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 90-27094 Filed 11-15-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL87-61-001, et al.]

PSI Energy, Inc., et al.; Electric rate, Small power production, and Interlocking Directorate filings

November 7, 1990.

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

1. PSI Energy, Inc.

[Docket Nos. 87EL-61-000 and EL87-61-001]

Take notice that on October 12, 1990 PSI Energy, Inc. (PSI), formerly named Public Service Company of Indiana, Inc., tendered for filing its Refund Compliance Report pursuant to the Commission's Letter Order, dated September 19, 1990.

Comment date: November 21, 1990, in accordance with Standard Paragraph E end of this notice.

2. Niagara Mohawk Power Corp.

[Docket No. ER91-104-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk,), on November 5, 1990, tendered for filing an agreement between Niagara Mohawk and Public Service Company of New Hampshire (PSNH) dated November 1, 1989.

The November 1, 1989 agreement is to provide for the sale by Niagara Mohawk of up to 92 MW of peaking capacity and related energy to Boston Edison. The term of the agreement was for the period November 1, 1989 through April 30, 1990.

Copies of this filing were served upon Boston Edison Company and the New York State Public Service Commission.

Comment date: November 22, 1990, in accordance with Standard paragraph E at the end of this notice.

3. Louisville Gas and Electric Co.

[Docket No. ER91-34-000]

Take notice that Louisville Gas and Electric Company (Louisville) tendered for filing on October 18, 1990 a Second Supplemental Agreement dated as of July 1, 1990 to the interconnection Agreement dated February 3, 1988, between Louisville and the Wabash Valley Power Association, Inc. (Wabash Valley).

The Second Suplemental Agreement cancels existing Service Schedules and replaces those schedules with new Service Schedules for Emergency Service, Interchange, Seasonal, Short Term, Limited Term and Diversity Power and adopts a new Service Schedule for Reserve Capacity and Back-up Energy. The new Service Schedules establish the applicable charges. There is not estimate of increased revenues from the charges since transactions will occur only as load and capacity conditions dictate. A November 1, 1990 effective date has been requested.

Louisville states that the rates and services were negotiated by the parties.

Copies of the filing were served upon Wabash Valley and the Public Service Commission of Kentucky.

Comment date: November 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corp.

[Docket No. ER91-103-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on November 5, 1990, tendered for filing an agreement between Niagara Mohawk and Boston Edison Company dated November 1, 1989.

The November 1, 1989 agreement is to provide for the sale by Niagara Mohawk of 175 MW of peaking capacity and related energy to Boston Edison. The term of the agreement was for the period November 1, 1989 through April 30, 1990.

Copies of this filing were served upon Boston Edison Company and the New York State Public Service Commission.

Comment date: November 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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

Lois D. Cashell,

Secretary.

[FR Doc. 90-26971 Filed 11-15-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

November 8, 1990.

Take notice that Equitrans, Inc. Equitrans) on November 7, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Orignial Volume No. 1, to become effective December 1, 1990:

Twentieth Revised Sheet No. 10
Eleventh Revised Sheet No. 34
Alternate Twentieth Revised Sheet No. 10
Alternate Eleventh Revised Sheet No. 34

This filing implements an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to reflect an increase in Equitrans's pipeline supplier rates to be effective December 1, 1990, under Texas Eastern Transmission Corporation's (TETCO) Rate Schedule CD-1 filed in Docket Nos. RP90-119-000 on October 31, 1990. The filing in necessary in order to have the rates charged to Equitrans' jurisdictional customers more closely reflect the experienced cost of gas being incurred by the Applicant. Equitrans hereby submitted primary tariff sheets Twentieth Revised Sheet No. 10 and Eleventh Revised Sheet No. 34 to reflect the increase in TETCO's gas costs.

Equitrans is also submitted alternate tariff sheets to reflect an adjustment to Equitrans' non-gas cost base rates which Equitrans requested to become effective on December 1, 1990 in an abbreviated section 4(e) filing it made on October 31, 1990 in Docket No. RP90-13-000. By that filing, Equitrans tendered tariff sheets to reflect the actual costs of transmission and compression of gas by others that are recorded in Equitrans' FERC Account No. 858.

It is requested that the Commission accept for filing and make effective on December 1, 1990 Alternate Twentieth Revised Sheet No. 10 and Alternate Eleventh Revised Sheet No. 34 if the RP91-13 filing is made effective on December 1, 1990 as was requested by Equitrans in that proceeding, or that the Commission accept for filing and make effective on December 1, 1990 the primary tariff sheets if the RP91-13 filing is not made effective on December 1, 1990.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the demand cost of $0.3201 per dekatherm (Dth) and an increase in the commodity cost of $0.0354 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.0460 per Dth.

Pursuant to § 154.51 of the Commission's regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on December 1, 1990.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 16, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26967 Filed 11–15–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91–1–4–000, TM91–2–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

November 8, 1990.

Take notice that on November 5, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on January 1, 1991:

Purchased Gas Cost Adjustment

Second Revised Sheet No. 21

and

Alternate Second Revised Sheet No. 21

Gas Research Institute Surcharge

First Revised Sheet No. 23

According to Granite State, the revised sales rates on Second Revised Sheet No. 21 and Alternate Second Revised Sheet No. 21 reflect a current adjustment for projected gas costs and sales during the first quarter of 1991 and a revised surcharge for unrecovered purchased gas costs. Granite State further States that the revised rates are filed on a primary and alternate basis to correspond with rate changes filed by Tennessee Gas Pipeline Company (Tennessee) in Docket No. TA91–1–9–000 for effectiveness on January 1, 1991. According to Granite State, Tennessee filed a primary rate proposal which reflected as-billed treatment of two-part demand and commodity costs for certain purchases from producers and an alternate proposal that reflects commodity-only treatment of the costs for such purchases. Granite State further states that its primary and alternate tariff sheets reflect the effect on its rates for projected purchases from Tennessee under Tennessee's Rate Schedule CD–6 during the first quarter of 1991.

It is further stated that the filing comprises Granite State's annual purchased gas cost filing in compliance with § 154.305 of the Commission's Regulations.

According to Granite State, First Revised Sheet No. 23 states the Gas Research Institute surcharge, effective January 1, 1991, as authorized in Docket No. RP90–120–000 which is applicable to Granite State's purchases of Canadian gas from Shell Canada, Limited.

It is stated that the proposed rate changes are applicable to Granite State's wholesale sales to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

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 Capital Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 29, 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. 90–26968 Filed 11–15–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90–168–002]

National Electric Associates Limited Partnership; Filing

November 7, 1990.

Take notice that on October 22, 1990, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering Paragraph (L) of the Commission's March 20, 1990 order in this proceeding. 50 FERC ¶ 61,378 (1990). Copies of NEA's informational filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26970 Filed 11–15–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89–224–000, RP89–203–000, and RP90–139–000]

Southern Natural Gas Co.; Informal Settlement Conference

November 8, 1990.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on November 27, 1990, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Betsy Carr (202) 208–1240 or Don Williams (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26969 Filed 11–15–90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. 90-88-NG]

Washington Natural Gas Co. Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 10, 1990, of an application filed by Washington Natural Gas Company (Washington Natural) to import from Canada up to 15,000 MMBtu per day (14,434 Mcf/d) of natural gas beginning on the first day of the month following the issuance of the authorization and extending until October 31, 1999. Washington Natural proposes importing the natural gas at a point on the U.S.-Canadian border near Sumas, Washington, pursuant to a gas purchase contract between Washington Natural and Poco Petroleums Ltd. (Poco). Existing facilities would be used for the importation and transportation of the proposed imports.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protects, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 17, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, 1000 Independence Avenue S.W., Washington, DC 20585, (202) 586–7249

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Washington Natural, a Washington corporation with its principal place of business in Seattle, Washington, is a natural gas distribution company serving 61 cities and towns and adjacent unincorporated areas within its five-county service area in the State of Washington. Washington Natural provides service to approximately 330,000 customers in its service area.

The gas that Washington Natural will purchase from Poco will be supplied initially from Poco's Alberta Pool in the Province of Alberta, Canada. Poco will be responsible for arranging the delivery of the gas on a firm basis through the facilities of Westcoast Energy Inc. (WEI) to the point of delivery under the contract at the international border near Sumas, Washington/Huntingdon, B.C. At the delivery point, the gas will enter the facilities of Northwest Pipeline Corporation (Northwest). Washington Natural will be responsible for arranging the transportation of the gas from the delivery point through the facilities of Northwest to Washington Natural's distribution system. Northwest will provide firm transportation for Washington Natural under Northwest's Rate Schedule TF–1. Washington Natural asserts that it has adequate available firm capacity under its transportation contract with the pipeline to accept delivery of the gas. Poco will file for approval from the provincial authority in Alberta for removal of the gas committed under the contract. Poco has applied to the National Energy Board of Canada (NEB) for approval to export the gas.

As a result of both Washington Natural's reduction in firm domestic and Canadian purchase commitments with Northwest under the pipeline's open access program and Washington Natural's growing market requirements, the company maintains that it must contract for approximately 95,000 MMBtu per day of firm gas supply. According to Washington Natural, the 10-year contract with Poco for 15,000 MMBtu per day is an important component of the firm gas supply needed to supplement the current firm service provided by Northwest. The company maintains that it requires the firm supply that will be purchased from Poco to provide continuous reliable service to its firm residential, commercial and small industrial customers who purchase all their gas requirements from Washington Natural.

The term of the sale is November 1, 1989, to October 31, 1999. Upon completion of the term, the gas purchase contract will be terminated. The contract provides for a firm daily volume of up to 15,000 MMBtu per day (14,434 Mcf/d), the maximum daily contract quantity (MDQ). Washington Natural is committed under the Poco contract to purchase a minimum annual quantity equal to 55 percent of the MDQ multiplied by 365, and a minimum monthly quantity equal to the lesser of 33⅓ percent of the contract quantity per day multiplied by the number of days in the month *or* 10 percent of Washington Natural's total purchases of gas supplies for utilization in its system market. In the event that Washington Natural fails to nominate the minimum annual quantity, Poco may reduce the MDQ as its sole remedy. Washington Natural anticipates no difficulty in meeting the monthly and annual takes under the contract.

The contract price is composed of two parts, a demand charge and a commodity charge. The demand charge is equal to the cost of transportation of the gas on the Westcoast system for delivery of gas at the international border near Sumas, Washington, and is the aggregate of the WEI firm service gathering, treatment, processing and transportation demand charges as approved by Canadian regulatory authorities. This charge is equivalent to the actual monthly toll charges on WEI's system.

The commodity component of the price for the first contract year, by agreement, is U.S. $1.25 per MMBtu for quantities purchased in excess of 3,000,000 MMBtu and U.S. $1.05 per MMBtu for quantities purchased in excess of 3,000,000 MMBtu, which is approximately equal to the minimum annual purchase obligation. The commodity component is subject to renegotiation annually in order to assure that the price of the gas remains continuously responsive over the life of the contract to the competitive prices of both alternative fuels and U.S. domestic gas supplies available in Washington Natural's market area. The contract provides that the commodity price will continue from year to year unless either party objects sixty days prior to the end of the contract year. The decision on the application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this requested arrangement would be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

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

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

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Washington Natural's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on November 9, 1990.

Clifford P. Tomaszewiski,

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

[FR Doc. 90–27055 Filed 11–15–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–3861–3]

Renewal for the National Pollution Control Techniques Advisory Committee

The U.S. Environmental Protection Agency (EPA) announces the renewal of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) following consultation with the Committee Management Secretariat, General Services Administration. The EPA has determined that renewal of this advisory committee is in the public interest in connection with the performance of duties imposed on the EPA by law. The charter which continues this advisory committee for two more years, unless otherwise sooner terminated, will be filed with the appropriate Congressional committees and the Library of Congress. The NAPCTAC will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in the implementation of the Act.

FOR FURTHER INFORMATION CONTACT: Jack R. Farmer, Director, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, (919) 541–5572.

Dated: November 9, 1990.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 90–27027 Filed 11–15–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3861–2]

Renewal for the Management Advisory Group to the Assistant Administrator for Water

The U.S. Environmental Protection Agency announces the renewal for the Management Advirsory Group to the Assistant Administrator for Water following consultation with the Committee Management Secretariat, General Services Administration. EPA has determined that renewal of this advisory committee is in the public interest in connection with the performance of duties imposed on the Agency by law. The charter which continues this advisory committee for two more years, unless otherwise sooner terminated, will be filed with the appropriate Congressional committees and the Library of Congress. The committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.

FOR FURTHER INFORMATION CONTACT: Elizabeth Jester, Designated Federal Official (WH–556), U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460, 202–382–5818.

Dated: November 9, 1990.

Elizabeth Jester,

Acting Director, WPO.

[FR Doc. 90–27028 Filed 11–15–90; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3861–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements Filed November 5, 1990 Through November 9, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900411, Draft EIS, FHW, AL, Corridor X Construction, U.S. 78 Eight Miles West of Jasper near the Walker/Jefferson County Line, Funding, U.S. Coast Guard Permit and COE Section 404 Permit, Walker County, AL, Due: January 3, 1991,

Contact: Joe D. Wilkerson (205) 832–7370.

EIS No. 900412, Draft EIS, FHW, AS, Territorial Route 50 in Pago Pago Park, Construction, Funding, U.S. Coast Guard Bridge Permit, and COE Section 10 and 404 Permits, Island of Tutuila, As, Due: December 31, 1990, Contact: William R. Lake (808) 541–2700.

EIS No. 900413, Final Supplement, COE, WA, Chehalis River Flood Control Project, South Aberdeen and Cosmopolis, Design Modifications, Implementation, Gray Harbor County, WA, Due: December 17, 1990, Contact: Mike Scuderi (206) 764–3479.

EIS No. 900414, Draft EIS, UAF, AL, Anniston Army Depot On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operation, Calhoun County, AL, Due: December 31, 1990, Contact: Margaret Thompson (301) 671–3633.

EIS No. 900415, Draft EIS, FHW, CA, CA–150/Rincon Creek Two Bridges Replacement, 1.0 miles east of CA–101 to 1.9 miles east of CA–101, Funding, Santa Barbara and Ventura Counties, CA, Due: January 10, 1991, Contract: John Schultz (916) 551–1140.

EIS No. 900416, Final EIS, USN, CA, San, Diego Navy Broadway Complex Redevelopment, Implementation, CA, Due: December 17, 1990, Contact: W.M. Robinson (619) 532–3291.

EIS No. 900417, Final Supplement, EPA, CA, City of Los Angeles Wastewater Treatment Facilities Plan, Construction and Operation, Updated Information, Grant, Los Angeles County, CA, Due: December 17, 1990, Contact: John Ong (415) 744–1932.

EIS No. 900418, Final, EIS, FHW, WA, WA–509/East-West Corridor Improvements or Relocation, I–705 to East 11th Street and Marine View Drive, Funding, US Coast Guard Section 9, and US COE Sections 10 and 404 Permits, City of Tacoma, Pierce County, WA, Due: December 17, 1990, Contact: Barry F. Morehead (206) 753–2120.

Amended Notices

EIS No. 900342, Draft EIS, COE, CA, Port of Long Beach and Los Angeles Phase I 2020 Plan, Channel Improvements and Landfill Development, Implementation Los Angeles County, CA, Due: December 1, 1990, Contact, John Bellinger (202) 272–0166. Published FR 9–21–90—Review period extended.

EIS No. 900368, Draft Supplement, COE, GA, SC, Richard B. Russell Dam and Lake Project, Implementation, Updated Information on Pumped Storage Operations, Fish Protection Alternatives, Section 404 Permit, Savannah District, Several Counties, GA and Several Counties, SC, Due: January 19, 1991, Contact: David Coleman (912) 944–5792. Published FR–10–5–90—Review period extended.

Dated: November 13, 1990.

Anne N. Miller,

Director, SPAD, Office of Federal Activities.

[FR Doc. 90–27093 Filed 11–15–90; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3861–6]

Environmental Impact Statements and Regulations, Availability of EPA Comments

Availability of EPA comments prepared October 29, 1990. Through November 2, 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–COE–K36096–CA, Rating EC2, Hanson Dam Flood Control and Recreation Project, Construction, Operation, and Maintenance, San Gabriel Rivers, Los Angeles County, CA.

Summary: EPA expressed environmental concerns: the sources of water and lake design to prevent sedimentation and contamination from poor quality basin waters; impacts to wetlands and riparian areas; air quality impacts; and the need to provide mitigation to protect air quality, water quality and other natural resources.

ERP No. D–FAA–K51053–HI, Rating EC2, Kalaupapa Airport, Roadway and Wharf Improvement, Construction and Funding, Island of Molokai, Kalawao County, HI.

Summary: EPA expressed environmental concerns that increased erosion and sedimentation may have adverse impacts on water quality and near shore coral communities. EPA requested that the final EIS more fully assess project impacts on coral communities and adopt mitigation adequate to protect natural resources.

ERP No. D–UAF–K11041–CA, Rating EC2, Los Angeles Air Force Base Closure and Headquarters Space Systems Division Relocation, Implementation, COE Section 404 Permit and EPA NPDES Permit, Los Angeles County, CA.

Summary: EPA expressed environmental concerns regarding the direct and indirect impacts of base closure and realignment activities, including potential impacts on: air quality, wetlands, water supply sources, water supply systems and biological communities.

ERP No. D–UMT–G54004–TX, Rating LO, South Oak Cliff Corridor Transit Improvements, South Oak Cliff Communities to the Dallas Central Business District, Funding, Dallas County, TX.

Summary: EPA has no objections to the proposed project.

ERP No. D–USN–L11011–AK, Rating EC2, Second Relocatable-Over-The-Horizon-Radar (ROTHR) System/Surveillance Installations in the Northwest Pacific Base Camp Facilities, Improvement and Construction, Section 404 and 10 Permits, NPDES Permit, Amchitka Island, AK.

Summary: EPA has environmental concerns based on the potential for adverse environmental degradation, and lack of a wetlands mitigation plan. Additional information and clarification is needed on wetland and water quality mitigation measures.

Final EISs

ERP No. F–FHW–D40241–VA, VA–17 Bypass Extension, VA–17/29 Business to VA–17 northwest of Warrenton, Construction, Funding and COE General Permit, Town of Warrenton, Fauquier County, VA.

Summary: EPA recommended that noise abatement be reconsidered at noise barrier sites 2 and 3. EPA strongly recommends the revision of the stormwater management facilities to protect the water quality of the Warrenton Reservoir

ERP No. FS–FHW–LA0122–ID, Banks-Lowman Highway/ID Forest Highway-24 Improvement, Sweet Creek to Little Gallagher Creek, Funding, Boise County, ID.

Summary: Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F1–BLM–J61071–WY, Great Divide Resource Areas, (Formerly Medicine Bow) Land and Mineral Management Plan, Implementation and Bennett Mountain, Encampment River Canyon and Prospect Mountain WSA's Wilderness Recommendations, Designation or Nondesignation, Larmie, Carbon, Albany and Sweetwater Counties, WY.

Summary: Review of the final EIS has been completed and the project found to be satisfactory.

Regulations

ERP No. R–FRC–A03084–00. 18 CFR Parts 157 and 284; Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates (55 FR 33017).

Summary: EPA supports the proposed rule's expansion of various environmental requirements, but is concerned about continued and newly proposed exemptions of natural gas pipeline projects from National Environmental Policy Act (NEPA) analysis. EPA also requests a programmatic NEPA analysis for the overall Natural Gas Policy Act Section 311 program.

Dated: November 13, 1990.

Anne N. Miller,

Director, SPAD, Office of Federal Activities.

[FR Doc. 90–27094 Filed 11–15–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL. 3861–1]

Indiana's Application to Administer the National Pollutant Discharge Elimination System (NPDES) Pretreatment Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of application for State program revision.

SUMMARY: In a letter dated December 12, 1989, Mr. Charles Bardonner, Assistant Commissioner, Office of Water Management, Indiana Department of Environmental Management (IDEM), requested approval of the State of Indiana's Pretreatment Program. In support of that request, IDEM has submitted:

(1) A signed statement from the Indiana Attorney General that the State of Indiana has the necessary statutory and regulatory authority to implement the requirements of 40 CFR 403;

(2) Copies of all statutes and regulations cited in the Attorney General's statement;

(3) A description of the funding levels and personnel available to implement the program;

(4) A description of the procedures developed to implement the program; and

(5) A signed revision to the NPDES Memorandum of Agreement.

U.S. EPA Region V has reviewed the submittal and intends to notice its recommended approval by the Administrator once additional work years are allocated to IDEM's Pretreatment Group and certain regulatory updates are made. Specifically, IDEM must add a minimum of two-and-a-half work years to its Pretreatment Group (for a total of five), and update its State pretreatment regulations to incorporate the Pretreatment Implementation Review Taskforce (PIRT) revisions adopted by U.S. EPA on October 17, 1988, the Domestic Sewage Study (DSS) revisions adopted on July 24, 1990, and the categorical pretreatment standards for those categories not subject to the 1976 NRDC–EPA Consent Decree, (40 CFR parts 417, 418, 424, 426, 427, 428, 446, 447, 443, 458, 406 (subparts C & E), 409 (subpart A) and 412 (subparts) A & B), as well as part 414 (organic chemicals, plastics and synthetic fibers)). IDEM is in the process of addressing these concerns.

A comment period and an opportunity to request a public hearing will be provided when the intended notice of recommended approval is issued by the Administrator.

FOR FURTHER INFORMATION CONTACT: Matt Gluckman, Permits Section (5WQP), U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6089.

SUPPLEMENTARY INFORMATION: On June 16, 1978, the United States Environmental Protection Agency (U.S. EPA) promulgated the General Pretreatment Regulations (40 CFR part 403). Amendments to the General Pretreatment Regulations were promulgated on October 17, 1988 and July 24, 1990. These regulations, mandated by the Clean Water Act as amended by Public Law 100–4, 1987, govern the control of industrial wastes introduced into publicly owned treatment works (POTWs), commonly referred to as municipal sewage treatment plants. The objectives of the regulations are to: (1) Prevent introduction of pollutants into POTW's which will interfere with plant operations and/or disposal or use of municipal sludges; (2) prevent introduction pollutants into POTW's which will pass through treatment works or otherwise be incompatible with such works; and (3) improve the opportunity to recycle and reclaim municipal and industrial wastewaters and sludges.

The establishment of State pretreatment programs to supplement existing State National Pollutant Discharge Elimination System (NPDES) permit programs is required by the General Pretreatment Regulations, and is fundamental in achieving the above-stated objectives. In order to be approved, a request for State pretreatment program approval must demonstrate that the State has legal authority, procedures, available funding, and qualified personnel to implement a State Pretreatment Program as specified in § 403.10 of the regulations. The State of Indiana received NPDES permit authority on January 1, 1975. Generally, local pretreatment programs will be the primary vehicle for administering, applying, and enforcing Pretreatment Standards and Requirements for Industrial users of POTWs. The State will be the control authority and will be required to apply and enforce pretreatment standards and requirements directly against industries that discharge to POTWs where local programs are not required or have not been developed.

The Administrator's decision to approve or disapprove the proposed pretreatment program will be based on a determination of whether the proposed program meets the requirements of the Clean Water Act and 40 CFR part 403, and on comments received.

The Indiana submission may be reviewed by the public at the State of Indiana Department of Environmental Management, 105 South Meridian Street, P.O. box 6015, Indianapolis, Indiana 46206–6015, and at the U.S. EPA office in Chicago at the address appearing at the beginning of this notice. Copies of the submittal may also be obtained from these offices; a copying fee will be assessed.

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

Valdas V. Adamkus,

Regional Administrator

[FR Doc. 90–27026 Filed 11–15–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 90–478; FCC 90–331]

Commercial Television; Bozeman, MT; Bee Broadcasting Associates

AGENCY: Federal Communications Commission.

ACTION: HDO, notice of apparent liability.

SUMMARY: The Commission is designating for hearing the applications of Bee Broadcasting Associates for assignment of the construction permit of Station KCTZ(TV), Bozeman, Montana, and for the license to cover the construction permit. The Commission

was unable to grant the applications because it found a substantial and material question of fact that the station had undergone an unauthorized transfer of control, and a hearing is necessary to determine whether grant of the applications is warranted.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Mark L. Berlin, Mass Media Bureau, (202) 632-6357.

SUPPLEMENTARY INFORMATION: On October 4, 1990, the Commission adopted an Order designating the license and assignment applications (BLCT-870908KG and BAPCT-871029KH) of Bee Broadcasting Associates for hearing upon the following issues:

(a) To determine whether the permittee has undergone an unauthorized transfer of control.

(b) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether the permittee, Benny Bee, or Thom Curtis possess the requisite qualifications to be or remain a permittee of Station KCTZ(TV).

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, and pursuant to Section 309(e) of the Communications Act, whether the grant of the applications will serve the public interest, convenience, and necessity.

A copy of the complete HDO in this proceeding (FCC 90-331) is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Wasington, DC 20037 (telephone No. (202) 875-3800).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-27091 Filed 11-15-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 90-31]

Safbank Line Limited v. Valmont Industries Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Safbank Line Limited ("Safbank") against Valmont Industries, Inc. ("Valmont") was served November 9, 1990. Safbank alleges that Valmont has violated sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1) and (b)(1), by refusing to pay the applicable ocean freight for a shipment of irrigation equipment.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by November 12, 1991, and the final decision of the Commission shall be issued by March 11, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 90-26982 Filed 11-15-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

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

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

Unless otherwise noted, comments regarding each of these applications must be received not later than December 6, 1990.

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

1. *Citizens Bancorp, Inc.*, Coudersport, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Trust Company, Coudersport, Pennsylvania.

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

1. *First National BancShares, Inc.*, Williston, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank & Trust Co. of Williston, Williston, North Dakota.

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

1. *First Belleville Bancshares, Inc.*, Belleville, Kansas; to acquire 100 percent of the voting shares of Scandia State Bank, Scandia, Kansas.

Board of Governors of the Federal Reserve System, November 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26991 Filed 11-15-90; 8:45 am]

BILLING CODE 6210-01-M

First Bank Holding Company Employee Stock Ownereship Plan, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the

proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 6, 1990.

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

1. *First Bank Holding Company Employee Stock Ownership Plan,* Lakewood, Colorado; to acquire First Bank Holding Company, Lakewood, Colorado, and there by engage in the issuance and sale of money orders, traveler's checks, and savings bonds pursuant to § 225.25(b)(12); issuance and sale of official checks and domestic money orders with a maximum face value of $10,000 pursuant to Board approval dated January 12, 1987; sale of credit-related insurance through Colorado FirstBank Life Insurance Company pursuant to § 225.25(b)(8)(i); and making and servicing loans, including residential mortgage loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Haviland Bancshares, Inc.,* Haviland, Kansas; to acquire Banco Insurance Agency, Inc., Haviland, Kansas, and thereby engage in the sale of general insurance within a nine-mile radius of Haviland, Kansas, a community with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26992 Filed 11-15-90; 8:45 am]

BILLING CODE 6210-01-M

William Eugene Rowland, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

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

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 30, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *William Eugene Rowland,* Murfreesboro, Tennessee, to acquire up to 16.1 percent; Robert Bell Murfree, Murfreesboro, Tennessee, to acquire up to 15.1 percent; and William Kent Coleman, Murfreesboro, Tennessee, to acquire up to 11.8 percent of the voting shares of First City Bancorp, Inc., Murfreesboro, Tennessee, and thereby indirectly acquire First City Bank, Murfreesboro, Tennessee.

2. *Oscar Zimmerman,* Boca Raton, Florida; to retain 1.16 percent of the voting shares of First Commercial Bancorporation, Boca Raton, Florida, for a total of 10.55 percent, and thereby indirectly acquire First Commercial Bank of Florida, Boca Raton, Florida. Mr. Zimmerman also seeks prior approval to acquire additional shares, up to 24.9 percent.

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

1. *Alice L. Campbell* and Richard W. Campbell; to acquire 100 percent of the voting shares of First Belleville Bancshares, Inc., Belleville, Kansas, and thereby indirectly acquire The First National Bank in Belleville, Belleville, Kansas.

Board of Governors of the Federal Reserve System, November 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26993 Filed 11-15-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0391]

Chelsea Laboratories, Inc.; Withdrawal of Approval of Abbreviated Antibiotic Drug Application for Doxycycline Hyclate Tablets and Abbreviated New Drug Application for Ergoloid Mesylates Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of abbreviated antibiotic drug application (AADA) 62-392 for doxycycline hyclate tablets 100 milligram (mg) and abbreviated new drug application (ANDA) 88-207 for ergoloid mesylates tablets 1.0 mg, both of which are held by Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552 (Chelsea). Chelsea has requested that approval of the applications be withdrawn and has waived its opportunity for a hearing. This action stems from an independent audit sponsored by Chelsea. The audit showed that the product formulations and manufacturing procedures for the batches used in bioequivalency testing for both drug products differ from the representations that were the basis for FDA's approval of the firm's applications for the products.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: Harry T. Schiller, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of discrepancies in the data submitted by Chelsea in support of the approval of several abbreviated new drug applications. In response to FDA investigations, Chelsea undertook an audit of many of its products by contract with outside consultants. The audit of AADA 62-392 for doxycycline hyclate tablets 100 mg revealed that the batch Chelsea submitted for bioequivalency testing contained an inactive ingredient, which was not included in the formulation submitted to FDA for AADA approval or used in Chelsea's commercial production batches of this drug product. The audit of ANDA 88-207 for ergoloid mesylate tablets 1.0 mg revealed that the batch Chelsea submitted for

bioequivalency testing contained several inactive ingredients, none of which were included in the formulation submitted to FDA and ANDA approval or used in Chelsea's commercial production batches of this drug product. Additional manufacturing differences involving both drug products included alterations in the order in which ingredients were blended, blending times, and other discrepancies. Chelsea has ceased marketing and has recalled both products. In a letter dated April 2, 1990, Chelsea requested that approval of its applications be withdrawn and waived its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of abbreviated antibiotic drug application 62–392 and abbreviated new drug application 88–207, and all amendments and supplements thereto, is hereby withdrawn, effective November 16, 1990.

Dated: November 7, 1990.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 90–27070 Filed 11–15–90; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Immunology Devices Panel

Date, time and place. December 6, 1990, 10 a.m., and December 7, 1990, 9 a.m., room 503–A, Hubert A. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, December 6, 1990, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; open committee discussion, December 7, 1990, 9 a.m. to 12 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Drive, Rockville, MD 20850, 301–427–1096

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 23, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addressed of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 6, 1990, the committee will discuss a premarket approval application (PMA) for a device used to quantify a tumor marker as an aid in the prognosis and management of established prostate cancer patients. If necessary, discussion will continue on December 7, 1990.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. December 13 and 14, 1990, 9 a.m., John Masur Auditorium, Building 10, National Institutes of Health, 900 Rockville Pike, Bethesda, MD. Parking in the Clinical Center visitor area is reserved for clinical center patients and their visitors. If you must drive, please use an outlying lot such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clinical center every 8 minutes during rush hour and every 15 minutes at other times.

Type of meeting and contact person. Open public hearing, December 13, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion 10 a.m. to 5 p.m.; open committee discussion, December 14, 1990, 9 a.m to 4 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211 or 301–443–4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 29, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 13, 1990, the committee will discuss Betapace tablets (sotalol hydrochloride), new drug application (NDA) 19–865, Bristol Myers Co., for use in cardiac arrhythmias, and Kerlidex tablets (betaxolol HC1/chlorthalidone), NDA 19–807, Lorex Pharmaceuticals, for use in hypertension. On December 14, 1990, the committee will discuss ticlopidine (ticlid), NDA 19–979, Syntex, indicated for use in risk reduction of threatened and recurrent stroke; the committee will also review proposed revised labeling for antiarrhythmic drugs.

Anti-Infective Drugs Advisory Committee Subcommittee on Ophthalmic Drugs

Date, time, and place. December 17, 1990, 8 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; Gretchen Hascall, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695. A meeting agenda and list of committee members will be available upon request.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 30, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. From 9 a.m. to 1 p.m., the committee will discuss clinical studies of ophthalmic quinolones in the treatment of conjunctivitis and corneal ulcers. From 2 p.m. to 4 p.m., the committee will discuss whether a vasoconstrictor/antihistamine ophthalmic drug product should be marketed as an over-the-counter product.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 13, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–27073 Filed 11–15–90; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1990.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: December 8–11, 1990, 6 p.m.

Place: Johnson and Wales Airport Hotel, 2081 Post Road, Warwick, Rhode Island 02886. The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: Registration is from 6–7 p.m. in the main lobby of the hotel. After registration there will be a presentation by Audrey F. Manley, M.D., M.P.H., Deputy Assistant Secretary for Health, Department of Health and Human Service; Bureau of Health Care Delivery and Assistance and NHSC update by Donald L. Weaver, M.D.; and an NHSC Region I update by Mr. Wayne Opel. The meeting on Sunday will begin at 8:30 a.m. and adjourn at 5 p.m. On Monday, the meeting will be from 8:30–11:30 a.m. Monday afternoon, the Council will be visiting health centers and Brown University in the Providence, Rhode Island area. No transportation will be provided for visitors and observers. The Tuesday meeting will begin at 8:30 a.m. and adjourn at 2 p.m. Topics of discussion will be strategies for fulfilling primary care manpower needs, NHSC scholarships and Loan Repayment.

Anyone requiring information regarding the subject Council should contact Anna Mae Voigt, National Advisory Council on the National Health Service Corps, room 7A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

Agenda Items are subject to change as priorities dictate.

Dated: November 9, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90–26997 Filed 11–15–90; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, November 2, 1990.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. Qualifications Evaluation Inquiry Form—0925–0036—The Qualification Evaluation Inquiry Form for Health Scientist Administrators and Grants Associates is used to supplement the

SF–171 and is used by panel members and selecting officials in the rating and selection process. *Respondents:* Individuals or households, Federal agencies or employees; *Number of Respondents:* 374; *Number of Responses per Respondent: 1; Average Burden per Response:* .116 hours; *Estimated Annual Burden:* 44 hours.

2. National Disease Surveillance Program—II. Disease Summaries—0920–0004—Surveillance data are essential to measure trends in disease incidence and evaluate effectiveness of prevention efforts. State and territorial health departments compile these summaries from data collected during disease investigations and from data furnished by local health departments. *Respondents:* State or local governments; Number of Respondents: 63; *Number of Responses per Respondent:* 294.61; *Average Burden per Response:* 267 hours; *Estimated Annual Burden:* 4,964 hours.

3. The Cohort Surveys for the Community Intervention Trial for Smoking Cessation (COMMIT)—0925–0309—The National Cancer Institute (NCI) is undertaking the Community Intervention Trial for Smoking Cessation (COMMIT). This large scale trial will test community-based strategies to produce long-term cessation among smokers, particularly heavy smokers. Clearance is herein being requested for the continued fielding of cohort surveys which assess and monitor the progress of this trial. *Respondents:* Individuals or households.

	No. of respondents	No. of hours per response	No. of responses per respondent
Evaluation Cohort Surveys	8,000	0.1898	1
Endpoint Cohort Surveys	15,644	0.0833	1

Estimated Annual Burden—2,822 hours.

4. Case Control Study of Risk Factors for Listeriosis—0920–0247—This study focuses on classifying certain foods as well as behaviors as risk factors for developing Listeriosis Monocytogenes. Respondents will complete a questionnaire designed to determine food preparation habits. Results from this study will assist health professionals to develop educational programs designed to reduce morbidity from listeriosis. *Respondents:* Individuals or households; *Number of Respondents:* 450; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .36 hours; *Estimated Annual Burden:* 163 hours.

5. The Prevalence of Alcohol and Other Drug Abuse and Dependence in Short-Term General Hospitals and the Impact of Abuse and Dependence on Hospital Utilization, Charges and Costs—new—The purpose of this study is to determine the national prevalence of alcohol abuse/dependence and other drug abuse among hospital inpatients and the associated costs. This information is needed to inform health policy and to provide a basis for educational programs targeted toward physicians and other health professionals. The study will be based on a representative national sample of short-term, non-Federal hospitals and patients within these hospitals. *Respondents:* Individuals or households, Businesses or other for-profit, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Hospital Inpatients	1,836	18	1
Hospitals	12	21.0	1

Estimated annual burden—575 hours.

6. 1991 National Health Interview Survey—0920–0214—The National Health Interview survey, an ongoing survey of the civilian, non-institutionalized population, monitors the Nation's health. The 1991 NHIS will include supplements on "Year 2000 Objectives", "Drug Use", "Income", and "AIDS Knowledge and Attitudes". *Respondents:* Individuals or households; *Number of Respondents:* 48,500; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1.59 hours; *Estimated Annual Burden:* 76,970 hours.

7. Survey of Preventive Medicine Residency Program Graduates—New—A survey of physicians who were graduated from preventive medicine residency programs will be conducted. The purpose is to determine the nature of the medical activities engaged in and the extent to which these physicians continue their involvement in public health. *Respondents:* Individuals or households; *Number of Respondents:* 1,336; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.167 hours; *Estimated Annual Burden:* 223 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: November 9, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90–26998 Filed 11–15–90; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on October 19, 1990.

(Call Reports Clearance officer on (301) 965–4149 for copies of package)

1. Request To Be Selected As Payee—0960–0014—The information collected on the form SSA–11–BK is used by the Social Security Administration to help determine the proper payee for a person who cannot receive or who is otherwise unable to manage his/her Social Security, Black Lung or Supplemental Security Income benefits. The affected public consists of individuals and/or institutions filing on behalf of someone else.

Number of respondents: 605,000.

Frequency of response: 1.

Average burden per response: 10.5 minutes.

Estimated annual burden: 105,875 hours.

OMB desk officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: November 13, 1990.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 90-26976 Filed 11-15-90; 8:45 am]

BILLING CODE 4190-11-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-98]

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: November 16, 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 Service (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 avialable to the homeless for use on an interim basis the propety 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: Dept. of Interior: Lola D. Knight, Department of Interior, 18th and C Sts. NW., Mailstop 5512, Washington, DC 20240; (202) 343-2704; U.S. Army: HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; room 1E671 Pentagon, Washington, DC 20360-2600; (202) 693-4583; Corps of Engineers: Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW., Washington, DC 20415-1000; (202) 272-1750; 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 toll-free numbers.)

Dated: November 9, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Suitable Land (by State)

Washington

NOAA Western Regional Center
7600 Sand Point Way, NE
Seattle, Wa, Co: King
Landholding Agency: Commerce
Property Number: 279040001
Status: Unutilized Comment: 35 acres with 6000 sq. ft.; two story wood frame Bldg. #7; presence of asbestos; structurally deteriorated.

Suitable Buildings (by State)

Alabama

Federal Building
109 W. Columbus Avenue
Vernon, Al, Co: Lamar
Landholding Agency: GSA
Property Number: 549040003
Status: Excess
Comment: 7774 sq. ft.; 2 story brick frame; most recent use—post office; possible asbestos on pipe joints.
GSA NO. 4-G-AL-572

Colorado

Peterson House
Bear Creek Lake Project
Lakewood, CO, Co: Jefferson
Location: Highway 8 or Morrison Road—2 miles west of Kipling Intersection.
Landholding Agency: COE
Property Number: 319040003
Status: Excess
Comment: 1200 sq. ft.; one story wood frame with basement; needs repair; off-site use only.

Georgia

Bldg. 34421
Fort Gordon

Augusta, GA, Co: Richmond
Location: Located on Kilbourne between Brainard and Avenue of State.
Landholding Agency: Army
Property Number: 219040376
Status: Unutilized
Comment: 4524 sq. ft.; two story wood frame; needs major rehab; off-site use only.

Bldg. 40422
Fort Gordon
Augusta, GA, Co: Richmond
Location: Located on Brainard Avenue between 40th and 42nd street.
Landholding Agency: Army
Property Number: 219040377
Status: Unutilized Comment: 4524 sq. ft.; two story wood frame; needs major rehab; off-site use only.

Bldg. 40424
Fort Gordon
Augusta, GA, Co: Richmond
Location: Located on Brainard Avenue between 40th and 42nd street.
Landholding Agency: Army
Property Number: 219040378
Status: Unutilized
Comment: 4524 sq. ft.; two story wood frame; most recent use—storage; needs major rehab; off-site use only.

Kentucky

Bldg. 2
Green River Lake
544 Lake Road
Campbellsville, KY, Co: Taylor
Landholding Agency: COE
Property Number: 319040005
Status: Unutilized
Comment: 1620 sq. ft.; one story brick veneer residence; presence of asbestos; off-site use only.

Bldg. 1
Green River Lake
544 Lake Road
Campbellsville, KY, Co: Taylor
Landholding Agency: COE
Property Number: 319040006
Status: Unutilized
Comment: 1620 sq. ft.; one story brick veneer residence; presence of asbestos; off-site use only.

Mobile Home
Kentucky River Lock and Dam Number 2
Highway 389
Lockport, KY, Co: Henry
Landholding Agency: COE
Property Number: 319040007
Status: Unutilized
Comment: 792 sq. ft.; one story mobile home; off-site use only.

Storage Building
Kentucky River Lock and Dam Number 2
Highway 389
Lockport, KY, Co: Henry
Landholding Agency: COE
Property Number: 319040008
Status: Unutilized
Comment: 40 sq. ft.; metal storage building; needs rehab; off-site use only.

Bldg. 2
Kentucky River Lock and Dam Number 4
1021 Kentucky Avenue
Frankfort, KY, Co: Franklin
Landholding Agency: COE
Property Number: 319040010
Status: Unutilized
Comment: 1613 sq. ft.; 2 story wood frame residence; needs rehab; off-site use only.

Garage
Kentucky River Lock and Dam Number 4
1021 Kentucky Avenue
Frankfort, KY, Co: Franklin
Landholding Agency: COE
Property Number: 319040011
Status: Unutilized
Comment: 528 sq. ft.; wood frame; most recent use—garage/storage; needs rehab; off-site use only.

Bldg. 1
Kentucky River Lock and Dam Number 4
1021 Kentucky Avenue
Frankfort, KY, Co: Franklin
Landholding Agency: COE
Property Number: 319040012
Status: Unutilized
Comment: 1613 sq. ft.; 2 story wood frame; needs rehab; off-site use only.

Maryland

Bldg. 166
Fort George G. Meade
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219040367
Status: Underutilized
Comment: 4720 sq. ft.; two story wood frame; possible asbestos; intermittent use only; secured with alternate access.

Bldg. 2466
Fort George G. Meade
5th Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219040373
Status: Unutilized
Comment: Two story wood frame; most recent use—storage; needs rehab; possible asbestos; secured with alternate access.

Bldg. 2713
Fort George G. Meade
Earnie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219040374
Status: Unutilized
Comment: 2284 sq. ft.; 1 story wood frame; most recent use—storage; structurally unsound; possible asbestos; secured with alternate access.

Bldg. 6209
Fort George G. Meade
Corners Rock and Taylor avenue
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219040375
Status: Unutilized
Comment: One story; most recent use—storage; needs major rehab; possible asbestos; secured with alternate access.

Oklahoma

Bldg. T–834
Fort Sill
834 McComb Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219040356
Status: Excess
Comment: 3963 sq. ft.; one story wood frame; most recent use—stables, possible asbestos; needs rehab.

Bldg. TM865
Fort Sill
865 McComb Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219040357
Status: Unutilized
Comment: 41513 sq. ft.; wood and sand structure, most recent use—riding pen; no utilities.

Bldg. T–1434
Fort Sill
1434 King Road
Lawton, OK, Co: Comanche
Landholding Agency: Agency
Property Number: 219040358
Status: Unutilized
Comment: 2500 sq. ft.; one story wood frame; most recent use—youth center; needs rehab; possible asbestos.

Bldg. T–1435
Fort Sill
1435 King Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219040359
Status: Unutilized
Comment: 3068 sq. ft.; one story wood frame; most recent use—youth center; needs rehab; possible asbestos.

Bldg. P–1436
Fort Sill
1436 King Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219040360
Status: Unutilized
Comment: 4000 sq. ft.; two story concrete block; most recent use—youth center; needs rehab; possible asbestos.

Bldg. PM 5055
Fort Sill
5055 Post Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 21904361
Status: Unutilized
Comment: 5616 sq. ft.; concrete slabs/tennis courts; no utilities.

South Dakota

Fort Randall Dam
Lake Francis Case Project
Chamberlain, SD, Co: Brule
Location: Exit 265 off I–90 then 2 miles west—1 mile south—2½ miles west then 1½ mile north on private road.
Landholding Agency: COE
Property Number: 319040002
Status: Excess
Comment: 800 sq. ft., two story concrete block; needs major rehab; off-site use only.

Texas

Bldg. 56318
Fort Hood
Avenue D
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219040364
Status: Unutilized
Comment: 8509 sq. ft.; one story; most recent use—classroom/assembly hall; potential utilities; structurally deteriorated.

Bldg. T09021
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040382
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—billeting facility; possible lease restrictions.

Bldg. T09022
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040383
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—billeting facility; possible lease restrictions.

Bldg. T09023
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040384
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—billeting facility; possible lease restrictions.

Bldg. T09024
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040385
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—billeting facility; possible lease restrictions.

Bldg. T09025
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040386
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—recreation billeting facility; possible lease restrictions.

Bldg. T09026
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040387
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—general storehouse; possible lease restrictions.

Bldg. T09027
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040388
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—general storehouse; possible lease restrictions.

Bldg. T09033
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040389
Status: Unutilized
Comment: 1078 sq. ft.; one story metal frame; most recent use—3 sided storage shed; possible lease restrictions.

Bldg. S9035
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040390
Status: Unutilized
Comment: 480 sq. ft.; one story metal frame; most recent use—boat house; limited utilities; possible lease restrictions.

Bldg. 9036
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040391
Status: Unutilized
Comment: 747 sq. ft.; one story concrete block; most recent use—service office; possible lease restrictions.

Bldg. S9037
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040392
Status: Unutilized
Comment: 695 sq. ft.; one story concrete block; most recent use—bath house; possible lease restrictions.

Bldg. T9038
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040393
Status: Unutilized
Comment: 800 sq. ft.; one story wood frame; most recent use—exchange branch; possible lease restrictions.

Bldg. 9039
Possum Kingdom Rec Area
Star Route Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040394
Status: Unutilized
Comment: 3380 sq. ft.; one story wood frame; most recent use—billeting facility; possible lease restrictions.

Bldg. 9040
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040395
Status: Unutilized
Comment: 4656 sq. ft.; two story wood frame; most recent use—billeting facility; possible lease restrictions.

Bldg. 9041
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040396
Status: Unutilized
Comment: 6920 sq. ft.; two story wood frame; most recent use—billeting facility; possible lease restrictions.

Bldg. 9043
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040398
Status: Unutilized
Comment: 134 sq. ft.; one story metal frame; most recent use—water treatment building; possible lease restrictions.

Bldg. 9048
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040401
Status: Unutilized
Comment: 1223 sq. ft.; one story concrete block; possible lease restrictions; most recent use—water treatment building.

Bldg. S85210
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040402
Status: Unutilized
Comment: 6248 sq. ft.; possible lease restrictions; most recent use parking area.

Virginia

Bldg. T–11802
U.S. Army Logistics Center and Fort Lee
"A" Avenue
Fort Lee VA
Landholding Agency: Army
Property Number: 219040355
Status: Excess
Comment: 4682 sq. ft.; one story; most recent use—golf club house; possible asbestos; structurally deteriorated; off-site use only

Bldg. T–1329
U.S. Army Logistics Center and Fort Lee
"B" Avenue
Fort Lee VA
Landholding Agency: Army
Property Number: 219040362
Status: Unutilized
Comment: 1525 sq. ft.; one story; structurally deteriorated; fire damage; presence of asbestos; off-site use only.

Washington

Haas Barn
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor
Landholding Agency: Interior
Property Number: 619040001
Status: Excess
Comment: 1408 sq. ft.; one story wood frame barn; potential utilities poor condition; off-site use only.

Haas Shed
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor
Landholding Agency: Interior
Property Number: 619040002
Status: Excess
Comment: 480 sq. ft.; wood frame shed; poor condition; off-site use only.

Haas Shed
% Quinault Ranger Station

Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor
Landholding Agency: Interior
Property Number: 619040003
Status: Excess
Comment: 64 sq. ft.; wood frame shed; poor condition; off-site use only.

Haas Residence
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor
Landholding Agency: Interior
Property Number: 619040006
Status: Excess
Comment: 624 sq. ft.; one story wood frame residence; potential utilities; poor condition; off-site use only.

Bldg. 1323
Jensen Barn
% Quinault Ranger Station, Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor
Landholding Agency: Interior
Property Number: 619040007
Status: Excess
Comment: 4200 sq. ft.; wood frame barn; most recent use—storage; no utilities; off-site use only.

Universe of Properties:
Total = 69
Suitable = 50
Suitable Buldings = 49
Suitable Land = 1
Unsuittable = 19
Unsuitable Buldings = 17
Unsuitable Land = 2
Number of Resubmissions = 0

[FR Doc. 90–26981 Filed 11–15–90 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–01–4740–10–CDLE]

Temporary Closure of Public Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of public lands in San Bernardino County, CA.

SUMMARY: Notice is hereby given that certain Public Lands in California that were used previously as courses and starting, pitting, spectating, and finishing areas for the Barstow to Los Vegas (B–V) Motorcycle Race, will be closed from November 21 through December 2, 1990 to all vehicle use. This closure begins on Public Lands north of I–15 in the Alvord Road area. From this location the closure covers the various routes and pit areas of previous Barstow to Vegas races, traveling in a generally northeasterly direction to the Nevada State border.

Order: Effective at 0001 hours (12:01 a.m., PST) Wednesday, November 21 through 2400 hours (Midnight, pst) Sunday, December 2, 1990, all Public Lands used for course routes, starting, pitting, spectating, and finishing areas for the Barstow to Las Vegas motorcycle race will be closed to vehicles. The legal land descriptions for the start, spectator, and pit areas affected by this closure are as follows:

San Bernardino Meridian:

T.10 N, R.3 E, sec. 1, 2, 3, 10, 11, 12, 14, 15.
T.10 N, R.4 E, sec. 5, 6, 7.
T.11 N, R.3 E, sec. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36.
T.11 N, R.4 E, sec. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32.
T.12 N, R.3 E, sec. 22, 23, 24, 25, 26, 27, 34, 35, 36.
T.12 N, R.4 E, sec. 19, 20, 29, 30, 21, 32.
T.15 N, R.8 E, sec. 19, 20, 29, 30.
T.12 N, R.7 E, sec. 11, 12, 13, 14.
T.15 N, R.10 E, sec. 2, 3, 10, 11.
T.17 N, R.15 E, sec. 7.

A map showing vehicle routes of travel affected by this closure is available from any of the offices listed below.

No person may use, drive, move, transport, let stand, park, or have charge or control over any type of motorized vehicle within this closure area. Exemptions to this order are granted to employees of valid right of way holders in the course of normal duties associated with maintenance of the right of way. All other exemptions to this order are by written authorization of the California Desert District Manager and Barstow and Needles Area Managers.

BACKGROUND: The purpose of this temporary closure is to protect all Public Land resources on or adjacent to Barstow to Las Vegas race courses and associated areas from the impacts of unauthorized vehicle use. Resources most critical to these areas are the desert tortoise and its habitat. The desert tortoise is listed as a threatened species under the Federal Endangered Species Act and is afforded increased protection under the terms of the Act. The environmental assessment prepared for this closure action has shown there will be no significant impacts to recreational use or the natural environment as a result of this closure.

EFFECTIVE DATE: This closure will be in effect from 0001 hours (12:01 a.m., PST) Wednesday, November 21, 1990 through 2400 hours (Midnight, PST) Sunday December 2, 1990.

FOR FURTHER INFORMATION CONTACT:

District Manager, California Desert District, 1695 Spruce St., Riverside, CA 92507, 714–276–6394
Area Manager, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, 619–256–3591
Area Manager, Needles Resource Area, 101 W. Spikes Road, Needles, CA 92363, 619–326–3896

SUPPLEMENTARY INFORMATION: The environmental assessment and maps showing the areas affected by this closure order is available by contacting the aforementioned offices.

Authority for this temporary closure and use restrictions is found in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed $1000 and/or 12 months in jail.

Dated: November 9, 1990.

Gerald E. Hillier,
District Manager.

[FR Doc. 90–27112 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–40–M

Bureau of Land Management

[G–910–G1–0406–4214–10; NMNM 55234]

Amended Record of Decision (ROD), Waste Isolation Pilot Plant (WIPP) Project; NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Amended, ROD, WIPP.

SUMMARY: The BLM's ROD for the WIPP Project Final Environmental Impact Statement was published in the **Federal Register** (FR) on September 19, 1990, implementing the Department of Energy's (DOE's) Proposed Action by recommending that the Secretary of Interior approve the DOE's request for an amended administrative withdrawal for the WIPP. The ROD is amended as outlined in the Supplementary Information listed below.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504–1449, 505–988–6071.

SUPPLEMENTARY INFORMATION: The FR notice appearing in FR Doc. 90–22097, published at pages 38586 and 38587, in the issue of Wednesday, September 19, 1990, (Vol. 55 No. 182), is hereby amended as follows:

On page 38586, column 2, the sentence beginning 10 lines from the bottom of the page reading: "Approval of the administrative withdrawal State and Federal Agencies." is hereby deleted. In its place insert: "The Public Land Order (PLO) for the WIPP withdrawal if approved, will contain the following stipulation: No transuranic or other forms of radioactive waste will be transported to or emplaced at the WIPP

until such time as the DOE has obtained all required permits and provided copies to the Department of Interior (DOI), BLM, or certifies that all environmental permitting requirements have been met, and the BLM issues a Notice to Proceed."

On page 38587, column 3, paragraph D., Mitigation and Monitoring, the last sentence is deleted. In its place insert: "No transuranic or other forms of radioactive waste will be transported to or emplaced at the WIPP until such time as the DOE has obtained all required permits and has provided copies to the DOI, BLM, or certifies that all environmental permitting requirements have been met, and the BLM issues a Notice to Proceed."

Dated: November 7, 1990.

Larry L. Woodard,

State Director.

[FR Doc. 90-27108 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-FB-M

[NV-050-91-4210-02]

Las Vegas District Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior Notice is hereby given in accordance with Public Law 920463 that a meeting of the Bureau of Land Management, Las Vegas District Advisory Council will be held December 11, 1990, at 9 a.m. to 3 p.m. in the Las Vegas BLM District Office, Las Vegas, Nevada.

The meeting agenda will include:

1. Observe ongoing Wild Horse and Burro adoption.
2. Tortoise Habitat Conservation Plan—Update and Progress.
3. Rocky Gap Road.
4. Stateline Resource Management Plan—Progress Report.
5. Sandy Valley Sanitary Landfill Closure.

Advisory Council Meetings are open to the public. Persons wishing to make oral statements to the Council must notify the District Manager, Bureau of Land Management, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89125, prior to December 7, 1990.

Minutes of the meeting will be available, upon request, at the Las Vegas District Office on December 21, 1990.

Dated: November, 7, 1990.

Gary Ryan,

Associate District Manager, Las Vegas, Nevada.

[FR Doc. 90-27109 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-HC

[MT-060-01-4320-02]

Lewistown District Grazing Advisory Board Meetings

AGENCY: Bureau of Land Management, Lewistown District, Interior.

ACTION: Notice of Grazing Advisory Board meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet December 18, 1990. The agenda will be:

10 a.m.—Introduction and Welcome
10:15 a.m.—Fiscal Year 1991 Range Improvements
11 a.m.—Preferred Alternative, Judith, Valley, Phillips Resource Management Plan
12 noon—Lunch
1 p.m.—Preferred Alternative (continued)
2 p.m.—Payment of Fees
2:30 p.m.—Grazing Fee Distributions to Counties
3:30 p.m.—Adjourn

Public comment will be sought at the end of each agenda item.

LOCATION: Bureau of Land Management, Airport Road, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Wayne Zinne, District Manager, Bureau of Land Management, 80 Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Grazing Advisory Board is authorized under the Federal Advisory Committee.

Act, 5 U.S.C., Appendix 1. The board advises the Lewistown District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Dated: November 5, 1990.

Wayne Zinne,

District Manager.

[FR Doc. 90-27098 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-DN-M

[OR-050-4320-02; GP1-035]

Grazing Advisory Board Meeting, Prineville, Oregon District

November 5, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Grazing Advisory Board Meeting Thursday, December 13, 1990, 10 a.m.

SUMMARY: There will be a meeting of the Prineville Oregon District, Bureau of Land Management Grazing Advisory Board on Thursday, December 13, 1990 at 10 a.m. in the District Office conference room. Topics for discussion will be:

1. The impacts to the range program as a result of current funding levels
2. Rangeland project update for fiscal years 1990 and 1991
3. Summary of allotment evaluations completed in fiscal year 1990 and those to be completed in fiscal year 1991
4. Proposed staffing changes in the district which will affect the rangeland management program
5. Completion report for the Bridge Creek Public Lands Restoration Task Force volunteer project
6. New procedures related to late payment of grazing fees
7. Programs report on various Coordinated Resource Management Plan (CRMP) efforts in the district

Following completion of the above agenda and adjournment of the District Grazing Advisory Board, the Taylor Grazing Board for Crook and Deschutes counties will meet to discuss allocation of federal grazing receipts.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, District Manager, BLM Prineville District Office, 185 E. 4th Street, Prineville, OR 97754 (Telephone: 503-447-4115).

James L. Hancock,

District Manager.

[FR Doc. 90-27099 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-33-M

[NM-060-01-4351-11-600]

Intent of Interim Road and Area Closures; Fort Stanton Reservation, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent of interim road and area closures at the Fort Stanton Reservation.

SUMMARY: Pursuant to 43 CFR part 8364. the Bureau of Land Management (BLM) will temporarily close roads and access areas to off-road motorized vehicle use in areas of public lands in the Roswell Resource Area.

DATE: This action is effective December 1, 1990, and will remain in effect until approval of the Final Roswell Resource Area Resource Management Plan.

ADDRESSES: Maps showing the location of designated routes and information pertaining to the above closures will be available at the BLM Roswell Resource Area Office, Federal Building, 5th and Richardson; BLM Roswell District Office, 1717 West 2nd St., Roswell, New Mexico; and the U.S. Forest Service Smokey Bear Ranger District, 901 Mechem Drive, in Ruidoso, New Mexico.

FOR FURTHER INFORMATION CONTACT: Saundra L. Porenta, Area Manager, Roswell Resource Area. P.O. Drawer 1857, Roswell, New Mexico 88202–1857, Telephone (505) 624–1790.

SUPPLEMENTARY INFORMATION: Approximatelyy 12 miles of roads and trails within the Ft. Stanton Reservation will be closed and temprary off-road motorized vehicle use closures will be imposed over the following described areas.

Vehicular use will be restricted to designated roads and trails delineated on maps available from the Bureau of Land Management.

New Mexico Principal Meridian

Fort Stanton Reservation

T. 9 S., R. 14 E.,
Surveyed and unsurveyed portions of secs. 13, 14, 23, 24, 26–29, incl., 32, 33, and 36., and protracted secs. 25, 34, and 35.
T. 10 S., Range 14 E.,
Surveyed and unsurveyed portions of secs. 1, 2, 3, 9–15, incl., 22, and protracted secs. 3 and 4.
T. 10 S., R. 15 E.,
Protracted secs. 19, 30, and 31.
T. 10 S., R. 15 E.,
Surveyed and unsurveyed portions of secs. 5, 6, and 7.

The area is generally the west half of the Reservation bounded by New Mexico Highway 214 on the east, the south and west Reservation boundaries, and the Reservation boundary and State Highway 380 on the north.

This temporary road and area closure will be in effect for a period from December 1, 1990, until the Final Resource Management Plan for the Roswell Resource Area is approved. The purpose of the closure and restriction is to prevent excessive erosion of fragile soils, provide protection of wildlife habitat and riparian areas, protect a Federally-listed endangered cactus, protect important cultural sites, preserve scenic values, promote safety, and prevent the development of new travelways. Motorized vehicle access for administrative purposes by Federal and State agencies may be approved by the authorized officer. Only lands within the boundary of the Fort Stanton Reservation are affected by this action.

Dated: November 9, 1990.

David L. Mari,

Associate District Manager.

[FR Doc. 90–27102 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–FB–M

[D–943–00–4212–13; IDI–22680]

Order Providing for Opening of Public Land; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens lands received in a private exchange to the land, mining, and mineral leasing laws.

EFFECTIVE DATE: December 5, 1990.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been reconveyed to the United States:

Boise Meridian

T. 7 N., R. 37 E.,
Sec. 23, NW¼NW¼.
T. 8 N., R. 38 E.,
Sec. 27, E½NW¼.
T. 8 N., R. 39 E.
Sec. 18, lots 1 and 2.

The areas described aggregate 186.43 acres in Fremont and Jefferson Counties.

2. At 9 a.m. on December 5, 1990, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 5, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on December 5, 1990, the lands described in paragraph 1 will be opened to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 29, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–27044 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–66–M

Realty Action; Lassen County, CA

AGENCY: Bureau of Land management, Department of the Interior, Susanville, California.

ACTION: Amendment of notice of realty action; exchange of public lands in Lassen County, California (CACA 22471).

SUMMARY: The Notice of Realty Action (CACA 22471) published in the **Federal Register** on February 1, 1990 (55 FR 3491–92) is hereby amended to add the following public lands to the lands to be treated to Henry Schechert through an exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

T. 29 N., R. 14 E., M.D.M.
Section 4, NESW. (40 acres)

These lands have been examined and found suitable for disposal by exchange. An environmental analysis, including a cultural resources clearance and threatened/endangered species clearance, has been completed for this parcel. Those documents are available for review at the Bureau of Land Management, 705 Hall Street, Susanville, CA 96130.

COMMENTS: For a period of 45 days from the date of publication of this amended notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130. Comments will be evaluated by the California State Director of the Bureau of Land Management, who may affirm, vacate or modify this amendment.

INFORMATION: For additional information on this matter, call or write Peter Humm, District Realty Specialist, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130. Telephone (916) 257–5381.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 90–27100 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–40–M

[CA-940-01-4212-12; CACA 21579]

California; Realty Action; Exchange of Public and Private Lands in Riverside, Imperial, Mendocino, Trinity, and San Bernardino Counties and Order Providing for Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and opening order.

ADDRESSES: Inquiries concerning the land should be addressed to Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (room E-2841), Sacramento, California 95825.

SUMMARY: The purpose of this exchange was to acquire lands within a variety of special management areas identified by the Bureau of Land Management including the East Mojave National Scenic Area, Mule Mountain Long Term Visitor Area, Imperial Sand Hills Recreation Area, Mammoth Wash Off-Highway-Vehicle Area and Yolla Bolly—Middle Eel Wilderness Area.

FOR FURTHER INFORMATION CONTACT: Mike DeKeyrel, Barstow Resource Area, Bureau of Land Management, 150 Coolwater Lane, Barstow, CA 92311, Telephone (619) 256-3591.

1. The United States issued land exchange conveyance documents to the State of California on September 28, 1988, pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described lands:

San Bernardino Meridian, California

T. 9 N., R. 2 E.,
Sec. 26, S½SW¼, SW¼SE¼, S½NE¼ SE¼SE¼, S½NW¼SE¼SE¼, S½SE¼ SE¼;
Sec. 27, S½SE¼;
Sec. 34, lots 1 and 3;
Sec. 35, lots 1–4, inclusive.
T. 2 N., R. 5 E.,
Sec. 1, lot 2 NE¼, lot 2 NW.
T. 9 N., R. 2 W.,
Sec. 8, NE¼SW¼.
T. 6 N., R. 3 W.,
Sec. 10, NW¼SW¼;
Sec. 21, NW¼;
Sec. 26, E½NE¼.
T. 6 N., R. 4 W.,
Sec. 24, E½SW¼SW¼, SE¼SW¼.

The areas described contain 847.41 acres in San Bernardino County.

2. In exchange for the lands described in paragraph 1, on January 3, 1990, the United States accepted title to the following described private lands from the State of California.

Mount Diablo Meridian, California

T. 25 N., R. 12 W.,
Portion of Tract 74 (formerly described as the NW¼NW¼, S½NW¼, SW¼ sec. 36).

San Bernardino Meridian, California

T. 9 N., R. 11 E.,
Secs. 16, 36, all.
T. 10 N., R. 11 E.,
Sec. 16, all.
T. 10 N., R. 12 E.,
Secs. 16, 36, all.
T. 12 S., R. 16 E.,
Sec. 36, all.
T. 13 S., R. 17 E.,
Sec. 36, NW¼, SW¼ (excepting 17.13 acres previously conveyed to the United States), SE¼.
T. 13 S., R. 17½ E.,
Sec. 36, all.
T. 14 S., R. 18 E.,
Sec. 16, all.
Sec. 36, NE¼, N½SE¼, SE¼SE¼.
T. 8 S., R. 20 E.,
Sec. 16, all.

The areas described contain 6,782.87 acres in Mendocino, Trinity, Imperial, Riverside, and San Bernardino Counties.

3. The above land descriptions contain exceptions too numerous to list here. A precise description of the exceptions is available in the case file CACA 21579 in the California State Office.

4. The appraised value of the non-Federal land is $671,000; the Federal land is $670,990.50. The value difference of $9.50 is approximately .00001 percent of the total Federal land value and qualifies under the cash equalization waiver provision under section 9 of the Federal Land Exchange Facilitation Act of 1988 (102 Stat. 1086). Therefore an equalization payment between the non-Federal and Federal lands is not required.

5. At 10 a.m. on December 17, 1990, the following lands acquired in the exchange shall be open to operation of the public land laws, to location under the United States mining laws and to the provisions of the mineral leasing laws, subject to valid existing rights and applicable law. All mineral locators assume the responsibility for assuring that the minerals being located were actually acquired by the United States.

San Bernardino Meridian, California

T. 9 N., R. 11 E.,
Secs. 16, 36, all.
T. 10 N., R. 11 E.,
Sec. 16, all.
T. 10 N., R. 12 E.,
Secs. 16, 36, all.
T. 12 S., R. 16 E.,
Sec. 36, all.
T. 13 S., R. 17 E.,
Sec. 36, NW¼, SW¼ (excepting 17.13 acres previously conveyed to the United States), SE¼.
T. 13 S., R. 17½ E.,
Sec. 36, all.
T. 14 S., R. 18 E.,
Sec. 16, all.
Sec. 18, NE¼, N½SE¼, SE¼SE¼.
T. 8 S., R. 20 E.,
Sec. 16, all.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 90-27096 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-01-4212-14; CACA 25287]

California Desert District, Realty Action; Non-Competitive (Direct) Sale of Public Land and Partial Revocation of Small Tract Classification, Serial Number CACA 25287, San Bernadino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive (direct) sale of public land, CACA 25287.

SUMMARY: The public land described below has been examined and found suitable for disposal under sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719):

San Bernardino Meridian, California

T. 3 N., R. 4 E.
Sec. 14, W½NW¼SE¼SW¼;

Containing 5.00 acres.

The parcel will be offered by direct sale to Arnold and Stella Goularte, the owners of contiguous land and who own improvements inadvertently located on the public land.

The sale will be made on or about January 15, 1991. The appraised fair market value of the parcel is 7,000 dollars.

All mineral interests will be conveyed simultaneously with the surface estate. The United States mineral interests offered for conveyance have no known value. At the time of the sale, Arnold and Stella Goularte will be required to deposit a $50.00 nonrefundable application fee for conveyance of the mineral estate.

The parcel is difficult and uneconomic to manage as part of the public lands, and is not suitable for transfer to another Federal, State or local agency. There is a need to recognize the established use and resolve the inadvertent trespass situation.

Sale of the parcel is consistent with land use planning decisions and current policy. There is no conflict with local plans and zoning. The public interest would be served by completing the sale.

The portion of Bureau of Land Management Order of Classification Small Tract 430 (October 18, 1954) affecting the above described public

land is hereby revoked effective upon issuance of patent to the parcel. Prior to conveyance, this Small Tract classification will continue to segregate the public land from appropriation under the public land laws, including the mining law. Publication of this notice will additionally segregate, for a period of 270 days, the above public land parcel from mineral leasing.

The terms and conditions applicable to the sale are:

A. Reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

There will be no mineral reservation to the United States. All minerals will be conveyed in the sale patent.

B. The public land will be conveyed subject to the following:

1. A right-of-way not to exceed 33 feet in width, for roadway and public utilities purposes, to be located along the boundaries of said parcel.

Additional information about this sale is available from the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, California 92311 (619–256–3591) and the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior, and the required payments requested from the Goulartes. Payment of the purchase price in full shall be in accordance with 43 CFR 1822.1–2 and 2711.3–3(b).

The land will not be offered for direct sale to the Goulartes for at least 60 days after the date of this notice.

Dated: November 8, 1990.

James L. Williams,

Acting District Manager.

[FR Doc. 90–27159 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–40–M

[CO–050–4212–14; COC–51325]

Realty Action, Boulder County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed sale of public land in Boulder County, Colorado (COC–51325); segregation of land from appropriation under the public land laws, including the mining laws.

SUMMARY: The following land is being evaluated for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713):

Sixth Principal Meridian, Colorado

T.1N., R.71W. Section 19: a portion of the SE¼SE¼SE¼ bounded by patented mining claims MS 427 (Durock), MS 439 (Smith) and MS 504 (Clipper).

The above land contains approximately 3 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

ADDRESS: Bureau of Land Management, Northeast Resource Area, Building 41, DFC, P.O. Box 25047, Denver, Colorado 80225–0047

FOR FURTHER INFORMATION CONTACT: Priscilla McLain at the Northeast Resource Area Office at (303) 236–4399.

SUPPLEMENTARY INFORMATION: Detailed information on the bidding procedures and appraisal price will be published following survey, at least 45 days before the sale.

Donnie R. Sparks,

District Manager.

[FR Doc. 90–27105 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–JB–M

[ID–943–01–4212–13; IDI–23538]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Wesley R. Wootan and Christine W. Wootan, of Hammett, Idaho, 83627, for the following described land under seciton 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian

T. 6 S., R. 10 E.,
- Sec. 1, NE¼SW¼, S½SW¼, W½SE¼, and SE¼SE¼;
- Sec. 2, SE¼SE¼;
- Sec. 11, E½NE¼, SW¼NE¼, and S½;
- Sec. 12;
- Sec. 13, N½, N½SW¼, and SE¼;
- Sec. 14, N½, NE¼SW¼, and N½SE¼;
- Sec. 24, NE¼ and N½SE¼.

T. 6 S., R. 11 E.,
- Sec. 6, lot 7;
- Sec. 7;
- Sec. 17, W½NW¼ and NW¼SW¼;
- Sec. 18, lots 1 to 4, inclusive, NE¼, E½ W½, N½SE¼, and SW¼SE¼;
- Sec. 19, lots 1 to 3, inclusive.

Comprising 4,097.57 acres of public land.

In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 13 N., R. 4 W.,
- Sec. 18, lots 1 to 3, inclusive;
- Sec. 19, lots 3 and 4, SE¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 20, SW¼NW¼, N½SW¼, and SW¼ SW¼;
- Sec. 29, W½NE¼ and NW¼NW¼;
- Sec. 30, lots 1 and 2, NE¼, E½NW¼, N½ SE¼, and SW¼SE¼.

T. 13 N., R. 5 W.,
- Sec. 10, NW¼NE¼, S½NE¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, and SW¼ SE¼SE¼;
- Sec 11, N½SW¼SW¼, SE¼SW¼, and SE¼SE¼;
- Sec. 12, NE¼SW¼, S½S½, and NW¼ SE¼;
- Sec. 13;
- Sec. 14, N½NE¼, SE¼NE¼, E½E½NW¼, NE¼NE¼SW¼, S½N½SW¼, and S½ SW¼;
- Sec. 15, W½E½NE¼, W½NE¼, NW¼ NE¼SE¼, S½NE¼SE¼, and SE¼SE¼;
- Sec. 22, NE¼NE¼;
- Sec. 23, S½NE¼, NW¼, and N½S½;
- Sec. 24, NW¼, N½SW¼, and W½SE¼;
- Sec. 25, N½NE¼ and SE¼NE¼.

Comprising 3,891.74 acres of private land.

The purpose of the exchange was to acquire non-federal land which has high public value for critical habitat for Columbia sharp-tailed grouse and numerous other wildlife species. The public interest was well served through completion of this exchange.

Dated: October 12, 1990.

John Davis,

Deputy State Director for Operations.

[FR Doc. 90–27045 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–GG–M

[G–010–4212–23/G1–0101]

Albuquerque District, NM; Realty Action—Life Estate Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action for NM84035, Life estate lease of public land in San Juan County, New Mexico.

SUMMARY: The following described land has been determined suitable for leasing under section 302 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. 1732.

New Mexico Principal Meridian

T. 24 N., R. 11 W.
- Sec. 7 S½S½NE¼NE¼SE¼, N½N½SE¼ NE¼ SE½.

Containing/aggregating approximately 5 acres of public land in the proposed lease.

The Bureau of Land Management proposes to issue a life estate lease on the above described land to Mrs. Bessie Woody. This would be for continued residential use for the term of the lease. After fulfillment of the lease, the Executor or Administrator of the estate, or people from the Huerfano Chapter will remove the property from the public land. Issuance of this lease is authorized and addressed in the De-Na-Zin Wilderness Management Plan approved August 1989. Preparation and implementation of the Management Plan was addressed in the Farmington Resource Area Management Plan approved July 1988.

COMMENT DATES: On or before December 31, 1990, interested parties may submit comments to the Bureau of Land Management at the address given below. Any adverse comments will be evaluated by the Bureau of Land Management, New Mexico State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FURTHER INFORMATION: Information related to this proposed lease is available by contracting Danny Charlie or Jerry Crockford at the Bureau of Land Management, Farmington Resource Area, 1235 LaPlata Highway, Farmington, New Mexico 87401, telephone (505) 327–5344.

Dated: November 6, 1990.

Robert T. Dale,

District Manager.

[FR Doc. 90–27103 Filed 11–15–90; 8:45 am]

BILLING CODE 4310-FB-M

[OR-050-4212-11: GP1-038]

Realty Action—Recreation and Public Purposes Classification in Jefferson County, OR

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: OR–46596.

The following described lands have been examined and found to be suitable for classification under the Recreation and Public Purposes Act of June 14, 1926 as Amended (43 U.S.C. 869 Et. seq.)

T. 12 S., R. 12 E., W.M., Jefferson County, Oregon,
Sec. 11: N½SW¼ SW¼SW¼;
Sec. 14: NW¼.

The described lands, comprising 280 acres, are being made available for conveyance to the State of Oregon as an addition to Cove Palisades State Park. This classification is an interim measure to segregate the public lands from entry. The lands are contained within the boundaries of the State Park.

The land is located approximately eight miles southwest of the City of Madras in Jefferson County, Oregon. Both the surface estate and mineral estate of the entire 280 acres are public domain in Federal ownership. The land is characterized by steep canyon slopes adjacent to the reservoir and the elevation above sea level varies from 1,945 feet at the reservoir to more than 2,400 feet at the rim of the canyon. The reservoir was established under FERC license for the Portland General Electric Company Round Butte Hydroelectric Project. The land is adjacent to a variety of land ownership, including BLM public land, State Parks, private land, and the Crooked River National Grass Lands.

The land is overlapped by the withdrawal for Power Project No. 2030 which affects approximately 140 acres below the 1,950-foot contour line, inundated by the Billy Chinook Reservoir on the Crooked River. By determinations (DVOR–584) dated February 27, 1987, and (DVOR–611) dated November 8, 1989, FERC concurs that the subject land located within the Boundary of Power Project No. 2030 can be opened to conveyance to the State of Oregon subject to the provisions of section 24 of the Federal Power Act. The 120 acres in section 11 were previously opened to entry subject to the provisions of section 24 of the Federal Power Act by the Secretarial Order of April 23, 1934. In addition to the Billy Chinook Reservoir, there is a County Road (Jordan Rd.) extending through the property. There are no other improvements or facilities on the land; the land is not contaminated by hazardous materials.

It has been determined by Bureau of Land Management mineral specialists that the land does not contain any locatable minerals of more than nominal value; that there has not been any serious interest expressed in locatable mineral development; and that there are no mining claims of record on the subject land or on adjacent lands. This classification would segregate the land from location and entry under the mining laws but not from applications and offers under the mineral leasing laws.

This classification action is consistent with the Bureau's Decision as outlined in the land report for Revocation of the Deschutes Reclamation Project Withdrawal, serialized OR–20313. This revocation met the categorical exclusion criteria contained in 516 Departmental Manual 6, appendix 5.4B (5) and (8). Accordingly, neither an enviornmental assesment nor an environmental impact statement is required.

Information concerning this classification, including the land report, OR–20313, is available for review at the Prineville District Office, P.O. box 550, Prineville, Oregon 97754.

Classification for Recreation and Public Purposes is approved as to the land described above.

On or before January 7, 1991, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. box 550, Prineville, OR 97754. Objections will be reviewed by the State Director who may sustain, vacate or modify the realty action. In the absence of any objections, this realty action will become the final determination of this department.

Dated: November 7, 1990.

Harry R. Cosgriffe,

Acting District Manager.

[FR Doc. 90–27097 Filed 11–15–90; 8:45 am]

BILLING CODE 4310-33-M

[CO-050-4333-09]

San Luis Resource Management Area, CO; Interim Management for Protection of Wild and Scenic River Values

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Canon City District, has determined that 41 miles of the Rio Grande River are eligible for consideration as a potential addition to the National Wild and Scenic River System. This required resource management plan determination was made as a part of the San Luis Resource Management Plan in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), 43 CFR part 1600, the Guidance for the Identification and Evaluation of Potential Additions to the National Wild and Scenic Rivers System, the USDI–USDA Final Revised Guidelines for Eligibility, Classification and Management of River Areas, and BLM Manual section 1623.41A2d.

SUMMARY: A resource management plan (RMP) is being prepared for the San Luis Resource Area of Colorado. Assessment of potential additions to the National Wild and Scenic River System is included in this planning effort.

Within the San Luis RMP, a total of 32 streams or segments of streams have been analyzed to date, and the 41-mile segment of the Rio Grande River in Colorado meets the eligibility criteria. This segment is the 41 miles of river above the state line. This segment of the river is "free-flowing" and has "outstandingly remarkable" values; therefore, adequate interim protection is needed until a final decision is reached.

The 41-mile segment of the Rio Grande River, which is the last 41 miles within Colorado has been tentatively classified as follows: the upper 33 miles meet the "scenic" classification criteria, and the lower 8 miles meet the "wild" classification criteria. These tentative classifications are based on conditions of the river corridor as they exist at this time. Management activities and authorized uses on BLM-administered lands shall not be allowed to adversely affect the eligibility or classification of this river. Management prescriptions affecting BLM-administered lands within the one-mile corridor along this river should provide for protection in three ways:

1. The free-flowing characteristics of the river cannot be modified, to the extent that BLM is authorized under law to control stream impoundments and diversions.

2. Outstandingly remarkable values must be protected and, to the extent practicable, enhanced.

3. Management and development of the river corridor cannot be modified to the degree that eligibility or classification is changed.

A study report has been prepared for the segment of the Rio Grande River and will be included as an appendix to the San Luis Proposed Resource Management Plan/Final Environmental Impact Statement. This study report documents the application of the wild and scenic river eligibility, classification, and suitability criteria and is an integral part of the RMP process documentation. The determination within the RMP will reflect tentative eligibility, classification, and suitability of the river corridor for inclusion in the national system of rivers designated under the Wild and Scenic Rivers Act. The RMP will include a finding on eligibility, classification, and suitability. The RMP will include specific management prescriptions to protect the resource values identified in the study and may contain a preliminary administrative recommendation. The final decisions on wild and scenic rivers will be made by the U.S. Congress.

DATES: Interim protective management on public lands along the described stream/river corridors will exist for a period not exceeding 5 years from the date of this publication or until such time as a final decision has been made, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain more information by writing RMP Project, Bureau of Land Management, P.O. Box 1171, Canon City, Colorado 81215–1171 or by contacting the RMP Project Manager, Dave Taliaferro at (719) 275–0631.

Donnie R. Sparks,
District Manager.

[FR Doc. 90–27104 Filed 11–15–90; 8:45 am]
BILLING CODE 4310–JB–M

[ID–942–01–4730–12]

Idaho: Filing of Plats of Survey

The plats of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 9, 1990.

The supplemental plat prepared to correct a lot in section 27, T. 48 N., R. 2 E., Boise Meridian, Idaho, was accepted November 2, 1990.

The supplemental plat prepared to correct certain lots in sections 11 and 14, T. 1 N., R. 3 E., Boise Meridian, Idaho, was accepted November 5, 1990.

The supplemental plat prepared to correct the bearing on the west boundary of, and lot 6 (now lot 12), section 29, T. 11 N., R., 14 E., Boise Meridian, Idaho, was accepted November 2, 1990.

These supplemental plats were prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 9, 1990.

Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.

[FR Doc. 90–27106 Filed 11–15–90; 8:45 am]
BILLING CODE 4310–GG–M

[OR–933–01–4332–09: GP1–021]

Public Review Period for USGS/USBM "Mineral Survey Report" Prepared for BLM Wilderness Study Areas; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Oregon Bureau of Land Management (BLM) is requesting public review of the U.S. Geological Survey (USGS) and U.S. Bureau of Mines Open-File Report for the following Wilderness Study Area (WSA). This WSA has been preliminarily recommended suitable for inclusion into the National Wilderness Preservation System:

1. Mountain Lakes (OR–011–001), Klamath County, Oregon (USGS Open-File Report 89–541).

If the public provides a new interpretation of the data presented in the mineral reports or submits new mineral data for consideration, BLM will send these comments to the USGS. Significant new findings, if any, will be documented in the BLM "Wilderness Study Report" which will be reviewed by the Secretary, the President, and by Congress before a final decision on wilderness designation is made.

Copies of the mineral survey report are available for review in BLM offices in Portland, Salem, Eugene, Roseburg, Medford, Coos Bay, Lakeview, Burns, Prineville, Vale, and Spokane. These copies are not available for sale or removal from BLM offices. Copies, of the report, however, may be purchased from the following address: Books and Open-File Report Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225, (303) 236–7476. Payment by check or money order must accompany all orders.

DATES: The public review of the mineral survey report named in this notice shall conclude on January 18, 1991.

ADDRESSES: Send comments and information to: State Director (920), BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Eric Hoffman, Division of Mineral Resources at (503) 280–7039 or David Harmon, Division of Lands and Renewable Resources at (503) 280–7062, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and US Bureau of Mines (USBM) are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable by BLM for inclusion into the wilderness

system to determine the mineral values, if any, that may be present in such areas.

There are about 2.8 million acres of Wilderness Study Areas identified by BLM in Oregon, of which about 1.3 million acres have been preliminarily recommended as suitable. This report is a part of 35 mineral survey reports that have been prepared by USGS and USBM. This is also the final mineral survey report scheduled for Oregon WSAs.

The BLM Oregon State Director is providing this public review and comment period in order to insure that all available minerals data are considered by Congress prior to making its final wilderness suitability decisions. BLM will review the public comments and will forward to USGS/USBM any significant new minerals data or new interpretations of the minerals data submitted by the public.

The information requested from the public via this invitation is not limited to any specific energy or mineral resource. Comments should be provided in writing and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and USGS/USBM Mineral Survey Report;
2. Mineral(s) of interest;
3. A map or land description by subdivision of the public land survey grid or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area;
4. Information and documents that depict the new data or reinterpretation of data;
5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Dated: November 8, 1990.

Patrick H. Geehan,

Deputy State Director for Mineral Resources.

[FR Doc. 90-27101 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-33-M

[ID-943-01-4214-10; IDI-05278]

Termination of Proposed Withdrawal and Reservation of Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Withdrawal application termination.

SUMMARY: The Forest Service has relinquished in its entirety a withdrawal application affecting various administrative and recreation sites within the Boise National Forest. This action terminates the segregative effect of the application and opens the lands to such disposition as may, by law, be made of National Forest lands.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

1. Notice of an application, serial number I-05278, for withdrawal and reservation of lands was published as **Federal Register** Document No. 58-5832 on pages 5794-5802 of the issue for July 31, 1958. The applicant agency has cancelled its application insofar as it affects the remaining lands involved, which are described as follows:

Boise Meridian

Boise National Forest

T. 1 N., R. 7 E.,
Sec. 19, N½SE¼NE¼NE¼.
T. 1 N., R. 8 E.
Sec. 10, S½NE¼SW¼NW¼SE¼.
T. 1 N., R. 9 E.
Sec. 2, NE¼SW¼SE¼SW¼, E½SE¼SW¼SE¼SW¼, and W½SW¼SE¼SW¼.
T. 3 N., R. 9 E.,
Sec. 6, lot 3;
Sec. 18, W½SE¼SW¼NW¼NE¼.
T. 4 N., R. 5 E.,
Sec. 35, W½SE¼SW¼SE¼NW¼, NE¼NW¼NE¼SW¼, E½SE¼NW¼NE¼SW¼, W½NE¼NE¼SW¼, W½NE¼NE¼NE¼SW¼, SE¼NE¼SW¼SW¼SE¼, NE¼SE¼SW¼SW¼SE¼, SW¼NW¼SE¼SW¼SE¼, NW¼SW¼, and SE¼SW¼SE¼.
T. 4 N., R. 7 E.,
Sec. 4, that portion of lot 8 described as follows:
Beginning at the NE corner of lot 10 which is the true point of beginning;
Thence north to a point on the north meander line of lot 8; thence in a southerly direction along the west meander line of lot 8 to a point on the north meander line of lot 8;
Thence is a southerly direction along the west meander line of lot 8 to the SW corner of lot 8;
Thence east along the south boundary of lot 8 to the NE corner of lot 10, the point of beginning.
T. 5 N., R. 3 E.,
Sec. 15, S½N½SW¼SE¼NW¼, N½S½SW¼SE¼NW¼, and SW¼;
Sec. 21, E½;
Sec. 22, N½NW¼ and SW¼NW¼.
T. 5 N., R. 6 E.,
Sec. 28, S½N½SW¼NE¼NW¼.
T. 5 N., R. 11 E.,
Sec. 3, that portion of lot 1 described as follows:
Beginning at the NE corner of lot 1, thence S. 35° W., 600 feet to the real point of beginning;
Thence south 0° E., 495 feet;
Thence south 90° W., 660 feet;
Thence north 0° W., 330 feet;
Thence north 90° E., 330 feet;
Thence north 0° E., 330 feet; to the real point of beginning.
T. 6 N., R. 8 E.,
Sec. 32, S½S½NW¼NW¼SE¼.
T. 6 N., R. 9 E.,
Sec. 34, S½S½NE¼SE¼SE¼, N½N½SE¼SE¼SE¼, NE¼SE¼NE¼SE¼SE¼, and SE¼NE¼NE¼SE¼NE¼;
Sec. 35, SW¼SW¼NE¼SW¼, S½S½NW¼SW¼SW¼, N½N½SW¼SW¼SW¼, S½SW¼NE¼SW¼SW¼, N½NW¼SE¼SW¼SW¼, SW¼NW¼NW¼SW¼SW¼, and NW¼SW¼NW¼SW¼SW¼.
T. 6 N., R. 10 E.,
Sec. 6, that portion of lot 4 described as follows:
Beginning at the NW corner of lot 4;
Thence east 495 feet to a point on the north boundary line which is the true point of beginning;
Thence south 330 feet to a point;
Thence east 165 feet to a point;
Thence north 330 feet to a point;
Thence west 165 feet to the true point of beginning.
T. 6 N., R. 11 E.,
Sec. 34, that portion of lot 7 described as follows:
Beginning at the SE corner of section 34;
Thence N. 50° W. 495 feet to a point, the true point of beginning;
Thence north 330 feet to a point;
Thence east 165 feet to a point;
Thence north 330 feet to a point;
Thence west 165 feet to a point;
Thence south 165 feet to a point;
Thence west 330 feet to a point;
Thence south 495 feet to a point;
Thence east 330 feet to the true point of beginning.
T. 7 N., R. 6 E.,
Sec. 12, S½SW¼SE¼NE¼NE¼.
T. 7 N., R. 7 E.,
Sec. 3, W½SE¼SE¼SE¼, W½SE¼SE¼SE¼SE¼, and W½NE¼SE¼SE¼SE¼;
Sec. 32, S½SE¼NE¼NE¼SE¼.
T. 7 N., R. 9 E.,
Sec. 28, N½SE¼SW¼SE¼NW¼ and S½NE¼SW¼SE¼NW¼.
T. 8 N., R. 5 E.,
Sec. 6, that portion of lot 7 described as follows:
Beginning at the NW corner of lot 7;
Thence south 1155 feet to a point on the west boundary line and the true point of beginning;
Thence east 660 feet to a point;
Thence south 330 feet to a point;
Thence west 660 feet to a point;
Thence north 330 feet to the true point of beginning.
T. 8 N., R. 7 E.,
Sec. 6, that portion of lot 5 described as follows:
Beginning at the NW corner of lot 5;
Thence south 660 feet along the western boundary of lot 5 to a point that is the true point of beginning;
Thence east 330 feet to a point;
Thence north 660 feet to a point on the north boundary of lot 5;

Thence east along the north boundary 660 feet to a point;
Thence south 660 feet to a point on the south meander line;
Thence in a south-westerly direction to the SW corner of lot 5;
Thence north along the west boundary to the true point of beginning.

T. 8 N., R. 10 E.,
Sec. 9, N½NW¼NW¼SE¼SE¼.

T. 9 N., R. 3 E.,
Sec. 32, that portion of lot 6 described as follows:
Beginning at the NE corner of lot 6;
Thence south 330 feet to a point on the east boundary line of lot 6 and the true point of beginning;
Thence west to a point on the meander line;
Thence in a southerly direction to the SW corner of lot 6;
Thence east to the SE corner of lot 6;
Thence north 990 feet to the true point of beginning.

T. 9 N., R. 6 E.,
Sec. 12, W½NW¼SW¼SW¼SW¼;
Sec. 21, S½NE¼SW¼SE¼SW¼ and N½ SE¼SW¼SE¼SW¼.

T. 9 N., R. 7 E.,
Sec. 13, SW¼SW¼SE¼NW¼, SE¼SE¼ SW¼NW¼, NE¼NE¼NW¼SW¼, and NW¼NW¼NE¼SW¼;
Sec. 29, that portion of lot 3 described as follows:
Beginning at the SE corner of lot 3 which is the true point of beginning;
Thence west 330 feet to a point on the south boundary line of lot 3;
Thence north 330 feet to a point;
Thence east to the meander line;
Thence in a southerly direction along the east meander line to the true point of beginning;
Sec. 35, that portion of lot 1 lying below 3920 feet above sea level and that portion of lot 2 lying below 3890 feet above sea level.

T. 9 N., R. 8 E.,
Sec. 26, SW¼NW¼NE¼;
Sec. 32, that portion of lots 4 and 5 lying below 4000 feet above sea level.

T. 9 N., R. 9 E.,
Sec. 32, S½NW¼SW¼NE¼NE¼ and N½ SW¼SW¼NE¼NE¼.

T. 9 N., R. 10 E.,
Sec. 7, S½SW¼NW¼NE¼NW¼.

T. 10 N., R. 3 E.,
Sec. 4, that portion of lot 15 described as follows:
Beginning at the SE corner of lot 15 which is the true point of beginning;
Thence in a northerly direction along the east meander line to a point 330 feet north of the south boundary;
Thence west 165 feet on a line parallel to the southern boundary to a point;
Thence south 330 feet to a point on the southern boundary line;
Thence 165 feet east to the true point of beginning;
Sec. 9, that portion of lot 2 described as follows:
Beginning at the NE corner of lot 2, the true point of beginning;
Thence in a southerly direction along the east meander line of lot 2 to a point 330 feet south of the northern boundary of lot 2;
Thence west 165 feet to a point;
Thence north 330 feet to a point on the northern boundary of lot 2;
Thence east to the true point of beginning;
Sec. 16, that portion of lot 7 described as follows:
Beginning at the NW corner of lot 7;
Thence S. 62° E. 680 feet to a point and the true point of beginning;
Thence south 330 feet to a point;
Thence east to a point on the east meander line of lot 7;
Thence in a northerly direction to a point on a line parallel to the east west boundary;
Thence east to the true point of beginning;
Sec. 21, that portion of lot 2 described as follows:
Beginning at the SW corner of lot 2, the true point of beginning;
Thence north 660 feet to the NW corner of lot 2;
Thence east to a point on the meander line;
Thence in a southerly direction along the east meander line of lot 2 to the SE corner of lot 2;
Thence west to the true point of beginning;
Sec. 29, that portion of lot 7 described as follows:
Beginning at the SW corner of lot 7 which is the true point of beginning;
Thence north 660 feet along the west boundary line of lot 7 to a point;
Thence east on a line parallel to the south boundary to a point on the east meander line of lot 7 to a point;
Thence in a southerly direction along the west meander line of lot 7 to the SE corner of lot 7;
Thence west along the south boundary line of lot 7 to the SW corner the point of beginning.

T. 10 N., R. 4 E.,
Sec. 12, E½NE¼SW¼SW¼SE¼ and NW¼SE¼SW¼SE¼.

T. 10 N., R. 5 E.,
Sec. 6, that portion of lot 1 described as follows:
Beginning at the NW corner of lot 1;
Thence south 330 feet to a point which is the true point of beginning;
Thence east 330 feet to a point;
Thence south 165 feet to a point;
Thence west 330 feet to a point;
Thence north 165 feet to the true point of beginning.

T. 10 N., R. 6 E.,
Sec. 19, S½SW¼SW¼NW¼SE¼.

T. 10 N., R. 10 E.,
Sec. 31, that portion of lot 3 described as follows:
Beginning at the SE corner of lot 3;
Thence N. 330 feet along E. line of lot 3 to the true point of beginning;
Thence W. 330 feet;
Thence N. 330 feet;
Thence E. 330 feet;
Thence S. 330 feet to the true point of beginning.

T. 11 N., R. 5 E.,
Sec. 20, S½NW¼NE¼SE¼SE¼, SW¼ NE¼SE¼SE¼, and N½NW¼SE¼SE¼ SE¼;
Sec. 21, W½SE¼NW¼NW¼;
Sec. 29, N½NE¼SW¼SW¼NE¼ and N½ NW¼SE¼SW¼NE¼;
Sec. 31, W½NE¼NE¼SE¼SE¼ and E½ NW¼NE¼SE¼SE¼.

T. 11 N., R. 8.,
Sec. 17, W½NW¼SE¼SE¼NW¼ and E½ NE¼SW¼SE¼NW¼.

T. 11 N., R. 9 E.,
Sec. 29, N½NE¼SW¼SW¼SE¼.

T. 11 N., R. 10 E.,
Sec. 9, E½SE¼NE¼SE¼NE¼, E½SW¼ SE¼SE¼NE¼, W½SE¼SE¼SE¼NE¼, E½NW¼NE¼NE¼SE¼, W½E½NE¼ NE¼SE¼, and NE¼SE¼NE¼SE¼.

T. 12 N., R. 2 E.,
Sec. 35, NW¼NE¼SE¼NE¼, N½NW¼ SE¼NE¼, SW¼NW¼SE¼NE¼, SE¼ NE¼SW¼NE¼, and SW¼SE¼SE¼ NE¼.

T. 12 N., R. 5 E.,
Sec. 21, N½N½NE¼NE¼SE¼;
Sec. 22, S½NE¼SW¼NW¼NW¼ and N½SE¼SW¼NW¼NW¼.

T. 12 N., R. 6 E.,
Sec. 7, S½NW¼SW¼NW¼SE¼ and N½ SW¼SW¼NW¼SE¼;
Sec. 19, N½SE¼NW¼SE¼SE¼;
Sec. 20, E½NW¼SE¼NW¼NW¼, W½ NE¼SE¼NW¼NW¼, W½NE¼SW¼ SW¼NW¼, and NW¼SW¼SW¼ NW¼.

T. 12 N., R. 7 E.,
Sec. 21, W½SW¼NE¼NW¼ and E½SE¼ NW¼NW¼.

T. 13 N., R. 9 E.,
Sec. 25, NW¼NW¼SE¼SW¼ and SW¼ SW¼NE¼SW¼;
Sec. 34, S½NW¼NE¼SE¼SW¼, SW¼ NE¼SE¼SW¼, NW¼SE¼SE¼SW¼, S½NE¼NW¼SE¼SW¼, NW¼NW¼ SE¼SW¼, N½SW¼NW¼SE¼SW¼, and SE¼NW¼SE¼SW¼.

T. 14 N., R. 9 E.,
Sec. 10 W½SW¼SE¼SW¼NW¼.

T. 15 N., R. 6 E.,
Sec. 2, S½SE¼NE¼SW¼;
Sec. 11, S½NW¼NW¼;
Sec. 12, lots 1 to 6, inclusive, NE¼NE¼ and NW¼SW¼;
Sec. 13, lots 2, 3, and N½ of lot 5, SE¼ NW¼ and N½NE¼SW¼;
Sec. 36, S½SW¼SE¼SW¼.

T. 15 N., R. 7 E.,
Sec. 1, S½SE¼SE¼SE¼;
Sec. 6, lot 7 and SE¼SW¼;
Sec. 7, lots 1, 2, and N½ of lot 3, E½NW¼ and N½NE¼SW¼;
Sec. 10, N½SE¼NW¼SE¼SE¼.

T. 15 N., R. 8 E.,
Sec. 7, W½ of lot 1.

T. 16 N., R. 7 E.,
Sec. 1, S½SW¼NE¼SE¼SW¼ and N½ NW¼SE¼SE¼SW¼;
Sec. 8, W½SW¼NW¼SE¼SW¼.

T. 16 N., R. 8 E.,
Sec. 31, that portion of lot 2 described as follows:
Beginning at the NW corner of lot 2;
Thence S. along the lot line 495 feet;
Thence W. 330 feet to the real point of beginning;
Thence S. 330 feet;
Thence W. 330 feet;
Thence N. 330 feet;
Thence E. 330 feet to the real point of beginning.

T. 18 N., R. 8 E.,
Sec. 4, N½S½SE¼NW¼SE¼ and S½N½ SE¼NW¼SE¼.

T. 18 N., R. 9 E.,
Sec. 29, N½NE¼NE¼NW¼SW¼.
T. 19 N., R. 8 E.,
Sec. 29, S½SE¼SW¼SE¼NE¼, N½NE¼NW¼NE¼SE¼, SW¼NE¼NE¼SE¼, S½SE¼NE¼NE¼SE¼, and E½NW¼NE¼SE¼.
Sec. 33, NE¼SE¼SE¼SW¼ and N½NW¼SE¼SE¼SW¼.

The areas described aggregate 1,687.40 acres in Elmore and Valley Counties.

2. Pursuant to the regulation contained in 43 CFR subpart 2091, the lands described above will be at 9 a.m. on December 17, 1990, relieved of the segregative effect of the above mentioned application and opened to such disposition as may, by law, be made of national forest lands.

Dated: November 9, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27107 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-66-M

[ID-943-01-4214-11; IDI-05384]

Proposed Continuation of Withdrawal, Correction; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice will correct an error in the land description for a notice of proposed continuation of withdrawal for the Seafoam Administrative Site.

EFFECTIVE DATE: September 8, 1989.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The land description in the notice of proposed continuation of withdrawal published on September 8, 1989, page 37385, third column, under Seafoam Administrative Site is hereby corrected to change line five to read "within SE¼ SE¼;" and to add a sixth line reading "sec. 24, metes and bounds description within N½NW¼."

Dated: October 29, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27043 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-01-4214-11; IDI-04319, IDI-014817, IDI-939]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawals of 4,054.00 acres for administrative and recreation sites in the St. Joe and Kaniksu National Forests be continued for the period of years shown below. The lands are still being used for the purposes for which they were withdrawn. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 1479, 3364, and 4498 be continued for the period of years shown below pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

To be continued for 25 years:

IDI-939 (PLO 4498)
St. Joe Lake Campground
T. 42 N., R. 11 E.,
Sec. 4, lot 2 and lot 3 less the west 422 ft.
Surveyors Ridge Lookout
T. 42 N., R. 7 E.,
Sec. 11, E½NE¼SE¼SE¼;
Sec. 12, W½NW¼SW¼SW¼.

To be continued for 50 years:

IDI-04319 (PLO 1479)
Priest Lake Recreation Area
T. 59 N., R. 4 W.,
Sec. 5, lot 1.
T. 60 N., R. 4 W.,
Sec. 3, lots 3, 6, 7, and 9, and Mineral Survey No. 1873;
Sec. 5, lots 1 and 2;
Sec. 6, lot 12;
Sec. 7, lots 1 to 5, inclusive, and SE¼NE¼;
Sec. 8, lots 1 and 3, inclusive;
Sec. 16, lots 1 and 2;
Sec. 17, lots 1, 2, 4, and 5, and SW¼SE¼;
Sec. 19, lots 1 to 4, inclusive, and 7, and NE¼SE¼SE¼;
Sec. 20, lots 1 to 4, inclusive;
Sec. 28, lot 2;
Sec. 29, lots 1 to 4, inclusive, and W½SW¼;
Sec. 30, lot 6;
Sec. 32, lots 1 to 4, inclusive, and W½W¼;

Papoose Island, an unsurveyed island in Priest Lake containing 0.97 acres in sec. 19 and described by metes and bounds.

T. 60 N., R. 5 W.,
Sec. 12, lot 5;
Sec. 13, lots 1 to 4, inclusive, and E½E½W½;
Sec. 24, lots 1 to 4, inclusive, and NW¼SE¼.
T. 61 N., R. 4 W.,
Sec. 4, lots 1 to 3, inclusive;
Sec. 5, that portion of lots 1, 2, and 4 and SW¼NE¼and E½SE¼lying east of the centerline of West Side Priest Lake Road No. 2512;
Sec. 8, that portion of lots 1 and 2 and the E½NE¼lying east of the centerline of West Side Priest Lake Road No. 2512;
Sec. 9, lots 2 and 3;
Sec. 17, that portion of lot 2 lying south and east of the centerline of Reeder Creek Road No. 1339;
Sec. 19, lot 3 less the NE¼NE¼and W½NE¼and N½NE¼of lot 6;
Sec. 20, that portion of lots 2 to 5, inclusive, lying south and east of the centerline of Reeder Creek Road No. 1339.
T. 62 N., R. 4 W.,
Sec. 4, lots 4, 5, 8, and 9, and SW¼SW¼;
Sec. 9, lots 1, 2, 4 to 6, inclusive, and 9, W½NW¼, E½E½SW¼, and NW¼SE¼;
Sec. 10, lot 7;
Sec. 21, lot 5 and that portion of lots 1 to 4, inclusive, SW¼SW¼, and NE¼SW¼ lying east of the centerline of West Side Priest Lake Road No. 2512;
Sec. 28, lots 1 and 3 and that portion of lot 2 and the NW¼NW¼ lying south and east of the centerline of West Side Priest Lake Road No. 2512;
Sec. 29, lot 1 and that portion of lot 2, SE¼NE¼, SE¼SW¼, and N½SE¼ lying south and east of the centerline of West Side Priest Lake Road No. 2512;
Sec. 32, lots 1, 3, and 4, and that portion of lot 2, N½NW¼, SW¼NW¼, and SW¼ lying east of the centerline of West Side Priest Lake Road No. 2512.
T. 63 N., R. 4 W.,
Sec. 19, lots 4 to 7, inclusive;
Sec. 29, lot 4;
Sec. 30, lots 1, 2, and 5 to 7, inclusive, SE¼NW¼, NW¼SE¼, and SE¼SE¼;
Sec. 32, lots 1 to 4, inclusive, and 6, W½NW¼, NW¼SE¼, NW¼NE¼SE¼, and S½NE¼SE¼;
Sec. 33, lots 4 and 5.
T. 63 N., R. 5 W.,
Sec. 24, lot 4, NW¼NE¼SW¼NE¼, S½NE¼SW¼NE¼, NW¼SW¼NE¼, S½SW¼NE¼, SW¼SE¼NE¼, W½SE¼SE¼NE¼, and NE¼SE¼.

IDI-014817 (PLO 3364)
Priest Lake Administrative Site
T. 60 N., R. 5 W.,
Sec. 2, E½SW¼SW¼ and W½SE¼SW¼;
Sec. 11, E½NW¼NW¼ and NE¼NW¼.

The areas described aggregate 4,054.00 acres in Bonner and Shoshone Counties.

The withdrawals are essential for protection of substantial capital improvements on the sites. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

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

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: October 24, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27037 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-01-4214-11; IDI-2291, et al.]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawals of 4,621.64 acres for administrative, recreation, research, and scenic sites in the Clearwater, Coeur d'Alene, St. Joe, and Kaniksu National Forests be continued for the period of years shown below. The lands are still being used for the purposes for which they were withdrawn. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 4647, 5326, 5467, 694, 1842, and 4189 be continued for the period of years shown below pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

IDI-2291 (PLO 4647)
To be continued for 20 years:
Red Ives Administrative Site
T. 43 N., R. 9 E.,
Sec. 20, E½SE¼SE¼NW¼ and E½E½ NE¼SW¼.
IDI-15467 (PLO 964)
Red Ives Administrative Site
T. 43 N., R. 9 E.,
Sec. 20, W½SW¼NE¼, S½SE¼SW¼ NE¼, S½SW¼SE¼NE¼, N½NE¼ NW¼SE¼, and W½NW¼SE¼.
IDI-06430 (PLO 1842)
Shoshone Creek Administrative Site
T. 50 N., R. 4 E.,
Sec. 5, lot 10 and W½SE¼SE¼;
Sec. 8, lot 1.
To be continued for 25 years:
IDI-4799 (PLO 5326)
Devil's Lake
T. 42 N., R. 6 E.,
Sec. 25,, E½SW¼NE¼, W½SE¼NE¼, NW¼NE¼SE¼, and NE¼NW¼SE¼.
Fawn Lake
T. 42 N., R. 7 E.,
Sec. 25, S½SW¼NE¼NE¼, S½SE¼NW¼ NE¼, E½SW¼NE¼, E½W½SW¼ NE¼, and SE¼NE¼.
Skyland Lake
T. 42 N., R. 7 E.,
Sec. 25, S½SW¼NW¼SW¼ and W½ SW¼SW¼;
Sec. 26, SE¼NE¼SE¼ and SE¼SE¼;
Sec. 35, NE¼NE¼NE¼ and N½NW¼ NE¼NE¼;
Sec. 36, N½NW¼NW¼NW¼.
Northbound Lake
T. 42 N., R. 7 E.,
Sec. 34, SE¼SW¼NW¼, SW¼SE¼NW¼, W½SE¼SE¼NW¼, W½NE¼NE¼ SW¼, NW¼NE¼SW¼, N½SW¼NE¼ SW¼, E½NW¼SW¼, and E½NW¼ NW¼SW¼.
Hero Lake and Gnat Lake
T. 42 N., R. 7 E.,
Sec. 21, S½S½SW¼NW¼ and W½SW¼;
Sec. 28, N½NE¼NW¼NW¼ and NW¼ NW¼NW¼.
Crag Lake (formerly Craig Lake)
T. 42 N., R. 7 E.,
Sec. 28, S½NE¼SW¼SW¼, E½SW¼ SW¼SW¼, SE¼SW¼SW¼, and SW¼ SE¼SW¼;
Sec. 33, NW¼NE¼NW¼ and N½NW¼ NW¼.
Heart Lake
T. 42 N., R. 7 E.,
Sec. 33, SW¼NE¼, S½NW¼SE¼NE¼, SW¼SE¼NE¼, E½SE¼NW¼, SW¼ SE¼NW¼, NE¼NE¼SW¼, N½SE¼ NE¼SW¼, W½NW¼NE¼SE¼, and NW¼SE¼.
Mudd Lake
T. 42 N., R. 7 E.,
Sec. 29, S½SW¼NW¼NE¼, N½SW¼ NE¼, SW¼SW¼NE¼ N½SE¼SW¼ NE¼, E½SE¼NW¼, and NE¼SE¼SE¼ NW¼.
Larkins Lake
T. 42 N., R. 7 E.,
Sec. 29, SW¼NE¼SW¼, SW¼SE¼NE¼ SW¼, SE¼NW¼SW¼, NE¼SW¼ SW¼, NE¼SE¼SW¼SW¼, and SE¼ SW¼.
Bacon Lake
T. 42 N., R. 9 E.,
Sec. 24, SW¼SW¼NE¼, SW¼SE¼SW¼ NE¼, SE¼SE¼NW¼, E½NE¼SW¼, N½NW¼SE¼, SW¼NW¼SE¼, and NW¼SE¼NW¼SE¼.
Forage Lake
T. 42 N., R. 9 E.,
Sec. 13, NE¼SW¼SW¼, N½SE¼SW¼ SW¼, SE¼SE¼SW¼SW¼, SE¼SW¼, SW¼NW¼SW¼SE¼, and W½SW¼ SW¼SE¼.
Halo Lake
T. 42 N., R. 9 E.,
Sec. 13, S½NE¼SE¼SE¼, SE¼NW¼SE¼ SE¼, and S½SE¼SE¼;
Sec. 24, N½NE¼NE¼.
T. 42 N., R. 10 E.,
Sec. 18, SW¼NW¼ of lot 4 and SW¼ of lot 4;
Sec. 19, NW¼ of lot 1.
High Mountain Lakes, Mallard-Larkins Area
T. 41 N., R. 7 E.,
Sec. 23, E½E½SW¼SW¼, W½SE¼ SW¼, and W½E½SE¼SW¼.
T. 41 N., R. 8 E., unsurveyed,
Sec. 19, W½E½NE¼SE¼, W½NE¼SE¼, NE¼SW¼SE¼, and E½SE¼SE¼SE¼;
Sec. 20, W½SW¼SW¼SW¼;
Sec. 29, SW¼NE¼NW¼SW¼, S½NW¼ NW¼SW¼, SW¼NW¼SW¼, SW¼ SW¼SW¼SW¼, and W½SE¼NW¼ SW¼;
Sec. 30, S½SE¼SE¼SE¼;
Sec. 31, NE¼NE¼NE¼ and N½SE¼NE¼ NE¼;
Sec. 32, W½NW¼NW¼NW¼.
T. 42 N., R. 7 E.,
Sec. 34, E½NE¼SE¼SW¼, NE¼SE¼SE¼ SW¼, NW¼SW¼SE¼, and N½SW¼ SW¼SE¼;
Sec. 36, S½SW¼SE¼NE¼, SW¼SE¼ SE¼NE¼, W½NE¼NE¼SE¼, and NW¼NE¼SE¼.
To be continued for 50 years:
IDI-5053 (PLO 5467)
Upper Fishhook Research Natural Area
T. 44 N., R. 5 E.,
Sec. 32, N½.
IDI-017475 (PLO 4189)
Upper Priest Lake Scenic Area
T. 63 N., R. 4 W.,
Sec. 30, lots 3, 4, 8, and 9, E½SW¼ and SW¼SE¼;
Sec. 31, lot 1, N½NE¼ of lot 2, NE¼, and NE¼NW¼, NE¼SE¼NW¼, N½NW¼ SE¼NW¼, SE¼NW¼SE¼NW¼, N½ SE¼SE¼NW¼, SE¼SE¼SE¼NW¼, NE¼SE¼, N½NW¼SE¼, SE¼NW¼ SE¼, NE¼SE¼SE¼, N½NW¼SE¼ SE¼, SE¼NW¼SE¼SE¼, N½SE¼SE¼ SE¼, and SE¼SE¼SE¼SE¼;
Sec. 32, SW¼ and S½SE¼.
T. 63 N., R. 5 W.,
Sec. 23, S½SW¼NE¼NE¼, E½SW¼ NE¼, SE¼NW¼SW¼NE¼, E½SW¼ SW¼NE¼, SE¼NE¼, SE¼SE¼SW¼, NE¼SE¼, S½NW¼SE¼, NE¼NW¼ SE¼, E½NW¼NW¼SE¼, and S½SE¼;
Sec. 24, S½NW¼NW¼NE¼, NE¼NW¼ NW¼NE¼, SW¼NW¼NE¼, SE¼NE¼ NE¼NW¼, NE¼SW¼NE¼NW¼, S½ SW¼NE¼NW¼, SE¼NE¼NW¼, S½ SE¼NW¼NW¼, S½NW¼, SW¼, NW¼SE¼, and S½SE¼;
Sec. 25;
Sec. 26, E½, E½NE¼NW¼, E½SW¼NE¼ NW¼, E½SE¼NW¼, E½NW¼SE¼ NW¼, NE¼SW¼SE¼NW¼, E½NE¼ SW¼, E½SW¼NE¼SW¼, E½SE¼ SW¼, NW¼SE¼SW¼, E½SW¼SE¼ SW¼, and NW¼SW¼SE¼SW¼;

Sec. 35, N½NE¼, NE¼SW¼NE¼, E½NW¼SW¼NE¼, N½SE¼SW¼NE¼, N½SE¼NE¼, N½SW¼SE¼NE¼, SE¼SW¼SE¼NE¼, SE¼SE¼NE¼, NE¼NE¼NW¼, E½NW¼NE¼NW¼, and NE¼SE¼NE¼NW¼;
Sec. 36, N½NE¼, SW¼NE¼, N½NW¼SE¼NE¼, SW¼NW¼SE¼NE¼, NW¼SW¼SE¼NE¼, N½NW¼, N½SW¼NW¼, SW¼SW¼NW¼, N½SE¼SW¼NW¼, N½SE¼NW¼, N½SW¼SE¼NW¼, and SE¼SE¼NW¼.

The areas described aggregate 4,621.64 acres in Bonner and Shoshone Counties.

The withdrawals are essential for protection of substantial capital improvements on the sites. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

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

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: September 28, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27038 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-00-4214-11; IDI-013935, et al.]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 743.62 acres for administrative, recreation, and historic sites in the Clearwater National Forest be continued for an additional 20 years. The lands are still being used for the purposes for which they were withdrawn. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 3151, 4032, and 4244 and the Secretarial Order dated December 20, 1907, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

IDI-013935 (PLO 3151)
Lochsa Work Center
T. 35 N., R. 9 E.,
Sec. 27, SW¼SW¼SW¼;
Sec. 34, N½NW¼NW¼.
Kelly Creek Ranger Station and Administrative Site
T. 39 N., R. 11 E.,
Sec. 16, N½NE¼SW¼ and N½S½NE¼SW¼.
Cold Springs Mill Site and Pond
T. 39 N., R. 9 E.,
Sec. 14, SW¼NW¼SW¼, N½SE¼NW¼SW¼, and N½NW¼SW¼SW¼;
Sec. 15, NE¼SE¼NE¼SE¼, S½S½NE¼SE¼ and N½N½SE¼SE¼.
Kelly Forks Administrative Site and Pasture
T. 39 N., R. 9 E.,
Sec. 13, SW¼NE¼SE¼, S½NW¼SE¼, NE¼SW¼SE¼, and SE¼SE¼.
T. 39 N., R. 10 E.,
Sec. 18, S½SW¼NW¼SW¼ and NW¼SW¼SW¼.
Canyon Work Center (formerly Canyon Ranger Station Administrative Site)
T. 40 N., R. 7 E.,
Sec. 4, north half of lots 9 and 10 above Forest Service Road 247.
IDI-017100 (PLO 4032)
Wilderness Gateway Campground
T. 35 N., R. 9 E.,
Sec. 26, SW¼NW¼SW¼ and W½SW¼SW¼;
Sec. 27, E½SE¼NE¼SE¼, S½S½SW¼SE¼, and E½SE¼SE¼;
Sec. 34, N½NE¼NE¼, SW¼NE¼NE¼, NW¼NE¼, N½SW¼NE¼, SE¼SW¼NE¼, W½SE¼NE¼, E½NE¼NW¼, and NE¼SE¼NW¼.
IDI-199 (PLO 4244)
Lolo Pass Information Site
T. 38 N., R. 15 E.,
Sec. 16, W½NW¼SE¼.
Snowbank Camp (formerly Wendover Ridge Campsite)
T. 37 N., R. 13 E.,
Sec. 4, SW¼NE¼NE¼.
Bears Oil and Root (formerly Spring Mountain Campsite)
T. 37 N., R. 12 E.,
Sec. 2, SE¼NE¼SW¼SE¼, NE¼SE¼SW¼SE¼, SW¼NW¼SE¼SE¼, and NW¼SW¼SE¼SE¼.
Indian Post Office Rock Cairns (formerly Indian Post Office Site)
T. 37 N., R. 12 E.,
Sec. 17, W½NW¼SW¼.
Lonesome Cove Campsite
T. 37 N., R. 12 E.,
Sec. 18, SW¼NE¼SW¼SE¼, SE¼NW¼SW¼SE¼, NE¼SW¼SW¼SE¼, and NW¼SE¼SW¼SE¼.
Sinque Hole Campsite
R. 37 N., R. 10 E.,
Sec. 36, E½SW¼NW¼SE¼ and W½SE¼NW¼SE¼.
Indian Grave Campsite
T. 36 N., R. 10 E.,
Sec. 1, S½NE¼NW¼NE¼ and N½SE¼NW¼NE¼.
Smoking Place Historical Site
T. 36 N., R. 10 E.,
Sec. 1, W½E½NW¼SE¼, W½NW¼SE¼, NW¼NE¼SW¼SE¼, and N½NW¼SW¼SE¼.
Bald Mountain Historical Site
T. 36 N., R. 10 E.,
Sec. 19, S½SE¼NW¼NE¼ and N½NE¼SW¼NE¼.
Greensward Campsite (formerly Bald Mountain Campsite)
T. 36 N., R. 10 E.,
Sec. 20, S½N½NE¼NW¼ and N½S½NE¼NW¼.
Dry Campsite
T. 36 N., R. 9 E.,
Sec. 25, SW¼SW¼NW¼NE¼, NW¼NW¼SW¼NE¼, SE¼SE¼NE¼NW¼, and NE¼NE¼SE¼NW¼.
Sherman Peak Historical Site
T. 36 N., R. 9 E.,
Sec. 34, SW½NE¼SW¼ and E½SE¼NW¼SW¼.
Cache Mountain Site
T. 35 N., R. 8 E.,
Sec. 12, SW¼NW¼NE¼.
Hungery Campsite
T. 35 N., R. 8 E.,
Sec. 14, SW¼NE¼SW¼ and NW¼SE¼SW¼.
Retreat Campsite
T. 35 N., R. 8 E.,
Sec. 15, NE¼NW¼SW¼.
Portable Soup Campsie (formerly Soup Campsite)
T. 35 N., R. 8 E.,
Sec. 8, S½NW¼NE¼SE¼.
Jerusalem Campsie (formerly Elbow Bend Campsite)
T. 35 N., R. 7 E.,
Sec. 13, W½SW¼SW¼NE¼ and E½SE¼SE¼NW¼.
Horse Steak Meadow Campsite
T. 35 N., R. 7 E.,
Sec. 14, SE¼NE¼SW¼NE¼, NE¼SE¼SW¼NE¼, SW¼NW¼SE¼NE¼, and NW¼SW¼SE¼NE¼.
IDI-15448 (SO 12/20/07)
Musselshell Work Center
T. 35 N., R. 6 E.,
Sec. 19, NE¼SE¼;
Sec. 20, NW¼SW¼.

The areas described aggregate 743.62 acres in Clearwater and Idaho Counties.

The withdrawals are essential for protection of substantial capital improvements on the administrative and

recreation sites and for protection of historic sites on the Lewis and Clark Trail. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

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

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final detmination is made.

Dated July 20, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–27039 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–GG–M

[ID–943–90–4214–11; IDI–07547, et al.]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 376.58 acres for administrative and recreation sites in the Payette and Sawtooth National Forests to be continued for the period of years shown below. The lands are still being used for administrative and recreation sites. Two administrative sites withdrawn under separate orders will be combined into one site under one name and one serial number. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 14, 1990.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Forest Service proposes that the existing land withdrawals made by the Secretarial Order and Public Land Orders listed below be continued for the period of years shown pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. Two administrative sites will be combined into one site under one name and one serial number. The lands are described as follows:

Boise Meridian

To be continued for 20 years:

IDI–012626 (PLO 3070)
Carey Creek Recreation site
T. 24 N., R. 4 E.,
Sec. 3, lot 7, by metes and bounds.
Fall Creek Recreation Area
T. 24 No., R. 4 E.,
Sec. 8, lot 10, by metes and bounds.
IDI–14880 (PLO 725)
Burgdorf Campground and Summer Home Area
T. 22 No., R. 4 E.,
Sec. 1, lot 3 and W½SW¼NE¼.

To be continued for 30 years:

The following sites are to be continued under the name of Warren Administrative Site under serial number IDI–012060:

IDI–07547 (PLO 5148)
Warren Ranger Station House Lot Addition (Original Name)
(Original Description)
T. 22 N., R. 6 E.,
Sec. 12, by metes and bounds.
IDI–012060 (PLO 2931)
Warren Adminstrative Site
(Original Description)
T. 22 N., R. 6 E.,
Secs. 11 and 12, by metes and bounds.
Combined Description of above sites for Warren Administrative Site
T. 22 No., R. 6 E.,
Secs. 11 and 12, by metes and bounds.
IDI–012060 (PLO 2931)
Big Creek Administrative Site
T. 21 N., R. 9 E.,
Secs. 23 and 26, by metes and bounds.
IDI–012626 (PLO 3070)
Big Creek Public Service Site
T. 21 N., R. 9 E.,
Sec. 26, unsurveyed, by metes and bounds.
IDI–017204 (PLO 4043)
Smith Knob Administrative Site
T. 23 N., R. 8 E.,
Sec. 31, by metes and bounds.
IDI–4837 (PLO 5462)
Peck Mountain Lookout Administrative Site
T. 18 N., R. 2 W.,
Sec. 29, N½SW¼SE¼SW¼.
IDI–14880 (PLO 725)
Boardman Recreation Area
T. 3 N., R. 13 E.,
Sec. 7, S½NE¼NE¼NE¼, SW¼NE¼NE¼, N½SE¼NE¼NE¼, S½SE¼NW¼NE¼, and NE¼SW¼NE¼;
Sec. 8, SW¼NE¼NW¼, S½NW¼NW¼NW¼, NE¼NW¼NW¼, S½NW¼NW¼, NE¼SW¼NW¼, NW¼NE¼SE¼NW¼, SW¼NE¼SE¼NW¼, NW¼SW¼NW¼, and N½SE¼SE¼NW¼.
IDI–15461 (SO 12/16/08)
Hard Creek Recreation Area (formerly Hard Creek Administrative Site)
T. 21 N., R. 2 E.,
Sec. 11, NE¼SE¼SE¼NE¼;
Sec. 12, NW¼SW¼SW¼NW¼.

To be continued for 40 years:

IDI–012060 (PLO 2931)
South Fork Administrative Site
T. 21 N., R. 7 E.,
Sec. 10, lots 3 and 4;
Sec. 11, W½ of lot 5 and W½NW¼SW¼.
IDI–14880 (PLO 725)
Burgdorf Administrative Site
T. 22 N., R. 4 E.,
Sec. 1, SE¼SW¼ and SW¼SW¼SE¼;
Sec. 12, NE¼NE¼NW¼.

The areas described aggregate 376.58 acres in Adams, Camas, Idaho, and Valley Counties.

The withdrawals are essential for protection of capital improvements on the administrative and recreation sites. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

For a periof of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register.** The exsiting withdrawals will continue until such final determination is made.

Dated: June 21, 1990.

Willam E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–27040 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–GG–M

[ID–943–90–4214–11; IDI–016341, IDI–14965]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 35.00 acres for recreation areas in the Boise and

Payette National Forests be continued for the period of years shown below. The lands are still being used for recreation sites. Two recreation sites withdrawn under separate orders will be combined into one site under one name and one serial number. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Forest Service proposes that the existing land withdrawals made by Secretarial Order dated October 19, 1908, and Public Land Order No. 3797 be continued for the period of years shown below pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. Two recreation sites will be combined into one site under one name and one serial number. The lands are described as follows:

Boise Meridian

To be continued for 20 years:

IDI–016341 (PLO 3797)
French Creek Recreation Area (formerly French Creek Campground)
T. 14 N., R. 3 E.,
Sec. 29, NE¼NE¼NE¼ and N½SE¼NE¼ NE¼.

The following sites are to be continued for 30 years under the name of Cabin Creek Recreation Area under serial number IDI–016341:

IDI–016341 (PLO 3797)
Cabin Creek Campground (Original Name)
(Original Description)
T. 15 N., R. 1 E.,
Sec. 12, SE¼SW¼NE¼NE¼, SW¼SE¼ NE¼NE¼, and N½NE¼SE¼NE¼.
IDI–14965 (SO 10–19–08)
Middle Fork Administrative Site (Original Name)
(Original Description)
T. 15 N., R. 1 E.,
Sec. 12, NW¼SE¼NE¼.
Combined Description of above sites for Cabin Creek Recreation Area
T. 15 N., R. 1 E.,
Sec. 12, SE¼SW¼NE¼NE¼, SW¼SE¼ NE¼NE¼, N½NE¼SE¼NE¼, and NW¼SE¼NE¼.

The areas described aggregate 35.00 acres in Adams and Valley Counties.

The withdrawals are essential for protection of capital improvements on the recreation sites. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

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

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continued until such final determination is made.

Dated: June 21, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–27041 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–GG–M

[ID–943–01–4214–11; IDI–15249, IDI–15251]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Bureau of Reclamation, Department of the Interior, proposes that the withdrawals of 6,312.08 acres for the Palisades and Upper Snake River Projects in Bonneville County be continued for an additional 67 years. The lands are still being used for the purposes for which they were withdrawn. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 19, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Bureau of Reclamation proposes that the existing land withdrawals made by Bureau of Land Management Orders dated April 15, 1953, and December 29, 1938, be continued for a period of 67 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

IDI–15249 (BLM O 4/15/53)
Palisades Project
T. 1 S., R. 45 E.
Sec. 13, S½SW¼SE¼;
Sec. 28, lot 7 and SW¼SW¼;
Sec. 29, lot 6, SE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 31, E½SE¼;
Sec. 32, N½NE¼, SW¼NE¼, E½NW¼, SW¼NW¼, N½SW¼, and SW¼SW¼.
T. 2 S., R. 45 E.,
Sec. 25, lot 1.
T. 1 S., R. 46 E.,
Sec. 18, lot 4 and SE¼SW¼;
Sec. 19, lots 1 and 2 and NE¼NW¼.
IDI–15251 (BLM O 12/29/38)
Upper Snake River Project
T. 1 S., R. 45 E.,
Sec. 8, lots 7 and 8 and SW¼SW¼;
Sec. 14, S½SW¼;
Sec. 17, lots 2, 3, and 6, E½NW¼, N½ SW¼, N½SW¼SW¼, and W½S½ SW¼SW½;
Sec. 20, lot 1, S½NW¼NE¼, SW¼NE¼, W½SE¼NE¼, SE¼NW¼, W½E½NE¼ SE¼, W½NE¼SE¼, NW¼SE¼, W½ E½SE¼SE¼, and W½SE¼SE¼;
Sec. 21, lots 7 to 9, inclusive E½SW¼SE¼ NE¼, SE¼SE¼NE¼, E½NE¼SE¼, E½ NW¼NE¼SE¼, and E½E½SE¼SE¼;
Sec. 22, S½NW¼SW¼NW¼, SW¼SW¼ NW¼, S½SE¼SW¼NW¼, SW¼, S½ NW¼SE¼, SW¼SE¼, SW¼NE¼SE¼ SE¼, NW¼NW¼SE¼SE¼, S½NW¼ SE¼SE¼, and S½SE¼SE¼;
Sec. 23, W½SE¼;
Sec. 24, NE¼NE¼ and S½NE¼;
Sec. 25, W½SE¼;
Sec. 26, lots 3 and 6 to 8, inclusive, SW¼ NW¼NW¼NW¼, SW¼NW¼NW¼, SW¼SE¼NW¼NW¼, SW¼NW¼, and W½SW¼;
Sec. 27, NE¼NE¼, NE¼SE¼, and S½ SE¼;
Sec. 28, lots 1 to 4, inclusive, and Homestead Entry Survey 755;
Sec. 29, lots 1 and 5 and Homestead Entry Survey 755;
Sec. 34, W½NE¼, E½NW¼, W½SE¼, and SE¼SE¼;
Sec. 35, lots 1 to 8, inclusive, and SE¼ NW¼.
T. 2 S., R. 45 E.,
Sec. 2, lots 2, 3, 7, and 8, SW¼SW¼NW¼, W½NW¼SW¼, SE¼NW¼SW¼, and SW¼SW¼;
Sec. 3, lots 1 and 5 and Homestead Entry Survey 748;
Sec. 11, lot 1, NW¼SW¼NE¼, S½SW¼ NE¼, NW¼, and SE¼;
Sec. 12, lot 1;
Sec. 13, lots 6 and 9 and NW¼SW¼;
Sec. 14, lots 1, 2, 5, and 6;
Sec. 24, lot 1, SW¼NE¼, NE¼NW¼, NW¼SE¼, and SE¼SE¼.
T. 1 S., R. 46 E.,
Sec. 31, lots 3 and 4.
T. 2 S., R. 46 E.
Sec. 18, S½NE¼;
Sec. 27, lot 4 and NW¼SW¼;
Sec. 30, NW¼NW¼, S½NW¼, and E¼ SW¼;
Sec. 31, E½NW¼, NE¼SW¼, and W½ SE¼;
Sec. 32, lot 1, SE¼NE¼ and E½SE¼.
T. 3 S., R. 46 E.,
Sec. 5, lots 4 and 7, and SW¼SW¼;
Sec. 6, lots 1 and 2, S½NE¼ and S½;

Sec. 8, lots 2 to 4, inclusive, N½NW¼, SE¼NW¼, and N½SE¼;
Sec. 9, lot 7 and SW¼SW¼;
Sec. 10, lot 8.

The areas described aggregate 6,312.08 acres in Bonneville County.

The withdrawals are essential for continued administrative jurisdiction for control, operation, and maintenance of the projects. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

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

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: October 24, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27042 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-GG-M

[OR-943-01-4214-11; GP1-037; ORE-015334, et al.]

Proposed Continuation of Withdrawals; Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of five separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved:

Umpqua National Forest

1. ORE-015334, Public Land Order No. 3688 dated June 10, 1985. Layng Creek Geological Area, 5 acres located in Sec. 30, T. 21 S., R. 1 E., W.M., in Lane County, approximately 12 miles west of Oakridge.

Steamboat Point Lookout, 7.44 acres located in Sec. 33, T. 25½ S., R. 1 E., W.M., in Douglas County, approximately 33 miles northeast of Roseburg.

Hemlock Lake Campground, 20 acres located in Sec. 28, T. 27 S., R. 1 E., W.M., in Douglas County, approximately 34 miles east of Roseburg.

Pig Iron Lookout, 5 acres located in Sec. 32, T. 26 S., R. 4 E., W.M., in Douglas County, approximately 42 miles east of Roseburg.

Acker Rock Lookout, 5 acres located in Sec. 13, T. 29 S., R. 1 E., W.M., in Douglas County, approximately 36 miles southeast of Roseburg.

Whiskey Camp, 10 acres located in Sec. 32, T. 30 S., R. 1 E., W.M., in Douglas County, approximately 42 miles southeast of Roseburg.

White Creek Campground, 10 acres located in Sec. 7, T. 27 S., R. 1 W., W.M., in Douglas County, approximately 25 miles east of Roseburg.

Pickett Butte Lookout, 5 acres located in Sec. 29, T. 30 S., R. 1 W., W.M., in Douglas County, approximately 25 miles east of Winston.

Threehorn Campground, 10 acres located in Sec. 7, T. 32 S., R. 1 W., W.M., in Douglas County, approximately 15 miles southeast of Canyonville.

Horseshoe Bend Campground, 20 acres located in Sec. 19, T. 26 S., R. 2 E., W.M., in Douglas County, approximately 42 miles east of Roseburg.

Big Twin Lakes Campground, 20 acres located in Sec. 9, T. 27 S., R. 2 E., W.M., in Douglas County, approximately 40 miles east of Roseburg.

Red Butte Lookout, 10 acres located in Sec. 1, T. 28 S., R. 2 W., W.M., in Douglas County, approximately 28 miles east of Winston.

Soda Springs Geological Area, 20 acres located in Sec. 18, T. 26 S., R. 3 E., W.M., in Douglas County, approximately 45 miles east of Roseburg.

Watson Butte Lookout, 5 acres located in Sec. 19, T. 26 S., R. 3 E., W.M., in Douglas County, approximately 60 miles east of Roseburg.

Garwood Butte Lookout, 5 acres located in Sec. 7, T. 28 S., R. 5 E., W.M., in Douglas County, approximately 60 miles southeast of Roseburg.

Cinnamon Butte Lookout, 5 acres located in Sec. 9, T. 27 S., R. 6 E., W.M., in Douglas County, approximately 66 miles east of Roseburg.

2. OR-21317, Secretarial Order dated November 17, 1906. Long Prairie Administration Site, 120 acres located in Sec. 2, T. 1 S., R. 10 E., W.M., in Hood River County, approximately 4 miles south of Mt. Hood.

3. ORE-012067, Public Land Order No. 2974 dated March 18, 1963. Lostine River Roadside Zone, 160 acres located in Sec. 36, T. 3 S., R. 43 E., W.M., and 40 acres in Sec. 5, T. 4 S., R. 44 E., in Wallowa County, approximately 12 miles southwest of Enterprise.

Imnaha River Roadside Zone, 300 acres located in Secs. 25, 26, 27, T. 5 S., R. 47 E., W.M., in Wallowa County, approximately 22 miles southeast of Joseph.

4. ORE-02851-A, Public Land Order No. 3502 dated December 2, 1964. Fall Creek Road, 75 acres located in Sec. 24, T. 18 S., R. 3 E., W.M., in Lane County, approximately 18 miles southwest of Eugene.

5. WASH-05805, Public Land Order No. 10355 dated November 2, 1965. Blewett Pass Highway Roadside Zone, 250 acres located in Secs. 3, 10, T. 20 N., R. 17 E., W.M., and Secs. 15, 22, 27, 34, T. 21 N., R. 17 E., Fall Creek Road, 75 acres located in Sec. 24, T. 18 N., R 3. E., W.M., in Kittitas County, approximately 18 miles northwest of Ellensberg.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

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

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will continue until such final determination is made.

Dated: November 7, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-27110 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-01-4214-10; GP1-032; OR-22213(WASH), OR-22370(WASH)]

Proposed Continuation of Withdrawals, Washington; Correction

The sentence which was omitted in FR Doc. 90-23481 published on page 40724, in the issue of Thursday, October 4, 1990, is hereby corrected as follows:

On page 40724, paragraph 2 is hereby corrected to begin with the sentence "The purpose of the withdrawals are to protect the Bumping Lake Dam and Reservoir Project."

Dated: November 1, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-27111 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-33-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (Interior), Washington, DC 20503, telephone 202-395-7340.

Title: Individual Civil Penalties, 30 CFR part 724.

OMB Number: 1029-

Abstract: 30 CFR 724 allows individuals to submit documentation that demonstrates he or she has taken all reasonable steps within his or her legal authority to bring about abatement of a violation of the Surface Mining Control and Reclamation Act of 1977 after being notified of his or her potential liability under interium program requirements.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Individual corporate officials.

Annual Responses: 0

Annual Burden Hours: 1.

Estimated Completion Time: 6 hours.

Bureau clearance officer: Andrew F. DeVito (202) 343-5150.

Dated: October 9, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 90-27047 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-05-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (Interior), Washington, DC 20503, telephone 202-395-7340.

Title: Individual Civil Penalties, 30 CFR part 846.

OMB Number: 1029-

Abstract: 30 CFR 724 allows individuals to submit documentation that demonstrates he or she has taken all reasonable steps within his or her legal authority to bring about abatement of a violation of the Surface Mining Control and Reclamation Act of 1977 after being notified of his or her potential liability under permanent program requirements.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Individual corporate officials.

Annual Responses: 15.

Annual Burden Hours: 90.

Estimated Completion Time: 6 hours.

Bureau clearance officer: Andrew F. DeVito (202) 343-5150.

Dated: October 9, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 90-27048 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-294]

Commission Determination To Provisionally Accept a Joint Petition To Rescind Consent Order

In the Matter of certain carrier materials bearing ink compositions to be used in a dry adhesive-free thermal transfer process and signfaces made by such a process.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to provisionally accept a joint petition filed by Minnesota Mining and Manufacturing of St. Paul, Minnesota (3M) and Signtech Inc. (Signtech) of Missaugua, Ontario, Canada to rescind the consent order issued at the termination of the above-captioned investigation. The petition states that Signtech has become a licensee of 3M and that 3M no longer has any objection to importation of Signtech's products.

ADDRESSES: Copies of the petition and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1104.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1104.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting he Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On February 14, 1989, 3M filed a complaint with the Commission alleging that Signtech and eight U.S. importers were in violation of section 337 of the Tariff Act of 1930 by reason of infringement or contributory infringement of U.S. Letters Patent 4,737,224 (the '224 patent) owned by 3M. The '224 patent covers a process for making commercial signs. 3M alleged that Signtech's products were used in a process that infringed the '224 patent by the domestic importers. The Commission instituted an investigation was terminated by a consent order prohibiting Signtech's from exporting its

products to the United States. The consent order also prohibited the named domestic importers from buying or importing Signtech's products.

On October 24, 1990, 3M and Signtech jointly petitioned the Commission under Commission interim rule 211.57(a), 19 CFR 211.57(a), to rescind its consent order because Signtech has become a licensee of the '224 patent, and as a result, 3M no longer opposes the importation of Signtech's products. The domestic respondents, Acme Wiley Corporation, Dualite Incorporated, Fairmont Sign Company, Graflex Incorporated, Harlan Laws Corporation, McHenry Industries, Persona Incorporated, and Superior Electrical Advertising, did not join in the petition.

Under Commission interim rule 211.57(b), all parties to the investigation will be served with a copy of the petition and this notice. The parties' responses to the petition must be received by the Commission within 30 days after service of the petition and notice.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 211.57(b) of the Commission's Interim Rules of Practice and Procedure (19 CFR 211.57(b)).

Issued: November 9, 1990.

Kenneth R. Mason,

Secretary

[FR Doc. 90-27032 Filed 11-15-90; 8:45 am]

BILLING CODE 7020-02-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: Burlington Industries Equity Inc., 3330 West Friendly Avenue, P O Box 21207 Greensboro, NC 27420.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Burlington Industries, Inc., DE.
(ii) BI Transportation, DE.
(iii) Burlington Fabrics Inc., DE.
(iv) Burlington Canada Inc., Canada
(v) Textile Morelo S.A. de C.V., Mexico.
(vi) Noblis-Lees, S.A. de C.V , Mexico.
(vii) C.H Masland & Sons, PA.

B. 1 Parent Corporation and address of principal office: Fiber Conversion Inc., 21 East Elm Street, Broadalbin, New York 12025.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation:

(i) Fiber Conversion Transport, Ltd., NY.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27076 Filed 11-15-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31754]

Kyle Railroad Co.—Lease and Trackage Rights In Northern Kansas—Missouri Pacific Railroad Co. and Union Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application filed on October 18, 1990, by Kyle Railroad Company (Kyle), Missouri Pacific Railroad Company (MP), and Union Pacific Railroad Company (UP) (collectively applicants), pursuant to 49 U.S.C. 11343, *et seq.*, for Kyle to: (1) Lease 346.747 miles of MP and UP rail lines known as the Northern Kansas Rail Lines; and (2) acquire trackage rights over 12.86 miles of UP's Salina Subdivision. Pursuant to 49 CFR part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than December 17, 1990 and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by January 2, 1991 The Commission will issue a service list shortly thereafter Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list and a certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list in this proceeding have been properly served copies of these comments. Applicants reply is due January 22, 1991.

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31754, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and each of the applicants' representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, room 8201, 400 Seventh Street, SW., Washington, DC 20590.

Attorney General of the United States, United States Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530.

Fritz R. Kahn (Kyle), Verner, Liipfert, Bernard, McPherson, and Hand, Chartered, 901 15th Street, NW., ι700, Washington, DC 20005-2301.

Joseph D. Anthofer (MP and UP), Jeanna L. Regier, 1416 Dodge Street, ι830, Omaha, Nebraska 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: The Kyle Railroad Company (Kyle), Missouri Pacific Railroad Company (MP), and Union Pacific Railroad Company (UP), collectively "applicants," seek Commission approval under 49 U.S.C. 11343, *et seq.*, for Kyle to: (1) Lease 346.747 miles of MP and UP rail lines Known as the Northern Kansas Rail Lines; and (2) acquire trackage rights over 12.86 miles of UP's Salina Subdivision. Applicants state that this is a minor transaction under 49 CFR 1180.2(c), and they submitted a conforming application in accordance with the Railroad Consolidation Procedures set out in 49 CFR part 1180. Applicants also state that time is of the essence as operations over the lines need to commence prior to the spring wheat harvest. As a result, they request expedited handling of their application so that a Commission decision can be served by March 1991.

The properties to be leased that are subject to statutory prior approval requirements consist of: (1) 171.507 miles of MP line between Stockton (milepost 580.626) and Frankfort, KS (milepost 409.119) (Concordia Branch); (2) 84.88 miles of MP line between Downs (milepost 623.60) to Lenora, KS (milepost 538.72) (Lenora Branch); (3) 33.40 miles of MP line between Jamestown (milepost 496.30) and Burr Oak, KS (milepost 529.70) (Burr Oak Branch); and (4) 56.96 miles of UP line between Solomon (milepost 0.93) and Beloit (milepost 57.89) (Solomon Branch). The 12.86-mile line over which Kyle seeks trackage rights, and which is subject to statutory prior approval by the Commission, runs between Solomon (milepost 173.14) and Salina, KS (milepost 186.0) (Salina Subdivision).

Kyle, a Kansas Corporation and wholly owned subsidiary of Kyle Railways, Inc., is a Class III rail carrier operating 420 miles of rail lines in the states of Kansas and Colorado. Kyle's present system intersects MP's lines at Mankato and Clifton, KS. Kyle also has trackage rights over MP between Yuma and Concordia, KS. MP and UP are Class I common carriers by railroad, and operate approximately 20,843 miles of rail lines in 19 states. The MP-UP traffic handled over the lines in question consists of, among other commodities, agricultural products, industrial equipment, raw materials, and chemicals.

There are currently 50 active shippers situated on the Concordia Branch, which produced 4,476 originating or terminating carloads in 1989. On the Lenora Branch, there are approximately nine active shippers. In 1989, these shippers originated or terminated 409 carloads. The Burr Oak Branch has approximately six active shippers, originating or terminating 393 carloads in 1989. There are eight active shippers on the Solomon Branch, for which MP–UP handled 73 originating or terminating carloads in 1989. Traffic over these four lines (collectively the Northern Kansas Rail Lines) consists primarily of agricultural products, agricultural and other types of chemicals, forest products, and some manufactured products. Kyle seeks trackage rights over the Salina Subdivision in order to interchange traffic with UP at Salina.

Applicants contend that the proposed transaction will not substantially reduce competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. According to applicants, the shippers served by the Northern Kansas Rail Lines enjoy ample intermodal competition that will not be reduced by this transaction. The area at issue here is also served by the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company. The substitution of Kyle for MP–UP as the operator of the lines in this transaction, it is argued, will enhance intramodal competition. Applicants state that this transaction will enable Kyle to operate in a new market, provide shippers with more responsive and economical rail service, and develop new rail business, thereby improving the financial viability of Kyle while relieving MP and UP of a marginal operation. Through more effective intermodal competition and efficient service, Kyle anticipates capturing motor carrier traffic. Kyle does not presently compete with MP or UP for originating and terminating freight on the lines.

Kyle plans to operate the line with its own employees under its own work rules, rates of pay and benefits. It is expected that approximately 24 positions will be eliminate on the MP and UP as a result of this transaction. MP and UP intend to honor their obligations to their adversely affected employees under 49 U.S.C. 11347 and existing collective bargaining agreements. MP and UP have not negotiated any alternate employee protection arrangements in conjunction with this matter. Morover, Kyle does not believe it is responsible for employees of MP and UP.

Any authority granted herein will be subject to the conditions set forth in *Mendocino Coast Railway, Inc.—Lease and Operate, modified*, 354 I.C.C. 732 (1978) and in *Norfolk & Western Railway Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), *modified, Mendocino Coast Railway, Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), as clarified in *Wilmington Term. R.R. Inc. Pur. Lease—CSX Transportation, Inc.*, 6 I.C.C. 2d 799 (1990).

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposal here involves a Class I (MP–UP) and a Class III rail carrier. It has no regional or national significance and will not result in a major market extension. Accordingly, we find the proposal to be a minor transaction. under 49 CFR 1180.2(c). Since the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably. We will wait for interested parties to file comments before ruling on applicants' request for expedited handling.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on November 16, 1990.

Decided: November 13, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 90–27075 Filed 11–15–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; CERCLA

In accordance with Department policy 28 CFR 50.7 notice is hereby given that on November 1 1990, a proposed consent decree in *United States* v *James and Carolyn Curtis*, Civil Action No. 87–673–B, was lodged with the United States District Court for the Southern District of Iowa. The proposed consent decree resolves a judicial enforcement action brought by the United States against James and Carolyn Curtis under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607(a).

In this action filed on September 16, 1987, the United States sought recovery of response costs incurred by the United States in connection with removal activities at a pesticides facility owned by the Curtises in Corning, Iowa. The proposed decree requires the Curtises to pay a total sum of $100,000 within ten days from the date of entry of the decree, in satisfaction of and to settle all claims raised against the Curtises in this lawsuit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division of the Department of Justice, Washington, DC 20530, and should refer to *United States* v. *James and Carolyn Curtis,* D.J. Ref. 90–11–3–256.

The proposed consent decree may be examined at the office of the United States Attorney, 115 U.S. Courthouse, Des Moines, Iowa 50309, and at the Region VII office of the United States Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–27049 Filed 11–15–90; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Surface Cleaning Technology Consortium

Notice is hereby given that, on October 16, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Surface Cleaning Technology Consortium ("SCTC") filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the SCTC. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are given below.

The current members of SCTC are: International Business Machines Corporation, Fujitsu Limited, Kobe Steel, Ltd., Storage Technology Corporation.

Membership in SCTC remains open, and members intend to file additional written notification disclosing all changes in membership.

On March 1, 1990, SCTC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 26, 1990, 55 FR 11068.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90–27067 Filed 11–15–90; 8:45 am]

BILLING CODE 4410–01–M

[Civil No. 90–0188]

United States v. American Safety Razor Co. et al; Antitrust Procedures

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in *United States* v. *American Safety Razor Company; Ardell Industries, Inc.; and The Jordan Company,* Civil Action No. 90–0188, E.D. Pa.

The Complaint alleged that the effect of the acquisition of Ardell by ASR may be substantially to lessen competition in the following United States markets: (1) Single edge industrial blades and (2) all types of industrial blades other than single edge industrial blades, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

Prior to the negotiations that led to the proposed Final Judgment the United States independently concluded that the acquisition of Ardell by ASR will not substantially lessen competition in the non-single edge blade market, and had intended to move to amend the complaint to eliminate that claim. Thus, the proposed Final Judgment does not address concerns regarding that market.

The proposed Final Judgment: (1) Orders and directs Ardell to sell four backing and shelling machines and related technology and, for up to three months, to assist the purchaser or purchasers in installing, debugging, and operating the machines, (2) orders and directs ASR to waive and release any rights it has to acquire Techni-Edge Manufacturing Corporation under a Right of First Refusal Agreement between Techni-Edge and ASR, (3) orders and directs ASR and Ardell to waive and release any claims they may have against Techni-Edge arising out of Techni-Edge's use of any of Ardell's proprietary manufacturing or engineering information or know-how, (4) orders and directs Ardell to terminate its consulting relationship with Bert Ghavami, (5) orders and directs ASR to release Hans Rath from any claims it may have arising out of three employment contracts between ASR and Hans Rath, and (6) orders and directs ASR to waive and release Hans Rath from any claim arising out of an October 25, 1988 Consulting Agreement which might prevent Hans Rath from providing services to competitors of ASR after the expiration of the Consulting Agreement, and to release Hans Rath from any other obligations he may have under the Consulting Agreement.

The proposed Final Judgment requires ASR and Ardell to divest the above described assets by May 31, 1991, unless the United States grants an additional three months to do so. If the divestiture is not accomplished within that period, the Court, upon application of the United States, will appoint a trustee to effect the divestiture. The divestiture is to be made to persons acceptable to the United States in its sole determination. The trustee may require ASR and Ardell to provide assistance in obtaining grinding capability to purchasers of the backers and shellers, if needed.

Should the Court enter the proposed Final Judgment, the complaint against The Jordan Company will be dismissed.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John J. Hughes, Chief, Middle Atlantic Office, Antitrust Division, United States Department of Justice, The Curtis Center, suite 650, 7th & Walnut Streets, Philadelphia, PA 19106, (Area Code 215) 597–7401, within the statutory 60-day comment period.

John W. Clark,

Acting Director of Operations, Antitrust Division.

Filed October 24, 1990.

Judge Newcomer.

Stipulation

It is stipulated by and between the undersigned parties, by their respective officers or attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

(2) The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff United States of America.

Alison L. Smith,

Acting Assistant Attorney General.

John W. Clark,

John J. Hughes,

Robert E. Connolly,

Attorneys, Antitrust Division, U.S. Department of Justice.

Richard S. Rosenberg,

Willard S. Smith,

Anne R. Spiegelman,

Attorneys, Antitrust Disision, Department of Justice, Middle Atlantic Office, The Curtis Center, suite 650, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-7401.

For The Defendants American Safety Razor Company; Ardell Industries, Inc.; and The Jordan Company:

Pepper, Hamilton & Scheetz.

Peter Hearn,

Pepper, Hamilton & Scheetz, 3000 Two Logan Square, Eighteenth & Arch Streets, Phildelphia, Pennsylvania 19103.

United States District Judge.

Dated:
So Ordered.
Filed October 24, 1990.
Judge Newcomer.

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on January 9, 1990, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement, and defendants have represented to plaintiff that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *ASR* means defendant American Safety Razor Company; each division and subsidiary thereof, except Ardell; and each officer, director, employee, agent or other person acting for or on behalf of any of the foregoing.

B. *Ardell* means defendant Ardell Industries, Inc.; each division and subsidiary thereof; and each officer, director, employee, agent or other person acting for or on behalf of any of the foregoing.

C. *Divestiture assets* means and includes all of the following: (a) Four (4) existing Ardell backers and shellers being identified as Nos. 4, 5, 6 and 7; and (b) License to the Original Purchaser to use only in the normal course of the Original Purchaser's business the drawings and specifications for the backers and shellers on a perpetual, royalty free basis. The license granted to the Original Purchaser shall be transferable by the Original Purchaser to a subsequent purchaser or purchasers of one or more of the divested backers and shellers on the same terms and conditions as granted to the Original Purchaser.

D. *Divestiture time period* means the period ending May 31, 1991 and any extension thereof pursuant to Section IV.B hereof.

E. *Person* means any natural person corporation, association, firm, partnership or other business or legal entity.

F. *Original purchaser* means a Person to whom one or more of the backers and shellers are sold by ASR and Ardell pursuant to Section IV hereof or by the Trustee pursuant to Section V hereof.

G. *Trustee* means a Person appointed by the Court pursuant to Section V hereof.

III. Applicability

A. The provisions of this Final Judgment shall apply to ASR and Ardell, to their successors and assigns, to their officers, directors, employees and agents and to all other Persons acting for or on behalf of ASR or Ardell who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Prior to the expiration of this Final Judgment, ASR and Ardell shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing shall be construed to provide any rights to any third party.

IV. Divestiture

A. ASR and Ardell are hereby ordered and directed to divest all of their direct and indirect ownership and control of the Divestiture Assets to an Original Purchaser or Purchasers within the Divestiture Time Period. ASR and Ardell shall be deemed to have complied with this obligation if, within the Divestiture Time Period, they have entered into a binding contract or contracts, subject only to the provisions of this Final Judgment, for the sale of the Divestiture Assets to a purchaser or purchasers then or thereafter approved by plaintiff and on terms then or thereafter approved by plaintiff, provided, such sale is consummated on such terms or such other terms as plaintiff may approve.

B. ASR and Ardell shall take all reasonable steps to accomplish the above-described divestiture on or before May 31, 1991. Plaintiff may, in its sole discretion, upon ASR's and Ardell's request and at any time on or before May 31, 1991, extend said period for an additional three months.

C. At the request of an Original Purchaser, ASR and Ardell shall provide

technical assistance as such Original Purchaser may reasonably require to enable it to install, to debut, and to operate the Divestiture Assets until the time required to achieve operational status of the Divestiture Assets exceeds fifteen (15) person days, then ASR and Ardell shall be compensated for such additional technical assistance in an amount equal to the salaries, benefits, and reasonable out-of-pocket expenses incurred in providing such assistance, and provided, further, ASR and Ardell shall not be required to provide such technical assistance after three months following delivery of the Divestiture Assets to the Original Purchaser.

D. Subject to Section IV.E hereof, a proposed divestiture of some or all of the Divestiture Assets shall be approved by plaintiff if plaintiff determines, in its sole discretion, that a proposed purchaser is purchasing Divestiture Assets for the purpose of competing effectively in the production and sale of strip ground single edge industrial blades in the United States and that a proposed purchaser has or has the ability to obtain the managerial, operational, and financial capability to become an effective competitor in the production and sale of strip ground single edge industrial blades in the United States.

E. The divestiture required by Section IV.A hereof shall not be made to Crescent Manufacturing Company, Industrial Blades Unlimited, SDI Corporation (formerly known as Shuen Der Industry Co., Ltd.), The Stanley Works, or Techni-Edge Manufacturing Corp.

F. ASR or Ardell shall not finance all or any part of any purchaser of Divestiture Assets by an Original Purchaser without the prior written approval of the plaintiff.

V. Trustee

A. If ASR and Ardell have not accomplished the divestiture required under Section IV.A hereof within the Divestiture Time Period, the Court shall appoint a Trustee for the purpose of accomplishing said divestiture in accordance with the provisions of this Section V. Within twenty days of the expiration of the Divestiture Time Period without divestiture having been accomplished, plaintiff shall furnish ASR and Ardell with the names and qualifications of at least two nominees for the Trustee. Within ten days of receiving plaintiff's names and qualifications, ASR and Ardell shall advise plaintiff of either their acceptance of one of those nominees or the names and qualifications of one or more other nominees for the Trustee. If the parties fail to agree on the appointment of a nominee within ten days, plaintiff shall promptly apply to the Court for the appointment of a Trustee. The Court may hear the parties as to the qualifications of their respective nominees to be the Trustee.

B. Upon his or her appointment the Trustee shall have the exclusive right and authority to sell the Divestiture Assets to an Original Purchaser approved by plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by said Trustee, provided, however, the Trustee shall not sell Divestiture Assets to any Person enumerated in Section IV.E hereof. ASR and Ardell may object to a sale of Divestiture Assets by the Trustee on the ground of the Trustee's malfeasance. Any such objection shall be conveyed in writing to plaintiff and the Trustee within fifteen (15) days of the Trustee's notification to the parties of a proposed sale.

C. If requested by the Trustee in order to facilitate a sale to an Original Purchaser not already engaged in producing strip ground industrial blades, ASR and Ardell shall agree to provide technical assistance as such Original Purchaser may reasonably require to enable such purchaser to procure, install, debug and operate strip grinding equipment of the same general type and efficiency as the strip grinding equipment currently used by Ardell to produce single edge industrial blades until such strip grinding equipment is operational, provided, however, ASR and Ardell are only required to provide such technical assistance if the Original Purchaser agrees (a) to compensate ASR and Ardell for such technical assistance in an amount equal to the salaries, benefits and reasonable out-of-pocket expenses incurred in providing such assistance; and (b) to hold harmless and indemnify ASR and Ardell from and against any and all claims arising out of the provision of such assistance, and, provided, further, ASR and Ardell shall not be required to provide such technical assistance after three months following delivery of such strip grinding equipment to such Original Purchaser.

D. In making the divestiture pursuant to this Section, the Trustee shall give preference to an otherwise qualified Person ready, willing and able to purchase a greater portion or all of the Divestiture Assets over an otherwise qualified Person ready, willing and able to purchase a lesser portion of the Divestiture Assets subject to the need to sell all of the Divestiture Assets.

E. The Trustee shall serve at the cost and expense of ASR and Ardell, shall receive compensation based on a fee arrangement providing an incentive based on price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe, provided, however, that the Trustee shall receive no compensation nor incur any costs or expenses prior to the date of his or her appointment. The Trustee shall account for all monies derived from the sale of Divestiture Assets and for all costs and expenses incurred in connection therewith. After the Court's approval of the Trustee's accounting, including the Trustee's fees, all remaining monies shall be paid to Ardell and the Trust shall then be terminated.

F. ASR and Ardell shall assist the Trustee in his or her efforts to accomplish the required divestiture to the extent reasonably requested and shall take no action to impede such efforts. The Trustee shall have full access to personnel, books, records and facilities related to the Divestiture Assets, and ASR and Ardell shall develop such financial or other information relevant to the Divestiture Assets as the Trustee may reasonably request, subject to appropriate protections for confidential information.

G. The Trustee shall provide the parties with monthly reports setting forth his or her efforts to accomplish the required divestiture. Each report shall contain (a) The name and address of each Person who, during the preceding month, expressed any interest in purchasing, made any inquiry regarding, or was contacted regarding the Divestiture Assets; and (b) a detailed description of all communications from and to each such Person. The Trustee shall maintain full records of all such communications.

H. If the Trustee has not accomplished the required divestiture within six months of his or her appointment, he or she shall within twenty days of the expiration of said six-month period submit a report to the parties and the Court setting forth (a) The Trustee's efforts to accomplish the divestiture, (b) the reasons, in the Trustee's judgment, why divestiture has not been accomplished, and (c) the Trustee's recommendations. The parties shall thereupon have the right to be heard and to make their own recommendations. The Court shall thereafter enter such orders as it deems appropriate, which may include extension of the Trust and the Trustee's appointment for some specified further period.

VI. Notification

ASR and Ardell or the Trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of any proposed divestiture pursuant to Section IV or V hereof. If the Trustee is responsible, he or she shall also notify ASR and Ardell. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each Person not previously identified who offered to acquire, or expressed an interest in acquiring or desire to acquire any ownership interest in the Divestiture Assets, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. ASR and Ardell or the Trustee shall furnish any additional information requested within twenty (20) days of the receipt of any such request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested, whichever is later, plaintiff shall provide written notice to ASR and Ardell and any Trustee, stating whether or not plaintiff objects to the proposed divestiture. If plaintiff provides written notice to ASR and Ardell or the Trustee that it does not object, then the divestiture may be consummated, subject only to ASR's and Ardell's rights to object to the sale pursuant to Section V.B hereof. Upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff or by ASR and Ardell, a divestiture proposed under Section V. shall not be consummated unless approved by the Court.

VII. Preservation of Assets

Until the divestiture required by this Final Judgment has been accomplished, defendants (a) Shall take all reasonable steps to assure that the Divestiture Assets are maintained as distinct and saleable assets; (b) shall not sell, lease, assign, transfer or otherwise dispose of the Divestiture Assets or further pledge them as collateral for any loan; (c) shall, so long as the Divestiture Assets remain within ASR's or Ardell's custody, possession or control, preserve the Divestiture Assets in at least the same condition of operation and repair as such conditions existed on October 15, 1990, ordinary wear and tear excepted; and (d) preserve the documents, books and records relating to the Divestiture Assets.

VIII. Techni-edge Relationship

A. ASR is hereby ordered and directed to waive and release any and all rights, which ASR may have to acquire Techni-Edge Manufacturing Corp., ("Techni-Edge") under the Right of First Refusal Agreement between Techni-Edge Manufacturing Corp. and ASR, dated April 28, 1989.

B. ASR and Ardell are hereby ordered and directed to waive and release any and all claims which ASR and Ardell may have against Techni-Edge arising out of Techni-Edge's use of any of Ardell's existing (as of the date of this Final Judgment) proprietary manufacturing or engineering information and know-how.

C. Ardell is hereby ordered and directed to terminate its consulting relationship with Bert Ghavami no later than six months after entry of this Final Judgment.

IX. Hans Rath Relationship

A. ASR is hereby ordered and directed to waive and release any and all claims which ASR may have against Hans Rath arising out of Hans Rath's Employee Patent and Confidential Information Agreements dated December 16, 1963, May 18, 1966 and May 5, 1981.

B. ASR is hereby ordered and directed to release Hans Rath from any and all executory obligations he may have under a Consulting Agreement between Hans Rath and ASR, dated October 25, 1988, provided, Hans Rath releases ASR from any executory obligations ASR may have under said Consulting Agreement. Notwithstanding the foregoing, ASR is hereby ordered and directed to waive and release any and all claims which ASR may have against Hans Rath arising out of Paragraph VIII(e) of said Consulting Agreement.

X. Compliance Inspection

For the purposes of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided herein shall be divulged by a representative of the Department of Justice to any Person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rule of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII. Termination

This Final Judgment will expire one year after the completion of the divestiture of the Divestiture Assets in

accordance with the provisions of Section IV or Section V hereof.

XIII. Dismissal of Complaint Against the Jordan Co.

The Amended Complaint is hereby dismissed with prejudice against The Jordan Company, each party to bear its own costs.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

Filed October 24, 1990.
Judge Newcomer.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On January 9, 1990, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, 15 U.S.C. 25, challenging the acquisition of Ardell Industries, Inc. ("Ardell") by the American Safety Razor Company ("ASR") as a violation of section 7 of the Clayton Act, 15 U.S.C. 18. The original complaint named ASR and Ardell as defendants. On August 15, 1990, the complaint was amended to add The Jordan Company ("Jordan") as a defendant. The complaint alleges that the effect of the acquisition may be substantially to lessen competition for the manufacture and sale in the United States markets of two product categories: (1) Single edge industrial blades and (2) all types of industrial blades other than single edge industrial blades. As defined in the complaint, industrial blades are strip ground, disposable razor blades not for wet shaving or medical use.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the Government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise To The Alleged Violation

On April 28, 1989, ASR acquired Ardell. ASR is a manufacturer of soap and shaving, industrial, and medical blades. Its principal blade manufacturing facility is located in Staunton, Virginia. Ardell is a manufacturer of industrial blades and hand tools. Its principal manufacturing facility is located in Union, New Jersey. Both ASR and Ardell manufacture and sell throughout the United States a wide variety of industrial blades, including single edge industrial blades.

Industrial blades are produced for numerous uses and are sold in industrial and do-it-yourself markets. The different types of blases are produced using a similar process. First, a coil strip of steel is run through a perforating punch press. The press contains a die, and the shape of the blade is determined by the width of the steel and the die that is inserted in the press. The press perforates the steel but does not cut it. Next, the steel strip is heat treated. The strip is fed into a hardening furnace, through a water-cooled quench block, then into a tempering furnace. The steel then is fed through a grinder which sharpens the blade. Different blades require different strip guides, which ensure that the blade is ground at the correct angle and to the correct thickness. Single edge blades may require stopping as well as grinding. As the sharpened steel exits the grinder, the individual blades are broken off by a breaker machine.

Most single edge blades are sold "backed" and "shelled," thus requiring additional processing. To back, a pre-cut aluminum or steel blade back is bent lengthwise down the middle. The back is then fed onto the unsharpened edge of the blade and crimped to become part of the blade. To shell, a sheet of paper is fed around the edged side of the blade, cut, and glued to form a protective sleeve.

Each type of industrial blade, including single edge blades, typically is used for specific purposes. Whether or not other types of products could be used interchangeably with single edge blades, in practice there is little overlap in usage. Consumers purchase single edge blades either as components and replacement blades for cutting and scraping tools, or for use without a tool. Because the tools in which single edge blades are used are designed specifically to hold only single edge blades, there are no substitute products for use in such tools. For most customers who use single edge blades without a tool, the superior cutting edge protected by the shelling and the ready grip provided by the backing produces a result far superior to that any alternative blade could produce. Although some consumers do purchase alternative blades to accomplish certain tasks for which single edge blades typically are used, a small but significant and nontransitory change in the price of single edge blades is unlikely to cause a significant number of users of single edge blades to switch to another type of blade.

Whether or not they currently do so, manufacturers of one type of industrial blade would shift into the manufacture of other non-single edge industrial blades in response to a small but significant and nontransitory price increase. Because of the additional requirement of backing and shelling, however, industrial blade manufacturers not currently manufacturing single edge industrial blades would not shift into the manufacture of single edge blades in response to a similar price increase.

The complaint alleges that the markets for single edge industrial blades both and for industrial blades other than single edge industrial blades both are highly concentrated. Based on 1988 sales data, ASR and Ardell have, respectively, about 50 percent and 18 percent of the single edge industrial blade market and about 36 percent and 11 percent of the market for industrial blades other than single edge blades. Only three companies other than ASR and Ardell have more than one percent of the single edge blade market. ASR has a right of first refusal to purchase one of them, Techni-Edge Manufacturing Corp. ("Techni-Edge"), a company owned by the family of Ardell's President at the time the complaint was filed.

As a result of ASR's acquisition of Ardell, the Herfindahl-Hirschman Index increased by about 1800 points to over 4900 in the single edge industrial blade market, and by about 800 points to over 2600 in the market for other types of industrial blades. A market with an HHI of 1800 is highly concentrated.

Entry into the market for single edge industrial blades is time consuming and requires the commitment of substantial non-recoverable costs. The acquisiton of efficient backing and shelling equipment alone likely requires more than two years. Moreover, the cost of this equipment is wholly non-recoverable should a firm choose to exit the market. Backing and shelling equipment typically is manufactured in-house by producers of single edge blades. Such equipment is not available for purchase off-the-shelf, and used equipment is rarely available. Similarly, equipment that can economically back and shell blades is difficult to design, and existing designs are not readily available. Successful competitiors in the single edge blades market, including ASR and Ardell, carefully protect their proprietary technology relating to

backing and shelling equipment. While grinding equipment is more readily available than backers and shellers, it may be difficult to acquire such equipment in fewer than two years. Entry that takes more than two years is not quick enough to deter or dispel noncompetitive performance resulting from a merger.

Entry into the market for industrial blades other than single edge blades is less difficult than for single edge blades because there is no need to obtain backing and shelling equipment. As discussed further below, the government has determined that because of the ease of entry into the production and sale of other industrial blades, as well as for other reasons, ASR's acquisition of Ardell will not have anticompetitive effects in the market for other blades.

III. Explanation of the Proposed Final Judgment

The United States brought this action because it believed the effect of this acquisition may be substantially to lessen competition in the United States markets for single edge industrial blades and for all types of industrial blades other than single edge blades, in violation of section 7 of the Clayton Act. As described below, the provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the proposed acquisition in the single edge blade market. Prior to negotiations that led to this proposed Final Judgment the United States independently concluded that the acquisition will not substantially lessen competition in the non-single edge blade market, and had intended to move to amend the complaint to eliminate that claim. Thus, the proposed Final Judgment does not address concerns regarding that market.

Concerns regarding the effect of ASR's acquisition of Ardell is based on the highly concentrated nature of the single edge industrial blade market and the difficulty potential new entrants face in achieving the ability to produce single edge industrial blades. The risk to competition posed by this transaction would be substantially reduced by the creation of a new competitor in the market. To this end, the proposed Final Judgment is designed to facilitate the entry of at least one new company with the capacity to manufacture a substantial quantity of single edge blades.

Section IV of the proposed Final Judgment requires defendant Ardell to sell four backing and shelling machines, the most difficult aspect of entry into the market, to a company or companies with the managerial, operational, and financial capability of becoming effective competitors in the production and sale of single edge industrial blades in the United States, and who intend to compete in that market. The proposed Final Judgment precludes the sale of the backers and shellers to currently viable single edge blade manufacturers, as well as to the Stanley works, a likely potential market entrant.

Four backers and shellers will provide the purchaser with sufficient capacity to compete effectively in the single edge blade market. Moreover, Section IV of the proposed Final Judgment also requires ASR and Ardell to license to the purchaser the drawings and specifications for the backers and shellers on a perpetual, royalty-free basis. The purchaser will be able to use this technology to build additional backers and shellers, if required in the normal course of business. Finally, the proposed Final Judgment requires ASR and Ardell to provide assistance to the purchaser in installing, debugging and operating the equipment for a period of three months following delivery of the assets.

The proposed Final Judgment also requires divestiture of ASR's right-of-first-refusal interest in Techni-Edge. Section VIII is intended to ensure that Techni-Edge, one of the few companies capable of manufacturing single edge industrial blades, will be a truly independent competitor. Techni-Edge was founded by the family of Bert Ghavami who, at the time of its founding, was a high ranking employee of Ardell. The proposed Final Judgment also eliminates uncertainty about the ownership of single edge technology practiced by Techni-Edge. Pursuant to the proposed Final Judgment, Ardell will waive any possible claim against Techni-Edge based on the use of Ardell's proprietary information. Furthermore, within six months after entry of the proposed Final Judgment. Ardell must terminate an existing consulting agreement with Bert Ghavami, who until recently was President of Ardell. These injunctions relating to Techni-Edge will ensure the independence of Techni-Edge from ASR and Ardell as a competitor in the single edge blade market.

Section IX of the proposed Final Judgment requires ASR to refrain from asserting any claim against Hans Rath arising out of three employment agreements. It also requires ASR to release Mr. Rath from his obligations under an October 25, 1988 consulting agreement provided Mr. Rath agrees to release ASR from its obligations under the consulting agreement. In any event, ASR will waive provisions in the consulting agreement that may preclude Mr. Rath from involvement in blade manufacturing with anyone other than ASR beyond the four year term of the agreement. The United States believes Mr. Rath is one of the few people in the United States with expertise in the design of single edge industrial blade manufacturing equipment, and his availability to assist potential market entrants in achieving the ability to manufacture single edge industrial blades may facilitate their entry into the market.

Under the terms of the proposed Final Judgment, defendants must take all reasonable steps necessary to accomplish quickly the sale of the four backers and shellers. Should Ardell fail to complete the sale of the backers and shellers by May 31, 1991, or an additional three months if granted by the United States, the Court will appoint a trustee to accomplish the divestiture. Following the trustee's appointment, only the trustee will have the right to sell the backers and shellers, and ASR and Ardell will assist the trustee in the trustee's efforts to accomplish the required divestitute. ASR and Ardell will be required to pay for all of the trustee's sale-related expenses.

Should a trustee be responsible for accomplishing the divestiture, preference would be given to a potential purchaser of a greater number or all of the backers and shellers over a potential purchaser of a lesser number of backers and shellers. Such a purchaser would begin operation with greater blade-making capacity, providing a greater deterrent to anticompetitive price rises by existing manufacturers. Because obtaining single edge blade grinding equipment may be difficult, the proposed Final Judgment also empowers the trustee to require defendants ASR and Ardell to provide assistance in achieving grinding capability to a purchaser, if necessary.

At the end of six months, if the trustee has not accomplished the sale, the trustee and the parties will make recommendations to the Court and the Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may include extending the trust or the term of the trustee's appointment.

The proposed Final Judgment provides that until the required divestiture has been accomplished, ASR and Ardell will maintain the divestiture assets in operable condition as distinct and saleable assets.

The proposed Final Judgment provides the United States an opportunity to review any proposed sale before it

occurs. If the United States requests information from defendants to assess a proposed sale, the sale may not be consummated until at least 20 days after defendants supply the information. If the United States objects to a proposed sale, the sale may not be completed.

The proposed Final Judgment provides that The Jordan Company will be dismissed as a defendant upon entry of the Final Judgment. Jordan was named as a defendant primarily due to its roles in the acquisition and operations of ASR and Ardell. For purposes of carrying out the terms of the proposed Final Judgment, Jordan is not a necessary defendant. Obligations in the proposed Final Judgment, however, bind partners and principals of Jordan to the extent they are officers or shareholders of ASR or Ardell.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedure Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: John J. Hughes, Chief, Middle Atlantic Office, Antitrust Division, The Curtis Center, Suite 650 West, 7th & Walnut Streets, Philadelphia, Pennsylvania 19106.

VI. Alternatives to the Proposed Final Judgment

An alternative to settling this action pursuant to the proposed Final Judgment would be for the United States to litigate the issues and, if successful, to seek an injunction requiring ASR to divest all of its ownership interest in Ardell.

As noted above, the United States decided not to press its claim concerning a violation in the non-single edge industrial blade market for reasons independent of the negotiations that led to the proposed Final Judgment. Because other types of industrial blades are not backed and shelled, entry into the market for non-single edge blades is significantly easier than entry into the market for single edge blades. Additionally, while there are few foreign companies capable of manufacturing single edge industrial blades who are reasonable sources for United States customers, foreign sources of non-single edge blades are more numerous and constitute a growing presence in the United States market. Finally, several types of non-single edge industrial blades face growing competition from non-disposable industrial blade products.

Regarding the single edge industrial blade market, the United States could have proceeded with the litigation, but the outcome of the trial, as with any litigation, is uncertain. The divestiture of four backers and shellers and related technology will provide the means for entry into the relevant market of a new, viable competitor. The proposed Final Judgment also assures the independence from ASR and Ardell of Techni-Edge, itself a source of new and significant competition, and the availability to potential entrants of the services of an individual possessing unique expertise in single edge blade manufacturing. The United States expects that these measures will provide new competition sufficient to prevent the ASR acquisition of Ardell from having anticompetitive effects.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the acquisition alleged in the complaint.

VII. Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating the proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Respectfully submitted,

Richard S. Rosenberg, Robert E. Connolly, Willard S. Smith, Anne R. Spiegelman,

Attorneys, Antitrust Division, Department of Justice, Middle Atlantic Office, The Curtis Center, suite 650, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-7401.

[FR Doc. 90-26980 Filed 11-15-90; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Prisons

Intent To Prepare Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Complex in Sumter County, FL

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statetment (DEIS).

SUMMARY:

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prison has determined that a new Federal correctional complex is needed in its system. A 1,350 acre tract of land located north of County Road 470 between Sumterville and Okahumpka will be evaluated. The proposal calls for the construction of facilities to house approximately 2,750 minimum, low, medium and high custody inmates.

The acreage would be used for road access, inmate housing, administration and program and service spaces and services and support facilities. In addition, exercise areas would be included in the needed acreage.

In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives

In developing the DEIS the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

Meeting

During the preparation of the DEIS there will be numerous opportunities for

public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Sumter County. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

Public notice will be given concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action and the DEIS can be answered by: Kevin W. McMahon, Site Acquisition Specialist, Office of Facilities Development and Operations, Administration Division, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 514–8698.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 90–26263 Filed 11–15–90; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

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

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

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

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

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

Revision

Bureau of Labor Statistics

National Longitudinal Survey of Labor Market Experience of Youth

1220–0109

Annually

Individuals or Households

9060 responses; 6493 total hours; 43 minutes per response; 1 form

The information provided in this survey will be used by the Department of Labor and other government agencies to help understand and explain the employment, unemployment, and related problems faced by young men and women in this age group.

Extension

U.S. Department of Labor, Employment Cost Index, 1220–0038; BLS 3038.

Form No.	Affected Public	Respondents	Frequency	Average time per response.
BLS 3038A	State or local governments; Businesses of other for-profit; Non-profit institutions; Small businesses or organizations.	1,260	Once	5 minutes.
BLS 3038B	State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.	6,705	Quarterly	35 minutes.
BLS 3038C	State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.	6,705	Quarterly	15 minutes.
BLS 3038D	State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.	1,260	Once	3 hours.
BLS 3038E	State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.	6,705	Quarterly	15 minutes.

15,510 total hours

The Employment Cost Index measures trends in employee compensation costs. The ECI is used to analyze the relationships between changes in productivity, employment, output prices, and compensation costs. The survey covers the private nonfarm economy and State and local governments.

Signed at Washington, DC this 13th day of November, 1990.

Marizetta Scott,

Acting Departmental Clearance Officer.

[FR Doc. 90–27083 Filed 11–15–90; 8:45 am]

BILLING CODE 4510–24–M

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

New Jersey:
- NJ90-2 (Jan. 5, 1990) ..... p. 665, p. 669.
- NJ90-3 (Jan. 5, 1990) ..... p. 685, p. 689.

Pennsylvania:
- PA90-5 (Jan. 5, 1990) .... p. 951, p. 952.
- PA90-7 (Jan. 5, 1990) .... p. 977, pp. 978-979.
- PA90-8 (Jan. 5, 1990) .... p. 987, pp. 988-989.
- PA90-9 (Jan. 5, 1990) .... p. 997, p. 998.
- PA90-12 (Jan. 5, 1990) .. p. 1013, p. 1014.
- PA90-14 (Jan. 5, 1990) .. p. 1019, p. 1021.
- PA90-17 (Jan. 5, 1990) .. p. 1035, p. 1036.
- PA90-18 (Jan. 5, 1990) .. p. 1041, p. 1042.
- PA90-19 (Jan. 5, 1990) .. p. 1049, p. 1050.
- PA90-20 (Jan. 5, 1990) .. p. 1055, p. 1056.
- PA90-21 (Jan. 5, 1990) .. p. 1063, p. 1064.
- PA90-22 (Jan. 5, 1990) .. p. 1067, p. 1068.
- PA90-23 (Jan. 5, 1990) .. p. 1079, p. pp. 1080-1081.
- PA90-24 (Jan. 5, 1990) .. p. 1085, p. 1086.
- PA90-26 (Jan. 5, 1990) .. p. 1093, p. 1094.

Index ..... pp. xxi-xxviii.

Volume II

Illinois:
- IL90-9 (Jan. 5, 1990) ..... p. 143, p. 144.
- IL90-11 (Jan. 5, 1990) .... p. 153, pp. 155-156.
- IL90-19 (Jan. 5, 1990) .... p. 231, p. 232.

Indiana, IN90-6 (Jan. 5, 1990). p. 303, p. 304.

Michigan:
- MI90-1 (Jan. 5, 1990)..... p. 421, pp. 422, 426, 433.
- MI90-7 (Jan. 5, 1990)..... p. 495, pp. 496, 498-500, pp. 505-508, 511, pp. 513-514.

Missouri:
- MO90-2 (Jan. 5, 1990)... p. 647, pp. 649, 651, pp. 654-655.
- MO90-6 (Jan. 5, 1990)... p. 677, pp. 678-684.

New Mexico:
- NM90-1 (Jan. 5, 1990)... p. 747, p. 753.
- NM90-2 (Jan. 5, 1990)... p. 763, pp. 765-768.

Ohio:
- OH90-1 (Jan. 5, 1990) ... p. 777, p. 779.
- OH90-2 (Jan. 5, 1990) ... p. 791, pp. 793-794.
- OH90-3 (Jan. 5, 1990) ... p. 813, p. 814.
- OH90-29 (Jan. 5, 1990). p. 873, p. 877.
- OH90-35 (Jan. 5, 1990). p. 918c, p. 918d.

Volume III

Montana, MT90-1 (Jan. 5, 1990). p. 171, p. 173.

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 9th day of November 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-26994 Filed 11-15-90; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-90-162-C]

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

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656, has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Dominion No. 18 Mine (I.D. No. 44-06577) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that boreholes be drilled not more than 8 feet apart in the rib to a distance of at least 20 feet and at an angle of 45 degrees.

2. As an alternate method, petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals, in a pattern that would provide a 10-foot barrier in all directions to the cut to be taken.

3. Petitioner states that the proposed alternate method will provide a degree of safety for the miners that will equal or exceed that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 17, 1990. Copies of the petition are available for inspection at that address.

Dated: November 8, 1990.

Patricia W. Silver,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27081 Filed 11-15-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-159-C]

Mason and Dixon Coal Company; Petition for Modification of Application of Mandatory Safety Standard

Mason and Dixon Coal Company, P.O. Box 188, Muir, Pennsylvania 17957 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope (I.D. No. 36-07893) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices were installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 17, 1990. Copies of the petition are available for inspection at that address.

Dated: November 8, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27082 Filed 11-15-90; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

California State Programs; Approval

I. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator-OSHA), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(e) of the Act and 29 CFR part 1902. On May 1, 1973, notice was published in the **Federal Register** 38 FR 10717 of the approval of the California plan and the adoption of subpart K to part 1952 of title 29 containing the decision. The California plan provides for the adoption of Federal standards and State standards through legislative procedures.

By a letter dated September 27, 1990, from Robert W. Stranberg to Frank Strasheim and incorporated as part of the plan, the State submitted a State standard revision identical to 29 CFR 1910.120, Hazardous Waste and Emergency Response (54 FR 9294 and April 13, 1990; 55 FR 14072).

This standard was promulgated through California legislative action, Assembly Bill (AB) 3018, and became effective on signature by the Governor on September 21, 1990. AB 3018 specifies that the State will enforce the Federal standard until such time as the California Occupational Safety and Health Standards Boards adopts a standard equivalent to the Federal standard (29 CFR 1910.120, Hazardous Waste and Emergency Response, as noted above) and it becomes effective. In accordance with the terms of the Operational Status Agreement (signed by Federal OSHA and the State of California on October 5, 1989), with the State's adoption of this standard, the State has resumed authority over the

enforcement of the Hazardous Waste and Emergency Response standard.

2. Decision

Having reviewed the State submission in comparison with the Federal standard, it has been determined that the standard is identical to the Federal standard and accordingly is approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 71 Stevenson Street, San Francisco, California 94105; Division of Occupational Safety and Health, 395 Oyster Point Boulevard, Wing C/3rd Floor, South San Francisco, California 94080–1913; and Directorate of Federal State-Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the California State plan as a proposed change and for making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard are identical to the Federal Standard which was promulgated in accordance with Federal law, including meeting requirements for public participation.

2. The standard was adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 16, 1990.

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at San Francisco, California this 5th day of October 1990.

Frank Strasheim,

Regional Administrator.

[FR Doc. 90–27095 Filed 11–15–90; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Folk Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel (Organizations; State Arts Apprenticeships Section) to the National Council on the Arts will be held on December 4–7, 1990 from 9 a.m.–6 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 7, 1990, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 8, 1990.

Yvonne M. Sabine,

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

[FR Doc. 90–27058 Filed 11–15–90; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Advancement Section) to the National Council on the Arts will be held on December 5, 1990 from 9 a.m.–5:30 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.–10 a.m. The topic will be introductory remarks.

The remaining portion of this meeting from 10 a.m.–5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 7, 1990, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observors, meetings, or portions, thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 8, 1990.

Yvonne M. Sabine,

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

[FR Doc. 90–27059 Filed 11–15–90; 8:45 am]

BILLING CODE 7537–01–M

Opera-Musical Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on December 3–4, 1990, from 9 a.m.–5:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be guidelines for Professional Companies, New American Works/Organizations & Individuals, Regional Touring and Services to the Art, Special Projects.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guideline.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532. TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms.Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 8, 1990.

Yvonne M. Sabine,

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

[FR Doc. 90–27060 Filed 11–15–90; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Playwrights Fellowships Section) to the National Council on the Arts will be held on December 7, 1990 from 9:30 a.m.–6 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m.–10 a.m. and 5:30 p.m.–6 p.m. The topics will be introductory remarks and guidelines discussion.

The remaining portion of this meeting from 10 a.m.–5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 7, 1990, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 8, 1990.

Yvonne M. Sabine,

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

[FR Doc. 90–27062 Filed 11–15–90; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Organizations Section) to the National Council on the Arts will be held on December 3–6, 1990 from 9 a.m.–9 p.m. and December 7 from 9:30 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 7 from 4 p.m.–5 p.m. The topics will be policy and guidelines discussion.

The remaining portions of this meeting on December 3–6 from 9 a.m.–9 p.m. and December 7 from 9:30 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 7, 1990, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 8, 1990.

Yvonne M. Sabine,

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

[FR Doc. 90–27061 Filed 11–15–90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission has recently submitted to OMB for review of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C chapter 35).

1. Type submission, new revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 53, "Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity."

3. The form number if applicable: Not applicable.

4. How often the collection is required: As necessary in order for NRC to determine that facilities for interim storage of spend nuclear fuel are consistent with the provisions of the Nuclear Waste Policy Act of 1982.

5. Who will be required or asked to report: Licensees authorized to operate utilization facilities.

6. An estimate of the number of responses: 6 annually.

7. An estimate of the total number of hours needed to complete the requirements or request: Approximately 1,320 hours per licensee (7,920 hours annually).

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: The Nuclear Waste Policy Act of 1982 (Pub. L. 97–425, January 7, 1983) established a framework for the disposal of spent nuclear fuel and high-level radioactive waste generated by nuclear power plants, which includes an interim program for the storage of spend nuclear fuel while the repository for ultimate disposal is selected and developed.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room 2120 L Street, NW., Lower Level, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0126), Office of Information and Regulatory Affairs (NEOB–3019), Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

NRC Clearance Office is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 7th day of November, 1990.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated, Senior Official for Information Resources Management.

[FR Doc. 90–27010 Filed 11–15–90; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission has recently submitted to OMB for review of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions".

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion. Upon submittal of an application for construction permit, operating license, early site review, design certification review, decommissioning review, manufacturing license, materials license, or upon submittal of a petition for rulemaking.

5. Who will be required or asked to report: Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR parts 40, 50, 52, 54, 61, 70 and 72.

6. An estimate of the number of responses: 26 annually.

7. An annual estimate of the total number of hours needed to complete the requirement or request: 33,902 (approximately 1,304 hours per response)

8. An indication of whether Section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: 10 CFR part 51 of the NRC's regulations, specifies information and data to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20037.

FOR FURTHER INFORMATION: Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0021), Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 7th day of November, 1990.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 90–27011 Filed 11–15–90; 8:45 am]

BILLING CODE 7590–01–M

Low-Level Radioactive Waste Policy Amendments; Milestone for Governors' Certifications

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Publication of Governors' Certification.

SUMMARY: This notice is to inform the public of the receipt and publication of the Governors' Certification for the State of Vermont. Section 5(e)(1)(E) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA or Pub. L. 99–240) requires NRC to publish the Certification.

Concurrently, NRC has dispatched copies of the Certification to Congress and the Department of Energy (DOE). These copies are accompanied by a statement signed by an NRC official authorized to verify NRC's official receipt of such correspondence. The statement verifies that the Certification, as described in the Act, signed by the Governor of the State, was filed with NRC on September 13, 1990. These actions fulfill NRC's statutory obligations under the Act.

For the 1990 milestone, States or Compacts are required to demonstrate through one of three mechanisms, i.e., submittal of completed license application, Governors' Certification, or disposal agreement, that they will be capable of storing, disposing, or managing any low-level radioactive waste generated within the State and requiring disposal after December 31,

1992. Refer to **Federal Register** dated February 22, 1989 (54 FR 7616) for a detailed description of these mechanisms.

FOR FURTHER INFORMATION CONTACT: Robert Hogg, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–0579.

Dated at Rockville, Maryland, this 2nd day of November, 1990.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Chief, Operations Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.

September 13, 1990

Honorable Kenneth M. Carr,
Chairman, U.S. Nuclear Regulatory Commission, Office of the Commissioner, Washington, DC 20555.

Dear Mr. Carr: The State of Vermont generates approximately 9,000 cubic feet of low level radioactive waste annually. Greater than 99% of this is generated by two generators. The Vermont Yankee nuclear power plant generates about 95% of the total waste and the University of Vermont generates about 4% of the waste.

The State of Vermont was out of compliance with the 1988 and 1990 milestones of the Low Level Radioactive Waste Policy Amendments Act of 1985. The legislature in Vermont passed a bill (H. 534) on April 27, 1990 which we believe will permit us to come back into compliance. I signed that bill (Title 10 V.S.a., Section 7001–7050) on June 29, 1990 and appointed the Low Level Waste Authority members on July 3, 1990. The Agency of Natural Resources is presently establishing a program and staffing a new division of radioactive waste management the purpose of which is to implement the regulatory requirements mandated in the new law. This package is submitted to you to give you the information necessary to make the determination that Vermont is now in compliance with the federal law.

Because of the passage of enabling legislation, I can now certify that Vermont will be capable of providing for, and will provide for, the storage, disposal, or management of any low level radioactive waste generated within its borders and requiring disposal after December 31, 1992. The actions to be taken to ensure such capacity exists are explained in the attached outline with Appendices.

Sincerely yours,

Madeleine M. Kunin,

Governor.

State of Vermont

Certification plan submitted in fulfillment of Public Law 99–240, section 5(e)(1)(C)(ii) of the Low-Level Radioactive Waste Policy Amendments Act of 1985.

Madeleine M. Kunin,

Governor.

August 1990

Outline of the Essential Elements of House Bill (H. 534) Title 10, Vermont Statutes Annotated, Sections 7001–7050 for Establishing a Low Level Radioactive Waste Disposal Facility in Vermont

The following is designed to meet the Low Level Radioactive Waste Policy Amendments Act requirements for Public Law 99–240, section 5.e(1), (C)(ii).

On April 27, 1990, the Vermont legislature passed a comprehensive low level radioactive waste (LLW) disposal bill (H. 534). (copy attached as Appendix A). The statement of purpose of this bill is as follows:

This bill proposes to:

(1) Require renewed efforts by the state to negotiate an agreement for the out-of-state disposal of low-level radioactive waste generated in Vermont.

(2) Establish the basic criteria, procedures, and the regulatory structure for the siting and licensing of a low-level radioactive waste disposal facility.

(3) Create a low-level radioactive waste authority.

(4) Provide for the preparation of a siting plan, (Section 7011(4)(D)).

(5) Provide, if necessary, for the siting, construction, operation, closing (including post-closure activities), and the long-term care of a low-level radioactive waste disposal facility in this state.

In summary form, the bill does the following:

- Creates an Authority.
- Charges the Authority with siting, designing, building, operating, and closing a LLW disposal facility.
- Charges the Agency of Natural Resources with continuing to pursue a compact with another state or states.
- Creates a timetable of necessary actions.
- Establishes a LLW fund to receive payments from the LLW generators to fund the actions required by the bill.
- Charges the Agency of Natural Resources with regulating the screening, siting, and facility design processes.
- Charges the Public Service Board with approving necessary fees of the Authority and determining the financial assurance requirements.
- Establishes minimum siting requirements (Appendix B, Section 7021).
- Requires a waste separation study.
- Prohibits shallow land burial of LLW.
- Requires the parallel screening of the state for sites and the characterization of a potential site on the property of the Vermont Yankee Nuclear Power Corporation.
- Requires a vote of the host municipality and the state legislature before a site can be developed.
- Requires public participation throughout the entire process.

As stated in the purpose of the bill, a Low Level Radioactive Waste Authority is created. The Authority consists of three Vermont residents, each having 6-year terms. The responsibilities of the Authority as delineated in the bill are given in Appendix C.

The bill contains a timetable to be met in establishing a LLW disposal facility in Vermont. That timetable is enclosed as Appendix D. In addition, a timeline of necessary actions is enclosed as Appendix E.

We believe this timetable is adequate to accomplish the task of developing and making operational a LLW disposal facility in Vermont by 1996. If the time required is longer than presently anticipated, Vermont generators can store waste for up to 5 years. The capacity to store waste on-site has been demonstrated because Vermont has been shut off from the existing LLW disposal sites since January 1989. Enclosed, as Appendices F and G are letters from the two major generators of LLW in Vermont stating they have the necessary storage capacity. These two generators together account for over 99% of Vermont's 8,000–9,000 cubic feet annual generation of LLW.

Appendix A

No. 296. An Act Creating A Low-Level Radioactive Waste Authority And Providing For A Possible Low-Level Radioactive Waste Facility.

(H. 534)

(Title 10 Vermont Statutes Annotated, Chapter 161, Sections 7001–7050)

It is hereby enacted by the General Assembly of the State of Vermont:

[*1] Sec. 1. Legislative Findings

(a) Low-level radioactive wastes are generated through the operation of nuclear power plants and as byproducts of medical, research, and industrial activities. In Vermont, a very high percentage of the state's current low-level radioactive wastes are generated by the Vermont Yankee nuclear facility It is very likely that Vermont Yankee will, during its operating life and during the period of its decommissioning, continue to produce the vast majority of Vermont's low-level radioactive waste.

(b) Vermont has been dependent on low-level radioactive waste disposal sites in other states that are no longer required to accept waste from Vermont

under the provisions of the federal Low-Level Radioactive Waste Policy Act.

(c) The state's efforts to join an interstate compact, or to sign a long-term agreement with a state or compact, for the disposal of some or all of Vermont's low-level radioactive waste have not been successful to date.

(d) Under the federal Low-Level Radioactive Waste Policy Act, Vermont could regain a right to access to out-of-state disposal facilities through December 31, 1992 by complying with the Act's milestones and it is the intent of the legislature that this act would achieve compliance and will allow the governor to meet the 1990 milestone by written certification of compliance.

(e) The federal Low-Level Radioactive Waste Policy Act states that if a state is unable to provide for the disposal of all low-level radioactive waste generated within the state by January 1, 1996. then upon the request of the generator the state shall take title and possession of the waste. Thus, Congress has created a new potential cost of waste disposal; that is, the cost to the state of its own ownership, possession and liability. It is therefore necessary that the state of Vermont establish a process that will assure that all such costs be fully provided by the time when they may be incurred. It is appropriate that these costs be met by the entities that may choose to exercise the option to pass ownership, possession and liability to the state.

(f) Low-level radioactive wastes are defined by the federal government. The definition includes some wastes that are radioactive for millions of years. The definition also includes some highly concentrated wastes, some of which are short-lived and some long-lived.

(g) Low-level radioactive waste currently generated in Vermont since the beginning of 1989 is being stored in temporary storage facilities by each of the generators without state evaluation of the site, monitoring of the waste or public input. Such storage cannot be continued indefinitely.

(h) The long-term storage in temporary facilities, and any related transfer of title or possession of such waste to the state because of the absence of disposal facility availability, could pose a threat to the economy, the public health and welfare, and the environment of the state. The nuclear power plant, medical institutions, research facilities, and other industries within the state could be adversely affected.

(i) It is in the best interests of the state to vigorously pursue opportunities to join an interstate compact, or to sign an agreement with a state or compact, for the disposal of some or all of the low-level radioactive waste generated in Vermont, provided that the terms of such an agreement adequately protect the environment of the host state and minimize the future possibility of the disposal of any low-level radioactive waste in Vermont.

(j) In the absence of a compact or a long-term agreement, it is in the best interests of the state to carry out its responsibilities under the present federal law and its responsibilities to the present and future inhabitants of this area by siting and constructing a facility which would satisfy the federal requirements for disposal of all the waste but would segregate that portion of the waste containing most of the long-lived isotopes. The facility would contain the short-lived isotopes for at least their hazardous life—thus, "disposing" of them and would contain the segregated long-lived isotopes in a manner that would allow recovery after an evaluation and decision on alternatives for permanent disposal of those wastes. It is also in the best interests of the state to "dispose" of the long-lived isotopes in a manner which isolates them from the biosphere for as long as reasonably necessary.

(k) A disposal facility larger than that necessary to dispose of reasonably expected low-level radioactive waste would present avoidable risks to the environment and public safety; reasonably expected waste includes only waste from the normal operation of the Vermont Yankee facility, during its licensed operating life, and including decommissioning waste, and from the normal operations of the currently licensed low-level radioactive waste generators in Vermont through the expected date for completing the decommissioning of Vermont Yankee plus a small emergency contingency reserve. The exhaustion of disposal capacity at an early and uncertain future date, because of the acceptance or generation of waste in excess of the reasonably expected amount, would burden the resources of the state, risk disruption of the economy of the state and would add avoidable risks of harm to the environment to public health and welfare.

(l) For a number of reasons, including the minimization of transportation, a site for the disposal facility in the vicinity of the Vermont Yankee Nuclear Power Plant should be initially studied to detemine if it is a qualified and environmentally acceptable site.

[*2] Sec. 2. Agreements and Compacts

(a) The secretary of the agency of natural resources shall vigorously pursue all opportunities to join an interestate compact (pursuant to the Low-Level Radioactive Waste Act of 1980 as amended), or to sign an agreement with a state or compact, for the disposal of some or all of Vermont's low-level radioactive waste and shall negotiate the terms of such an agreement so as to minimize the future possibility of the disposal of any low-level radioactive waste in Vermont and to adequately protect the environment of the host state. The secretary shall report, every January 15, to the legislature on the status of any negotiations.

(b) The secretary of the agency of natural resources shall discontinue the pursuit of such an agreement or compact for the disposal of waste designated as short-lived wastes under chapter 161 of Title 10 when a license is issued for the construction of a low-level radioactive waste disposal facility in Vermont.

(c) The secretary of the agency of natural resources shall discontinue the pursuit of such an agreement or compact for the disposal of waste designated as long-lived wastes under chapter 161 of Title 10 when a final decision is made by the legislature for the permanent disposal of that waste.

(d) Any interstate agreement that would extend for more than four years or any compact dealing with the disposal of low-level radioactive waste generated in Vermont shall be submitted to the legislature for ratification or adoption. Any such interstate agreement that would extend for four years or less, shall become effective, on an interim basis, upon receiving approval of the emergency board, and shall become final upon receiving legislative approval before the end of the next session of the general assembly.

(e) The authority established in this act shall, after public comment, present a report to the legislature on the environmental strengths and weaknesses of the host state site or siting process and criteria.

[*3] Sec. 3. 10 V.S.A. chapter 161 is added to read:

[A> Chapter 161. Disposal of Low-Level Radioactive Waste <A]

[A> § 7001. Definitions <A][A> As used in this chapter: A]

[A> (1) "Adequate financial assurance requirements" mean a requirement, or combination of requirements, for the authority and for generators of low-level radioactive waste to have financial responsibility instruments or arrangements that, considering the fund established by

section 7013 of this chapter and all other relevant information, are sufficient to assure, to a high probability, that the authority will be financially able to carry out its responsibilities under this chapter. <A]

[A> (2) "Agency" means the agency of Natural Resources. <A]

[A> (3) "Authority" means the Vermont Low-Level Radioactive Waste Authority. <A]

[A> (4) "Closure" includes post-closure observation and maintenance. <A]

[A> (5) "Construction Costs" means pre-operational capital costs, site acquisition costs and any permit and license fees for the facility authorized by this chapter. <A]

[A> (6) "Expected low-level radioactive waste" means the low-level radioactive waste from the normal operation of the Vermont Yankee Facility, during its licensed operating life, including decommissioning waste, and from the normal operations of the currently licensed low-level radioactive waste generators in Vermont through the expected date for completing the decommissioning of Vermont Yankee, plus a small emergency contingency reserve. <A]

[A> (7) "Low-level radioactive waste" means radioactive material that is not high-level radioactive waste, spent nuclear fuel, transuranic waste or byproduct material, as defined in 42 U.S.C. SEC. 2014(E)(2), which the United States Atomic Energy Act of 1954, Section 11(E)(2), and that material the United States Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste. <A]

[A> (8) "NRC" means the Nuclear Regulatory Commission or any successor agency. <A]

[A> (9) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, or other legal entity or any legal successor to or representative, or agent. <A]

[A> (10) "Public Comment" means ample opportunities for public input, including at least prior availability of a draft decision, policy or rule, two public hearings in different areas of the state, warned at least twice with a first warning not less than 30 days prior to the hearing by notice to daily media outlets in the area and statewide, and preparation and distribution of a response summary to all comments received. <A]

[A> (11) "Shallow land burial" means the burial of waste within an unlined subsurface trench without additional engineered structures or enhancements designed to minimize migration of radionuclides. <A]

[A> (12) "Sitting plan" means a plan which reflects the standards, procedures and timetables of this chapter and meets the requirements for a sitting plan of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Public Law 99–24D) (42 U.S.C. 2021B et seq.). <A]

[A> (13) "Yankee site" means a site for a low-level radioactive waste disposal facility on land presently owned by and contiguous to the Vermont Yankee Nuclear Generating Facility. <A]

[A> § 7002. Timetable and Responsibilities <A]

[A> (A) The following timetable and responsibilities shall be adhered to: <A]

[A> (1) Within 60 days of the effective date of this chapter, the Governor shall appoint the initial members of the authority. <A]

[A> (2) As soon as practicable, the authority shall, after public comment, initiate a study to determine the maximum appropriate separation of long-lived waste, the appropriate level of recoverability of such waste, and the appropriate permanent disposal technology and cost for that waste. <A]

[A> (3) As soon as practicable, the authority shall initiate the site characterization of the Yankee site. <A]

[A> (4) As soon as practicable, the authority shall begin collecting data for the screening of the town of Vernon and of the rest of the state in order to identify potential alternative sites for a disposal facility. <A]

[A> (5) Within 270 days of the effective date of this chapter, the Agency shall, after public comment, adopt rules establishing the siting, screening and certification requirements under Sections 7021 and 7022. <A]

[A> (6) On or before November 1, 1991, the Authority shall: <A]

[A> (A) Complete the characterization of the Yankee site; <A]

[A> (B) After public comment, select at least three potential alternate sites, including one in the town of Vernon. <A]

[A> (7) Within 60 days of the submission by the authority of a request for certification of a potential alternative site, the Agency shall decide if the site meets the applicable siting requirements. <A]

[A> (8) As soon as practicable, the authority shall, after public comment, decide whether to characterize a certified site other than the Yankee site or to complete the requirements of subsection 7012(F) for the Yankee site. Then, if the Yankee site has been certified by the Agency as meeting the siting requirements and if the requirements of subsection 7012(F) have been completed, the authority may decide whether to prepare a draft license application for a disposal facility at the Yankee site. <A]

[A> (9) On or before December 15, 1991, the authority must decide either to characterize an alternative site or to prepare a draft license application for a facility at a previously characterized site. Then initially before January 15, 1992, and subsequently within 30 days of any similar decision, the authority must petition the legislature, under chapter 157 of this Title, for approval of its decision. <A]

[A> (10) If the legislature approves a petition to characterize an alternate site or sites or if it directs the characterization of an alternate site or sites, then the authority must begin characterization and, within 18 months of the legislative decisions, the authority must complete characterization. Following the completion of characterization, the authority must again decide whether to characterize another certified site, or sites, or to complete the requirements of subsection 7012(F) for the characterized site. Then, if the requirements of subsection 7012(F) have been completed, the authority may decide whether to prepare a draft license application for a disposal facility at a characterized site. <A]

[A> (11) If the legislature approves a petition to prepare a draft license application or directs the preparation of a draft license for a disposal facility at a particular characterized site, the authority shall, within six months of the legislative action or the effective date of the rules required by sections 7023 and 7024, whichever is later, after public comment, submit a draft license application to the Agency for review. <A]

[A> (12) Within 18 months of the effective date of this act, based on the results of the study required in subdivision (A)(2) of this seciton and after public comment, the authority shall: <A]

[A> (A) Make recommendations to the Agency for rules on separation and recoverability of long-lived waste; <A]

[A> (B) Make recommendations to the Agency for rules on the disposal facility design standards; and <A]

[A> (C) Make an initial report to the legislature and to the Public Service Board on the possible appropriate technologies, and their costs, for the permanent disposal of the long-lived waste. <A]

[A> (13) Within six months of receiving the authority's recommendations and after public comment, the Agency shall adopt the separation, recoverability and design standards under section 7023 and the draft license application standards and review procedures under section 7024. <A]

[A> (14) By July 1, 1992 after public comment, the authority shall petition the Public Service Board for approval of a service fee under subsections 7013(E) and 7020(B) of this chapter and shall propose adequate financial assurance requirements as part of the same proceeding. <A]

[A> (15) Within six months of receiving the draft license application, the agency must complete its review. <A]

[A> (16) Not later than 30 days after completion of the review of the draft license application by the Agency, the authority shall apply to the United States Nuclear Regulatory Commission for a license to construct and operate a disposal facility in the State. <A]

[A> (17) Not later than 30 days after completion of the review of the draft license application by the Agency, the authority shall apply for a land use permit under Chapter 151 of this Title. <A]

[A> (18) Within 180 days of obtaining a licence and a land use permit, the authority shall begin construction of the disposal facility. <A]

[A> (19) As soon as practicable, the authority shall begin operation of the disposal facility. <A]

[A> (20) Every year after the initial report required by subdivision (A)(12) of this section, and until otherwise directed by the Legislature, the authority shall, after public comment, report to the Legislature its recommendations for the permanent disposal of the long-lived waste and, no later than the beginning of operations of the disposal facility authorized by this chapter, proposed to the Legislature a specific disposal plan for the permanent disposal of the long-lived waste. <A]

[A> (21) Within 120 days of the completion of decommissioning of the Vermont Yankee Nuclear Generating Facility, the authority shall begin closure of the disposal facility. <A]

[A> (B) Subdivisions (A)(3) and (A)(6) through (A)(21) of this section may be, but need not be, complied with if, at the time the action is required, the State has entered into a compact or agreement adequately providing for the out-of-state disposal of the expected low-level radioactive waste. <A]

[A> § 7010. Creation of the Vermont Low-Level Radioactive Waste Authority <A]

[A> (A) The Vermont Low-Level Radioactive Waste Authority is established as a body corporate and politic, with the duties and powers set forth in this chapter. The Authority is a public instrumentality and the exercise by the authority of its powers constitutes the performance of an essential governmental function. The Authority is a company within the scope of chapter 5 of title 30 and is within the juridiction of the Public Service Board and the Department of Public Service only regarding the fees of subdivision 7011(4)(K) and subsections 7012(P) and 7013(E) and the financial assurance requirements and permanent disposal costs of subsection 7020(B). <A]

[A> (B) The Authority shall consist of three Vermont residents appointed by the Governor and confirmed by the Senate. The Governor shall designate a chair.

[A> (C) The members shall be appointed for six-year terms, except that the terms of all initial appointments shall be staggered in two-year increments. The initial appointment to the two-year term shall be from the town of Vernon. Notwithstanding 3 V.S.A. § 2004, or any other provision of law, members of the Authority may be removed only for cause. <A]

[A> (D) The chair shall be a full-time employee and shall receive the same annual salary as that fixed for each superior court judge. Other members shall be part time and shall receive an annual salary equal to 50 percent of that received by the chair. All members shall be entitled to actual expenses, as reasonable and necessary. However, after June 30, 1998, the compensation of the chair and the other members of the Authority shall be on the per diem basis provided for in section 1010 of title 32. <A]

[A> § 7011. Powers of the Authority

[A> In addition to any powers conferred or implied eleswhere by this chapter: <AS]

[A> (1) The members may meet as often as necessary to carry out the responsibilities of the authority. Meetings shall be held at the call of the chair or on written request to the chair by two members. The authority shall keep complete minutes of all its meetings and other proceedings and shall preserve its records of all kinds. <A]

[A> (2) As soon as practical after appointment, and at appropriate intervals thereafter, the authority shall hold public hearings in various locations throughout the state to obtain the reaction of the general public to the way the authority proposes to carry out its responsibilities. <A]

[A> (3) The authority may appoint a director to be the Chief Administrative Officer of the Authority. In addition to any other duties authorized by the Authority, the director may: <A]

[A> (A) Hire and supervise staff and negotiate and execute contracts as authorized by the authority and as necessary to fulfill its responsibilities; <A]

[A> (B) Attend meetings of the authority; <A]

[A> (C) Ensure that the minutes and records of the authority are properly maintained and preserved; <A]

[A> (D) Approve all accounts of the authority, including but not limited to accounts for salaries, per diems and allowable expenses of any employee or consultant thereof, and expenses incidental to the operation of the authority; <A]

[A> (E) Prepare an annual report of the actions of the authority, and prepare such other reports as the authority may request; and <A]

[A> (F) Perform such other duties as may be directed by the authority in the carrying out of the purposes of this chapter. <A]

[A> The Authority may: <A]

[A> (A) Adopt and amend bylaws necessary to properly carry out this chapter; <A]

[A> (B) Do all things necessary, convenient or desirable to carry out the purposes of this chapter, or the responsibilities imposed or necessarily implied in this chapter; <A]

[A> (C) Acquire, construct, reconstruct, purchase, hold, maintain, repair, operate, lease as lessor or lessee, dispose of and use any real or personal property or any interest therein necessary, convenient or desirable to carry out the purpose of this chapter and to sell, transfer and dispose of any property or interest therein at any time required by it in the exercise of its powers; <A]

[A> (D) Prepare a siting plan for obtaining compliance with the Federal Low-Level Radioactive Waste Policy Act; <A]

[A> (E) Apply for, accept, receive, and administer gifts, grants, and other funds available from any source; <A]

[A> (F) Enter into contracts and agreements with the Federal Government and its agencies, interstate agencies, local governmental entities, or private entities, as necessary, convenient or desirable for the authority

in the performance of its duties and the execution or carrying out of any of its powers under this chapter; <A]

[A> (G) Make, conduct, request, and participate in studies, plans, surveys, investigations, and research relating to selection, preparation, construction, operation, maintenance, closure, and financing of a disposal facility; <A]

[A> (H) Obtain necessary insurance; <A]

[A> (I) Enforce all contracts and agreements as necessary, convenient or desirable for the authority; <A]

[A> (J) Distribute appropriate impact fees; <A]

[A> (K) Set and collect the service fees, and otherwise administer the low-level radioactive waste, as required by section 7013 of this title; <A]

[A> (L) Ensure that all waste is properly packaged before being placed in the disposal facility; and <A]

[A> (M) The authority may refuse to accept at facilities established pursuant to this chapter any low-level radioactive waste from a generator who has failed to follow the reporting requirements established by the agency under section 7020(A). <A]

[A> (5) The authority may not prepare a draft license application for any site nor initiate characterization of any site other than the Vermont Yankee site, without legislative approval. <A]

[A> (6) The authority may acquire real property, or any interest in it (including the right to perform site characterization or other investigatory activities) by eminent domain in accordance with the procedures of sections 3604 through 3610 of title 24, except that: <A]

[A> (A) "Necessity" shall mean only a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner; it shall not be measured merely by expense or convenience to the condemning party, but shall, nevertheless, consider the importance of carrying out the purposes of this chapter; <A]

[A> (B) When the right to do a site characterization or other investigatory activity is sought, the "survey" required by those sections need only be a legal description of the property plus a statement of the activities to be conducted; and <A]

[A> (C) Nothing contained in those sections shall be construed to prevent the Authority from bringing any proceeding to remove a cloud on title or from acquiring any property by negotiation or purchase. <A]

[A> § 7012. Responsibilities of the authority <A]

[A> (A) The authority, while informing and consulting the public throughout, shall carry out the actions necessary to fulfill the requirements of the timetable in section 7002 of this chapter. <A]

[A> (B) The authority must comply with the rules adopted by the agency and with any fee approval conditions of the Public Safety Service Board under sections 7020 through 7024, even if the impose requirements most stringent than Federal requirements, and the authority must obtain all applicable state and local permits for the disposal facility authorized by this chapter, except that the facility is not subject to certification under section 6605 of this title. <A]

[A> (C) If a low-level radioactive waste disposal facility is constructed by the authority, the authority shall provide for the operation, maintenance and closure of the facility and shall provide for all necessary actions during the insitutional control period. The authority shall place information about the facility and the waste placed in the facility in appropriate state and local records. <A]

[A> (D) In performing the study to determine the appropriate permanent disposal technology for long-lived waste, required by subdivision (A)(2) of section 7002, the authority shall consider a deep-mined facility in-state, technologies not normally examined in the United States for disposal of low-level radioactive waste, and all other technologies reasonably available. <A]

[A> (E) In performing the study, required by subdivision (A)(2) of section 7002, to determine the maximum appropriate separation of long-lived waste, the authority shall consider the various techniques potentially available, their costs and incremental risks. The risks to be considered should include radiological and other risks to workers, the public and the environment from the separation process and from the disposal of the separated wastes in the facility authorized by this chapter and in any expected permanent disposal facility for the long-lived waste. <A]

[A> (F) Prior to a decision to prepare a draft license application and the submission of that decision to the legislature, the authority shall: <A]

[A> (1) Conduct a social and economic impacts study to determine the short-term and long-term effects from the proposed disposal facility on the Vermont municipalities which contain, or which are adjacent to municipalities containing, the proposed site and determine the appropriate impact fees to be paid; <A]

[A> (2) Prepare a report on the strengths and weaknesses of the site that has been characterized and comparing the site to the best potential alternative site as identified by the authority; <A]

[A> (3) Negotiate with the municipality, or each municipality, where the proposed site is located any impact fees, other payments, or conditions to be included in the proposal to be submitted to the voters and in the petition to be submitted to the legislature; <A]

[A> (4) Hold at least one public hearing near each site; and <A]

[A> (5) Obtain the consent of a majority of the voters, present and voting at a duly warned meeting, of the municipality, or of each municipality, where the proposed site is located. <A]

[A> (G) For any particular site, including the Yankee site, the authority may perform any of the requirements of subsection 7012(F) as soon as appropriate. <A]

[A> (H) Prior to a decision to characterize another certified site, the report on the strengths and weaknesses of the previously characterized site must be completed. However, a decision to characterize another site will not prohibit a later decision to prepare a draft license for any previously characterized site, if otherwise appropriate. <A]

[A> (I) A petition to the legislature to prepare a draft license application must be accompanied by a proposed financing plan for legislative enactment to cover the construction costs of the facility, unless the authority has opted to raise construction funds under the provisions of section 7015 of this chapter. <A]

[A> (J) The authority in deciding on the specific disposal plan required by subdivision (A)(20) of section 7002 for the permanent disposal of the long-lived waste shall thoroughly examine all reasonable alternatives to leaving the waste at the disposal facility authorized by this chapter and the option of leaving it there shall not be given undue weight. <A]

[A> (K) The authority shall advise, consult, and cooperate with the Federal Government and its agencies, the state and its other agencies, interstate agencies, other states, local governmental entities within this state, and private entities. <A]

[A> (L) The authority initially shall prepare a budget in reasonable detail, allocating funds for the year, and shall periodically revise the budget, as

necessary. The authority shall keep an accurate account of all its activities and of all its receipts and expenditures. Prior to the first day of September in each year, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. The report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by a certified public accountant and its cost shall be considered an expense of the authority and a copy shall be included in the annual report. <A]

[A> (M) The auditor of accounts of the state and the auditor's authorized representatives may at any time examine the accounts and books of the authority including its receipts, disbursements, contracts, funds, investments and any other matters relating to its financial statements. <A]

[A> (N) The authority shall prepare an annual report on the quantities, characteristics and any expected treatment of the low-level radioactive waste generated in Vermont during the calendar year and reasonably expected to be generated through the date anticipated by the authority for the completion of the decommissioning of Vermont Yankee. <A]

[A> (O) The authority shall administer a grant program for Vermont municipalities where a certified site is located which the authority has decided to characterize and may administer a similar grant program for Vermont municipalities which are within five miles of such a site. The grants shall be subject to the approval of the Public Service Board and shall be used by the municipality to provide technical assistance and to otherwise assist the community to effectively participate in the consideration of the site for a disposal facility under this chapter. <A]

[A> (P) Prior to the commencement of operation of the disposal facility, the authority shall establish a disposal fee, to be approved by the Public Service Board, for any waste that must be accepted by the facility for disposal on which the service fee has not been paid under subsection 7014(E) or for which capacity has not been contracted for under section 7015. The disposal fee must cover, pro rata, all costs and expenses contemplated by this chapter. <A]

[A> (Q) The authority shall provide free of charge a copy of any public document within its possession, upon request, to any municipalities which contain, or which are adjacent to municipalities containing, an alternative site or the Yankee site. <A]

[A> § 7013. Low-level Radioactive Waste Fund <A]

[A> (A) There is hereby created in the state treasury a fund to be known as the low-level radioactive waste fund, to be administered and expended by the Vermont Low-Level Radioactive Waste Authority. <A]

[A> (B) The fund shall consist of: <A]

[A> (1) The balance in the radioactive waste management fund as of the repeal of section 6512 of this title; <A]

[A> (2) Fees assessed under subsections (E) and (G) of this section and under subsection 7012(P); <A]

[A> (3) Any monies required for the financial assurances, and pre-paid construction funds raised under section 7015 of this title; <A]

[A> (4) Any grants from the Federal Government or from other sources accepted by the governor for deposit into the fund; and <A]

[A> (5) Rebates of any surcharges collected for the disposal of low-level radioactive waste generated in Vermont pursuant to the Federal Low-Level Radioactive Waste Policy Amendments of 1985 (P.L. 99–240) and deposited in escrow pursuant to section 5(D)(2) of such law (42 U.S.C. 2021E(D)(2)). <A]

[A> (C) All balances in the fund at the end of any fiscal year shall be carried forward and remain a part of the fund. Interest accruing from the fund shall remain in the fund and shall be allocated proportionately among the accounts provided for in subsection (I) of this section based on the average principal balance of each account. Disbursements from the fund shall be made by the state treasurer on warrants drawn by the director or chair of the authority. <A]

[A> (D) The fund shall be used to: <A]

[A> (1) Provide staff for the authority, and to pay for all costs related to the performance of its reponsibilities under this chapter; <A]

[A> (2) Reimburse any state entity for all costs incurred in the issuance and enforcement of regulations and adjudications authorized by section 7020 and for all other costs for actions and proceedings authorized by this chapter; <A]

[A> (3) Provide for all costs of the long-term monitoring and care of the disposal facility authorized under this chapter; <A]

[A> (4) Cover costs of emergency responses, remedial action, personal injury and property damage during construction, operations, closure and long-term monitoring and care of the disposal facility authorized by this chapter; <A]

[A> (5) Cover the costs of the permanent disposal of the long-lived waste; <A]

[A> (6) Pay the costs associated with any community and project safety plan required under subdivision 7024(A)(9) of this title; and <A]

[A> (7) Cover any liability of the authority or of any other state entity arising out of activities under this chapter. <A]

[A> (E) A service fee shall be levied on all low-level radioactive waste generated in this state, whether shipped to a disposal facility or stored awaiting disposal. Initially, the service fee shall be $10.00 per cubic foot. Periodically or as necessary, the service fee shall be set by the authority in an amount sufficient for all current and future expenses allowed under subsection (D) of this section, except for construction costs of the facility authorized by this chapter. The service fee shall be approved by the Public Service Board under section 7020 of this chapter. Whenever the authority requests approval of a service fee by the Public Service Board, it shall estimate the totals needed in each of the segregated accounts required by subsection (I) of this section. The estimates shall contain appropriate contingency amounts. The authority may set the service fee on the basis of volume, curies, hazardous constituents or a combination of those characteristics, as appropriate. <A]

[A> (F) The service fee of subsection (E) of this section and the assessment of subsection (G) of this section, shall not apply to low-level radioactive waste which was authorized, as of January 1, 1990, under regulations of the United States Nuclear Regulatory Commission, to be stored for decay on the site of generation for less than one year and disposed of as though it were not radioactive. The authority shall identify those wastes which are exempt from the service fee, consistent with the intent of this section. <A]

[A> (G) In order to provide funds for the timely commencement of the regulatory responsibilities of state agencies and for the initial activities of the authority, there shall be imposed an immediate assessment of $1,000,000.00 levied proportionately on all generators of low-level radioactive waste, based on the volume of waste generated in calendar years 1986–1989. The authority shall make these assessments within 60 days of the effective date of this chapter

and the generators shall pay them within 30 days of the assessment. <A]

[A> (H) The service fee for Vermont Yankee shall be adjusted such that its portion of the total funds needed for all current and future expenses will be accumulated no later than the end of the operating life of the plant. The service fee for all other generators shall be adjusted to accumulate their shares no later than the date they expect to cease generating waste and in no case later than the expected date for closure of the disposal facility authorized by this chapter. <A]

[A> (I) The fund established by this section shall be segregated into four accounts: one account for expenses expected prior to the end of the operating life of Vermont Yankee, except construction costs; a second account for expenses, including ongoing captial costs, expected after the end of the operating life of Vermont Yankee; a third account for the costs of the permanent disposal of the long-lived waste; and a fourth account for construction costs. Funds in each account shall be used only for the stated purpose of the account and shall not be transferred between accounts without approval of the Public Service Board. If the Public Service Board finds, upon petition, that any of the accounts contains funds substantially in excess of those reasonably expected to be sufficient for all current and future expenses of the account, the Public Service Board may require any excess in that account to be returned to the generators on an equitable basis. <A]

[A> § 7014. Tax Ramifications <A]

[A> (A) All property and business of the authority is devoted to an essential public and governmental function and purpose and is exempt from all taxes, franchise fees, and special assessments of whatever nature of the state or any subdivision of the state. <A]

[A> (B) The authority annually shall pay a municipality, in which a disposal site is located, an amount in lieu of taxes equal to the amount of property tax that would be paid on such a disposal site by an owner subject to property tax. <A]

[A> (C) The authority shall pay all applicable state and local permit fees, including any fees negotiated pursuant to § 7012(F)(3) of this chapter. <A]

[@> § 7015. Construction Costs <A]

[A> (A) In lieu of proposing a financing plan for the construction costs to the legislature under subsection 7012(I) of this title, the authority may solicit offers to purchase or otherwise commit or contract for disposal capacity in the disposal facility authorized by this chapter. In the solicitation the authority should provide an estimate of the proposed design capacity and the expected construction costs. <A]

[A> (B) No offer may be accepted unless the terms of all such commitments or contracts, taken together, provide for the complete pre-payment of all construction costs, exhaust the proposed capacity contain acceptable terms and conditions and are otherwise in the best interest of the state. <A]

[A> (C) The commitments or contracts shall be nontransferable, without approval of the authority, shall provide for payment on an equal and pro rata basis for all generators and shall provide for, the right of the authority to reacquire, at any time, pro rata from all such commitments or contracts sufficient capacity to meet emergencies or necessary contingencies. <A]

[A< (D) If the total capacity of all offered commitments or contracts is less than the expected low-level radioactive waste, or if the commitments or contracts provide less than all the construction costs, or if the offers are for any other reason unsatisfactory, then the Authority shall reduce the design capacity of the facility, try to negotiate terms and conditions which will provide the complete construction costs and carry out the purposes of this chapter. <A]

[A< (E) The Authority may, for any reason, decide to not accept all offers received under this section and decide to pursue an alternative method of financing the construction costs of the disposal facility. If the Authority decides not to accept any such offers, it shall propose a financing plan to the legislature within 90 days or by the date set out in subdivision 7002(A)(9) of this title, whichever is later. <A]

[A< § 7020. State Regulation; Responsibilities and Authority <A]

[A< (A) The agency, after public comment and after consultation with the Public Service Board and the Department of Public Service, shall by rule establish the siting requirements, the screening and certification procedures and criteria, the separation, recoverability and facility design standards, and the draft license review procedures and standards. These rules must at least include the minimum requirements of sections 7021, 7022, 7023 and 7024 of this title and be sufficient to protect the environment and the public health for the hazardous life of materials likely to be deposited in the disposal facility. The agency shall by rule establish procedures and requirements for public comment under this chapter. The agency shall also by rule establish procedures and requirements for reports and manifests from generators of low-level radioactive waste concerning the quantities, concentrations, characteristics, expected generation rates, packaging, storage conditions and any other information reasonably necessary for the agency and the authority to carry out their responsibilities. <A]

[A< (B) The Public Service Board shall: <A]

[A< (1) Approve the service fees and disposal fees set by the authority under sections 7011(4)(K), 7012(P) and 7013(E) of this title; <A]

[A< (2) Utilize procedures substantially similar to the rate-setting procedures in chapter 5 of title 30, including the procedures for temporary rates in section 226 of that chapter but not including the time limits of section 227; <A]

[A< (3) Review and approve, during any fee approval proceeding, an amount for (a) expenses expected prior to the end of the operating life of Vermont Yankee, except construction costs, (b) expenses, including ongoing capital costs, expected after the end of the operating life of Vermont Yankee, and (c) costs of the permanent disposal of the long-lived waste, and (d) construction costs; and <A]

[A< (4) Determine, after public hearing, adequate financial assurance requirements to be specified as a condition for approval of fees under this subsection. <A]

[A< (C) The Department of Public Service shall appear in all proceedings before the Public Service Board under this chapter and represent the interests of the people of the state. The Department of Public Service shall review and may present testimony on any issue, including the service or disposal fees, the costs of permanent disposal of the long-lived waste, the financial assurance requirements and the relationship of the fees, costs and requirements to the costs of decommissioning the Vermont Yankee Nuclear Power Station. <A]

[A< (D) Rules adopted under this section must be at least as stringent as applicable Federal standards, performance objectives and requirements. <A]

[A< (E) No officers, departments, boards, agencies, divisions and commissions of the state may render any services to the Authority that would compromise their ability to perform their regulatory functions under this chapter,

but they shall cooperate with and provide any information available to them as may be requested by the Authority for the performance of its responsibilities if otherwise allowed by law. <A]

[A< (F) The Agency of Natural Resources, the Public Service Board and the Department of Public Service may allocate to the Authority the portion of the expenses incurred by them, including expenses from the use of additional personnel and regular employees, for all actions and proceedings authorized by this chapter. At least quarterly, the agency and the Department of Public Service shall send to the Authority detailed statements showing the money expended, and the Authority shall pay those statements out of the low-level radioactive waste fund. <A]

[A< § 7021. Siting Requirements <A]

[A< (A) Under the authority of section 7020 of this title, the Agency shall adopt rules establishing the siting requirements for a low-level radioactive waste disposal facility which shall, at a minimum, require that: <A]

[A< (1) The disposal site shall not be located in an area that is incapable of being thoroughly characterized, modeled, analyzed, and monitored; <A]

[A< (2) The disposal site shall not be located in an area where projected population growth and future development are likely to affect the ability of the disposal facility to meet the performance objectives; <A]

[A< (3) The disposal site shall not be located in areas having known natural resources which, if exploited, would result in the failure of the disposal facility to meet the requirements objectives; <A]

[A< (4) The disposal site shall not be located in a 500-year floodplain, coastal high-hazard zone or wetland and must be generally well drained and free of areas of flooding or frequent ponding; <A]

[A< (5) The disposal site shall not be located in areas with excessive upstream drainage which could erode, expose, or inundate the waste disposal untis; <A]

[A< (6) The disposal site shall not be located in an area with insufficient depth to watertable so that groundwater intrusion, perennial or otherwise, could occur; <A]

[A< (7) The hydrogeologic unit used for disposal shall not discharge groundwater to the surface within the disposal site; <A]

[A> (8) The disposal site shall avoid areas where tectonic processes such as faulting, folding, seismic activity, or vulcanism may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives; <A]

[A> (9) The disposal site shall avoid areas where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives; <A]

[A> (10) The disposal site shall not be located where nearby facilities or activities or any existing radioactive materials could adversely impact the ability of the site to meet the performance objectives or significantly mask the environmental monitoring program; <A]

[A> (11) The disposal site shall not be located above 2,500 feet in elevation; <A]

[A> (12) The disposal site shall not be located within a watershed of class A waters or of a public water supply, or within or adjacent to an aquifer protection areas, within or adjacent to class I or class II aquifers, or where surface water quality standards could be reasonably expected to be violated by the facility; <A]

[A> (13) The disposal facility shall not be located within 100 meters of a wetland, stream, river, lake or pond, within 200 meters of designated outstanding resource waters, or within distances found critical by site investigation; <A]

[A> (14) The disposal site shall not be located in areas where failure of a dam or impoundment could adversely affect the ability of the disposal site to meet the performance objectives; <A]

[A> (15) The disposal site must be of sufficient size to allow the satisfaction of the performance objectives; and <A]

[A> (16) The disposal site must retard, or be capable of being modified to retard, the movement of radionuclides. <A]

[A> (B) The rules establishing the siting requirements for a low-level radioactive waste disposal facility shall also consider the following: <A]

[A> (1) The proximity of the disposal site to schools, historical sites, wilderness areas, parks (municipal, state or national), state or wildlife refuges or management areas, military sites, or unique cultural areas; <A]

[A> (2) The potential for adverse effects on rare or endangered species; <A]

[A> (3) The population density of the area surrounding the disposal site and the likely impacts on local governmental units; and <A]

[A> (4) Mitigation or avoidance of harm from unanticipated releases and from transportation accidents. <A]

[A> § 7022. Screening and Certification Process <A]

[A> Under the authority of section 7020 of this title, the agency shall adopt rules, regarding screening for potential alternative sites and certification of sites, which must, at least, establish the procedures and criteria for: <A]

[A> (1) Screening, by the authority, of the town of Vernon and the rest of the state; <A]

[A> (2) Selecting and studying potential alternative sites by the authority; <A]

[A> (3) Submission, by the authority, of each selected potential alternative site to the agency for certification; <A]

[A> (4) Certification, by the agency, of alternative sites and the Yankee site as meeting applicable siting requirements; <A]

[A> (5) Characterization of an alternative site; <A]

[A> (6) Deciding, by the authority, to characterize a certified alternative site or to prepare a draft license application for a disposal facility at a characterized site. <A]

[A> § 7023. Waste Separation; Recoverability; and Minimum Facility Design Standards <A]

[A> (A) Under the authority of section 7020 of this title, the agency shall adopt rules establishing waste separation, recoverability and minimum facility design standards for any low-level radioactive waste disposal facility including: <A]

[A> (1) A prohibition on shallow land burial; <A]

[A> (2) Definitions of short-lived waste and long-lived waste; <A]

[A> (3) Definition of hazardous life of the short-lived waste; <A]

[A> (4) Requirements for maximum separation of short-lived and long-lived waste; <A]

[A> (5) Requirements that the design be compatible with and complement the characteristics of the site as necessary for the performance objectives; <A]

[A> (6) Requirements for active management during, and setting the length of, an institutional control period; <A]

[A> (7) Requirements to control the dilution of long-lived waste where the purpose is to convert long-lived waste to short-lived waste or to change the Federal classification; <A]

[A> (8) Requirements for enhanced containment sufficient to meet the performance objectives; <A]

[A> (9) Requirements for recoverability of the separated long-lived waste which are compatible with the performance objectives; <A]

[A> (10) Requirements for structural integrity during the design life of the facility; <A]

[A> (11) Requirements for monitoring, until the end of the institutional control period, which are adequate to detect failure of the facility in time to take reasonable remedial action and which provide for independent review and verification; <A]

[A> (12) Requirements for long-term passive isolation of the waste from the environment including the minimization of water intrusion and protection against intruders; <A]

[A> (13) Requirements for the permanent unmistakeable marking of the facility identifying it as hazardous to future human inhabitants; <A]

[A> (14) Performance objectives for each stage of the life of the facility to ensure the protection of individuals and the general population from releases of radioactivity, the protection of individuals and the general population from direct radiation, the protection of individuals from and during intrusion; and <A]

[A> (15) Capacity specifications to limit the size of the disposal facility to that necessary to dispose of the expected low-level radioactive waste. <A]

[A> (B) In establishing the definitions of short-lived and long-lived waste and in establishing the requirements for maximum separation of those wastes, the agency shall ensure that the hazardous life of the short-lived waste is less than the institutional control period and shall consider the costs of separation and all risks from separating and disposing of the separated wastes. This should include the risks associated with the separation process, the placement of the separated wastes in the facility authorized by this chapter, the recovery of the long-lived waste and any transportation and preparation of that waste for permanent disposal.<A]

[A> § 7024. Agency standards and procedures for review of the draft license application <A]

[A> (A) The agency shall adopt rules establishing standards for a draft license application for a low-level radioactive waste disposal facility which shall, at a minimum, include: <A]

[A> (1) Compliance with the rules promulgated by the agency under this chapter; <A]

[A> (2) Consent for entry into the facility by state regulatory personnel: <A]

[A> (3) Requirements to the extent permitted by law, to limit waste disposal access in order to prevent the exhaustion of disposal capacity at an early or uncertain future date; <A]

[A> (4) The financial assurance requirements established by the Public Service Board under section 7020 of this title; <A]

[A> (5) Requirements for operating procedures; <A]

[A> (6) Requirements for on-site supervision of the operation of the disposal facility; <A]

[A> (7) Requirements for closure and for closure monitoring and observation, including a minimum five-year post-closure period; <A]

[A> (8) Requirements for long-term management by the state; <A]

[A> (9) Requirements for a community and project safety plan including an emergency response plan and a training plan for facility personnel and public safety officials, all based on a worst case analysis; <A]

[A> (10) Requirements for emergency response and monitoring for operator or facility failure; and <A]

[A> (11) Requirements for detailed annual reports, including requirements for reporting all waste in storage and, after disposal has begun, all waste placed in the facility. <A]

[A> (B) The agency shall adopt rules establishing procedures for its review of a draft license application which shall, at a minimum, include: <A]

[A> (1) Submission of the draft application and other specified information; <A]

[A> (2) Submission of pre-operational radiation survey in the vicinity of the site; <A]

[A> (3) Submission of environmental and public health impact analysis; <A]

[A> (4) An opportunity for public review and inspection of, and public comment on, the draft license application in the locality of the approved site; and <A]

[A> (5) A procedure for complying with conditions or changes, to the licensing application, required by the NRC or the environmental board. <A]

[A> § 7030. Enforcement and judicial review <A]

[A> (A) Any person who violates this chapter or any rule adopted under this chapter or refuses to comply with any of the provisions of this chapter shall be subject to enforcement actions under chapters 201 and 211 of this title, except that for the failure to pay the service fees under section 7013 of this title, the penalty shall be no more than 25 percent of the fees owed. <A]

[A> (B) Any person, upon a well-rounded belief that there has been a violation of this chapter or any rule adopted under this chapter or a refusal to comply with any of the provisions of this chapter, or of the rules adopted under this chapter, may commence an action in Washington Superior Court for injunctive relief, or other appropriate relief, or for penalties and attorneys' fees. <A]

[A> § 7040. Immunity and liability <A]

[A> (A) No provision of this act shall constitute a waiver of sovereign immunity. <A]

[A> (B) Nor shall any state official or employee (including members of the authority and its director and staff) be held financially responsible for acts taken within the scope of employment, or for failure to take any discretionary act, related to this chapter or the rules authorized by this chapter. <A]

[A> § 7050. Generator Obligations <A]

[A> In addition to any other obligation imposed by this chapter, any person who generates low-level radioactive waste in Vermont shall comply with the reporting and financial assurance requirements as established under section 7020 of this title. <A]

[*4] Sec. 4. Repeal of subchapter 2 of Chapter 157 of Title 10: Advisory Commission on Low-Level Radiocative Waste.

Sections 6510 through 6512 of Title 10, being Subchapter 2 of Chapter 157 regarding the "Advisory Commission on Low-Level Radioactive Waste," are repealed.

[*5] Sec. 5. 30 V.S.A. § 2(d) is added to read:

[A> (D) In any proceeding where the decommissioning fund for the Vermont Yankee Nuclear Facility is involved, the department shall represent the consuming public in a manner that acknowledges that the general public interest requires that the consuming public, rather than either the state's future consumers who never obtain benefits from the facility or the state's taxpayers, ought to provide for all costs of decommissioning. The department shall seek to have the decommissioning fund be based on all reasonably expected costs. <A]

[*6] Sec. 6. 10 V.S.A. § 6001b is added to read:

[A> § 6001B. Low-level Radioactive Waste Disposal Facility <A]

[A> Any low-level radioactive waste disposal facility proposed for construction under chapter 161 of this title shall be a development, for purposes of this chapter, independent of the acreage involved. Any construction of improvements which is likely to generate low-level radioactive waste is a development, for purposes of this chapter, independent of the acreage involved. The criteria and procedures for obtaining a permit shall be the same as for any other development. <A]

[*7] Sec. 7. 10 V.S.A. § 6086a is added to read:

[A> § 6086A. Generators of Radioactive Waste <A]

[A> No land use permit will be issued for a development which generates low-level radioactive waste unless it shows that it will have access to a low-level radioactive waste disposal facility and that the facility is expected to have sufficient capacity for the waste. <A]

[*8] Sec. 8. 10 V.S.A. § 6501(a) is added to read:

(a) No facility for deposit, storage, reprocessing or disposal of spent nuclear fuel elements or radioactive waste material shall be constructed or established in the state of Vermont unless the general assembly first finds that it promotes the general good of the state and approves, through either bill or joint resolution, a petition for approval of the facility. [A> No facility for the incineration of low-level radioactive waste, as defined in subsection 7001(7) of this title, shall be constructed or established without a similar finding and approval. <A]

[*9] Sec. 9. Vermont State Nuclear Advisory Panel; Sunset

Sec. 2 of Act No. 242 of the Acts of 1978, as amended by Sec. 2 of Act No. 181 of the Acts of 1984, as further amended by Sec. 1 of Act No. 155 of the Acts of 1986, is amended as follows:

Sec. 2. This act shall [D> be effective only until July 1, 1990 <D] [A> Expire on July 1, 1994. <A]

[*10] Sec. 10. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

(1) 3 V.S.A. chapter 51, relating to the certification of site technicians, and trailer camps and tent sites;

(2) 10 V.S.A. chapter 23, relating to air quality;

(3) 10 V.S.A. chapters 37 and 47, relating to water pollution control and water quality standards;

(4) 10 V.S.A. chapters 41 and 43, relating to dams and stream alterations;

(5) 10 V.S.A. chapter 37, relating to the introduction of algicides, pesticides and herbicides;

(6) 10 V.S.A. chapter 48, relating to well drillers;

(7) 10 V.S.A. chapter 53, relating to beverage containers;

(8) 10 V.S.A. chapter 59, relating to underground storage tanks;

(9) 10 V.S.A. chapter 61, relating to water supply and wastewater;

(10) 10 V.S.A. chapter 151, relating to land use;

(11) 10 V.S.A. chapter 153, relating to mobile home parks;

(12) 10 V.S.A. chapter 159, relating to solid waste, hazardous waste and hazardous materials;

[A> (13) 10 V.S.A. chapter 161, relating to low-level radioactive waste; <A]

[D> (13) <D] [A> (14) <A] 18 V.S.A. chapter 23, relating to subdivisions; and

[D> (14) <D] [A> (15) <A] 29 V.S.A. chapter 11, relating to lands under public waters.

[*11] Sec. 11. Positions Established

The following permanent classified positions are established until June 30, 1994:

(1) Eight (8) new permanent classified positions—one (1) director, one (1) geologist/environmental specialist, one (1) environmental engineer C, one (1) public information specialist, one (1) attorney, one (1) health physics specialist, and two (2) secretaries—are authorized in the agency of natural resources for fiscal year 1991 for the purpose of administering this act.

(2) One (1) new permanent classified position—one (1) financial analyst—is authorized in the department of public service for fiscal year 1991 for the purpose of administering this act.

(3) One (1) new permanent exempt position—one (1) utilities analyst—is authorized in the public service board for fiscal year 1991 for the purpose of administering this act.

[*12] Sec. 12. Appropriations

The following sums are appropriated from the low-level radioactive waste fund in fiscal year 1991:

(1) $430,000.00 to the Vermont Low-Level Radioactive Waste Authority;

(2) $370,000.00 to the Agency of Natural Resources;

(3) $60,000.00 to the Public Service Board; and

(4) $60,000.00 to the Public Service Department.

[*13] Sec. 13. Effective Date

This act shall take effect upon passage.

Approved: June 29, 1990.

Appendix B.—Siting Requirements

(Title 10 VSA, Section 7021)

Section 7021 Siting Requirements

(a) Under the authority of section 7020 of this title, the agency shall adopt rules establishing the siting requirements for a low-level radioactive waste disposal facility which shall, at a minimum, require that:

1. The disposal site shall not be located in an area that is incapable of being thoroughly characterized, modeled, analyzed, and monitored;

2. The disposal site shall not be located in an area where projected population growth and future development are likely to affect the ability of the disposal facility to meet the performance objectives;

3. The disposal site shall not be located in areas having known natural resources which, if exploited, would result in the failure of the disposal facility to meet the performance objectives;

4. The disposal site shall not be located in a 500-year floodplain, coastal high-hazard zone or wetland and must be generally well drained and free of areas of flooding or frequent ponding;

5. The disposal site shall not be located in areas with excessive upstream drainage which could erode, expose, or inundate the waste disposal units;

6. The disposal site shall not be located in an area with insufficient depth to watertable so that groundwater intrusion, perennial or otherwise, could occur;

7. The hydrologic unit used for disposal shall not discharge groundwater to the surface within the disposal site;

8. The disposal site shall avoid areas where tectonic processes such as faulting, folding, seismic activity, or vulcanism may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives;

9. The disposal site shall avoid areas where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives;

10. The disposal site shall not be located where nearby facilities or activities or any existing radioactive materials could adversely impact the ability of the site to meet the performance objectives or significantly mask the environmental monitoring program;

11. The disposal site shall not be located above 2,500 feet in elevation;

12. The disposal site shall not be located within a watershed of Class A water or of a public water supply, or within or adjacent to an aquifer protection area, within or adjacent to Class I or Calss II aquifers, or where surface water quality standards could be reasonably expected to be violated by the facility;

13. The disposal facility shall not be located within 100 meters of a wetland, stream, river, lake, or pond, within 200 meters of designated outstanding resource waters, or within distances found critical by site investigation;

14. The disposal site shall not be located in areas where failure of a dam or impoundment could adversely affect the ability of the disposal site to meet the performance objectives;

15. The disposal site must be of sufficient size to allow the satisfaction of the performance objectives; and

16. The disposal site must retard, or be capable of being modified to retard, the movement of radionuclides.

(b) The rules establishing the siting requirements for a low-level radioactive waste disposal facility shall also consider the following:

1. The proximity of the disposal site to schools, historical sites, wilderness areas, parts (municipal, state or national), state or wildlife refuges or management areas, military sites, or unique cultural areas;

2. The potential for adverse affects on rare or endangered species;

3. The population density of the area surrounding the disposal site and the likely impacts on local governmental units; and

4. Mitigation or avoidance of harm from unanticipated releases and from transportation accidents.

Appendix C.—Responsibilities of the Authority

(Title 10 VSA, Section 7012)

Section 7012 Responsibilities of the Authority

(a) The authority, while informing and consulting the public throughout, shall carry out the actions necessary to fulfill the requirements of the timetable in Section 7002 of this chapter.

(b) The authority must comply with the rules adopted by the agency and with any fee approval conditions of the public service board under Sections 7020 through 7024, even if they impose requirements more stringent than federal requirements, and the authority must obtain all applicable state and local permits for the disposal facility authorized by this chapter, except that the facility is not subject to certification under Section 6605 of this title.

(c) If a low level radioactive waste disposal facility is constructed by the authority, the authority shall provide for the operation, maintenance and closure of the facility and shall provide for all necessary actions during the institutional control period. The authority shall place information about the facility and the waste placed in the facility in appropriate state and local records.

(d) In performing the study to determine the appropriate permanent disposal technology for long-lived waste, required by subdivision (a)(2) of Section 7002, the authority shall consider a deep-mined facility in-state, technologies not normally examined in the United States for disposal of low-level radioactive waste, and all other technologies reasonably available.

(e) In performing the study, required by subdivision (a)(2) of Section 7002, to determine the maximum appropriate separation of long-lived waste, the authority shall consider the various techniques potentially available, their costs and incremental risks. The risks to be considered should include radiological and other risks to workers, the public and the environment from the separation process and from the disposal of the separated wastes in the facility authorized by this chapter and in any expected permanent disposal facility for the long-lived waste.

(f) Prior to a decision to prepare a draft license application and the submission of that decision to the legislature, the authority shall:

1. Conduct a social and economic impacts study to determine the short-term and long-term effects from the proposed disposal facility on the Vermont municipalities which contain, or which are adjacent to municipalities containing the proposed site and determine the appropriate impact fees to be paid;

2. Prepare a report on the strengths and weaknesses of the site that has been characterized;

3. Negotiate with the municipality, or each municipality where the proposed site is located any impact fees, other payments, or conditions to be included in the proposal to be submitted to the voters and in the petition to be submitted to the legislature;

4. Hold at least one public hearing near each site; and

5. Obtain the consent of a majority of the voters, present and vote at a duly warned meeting, of the municipality, or of each municipality, where the proposed site is located.

(g) For any particular site, including the Yankee site, the authority may perform any of the requirements of subsection 7012(f) as soon as appropriate.

(h) Prior to a decision to characterize another certified site, the report on the strengths and weaknesses of the previously characterized site must be completed. However, a decision to characterize another site will not prohibit a later decision to prepare a draft license for any previously characterized site, if otherwise appropriate.

(i) A petition to the legislature to prepare a draft license application must be accompanied by a proposed financing plan for legislative enactment to cover the construction costs of the facility, unless the authority has opted to raise construction funds under the provisions of Sec. 7015 of this chapter.

(j) The authority in deciding on the specific disposal plan required by subdivision (a)(20) of Section 7002 for the permanent disposal of the long-lived waste shall thoroughly examine all reasonable alternatives to leaving the waste at the disposal facility authorized by this chapter and the option of leaving it there shall not be given undue weight.

(k) The authority shall advise, consult, and cooperate with the federal government and its agencies, the state and its other agencies, interstate agencies, other states, local governmental entities within this state, and private entities.

(l) The authority initially shall prepare a budget in reasonable detail, allocating funds necessary for the year, and shall periodically revise the budget, as necessary. The authority shall keep an accurate account of all its activities and of all its receipts and expenditures. Prior to the first day of September in each year, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. The report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once each year by a certified public accountant and its cost shall be considered an expense of the authority and a copy shall be included in the annual report.

(m) The auditor of accounts of the state and the auditor's authorized representatives may at any time examine the accounts and books of the authority including its receipts, disbursements, contracts, funds, investments and any other matters relating to its financial statements.

(n) The authority shall prepare an annual report on the quantities, characteristics and any expected treatment of the low level radioactive waste generated in Vermont during the calendar year and reasonably expected to be generated through the date anticipated by the authority for the completion of the decommissioning of Vermont Yankee.

(o) The authority shall administer a grant program for Vermont municipalities where a certified site is located which the authority has decided to characterize and may administer a similar grant program for Vermont municipalities which are within five miles of such a site. The grants shall be subject to the approval of the public service board and shall be used by the municipality to provide technical assistance and to otherwise assist the community to effectively participate in the consideration of the site for a disposal facility under this chapter.

(p) Prior to the commencement of operation of the disposal facility, the authority shall establish a disposal fee, to be approved by the public service board, for any waste that must be accepted by the facility for disposal on which the service fee has not been paid under the subsection 7013(e) or for which capacity has not been contracted for under Section 7015. The disposal fee must cover, pro rata, all costs and expenses contemplated by this chapter.

(q) The authority shall provide free of charge a copy of any public document within its possession, upon request, to any municipalities which contain, or which are adjacent to municipalities containing, an alternative site or the Yankee site.

Appendix D.—Timetable and Responsibilities

(Title 10 VSA, Section 7002)

Section 7002 Timetable and Responsibilities

(a) The following timetable and responsibilities shall be adhered to:

1. Within 60 days of the effective date of this chapter, the governor shall appoint the initial members of the authority.

2. As soon as practicable, the authority shall, after public comment, initiate a study to determine the maximum appropriate separation of long-lived waste, the appropriate level of recoverability of such waste, and the appropriate permanent disposal technology and cost for that waste.

3. As soon as practicable, the authority shall initiate the site characterization of the Yankee site.

4. As soon as practicable, the authority shall begin collecting data for the screening of the town of Vernon and of the rest of the state in order to identify potential alternative sites for a disposal facility.

5. Within 270 days of the effective date of this chapter, the agency shall, after public comment, adopt rules establishing the siting, screening and certification requirements under Section 7021 and Section 7022.

6. On or before November 1, 1991, the authority shall:

(A) Complete the characterization of the Yankee site;

(B) After public comment, select at least three potential alternate sites, including one in the town of Vernon.

7. Within 60 days of the submission by the authority of a request for certification of a potential alternative site, the agency shall decide if the site meets the applicable siting requirements.

8. As soon as practicable, the authority shall, after public comment, decide whether to characterize a certified site other than the Yankee site or to complete the requirements of subsection 7012(f) for the Yankee site. Then, if the Yankee site has been certified by the agency as meeting the siting requirements and if the requirements of subsection 7012(f) have been completed, the authority may decide whether to prepare a draft license application for a disposal facility at the Yankee site.

9. On or before December 15, 1991, the authority must decide either to characterize an alternative site or to prepare a draft license application for a facility at a previously characterized site. Then initially before January 15, 1992 and subsequently within 30 days of any similar decision, the authority must petition the legislature, under chapter 157 of this title for approval of its decision.

10. If the legislature approves a petition to characterize an alternative site or sites or if it directs the characterization of an alternative site or sites, then the authority must begin characterization and, within 18 months of the legislative decisions, the authority must complete characterization. Following the completion of characterization, the authority must again decide whether to characterize another certified site, or sites, or to complete the requirements of subsection 7012(f) for the characterized site. Then, if the requirements of subsection 7012(f) have been completed, the authority may decide whether to prepare a draft license application for a disposal facility at a characterized site.

11. If the legislature approves a petition to prepare a draft license application or directs the preparation of a draft license for the disposal facility at a particular characterized site, the authority shall, within six months of legislative action or the effective date of the rules required by Section 7023 and Section 7024, whichever is later, after public comment, submit a draft license application to the agency for review.

12. Within 18 months of the effective date of this act, based on the results of the study required in subdivision (a)(2) of this section and after public comment, the authority shall:

(A) Make recommendations to the agency for rules on separation and recoverability of long-lived waste;

(B) Make recommendations to the agency for rules on the disposal facility design standards; and

(C) Make an initial report to the legislature and to the public service board on the possible appropriate technologies, and their costs, for the permanent disposal of the long-lived waste.

13. Within six months of receiving the authority's recommendations and after public comment, the agency shall adopt the separation, recoverability and design standards under Section 7023 and the draft license application standards and review procedures under Section 7024.

14. By July 1, 1992 after public comment, the authority shall petition the public service board for approval of a service fee under subsections 7013(e) and 7020(b) of this chapter and shall propose adequate financial assurance requirements as part of the same proceeding.

15. Within six months of receiving the draft license application, the agency must complete its review.

16. Not later than 30 days after compeletion of the review of the draft license application by the agency, the authority shall apply to the United States Nuclear Regulatory Commission for a license to construct and operate a disposal facility in the state.

17. Not later than 30 days after completion of the review of the draft license application by the agency, the authority shall apply for a land use permit under chapter 151 of this title.

18. Within 180 days of obtaining a license and a land use permit, the

authority shall begin construction of the disposal facility.

19. As soon as practicable, the authority shall begin operation of the disposal facility.

20. Every year after the initial report required by subsection (a)(12) of this section, and until otherwise directed by the legislature, the authority shall, after public comment, report to the legislature its recommendations for the permanent disposal of the long-lived waste and, no later than the beginning operations of the disposal facility authorized by this chapter, propose to the legislature a specific disposal plan for the permanent disposal of the long-lived waste.

21. Within 120 days of the completion of decommissioning of the Vermont Yankee nuclear generating facility, the authority shall begin closure of the disposal facility.

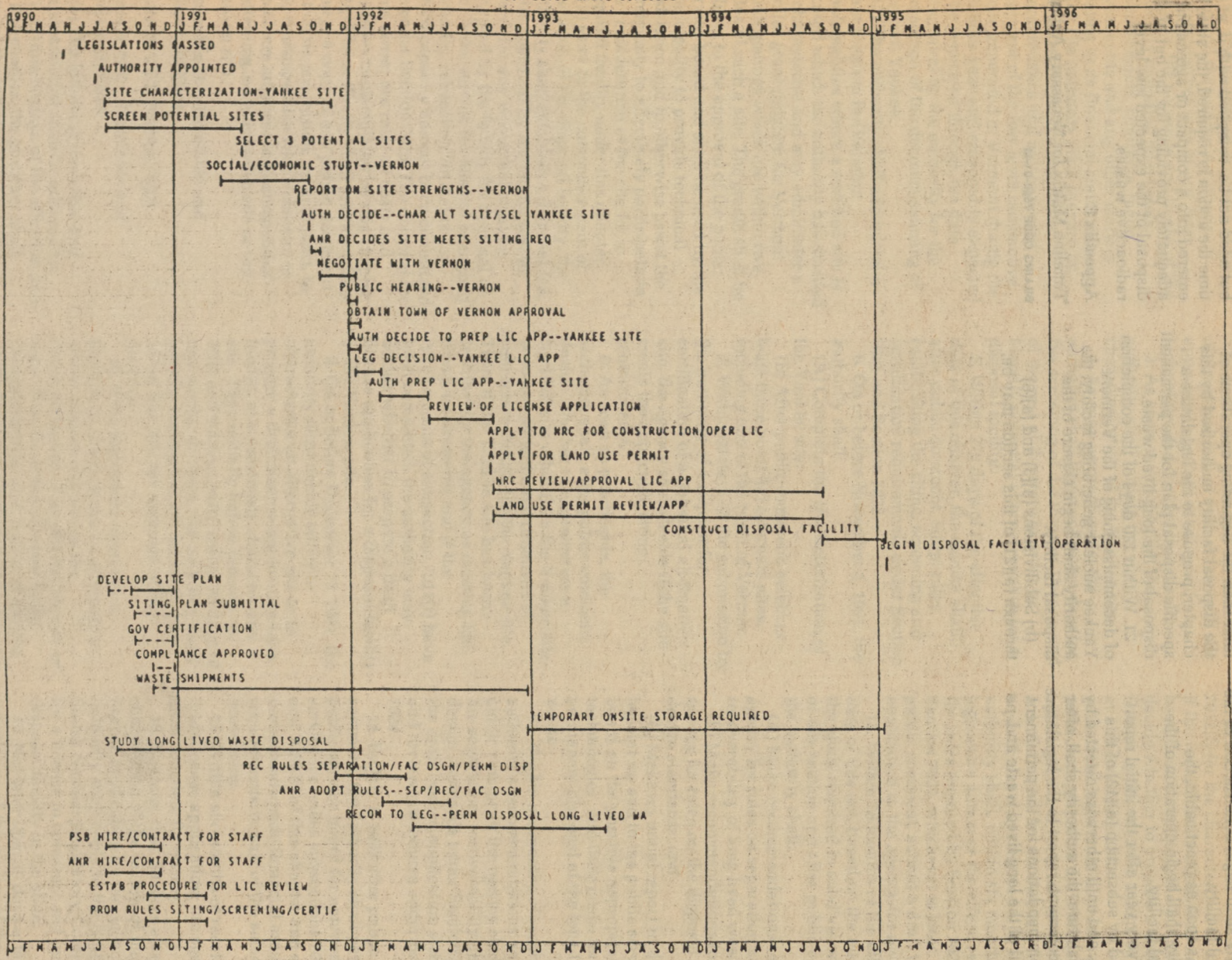
(b) Subdivisions (a)(3) and (a)(6) through (a)(21) of this section may be, but need not be, complied with if, at the time the action is required, the state has entered into a compact or agreement adequately providing for the out-of-state disposal of the expected low-level radioactive wastes.

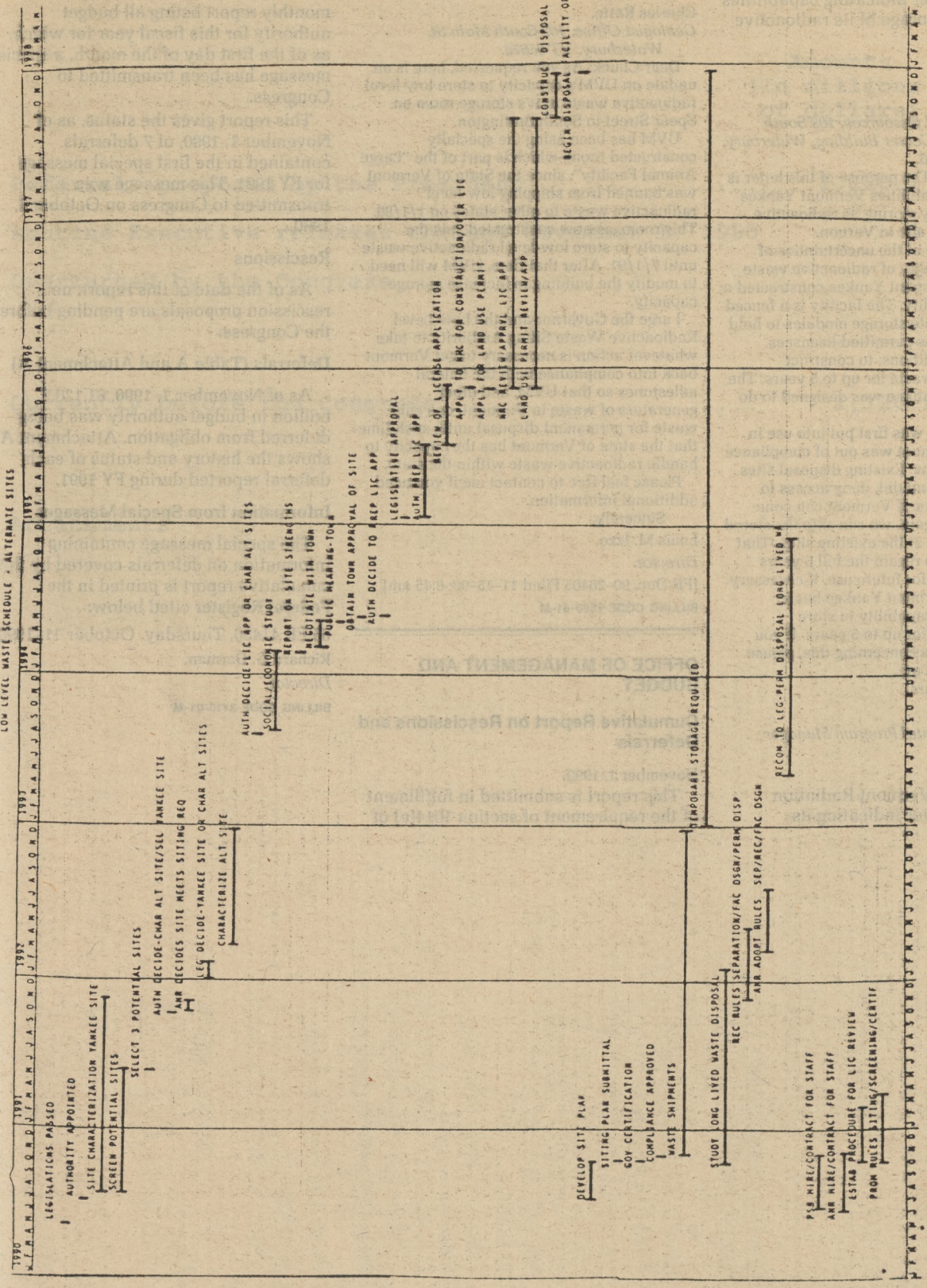
Appendix E

Timeline Matrix for Necessary Actions

BILLING CODE 7590-01-M

LOW LEVEL WASTE SCHEDULE-YANKEE SITE





BILLING CODE 7590-01-C

Appendix F

Vermont Yankee Nuclear Power Corporation letter indicating capabilities for temporary storage of its radioactive waste.

July 30, 1990.

Dr. Charles Ratte,
State Geologist,
Agency of Natural Resources, 103 South Main Street, Center Building, Waterbury, Vermont 05676.

Dear Dr. Ratte: The purpose of this letter is to explain the capabilities Vermont Yankee has for temporarily storing its radioactive waste at the plant site in Vernon.

In 1985, because of the uncertainties of continued availability of radioactive waste disposal sites, Vermont Yankee constructed a waste storage facility. The facility is a fenced in pad with concrete storage modules to hold the waste. NRC has permitted licensees, under certain conditions, to construct facilities to store waste for up to 5 years. The pad at Vermont Yankee was designed to do that.

The storage pad was first put into use in 1989 because Vermont was out of compliance with the federal law. Existing disposal sites were allowed to, and did, deny access to Vermont generators. If Vermont can come into compliance again, we can ship the stored waste for disposal at the existing sites. That would permit us to regain the full 5 years storage capability for future use, if necessary.

In summary, Vermont Yankee has in existence proven capability to store radioactive waste for up to 5 years. If you have any questions concerning this, please feel free to contact me.

Very truly yours,

G. Dean Weyman,
Senior Enviornmental Program Manager

Appendix G

University of Vermont Radiation Safety Office letter indicating its temporary storage capacity for radioactive waste.

August 6, 1990.

Charles Ratte,
Geologist Office, 103 South Main St, Waterbury, VT 05676.

Dear Chuck: As you requested, here is an update on UVM's capacity to store low-level radioactive waste at it's storage room on Spear Street in South Burlington.

UVM has been using the specially constructed room, which is part of the "Large Animal Facility", since the State of Vermont was banned from shipping low-level radioactive waste to other states on 1/1/89. This room, as now constructed, has the capacity to store low-level radioactive waste until 7/1/91. After that time, UVM will need to modify the building to increase storage capacity.

I urge the Governor and the Low-Level Radioactive Waste Siting Authority to take whatever action is necessary to get Vermont back into compliance with the federal milestones so that UVM, and other generators of waste in Vermont, can ship waste for permanent disposal until, such time that the state of Vermont has the capacity to handle radioactive waste within the state.

Please feel free to contact me if you need additional information.

Sincerely;

Louis M. Izzo,
Director.

[FR Doc. 90-26405 Filed 11-15-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

November 1, 1990.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of November 1, 1990, of 7 deferrals contained in the first special message for FY 1991. This message was transmitted to Congress on October 4, 1990.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Table A and Attachment A)

As of November 1, 1990, $1,120.2 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1991.

Information from Special Messages

The special message containing information on deferrals covered by this cumulative report is printed in the **Federal Register** cited below:

55 FR 41436, Thursday, October 11, 1990.

Richard G. Darman,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1991 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	1,120.2
Routine Executive releases through November 1, 1990	0
Overturned by the Congress.....	0
Currently before the Congress.....	1,120.2

Attachments

ATTACHMENT A
Status of FY 1991 Deferrals - As of November 1, 1990
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 11-1-90
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D91-1	149,319		10-04-90					149,319
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D91-2	135,955		10-04-90					135,955
Cooperative work	D91-3	273,468		10-04-90					273,468
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D91-4	1,186		10-04-90					1,186
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction)	D91-5	7,127		10-04-90					7,127

ATTACHMENT A
Status of FY 1991 Deferrals - As of November 1, 1990
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 11-1-90
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive....	D91-6	14,529		10-04-90					14,529
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D91-7	538,659		10-04-90					538,659
TOTAL, DEFERRALS.....		1,120,244	0		0	0		0	1,120,244

[FR Doc. 90-27123 Filed 11-15-90; 8:45 am]
BILLING CODE 3110-01-C

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 19, 1990, 9 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Congressional Reaction to the Possible Closing of the Raleigh, North Carolina, Base Point.
(2) Incentive Awards Plan.
(3) Proposed Occupational Disability Physical Standards.
(4) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
(5) Regulations—Part 203, Employees Under the Act.
(6) Regulations—Parts 200, 209 and 234, Railroad Employers' Reports and Responsibilities; Lump-Sum Payments.
(7) Regulations—Part 216, Eligibility for an Annuity.
(8) Regulations—Part 255, Recovery of Overpayments.
(9) Regulations—Part 320, Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals from Such Determinations.
(10) Regulations—Parts 320 and 340, Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from Such Determinations; Recovery of Benefits.
(11) Regulations—Part 330, Determination of Daily Benefit Rates.
(12) Regulations—Part 200, General Administration.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary of the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: November 9, 1990.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90–27074 Filed 11–15–90; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 28606; File No. 600–20]

Order Approving on an Accelerated Basis an Extension of Registration as a Clearing Agency Until November 30, 1991

November 9, 1990.

In the matter of the registration as a clearing agency of International Securities Clearing Corporation.

On May 12, 1989, the Securities and Exchange Commission ("Commission") granted the application of International Securities Clearing Corporation ("ISCC") for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Securities Exchange Act of 1934 ("Act"), and Rule 17Ab2–1(c) thereunder, for a period of 18 months.[1] At that time, the Commission granted ISCC an exemption from compliance with section 17A(b)(3)(C) of the Act.[2] On October 16, 1990, ISCC requested that the Commission extend ISCC's registration for a period of one year.[3] Notice of the request for an extension of temporary registration was published in the **Federal Register** on October 24, 1990.[4] No comments have been received.

As discussed in detail in the order first granting ISCC's registration as a clearing agency, one of the primary reasons for ISCC's registration was to enable it to provide for the safe and efficient clearance and settlement of international securities transactions by providing links to centralized, efficient processing systems in the United States and at foreign financial institutions. Although ISCC has succeeded in this mission in the past 18 months, business conditions generally in the international securities markets have not been favorable, and ISCC's capacity and linkage agreements with foreign financial institutions therefore have not yet been adequately challenged. ISCC also is working on changes to its rules that would no longer require that ISCC be registered with an exemption from section 17A(b)(3)(C) or any other section of the Act.

ISCC has functioned effectively as a registered clearing agency for the past 18 months, and since 1986 functioned in this capacity under the terms of several no-action letters issued by the Commission's Division of Market Regulation.[5] Accordingly, in light of the past performance of ISCC, as well as the need for ISCC to provide continuity of services to its participants and members, the Commission believes that "good cause" exists, pursuant to section 19 of the Act, for extending ISCC's registration for an additional 12 months before the expiration of the comment period on such extension.[6] Any comments received concerning ISCC's request for an extension of temporary registration will be considered in conjunction with the Commission's consideration of whether to grant ISCC permanent registration as a clearing agency under section 17A of the Act.

It is therefore ordered That ISCC's registration as a clearing agency be, and hereby is, approved until November 30, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27035 Filed 11–15–90; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691 (May 19, 1989).

[2] Section 17A(b)(3)(C) requires that ISCC's rules assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.

[3] See letter from Karen Saperstein, Associate General Counsel, ISCC, to Brandon Becker, Associate Director, Commission, dated October 16, 1990.

[4] Securities Exchange Act Release No. 28551 (October 18, 1990), 55 FR 42923.

[5] See Securities Exchange Act Release No. 26812, n.1, *supra*, at 21692.

[6] On or before the end of 12 months, the Commission expects to consider whether to grant ISCC permanent registration as a clearing agency.

[Release No. 34–28603; SR–GSCC–90–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Proposed Change Relating to the Netting of Zero Coupon Government Securities

November 8, 1990.

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 September 26, 1990, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 proposal will allow GSCC to include in its netting system book-entry zero coupon securities. GSCC will also develop margin factor designed to accommodate the volatility associated with zeros. The text of the proposed rule change may be examined at place specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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 statement may be examined at the places specified in Item IV below. GSCC 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

(a) STRIPS (Separate Trading of Registered Interest and Principal of Securities)—which are pre-stripped, book-entry, zero coupon securities that are direct obligations of the U.S. Treasury—and other book-entry zero coupon Government securities, other than Treasury Bills, which have a maturity of one year or less, (collectively "zeros") have not yet been made eligible for netting by GSCC. GSCC now proposes to make all zeros eligible for its net. In so doing, it recognizes that these securities require different considerations from a margining perspective than do other Treasury securities, because zeros generally are subject to greater price volatility than coupon bearing securities with the same maturity.

GSCC is not aware of any satisfactory third-party source of historical price volatility data on zeros from which to establish applicable margin factors or disallowance percentages. (GSCC intends to develop and maintain its own historical price volatility base for zeros, as it does for all other securities eligible for the net, commencing at the time that it starts to net zeros). In order to allow GSCC to make such securities eligible for the net in a prudent fashion that does not present undue risk to GSCC or its members, GSCC will make changes to its margin factor and offset class schedule, and disallowance percentage schedule, as regards the margining of zeros for clearing fund purposes. Non-Treasury zeros will not be distinguished from Treasury zeros, as they do not differ significantly as regards their price volatility.

First, a new, separate margin factor schedule will be established for zeros, which will take into account the greater price volatility presented both generally by zeros and that which arises as the remaining maturity of a zero security increases. The applicable margin percentages for zeros will range from being the same as those for coupon securities on the short-end of the maturity spectrum to two-and-a-half times that applicable to coupon securities on the longest-term end. These differences are comparable to the differences in amount of net position haircut factors (which are designed to reflect the price volatility of debt instruments between zeros and coupon securities found in the Treasury Department's liquid capital requirements for Government securities brokers and dealers (17 CFR 402.2) (the "Treasury capital requirements"); it is that haircut schedule that has been used by GSCC as a basis for deriving its current offset classes and disallowance percentage schedule.

Second, in view of the current lack of sufficient historical data from which to derive offsets among zeros and coupon securities, GSCC will take a conservative approach by setting the disallowance percentage for zeros at 100 percent as against coupon securities (as against other zeros issues, the current disallowance percentage schedule will be followed). This may be contrasted with the approach taken in the Treasury capital requirements, where the hedging disallowance haircut factors (which reflect the risk inherent in hedges across categories of securities) allow for a certain degree of offset between zeros and coupon securities.

In addition, as a further measure designed to ensure that a netting member's activity in zeros will not present undue exposure to GSCC, GSCC will monitor the level of each member's activity in zeros, and will expressly establish the following daily concentration levels, the triggering of which will lead to GSCC determining whether it is appropriate to call for additional clearing fund deposit:

1. Concentration in CUSIPS within the same range of remaining maturities

The level of a netting member's net settlement positions, measured by dollar value, in all zeros constitutes 50 percent or more of the total dollar value of all Netting Members' net settlement positions in zeros.

2. Concentration in all zeros issues as against activity in all issues

The level of a netting member's net settlement positions, measured by dollar value, in all zeros constitutes 25 percent or more of the dollar value of its net settlement positions in all issues eligible for the net.

This new procedure for the collection of clearing fund collateral related to the meeting of zeros will be reviewed on a regular basis by the Membership and Standards Committee of the GSCC Board, which review will be facilitated by the growing base of historical data to be maintained by GSCC on the price volatility of zeros.

(b) The proposed rule change will help further GSCC's ability to ensure orderly settlement in the Government securities marketplace, by expanding the scope of Government securities eligible for its netting system. Thus, it is consistent with the requirements of section 17A the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule changes have not yet been solicited or received. Members will be notified of the proposed rule change, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

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 its finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should 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 principle office of GSCC. All submissions should refer to file number SR–GSCC–90–06 and should be submitted by December 7, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27033 Filed 11–15–90; 8:45 am]

BILLING CODE 8010–01–M

[Relase No. 34–28604; SR–GSCC–90–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Allocation of Clearance Costs

November 8, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 24, 1990, the Government Securities Clearing Corporation ("GSCC") 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 GSCC. 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 change the fee GSCC charges for clearing services. GSCC would no longer use its current method of assessing clearing charges based on the member's percentage of the total number of deliver and receive obligations. GSCC will charge each member a standard fee of $3.25 for each deliver or receive obligation. The full context of the proposed rule change 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 Change

In its filing with the Commission, GSCC 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. GSCC 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

(a) Most of the cost incurred by GSCC as the result of the clearing of netted deliver and receive obligations are passed through to all non-inter-dealer broker netting members ("dealer members"). (Certain costs, such as the space and personnel costs incurred by GSCC in its coordination and monitoring of the settlement process related to the netting system are not directly passed through to members but, rather, constitute a general expense of GSCC.) The allocation method currently used for such pass-through is based on each dealer member's portion, measured on a separate product basis, of the total number of settled deliver and receive obligations of all dealer members.

With over a year of experience in the provision of clearance and settlement services, GSCC is now simplifying this method of allocating clearance charges (clearance charges do not include financing charges, the allocation of which would not be changed). Effective on November 1, 1990, (to be first reflected in the billings issued in December 1990) GSCC will establish a fixed standard cost of $3.25 per deliver/receive obligation of a dealer member, which amounts in total would recover the clearance costs currently passed through by GSCC. This standard cost will be the same for all obligations, regardless of product, and will be allocated based on the absolute number of a dealer member's settlement obligations and not by reference to such member's portion of all dealer members' settlements.

There are numerous advantages associated with this revised method of allocating clearance costs, including the following:

• *Improved expense control and budget planning for GSCC.*

GSCC will be better able to budget, monitor, and control the expenses that it incurs for clearance and settlement, and its overall cash flow.

• *Improved expense planning for Netting Members.*

Members will better be able to anticipate and budget for their GSCC clearance charges, because such charges would be based on their absolute settlement volume (and not on the proportion of their value to total GSCC volume) and would be consistent across all product lines.

• *More equitable method of allocation.*

This will be a more direct method and, thus, a more equitable one, of allocation of all of the costs of the provision by GSCC of a clearance and settlement service.

• *Not a cost increase to members.*

The standard cost will represent the average cost currently passed through to dealer members.

The fixed cost per obligation established by GSCC will be reviewed on a periodic basis by its Audit and Finance Committee and the Board of Directors, and be adjusted as necessary.

(b) The proposed fee structure changes will improve expense control and budget planning for GSCC and its members and provide a more equitable method of allocation of clearance charges and, thus, are consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Commission if GSCC receives any written comments.

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 because the proposal changes a fee charged by GSCC. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the 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 changes 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 GSCC. All submissions should refer to file number SR–GSCC–90–07 and should be submitted by December 7, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27034 Filed 11–15–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before December 17, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: SBA Long-Term Counseling Evaluation Form.

Form No.: SBA Form 1434.

Frequency: Semi-Annually.

Description of Respondents: Recipients of SBI Counseling Services.

Annual Responses: 6,600.

Annual Burden: 2,200.

Title: SBA Private Retirement Plan Survey.

Form No.: SBA Temp. Form 1752.

Frequency: On-time survey.

Description of Respondents: Small Businesses.

Annual Responses: 918.

Annual Burden: 448.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 90–27031 Filed 11–15–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice No. 1290]

Study Group 12 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 12 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting on December 4, 1990, at the Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC, from 1:30 to 4:30 p.m. in room 1605.

Study Group 12 was established at the 1990 Plenary Assembly of the CCIR to deal with matters concerning Inter-Service Sharing and Compatibility. Initially the Study Group will conduct studies in three topical areas: (i) Compatibility between the broadcasting service (88–108 MHz) and aeronautical services (108–137 MHz); (ii) Frequency Sharing between the broadcasting service and the fixed and mobile services in the VHF and UHF bands; and (iii) Coordination area of an earth station and certain space services.

The meeting on December 4, 1990 will be organizational in nature with an agenda intended to review work previously carried out in the CCIR, identify future U.S. work efforts, prepare for an organizational meeting of Study Group 12 in Geneva, January 14–15, 1991 and undertake preparations for a Study Group 12 meeting, May 13–17, 1991.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. William Hatch, National Telecommunications and Information Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230, phone (202) 377–1138, telefax (202) 377–1865.

Dated: October 29, 1990.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90–27063 Filed 11–15–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice No. 1289]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Study Group A Meeting

The Department of State announces that Study Group A (Policy and Services) of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, December 13, 1990, 10 a.m., in conference room 1107, Department of State, 2201 C Street NW., Washington, DC 20520.

The Agenda for the meeting is as follows:

1. Debrief and review of results of CCITT Study Group III (Geneva, November 12–21).
2. Debrief and review of results of CCITT Study Group I (Geneva, October 30–November 9).
3. Update of Ad Hoc Group for Resolution #18 and its continuing activities.
4. Debrief and review of Plan Asia and Oceania meeting (October 31–November 7).
5. Future Schedule of Work Activities.
6. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the Office of Earl S. Barbely, Department of State, 202–647–2592 (fax 202–647–7407). The above includes government and non-government attendees. All attendees must use the C Street entrance.

Dated: October 31, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 90–27064 Filed 11–15–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice No. 1288]

Study Group 7 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 (formerly Study Groups 2 & 7) of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting November 29, 1990 at NASA Headquarters, 600 Independence Avenue, SW., Washington, DC in room 521] commencing at 10 a.m.

Study Group 7 deals with matters relating primarily to the space research systems and standard frequency and time systems. The purpose of the meeting is to review the Report of the recently completed meeting of Interim Working Party (IWP) 2/2 as well as the reports of other CCIR technical groups charged with preparing material for the 1992 World Administrative Radio Conference. Additional work necessary to prepare for the 1992 Conference will be identified.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. John Postelle, ARC Professional Services Group, Herndon, Virginia 22070, phone (703) 834–5607.

Dated: October 30, 1990.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90–27065 Filed 11–15–90; 8:45 am]

BILLING CODE 4710–01–M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 9–7–65 established the currently effective two-month SFFL applicable through September 30, 1990.

In establishing the SFFL for the two-month period beginning October 1, 1990, we have projected non-fuel costs based on the year ended June 31, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels, including those for the month of August, as reported to the Department.

These projections register the beginning of the dramatic increase in fuel prices precipitated by the August Mid East crisis. Future SFFL revisions, beginning with that scheduled for December 1, 1990, will capture additional increases in fuel costs.

By Order 90–11–18 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.3039
Latin America	1.4255
Pacific	1.6965
Canada	1.4128

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–26995 Filed 11–15–90; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–90–46]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 29, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AG–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Indepedence Avenue, SW., Washington, DC 20591; telephone (202) 267–9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 7, 1990.

Denise Donohue Hall,

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

Petitions for Exemption

Docket No.: 17681
Petitioner: Kenmore Air Harbor
Sections of the FAR affected: 14 CFR 135.103(a)(1)
Description of relief sought: To extend Exemption No. 2528, as amended, which allows petitioner to conduct operations under visual flight rules (VFR) outside of controlled airspace, over water, at an altitude below 500 feet. Exemption No. 2528, as amended, will expire on March 31, 1991.

Docket No.: 25659
Petitioner: Eastern Air Charter, Inc.
Sections of the FAR affected: 14 CFR 91.511(a)(4) and 135.165(b)(5), (b)(6), and (b)(7)
Description of relief sought: To extend Exemption No. 5992, which allows petitioner to operate its Cessna Citation CE–500, registration No. N30SB, in extended overwater operations with only one operative long-range navigational system and one operative high-frequency communication system.

Docket No.: 26340
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.391(d) and 121.311(f)
Description of relief sought: To extent Exemption No. 4298, as amended, which allows required flight attendant(s) to be located at the midcabin flight attendant station during takeoff and landing on B–767 aircraft operated by petitioner's member airlines and other similarly situated Part 121 certificate holders who may apply for approval from

their Principal Operations Inspector. Exemption No. 4298, as amended, will expire on March 31, 1991.

Docket No.: 26356
Petitioner: Allied-Signal Aerospace Company
Sections of the FAR affected: 14 CFR 21.325(b)
Description of relief sought: To allow the issuance of a U.S. export airworthiness approval for Gas Turbine Auxiliary Power Units (and parts for such power units) that are manufactured and produced in Germany under an extension of Garrett Auxiliary Power Division U.S. Technical Standard order (TSO) C77a authorization.

Docket No.: 26358
Petitioner: Empire Airlines
Sections of the FAR affected: 14 CFR 121.547(c)
Description of relief sought: To allow petitioner to carry Federal Express personnel who have the responsibility to observe and monitor cargo operations in the jumpseat of its leased Fokker Mark 500 series F–27 aircraft that are not equipped with seats in the passenger compartment.

Dispositions of Petitions

Docket No.: 21789
Petitioner: Air Transport Association of America
Sections of the FAR affected: 14 CFR 61.49
Descriptions of relief sought/disposition: To extend Exemption No. 3474, as amended, which permits the airman employees of the petitioner's member airlines and similarly situated part 121 certificate holders to apply for retesting without waiting 30 days after a second (or subsequent) failure of the written or flight test, provided that a part 121-authorized instructor has given that applicant additional flight or ground instruction, as appropriate, and finds that applicant competent to pass the test. *Partial Grant, October 30, 1990, Exemption No. 3474E*

Docket No.: 26138
Petitioner: Air Berlin, Inc.
Sections of the FAR affected/disposition: 14 CFR 121.61(a)(1) and (a)(2)
Descriptions of relief sought/disposition: To allow Captain Gilbert Marriner, employed by the petitioner, to assume the duties of Director of Operations without having the required 3 years of experience. *Denial, October 29, 1990, Exemption No. 5247.*

Docket No.: 26353
Petitioner: British Aerospace Commercial Aircraft Limited/Air Wisconsin
Sections of the FAR Affected: 14 CFR 121.312(a)(2)
Description of relief sought/disposition: To allow operation of three airplanes that do not fully comply with the heat release and smoke density requirements or interior materials as specified in § 121.312(a)(2). The exemption would allow the operation of three aiplanes, whose dates of manufacture are after August 20, 1990, with certain interior components that do not comply with the heat release and smoke emission requirements of § 121.312(a)(2). *Grant, October 12, 1990, Exemption No. 5243*

[FR Doc. 90–26999 Filed 11–15–90; 8:45 am]
BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., appendix I), notice is hereby given for the thirty-fourth meeting of RTCA Special Committee 147 on Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment to be held December 11–13, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington DC, 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of minutes of the thirty-third meeting held on August 14–15, 1990; (4) TCAS program status reports; (a) Manufacturers update; (b) FAA TCAS Program; (c) TCAS Transition Program; (d) TCAS III; (5) Reports of Working Group activities; (a) Pilot Working Group; (b) Requirements Working Group; (6) Review of EUROCAE Working Group 34 activities; (7) Report of RTCA Special Committee 142 (Mode S) activities; (8) Review of new trouble reports or proposed modifications to TCAS II Logic; (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 9, 1990.

Geoffrey R. McIntyre,
Designated Officer.

[FR Doc. 90–27008 Filed 11–15–90; 8:45 am]
BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., appendix I), notice is hereby given for the meeting of the Executive Committee with the International Associates to be held December 5, 1990, at Loews L'Enfant Plaza Hotel, Quorum Room, 480 L'Enfant Plaza, SW., Washington DC, 20024, commencing at 2:15 p.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) Approval of the minutes of meeting held November 16, 1990; (3) Executive Director's report; (4) Special Committee activities report; (5) Consideration of proposals to establish new Special Committees; (6) Report on EUROCAE Working Group activities; (7) Comments and reports by International Associates; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW. suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 9, 1990.

Geoffrey R. McIntyre,
Designated Officer.

[FR Doc. 90–27009 Filed 11–15–90; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 9, 1990.

The Department of Treasure has submitted the following public

information collection requirement(s) 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 Office, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0019
Form Number: ATF Form 6A (5330.3C)
Type of Review: Extension
Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War
Description: This information collection is needed to verify importation of firearms, ammunition and implements of war. ATF Form 6A is completed by Federal firearms licensees, active duty military members, nonresident U.S. citizens returning to the U.S., and aliens immigrating to the United States.
Respondents; Individuals or households, businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 20,000
Estimated Burden Hours Per Response: 24 minutes
Requency of Response: On occasion
Clerance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer; Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Department Reports Management Officer.

[FR Doc. 90–27012 Filed 11–15–90; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

November 9, 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: 1545–0128.
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 of other for-profit.
Estimated Number of Respondents: 2,440.
Estimated Burden Hours Per Respondent:
Recordkeeping—75 hours, 20 minutes.
Learning about the law or the form—23 hours, 53 minutes.
Preparing the form—37 hours, 20 minutes.
Copying, assembling, and sending the form to IRS—3 hours, 13 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 341,039 hours.

OMB Number: 1545–1027.
Form Number: IRS Form 1120–PC.
Type of Review: Revision.
Title: U.S. Property and Casualty Insurance Company Income Tax Return.
Description: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 7,500.
Estimated Burden Hours Per Respondent:
Recordkeeping—106 hours, 25 minutes.
Learning about the law or the form—33 hours, 19 minutes.
Preparing the form—54 hours, 12 minutes.
Copying, assembling, and sending the form to IRS—5 hours, 5 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,492,725 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. 90–27015 Filed 11–15–90; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

November 9, 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. Due to the short deadline imposed by Congress on November 9, 1990, the Department requested an emergency approval by the Office of Management and Budget by November 14, 1990, to allow time to deliver printed forms and instructions to dealers so that they may insure the correct payment of the floor stocks tax which goes into effect January 1, 1991.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New
Forms Number: ATF F 5000.28
Type of Review: New collection
Title: Floor Stocks Tax Return (90F–269P) Recordkeeping and Reporting Requirements
Description: The Omnibus Budget Reconciliation Act of 1990, raises the excise tax on alcoholic beverages, tobacco products, and perfume containing ethyl alcohol. The Act also imposes a floor stocks tax affecting wholesale and retail dealers in these commodities as well as proprietors of producing/warehouse facilities. AFT F 5000.28 and these regulations implement the law and are necessary to protect the revenue
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 500,000

Estimated Burden Hours Per Response/ Recordkeeping: 5 hrs., 18 mins

Frequency of Response: Taken Jan. 91 and Jan. 93 (Cigarettes)

Estimated Total Recordkeeping/ Reporting Burden: 2,650,000 hours

Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226

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 Report, Management Officer.

BILLING CODE 4810–31–M

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FLOOR STOCKS TAX RETURN

(See Instructions)

DRAFT

SECTION I - TAXPAYER IDENTIFYING INFORMATION

1. NAME AND ADDRESS:

2. TAXPAYER IDENTIFICATION NUMBER:

3. NUMBER OF LOCATIONS COVERED BY THIS RETURN:

SECTION II - EXEMPTIONS (Check the appropriate block(s))

4. ☐ I am not engaged in a business involving **DISTILLED SPIRITS, WINE, BEER, IMPORTED PERFUME OR CIGARETTES** liable for floor stocks tax. Do not complete Section III or IV, if you checked this block. Complete only Section V (items 18,19 and 20).

5. ☐ The total (**DISTILLED SPIRITS, WINE, BEER AND IMPORTED PERFUME**) held by me, on January 1, 1991, does not exceed 500 wine gallons (standard U.S. gallons). Do not complete items 7 through 10 of Section III if you checked this block.

6. ☐ The total large and small (**CIGARETTES**) held by me, on January 1, 1991, does not exceed 30,000 cigarettes. Do not complete items 11 through 13 of Section III if you checked this block.

SECTION III - CALCULATION OF TAXES

Compute tax in column (f) by multiplying inventory total, column (b), by rate of tax in column (c) minus any tax credits shown in column (e).

ALCOHOL

ARTICLE (a)	INVENTORY TOTAL (See Instructions) (b)	FLOOR STOCKS TAX RATE (c)	COMPUTED TAX (d)	TAX CREDIT (See Instructions) (e)	ADJUSTED TAX ((d)minus(e)) (f)
7. DISTILLED SPIRITS (Report In Proof Gallons)		$1.00			
8. WINE (Report In Wine Gallons)		$.90			
9. BEER (Report In Barrels)		$9.00			
10 IMPORTED PERFUME (Report in Wine Gallons)		$1.00			

CIGARETTES

11 SMALL CIGARETTES (Class A) (All Standard Sizes, including 100mm and 120mm)		$2. Per Thousand .002 x Column (b)			
12. LARGE CIGARETTES (Class B) (Weighing MoreThan 3 Pounds Per Thousand)		$4.20 Per Thousand .0042 x Column (b)			
13. TOTAL COMPUTED CIGARETTE TAX (Add Lines 11(d) and 12(d)) →					

SECTION IV - TAX AND PAYMENT SUMMARY

14 TOTAL TAX DUE (Lines 7(f) through 13(f)) →

15. METHOD OF PAYMENT → ☐ EFT ☐ CHECK ☐ MONEY ORDER ☐ OTHER (Specify)

MAKE CHECK OR MONEY ORDER PAYABLE TO "BUREAU OF ALCOHOL, TOBACCO AND FIREARMS." WRITE YOUR TAXPAYER IDENTIFICATION NUMBER ON THE CHECK AND SEND IT ALONG WITH THE TAX RETURN IN THE RETURN ENVELOPE, OR ADDRESS ENVELOPE TO BUREAU OF ATF, P.O. BOX 371987, PITTSBURGH, PA 15250-7987.

16. OFFICIAL USE ONLY — FF | FP | I

17 OFFICIAL USE ONLY

SECTION V - TAXPAYER CERTIFICATION

Under penalties of perjury, I declare that I have examined this return (including any supporting inventory records and accompanying statements) and to the best of my knowledge and belief it is true, correct, complete, and includes all tax liabilities required by law or regulations to be reported

18 SIGNATURE	19. TITLE	20. DATE

ATF F 5000.28 (12-90)

INSTRUCTIONS

Section I — Taxpayer Identifying Information

Items 1 and 2. Verify and correct all pre-printed information. If you receive a blank tax return, enter your complete business name, address, and ZIP code in item 1. Enter your Employer Identification Number (EIN) in item 2. If you do not have an EIN, enter your Social Security Number (SSN).

Item 3. Specify the number of locations covered by this return. You may file a separate return for each place of business or a consolidated return covering multiple locations. Enter the number "1" if the return covers only one location.

Section II — Exemptions

Items 4 through 6. Check the appropriate box(es) if you meet any of the exemptions listed.

Section III — Calculation of Taxes

Items 7 through 10. Enter your inventory totals for each product on the appropriate line in Column (b). Multiply Column (b) by the tax rate in Column (c) and enter the result in Column (d). In Column (e) enter any tax credits allowed (see detailed instructions). Subtract the tax credit and enter the adjusted tax in Column (f).

The tax credits mentioned above apply to dealers and producers liable for floor stocks tax. Dealers and producers may be eligible for a tax credit of $240 for distilled spirits, $270 for wine and $87 for beer. Small domestic wine producers may also be eligible to take a tax credit based on their 1990 production and removals. Refer to the supplemental instructions for the restrictions which apply to these credits.

Items 11 through 13. Enter inventory totals in Column (b). Multiply Column (b) by the tax rate in Column (c) and enter the result in Column (d). Add Items 11 and 12, Column (d), and enter total in Item 13, Column (d). Subtract the $60 tax credit and enter the adjusted tax in Column (f).

Section IV — Tax and Payment Summary

Item 14. Enter the total amount of tax due in Item 14 column (f). This amount is the total of Items 7(f) through 13(f).

Item 15. Check the appropriate box for the method of payment.

Section V — Taxpayer Certification

Items 18 through 20. Sign the tax return in Item 18 and enter the title of the signing official in Item 19. Enter the date the return is signed in Item 20. The person signing the tax return must be authorized to act on behalf of the business. Agents signing on behalf of a business must have a power of attorney on file with ATF or may attach a copy with the tax return.

Mailing. Use the enclosed self-addressed envelope to submit the return and payment, or mail to:

Bureau of Alcohol, Tobacco and Firearms
P.O. Box 371987
Pittsburgh, PA 15250-7987

This floor stocks tax return is not a special tax return. File each return and payment in the separate envelopes provided.

Correspondence. Do not include letters or inquiries with your tax return. Send letters and inquiries directly to your ATF regional office listed in the supplemented instructions.

Electronic Funds Transfer (EFT). Submit your floor stocks tax payment by EFT if you currently pay your Federal excise taxes by EFT.

Retention of Records. Keep your inventory sheets and other supporting records available for inspection by ATF officers for a period of 3 years from the date you file your return. It is also recommended that you maintain a copy of this tax return for your records.

Inspection Authority. Whenever it is necessary to establish, verify, or investigate floor stocks tax liabilities, ATF officers are authorized by 26 U.S.C. Section 7602 and 7606 to:

(a) Examine any books, records, or other data which may be relevant to an investigation of floor stocks tax, and

(b) Enter premises where articles subject to the floor stocks tax are stored and inventory or examine these articles, and

(c) Issue summonses compelling the production of books of account or other data, or the appearance of appropriate persons.

Penalties. Civil and criminal penalties are imposed for failure to file, failure to pay, failure to allow ATF officers access to premises where taxable articles are stored, failure to furnish officers access to records pertinent to tax liabilities, or filing a fraudulent return.

PAPERWORK REDUCTION ACT NOTICE

This request is in accordance with the Paperwork Reduction Act of 1980. The purpose of this information is to identify taxpayers and the amount of tax due for each tax return. The information is used by the Government to ensure that the correct tax was determined and paid. This information is mandated by Public Law 101-508.

5 . 3

The estimated average burden associated with this collection is / hours per respondent or recordkeeper depending on individual circumstances. The time will vary widely depending on inventory.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Reports Management Officer, Information Programs Branch, Room 7011, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 AND the Office of Management and Budget, Paperwork Reduction Project (1512-), Washington, DC 20503

ATF F 5000.28

[FR Doc. 90-27014 Filed 11-15-90; 8:45 am]
BILLING CODE 4810-31-C

Office of Thrift Supervision

Florida Federal Savings, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Florida Federal Savings, F.S.B., St. Petersburg, Florida, on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–27022 Filed 11–15–90; 8:45 am]

BILLING CODE 6720–01–M

Louisiana Savings Bank, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Louisiana Savings Bank, F.S.B., Metairie, Louisiana, on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–27023 Filed 11–15–90; 8:45 am]

BILLING CODE 6720–01–M

Colonial Savings and Loan Association, F.A.; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) and of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Colonial Savings and Loan Association, F.A., Cape Girardeau, Missouri, Docket No. 8737, with the Resolution Trust Corporation as sole Receiver for the Association on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–27017 Filed 11–15–90; 8:45 am]

BILLING CODE 6720–01–M

Florida Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Florida Federal Savings Bank, St. Petersburg, Florida, Docket No. 1943, on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–27024 Filed 11–15–90; 8:45 am]

BILLING CODE 6720–01–M

Home Federal Savings Bank of Worcester; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Home Federal Savings Bank of Worcester, Worcester, Massachusetts, Docket No. 8871, with the Resolution Trust Corporation as sole Receiver for the Association on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–27018 Filed 11–15–90; 8:45 am]

BILLING CODE 6720–01–M

Louisiana Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Louisiana Federal Savings Bank, Metairie, Louisiana, Docket No. 8031, on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–27025 Filed 11–15–90; 8:45 am]

BILLING CODE 6720–01–M

Valley Savings, A Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Valley Savings, A Federal Savings and Loan Association, Hutchinson, Kansas, Docket No. 8652, with the Resolution Trust Corporation as sole Receiver for the Association on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–27019 Filed 11–15–90; 8:45 am]

BILLING CODE 6720–01–M

[AC–63: OTS No. 0846]

Davidson Federal Savings Bank, Lexington, NC; Final Action; Approval of Conversion Application

Notice is hereby given that on November 2, 1990, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Davidson Federal Savings Bank, Lexington, North Carolina for permission to convert to the stock form of organization. Copies of the applications are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Office of Thrift Supervision.

Dated November 7, 1990.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–27020 Filed 11–15–90; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OBM Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer December 17, 1990.

Dated: November 8, 1990.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Veterans Benefits Administration.
2. Application for Dependency and Indemnity Compensation or Death Pension by a Surviving Spouse or Child (Including Accrued Benefits and Death Compensation, where Applicable).
3. VA Form 21-534.
4. This form is used by claimants to file an application for benefits subsequent to the death of the veteran. The information is used to determine the claimant's eligibility for dependency and indemnity compensation benefits.
5. On occasion.
6. Individuals or households.
7. 162,720 responses.
8. 1¼ hour.
9. Not applicable.

[FR Doc. 90–26986 Filed 11–15–90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 222
Friday, November 16, 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).

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Tuesday, November 20, 1990.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in *Montfort of Colorado, Inc.*, OSHRC Docket No. 87–1220.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller, (202) 634–4015.

This notice of meeting is published pursuant to the Government in the Sunshine Act (Pub.L. 94–409) 5 U.S.C. 552b.

Dated: November 13, 1990.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 90–27152 Filed 11–14–90; 10:59 am]

BILLING CODE 77600-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 19, 1990.

A closed meeting will be held on Tuesday, November 20, 1990, at 2:30 p.m.

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

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

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

The subject matter of the closed meeting scheduled for Tuesday, November 20, 1990, at 2:30 p.m., will be:

Litigation matter.

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Regulatory matter bearing enforcement implication.

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: John Kincaid at (202) 272–2000.

Dated: November 14, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–27240 Filed 11–14–90; 4:04 pm]

BILLING CODE 8010-01-M

federal register

Friday
November 16, 1990

Part II

Environmental Protection Agency

40 CFR Parts 122, 123, and 124
National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, and 124

[FRL-3834-7]

RIN 2040-AA79

National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's final rule begins to implement section 402(p) of the Clean Water Act (CWA) (added by section 405 of the Water Quality Act of 1987 (WQA)), which requires the Environmental Protection Agency (EPA) to establish regulations setting forth National Pollutant Discharge Elimination System (NPDES) permit application requirements for: storm water discharges associated with industrial activity; discharges from a municipal separate storm sewer system serving a population of 250,000 or more; and discharges from municipal separate storm sewer systems serving a population of 100,000 or more, but less than 250,000.

Today's rule also clarifies the requirements of section 401 of the WQA, which amended CWA section 402(1)(2) to provide that NPDES permits shall not be required for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations. This rule sets forth NPDES permit application requirements addressing storm water discharges associated with industrial activity and storm water discharges from large and medium municipal separate storm sewer systems.

DATES: This final rule becomes effective December 17, 1990. In accordance with 40 CFR 23.2, this rule shall be considered final for purposes of judicial review on November 30, 1990, at 1 p.m. eastern daylight time. The public record is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street SW., Washington DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the rule contact: Thomas J. Seaton, Kevin Weiss, or Michael Mitchell Office of Water Enforcement and Permits (EN-336), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9518.

SUPPLEMENTARY INFORMATION:

I. Background and Water Quality Concerns
II. Water Quality Act of 1987
III. Remand of 1984 Regulations
IV. Codification Rule and Case-by-Case Designations
V. Consent Decree of October 20, 1989
VI. Today's Final Rule and Response to Comments
A. Overview
B. Definition of Storm Water
C. Responsibility for Storm Water Discharges Associated with Industrial Activity into Municipal Separate Storm Sewers
D. Preliminary Permitting Strategy for Storm Water Discharges Associated with Industrial Activity
1. Tier 1—Baseline Permitting
2. Tier 2—Watershed Permitting
3. Tier 3—Industry Specific Permitting
4. Tier 4—Facility Specific Permitting
5. Relationship of Strategy to Permit Application Requirements
a. Individual Permit Application Requirements
b. Group Application
c. Case-by-Case Requirements
E. Storm Water Discharge Sampling
F. Storm Water Discharges Associated with Industrial Activity
1. Permit Applicability
a. Storm Water Discharges Associated with Industrial Activity to Waters of the United States
b. Storm Water Discharges Through Municipal Separate Storm Sewers
c. Storm Water Discharges Through Non-Municipal Storm Sewers
2. Scope of "Associated with Industrial Activity"
3. Individual Application Requirements
4. Group Applications
a. Facilities Covered
b. Scope of Group Application
c. Group Application Requirements
5. Group Application: Applicability in NPDES States
6. Group Application: Procedural Concerns
7. Permit Applicability and Applications for Oil, Gas and Mining Operations
a. Gas and Oil Operations
b. Use of Reportable Quantities to Determine if a Storm Water Discharge from an Oil or Gas Operation is Contaminated
c. Mining Operations
8. Application Requirements for Construction Activities
a. Permit application requirements
b. Administrative burdens
G. Municipal Separate Storm Sewer Systems
1. Municipal Separate Storm Sewers
2. Effective Prohibition on Non-Storm Water Discharges
3. Site-Specific Storm Water Quality Management Programs for Municipal Systems
4. Large and Medium Municipal Storm Sewer Systems
a. Overview of proposed options and comments
b. Definition of large and medium municipal separate storm sewer system
c. Response to comments
H. Permit Application Requirements for Large and Medium Municipal Systems
1. Implementing the Permit Program
2. Structure of Permit Application
a. Part 1 Application
b. Part 2 Application
3. Major Outfalls
4. Field Screening Program
5. Source Identification
6. Characterization of Discharges
a. Screening Analysis for Illicit Discharges
b. Representative Data
c. Loading and Concentration Estimates
7. Storm Water Quality Management Plans
a. Measures to Reduce Pollutants in Runoff from Commercial and Residential Areas
b. Measures for Illicit Discharges and Improper Disposal
c. Measures to Reduce Pollutants in Storm Water Discharges Associated with Industrial Activity Through Municipal Systems
d. Measures to Reduce Pollutants in Runoff from Construction Sites Through Municipal Systems
8. Assessment of Controls
I. Annual Reports
J. Application Deadlines
VII. Economic Impact
VIII. Paperwork Reduction Act
IX. Regulatory Flexibility Act

SUPPLEMENTARY INFORMATION:

I. Background and Water Quality Concerns

The 1972 amendments to the Federal Water Pollution Control Act (referred to as the Clean Water Act or CWA), prohibit the discharge of any pollutant to navigable waters from a point source unless the discharge is authorized by an NPDES permit. Efforts to improve water quality under the NPDES program traditionally and primarily focused on reducing pollutants in discharges of industrial process wastewater and municipal sewage. This program emphasis developed for a number of reasons. At the onset of the program in 1972, many sources of industrial process wastewater and municipal sewage were not adequately controlled and represented pressing environmental problems. In addition, sewage outfalls and industrial process discharges were easily identified as responsible for poor, often drastically degraded, water quality conditions. However, as pollution control measures were initially

developed for these discharges, it became evident that more diffuse sources (occurring over a wide area) of water pollution, such as agricultural and urban runoff were also major causes of water quality problems. Some diffuse sources of water pollution, such as agricultural storm water discharges and irrigation return flows, are statutorily exempted from the NPDES program.

Since enactment of the 1972 amendments to the CWA, considering the rise of economic activity and population, significant progress in controlling water pollution has been made, particularly with regard to industrial process wastewater and municipal sewage. Expenditures by EPA, the States, and local governments to construct and upgrade sewage treatment facilities have substantially increased the population served by higher levels of treatment. Backlogs of expired permits for industrial process wastewater discharges have been reduced. Continued improvements are expected for these discharges as the NPDES program continues to place increasing emphasis on water quality-based pollution controls, especially for toxic pollutants.

Although assessments of water quality are difficult to perform and verify, several national assessments of water quality are available. For the purpose of these assessments, urban runoff was considered to be a diffuse source or nonpoint source pollution. From a legal standpoint, however, most urban runoff is discharged through conveyances such as separate storm sewers or other conveyances which are point sources under the CWA. These discharges are subject to the NPDES program. The "National Water Quality Inventory, 1988 Report to Congress" provides a general assessment of water quality based on biennial reports submitted by the States under section 305(b) of the CWA. In preparing the section 305(b) Reports, the States were asked to indicate the fraction of the States' waters that were assessed, as well as the fraction of the States' waters that were fully supporting, partly supporting, or not supporting designated uses. The Report indicates that of the rivers, lakes, and estuaries that were assessed by States (approximately one-fifth of stream miles, one-third of lake acres and one-half of estuarine waters), roughly 70% to 75% are supporting the uses for which they are designated. For waters with use impairments, States were asked to determine impacts due to diffuse sources (agricultural and urban runoff and other sources), municipal sewage, industrial process wastewaters, combined sewer overflows, and natural and other sources, then combine impacts to arrive at estimates of the relative percentage of State waters affected by each source. In this manner, the relative importance of the various sources of pollution that are causing use impairments was assessed and weighted national averages were calculated. Based on 37 States that provided information on sources of pollution, industrial process wastewaters were cited as the cause of nonsupport for 7.5% of rivers and streams, 10% of lakes, and 6% of estuaries. Municipal sewage was the cause of nonsupport for 13% of rivers and streams, 5% lakes, 48% estuaries, 41% of the Great Lake shoreline, and 11% of coastal waters. The Assessment concluded that pollution from diffuse sources, such as runoff from agricultural, urban areas, construction sites, land disposal and resource extraction, is cited by the States as the leading cause of water quality impairment. These sources appear to be increasingly important contributors of use impairment as discharges of industrial process wastewaters and municipal sewage plants come under increased control and as intensified data collection efforts provide additional information. Some examples of diffuse sources cited as causing use impairment are: for rivers and streams, 9% from separate storm sewers, 6% from construction and 13% from resource extraction; for lakes, 28% from separate storm sewers and 26% from land disposal; for the Great Lakes shoreline, 10% from separate storm sewers, 34% from resource extraction, and 82% from land disposal; for estuaries, 28% from separate storm sewers and 27% from land disposal; and for coastal areas, 20% from separate storm sewers and 29% from land disposal.

The States conducted a more comprehensive study of diffuse pollution sources under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and EPA. The study resulted in the report "America's Clean Water—The States' Nonpoint Source Assessment, 1985" which indicated that 38 States reported urban runoff as a major cause of beneficial use impairment. In addition, 21 States reported construction site runoff as a major cause of use impairment.

To provide a better understanding of the nature of urban runoff from commercial and residential areas, from 1978 through 1983, EPA provided funding and guidance to the Nationwide Urban Runoff Program (NURP). The NURP included 28 projects across the Nation, conducted separately at the local level but centrally reviewed, coordinated, and guided.

One focus of the NURP was to characterize the water quality of discharges from separate storm sewers which drain residential, commercial, and light industrial (industrial parks) sites. The majority of samples collected in the study were analyzed for eight conventional pollutants and three metals. Data collected under the NURP indicated that on an annual loading basis, suspended solids in discharges from separate storm sewers draining runoff from residential, commercial and light industrial areas are around an order of magnitude greater than solids in discharges from municipal secondary sewage treatment plants. In addition, the study indicated that annual loadings of chemical oxygen demand (COD) are comparable in magnitude to effluent from secondary sewage treatment plants. When analyzing annual loadings associated with urban runoff, it is important to recognize that discharges of urban runoff are highly intermittent, and that the short-term loadings associated with individual events will be high and may have shockloading effects on receiving water, such as low dissolved oxygen levels. NURP data also showed that fecal coliform counts in urban runoff are typically in the tens to hundreds of thousands per 100 ml of runoff during warm weather conditions, although the study suggested that fecal coliform may not be the most appropriate indicator organism for identifying potential health risks in storm water runoff. Although NURP did not evaluate oil and grease, other studies have demonstrated that urban runoff is an extremely important source of oil pollution to receiving waters, with hydrocarbon levels in urban runoff typically being reported at a range of 2 to 15 mg/l. These hydrocarbons tend to accumulate in bottom sediments where they may persist for long periods of time and exert adverse impacts on benthic organisms.

A portion of the NURP study involved monitoring 120 priority pollutants in storm water discharges from lands used for residential, commercial and light industrial activities. Seventy-seven priority pollutants were detected in samples of storm water discharges from residential, commercial and light industrial lands taken during the NURP study, including 14 inorganic and 63 organic pollutants. Table A–1 shows the priority pollutants which were detected in at least ten percent of the discharge samples which were sampled for priority pollutants.

TABLE A-1.— PRIORITY POLLUTANTS DETECTED IN AT LEAST 10% OF NURP SAMPLES

[In percent]

	Frequency of detection
Metals and inorganics:	
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	58
Copper	91
Cyanides	23
Lead	94
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated aliphatics:	
Methane, dichloro-	11
Phenols and cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10
Phthalate esters:	
Phthalate, bis(2-ethylhexyl)	22
Polycyclic aromatic hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

The NURP data also showed a significant number of these samples exceeded various EPA freshwater water quality criteria.

The NURP study provides insight on what can be considered background levels of pollutants for urban runoff, as the study focused primarily on monitoring runoff from residential, commercial and light industrial areas. However, NURP concluded that the quality of urban runoff can be adversely impacted by several sources of pollutants that were not directly evaluated in the study and are generally not reflected in the NURP data, including illicit connections, construction site runoff, industrial site runoff and illegal dumping.

Other studies have shown that many storm sewers contain illicit discharges of non-storm water and that large amounts of wastes, particularly used oils, are improperly disposed in storm sewers. Removal of these discharges present opportunities for dramatic improvements in the quality of storm water discharges. Storm water discharges from industrial facilities may contain toxics and conventional pollutants when material management practices allow exposure to storm water, in addition to wastes from illicit connections and improperly disposed wastes.

In some municipalities, illicit connections of sanitary, commercial and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although the NURP study did not emphasize the identification of illicit connections to storm sewers (other than to assure that monitoring sites used in the study were free from sanitary sewage contamination), the study concluded that illicit connections can result in high bacterial counts and dangers to public health. The study also noted that removing such discharges presented opportunities for dramatic improvements in the quality of urban storm water discharges.

Studies have shown that illicit connections to storm sewers can create severe, wide-spread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes and other buildings located in Washtenaw County, Michigan and identified 14% of the buildings as having improper storm drain connections. Illicit discharges were detected at a higher rate of 60% for automobile related businesses, including service stations, automobile dealerships, car washes, body shops and light industrial facilities. While some of the problems discovered in this study were the result of improper plumbing or illegal connections, a majority were approved connections at the time they were built.

Intensive construction activities may result in severe localized impacts on water quality because of high unit loads of pollutants, primarily sediments. Construction sites can also generate other pollutants such as phosphorus and nitrogen from fertilizer, pesticides, petroleum products, construction chemicals and solid wastes. These materials can be toxic to aquatic organisms and degrade water for drinking and water-contact recreation. Sediment loadings rates from construction sites are typically 10 to 20 times that of agricultural lands, with runoff rates as high as 100 times that of agricultural lands, and typically 1,000 to 2,000 times that of forest lands. Even a small amount of construction may have a significant negative impact on water quality in localized areas. Over a short period of time, construction sites can contribute more sediment to streams than was previously deposited over several decades.

II. Water Quality Act of 1987

The WQA contains three provisions which specifically address storm water discharges. The central WQA provision governing storm water discharges is section 405, which adds section 402(p) to the CWA. Section 402(p)(1) provides that EPA or NPDES States cannot require a permit for certain storm water discharges until October 1, 1992, except: for storm water discharges listed under section 402(p)(2). Section 402(p)(2) lists five types of storm water discharges which are required to obtain a permit prior to October 1, 1992:

(A) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(B) A discharge associated with industrial activity;

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or

(E) A discharge for which the Administrator or the State, as the case may be, determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

Section 402(p)(4)(A) requires EPA to promulgate final regulations governing storm water permit application requirements for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems (systems serving a population of 250,000 or more), "no later than two years" after the date of enactment (*i.e.*, no later than February 4, 1989). Section 402(p)(4)(B) also requires EPA to promulgate final regulations governing storm water permit application requirements for discharges from medium municipal separate storm sewer systems (systems serving a population of 100,000 or more but less than 250,000) "no later than four years" after enactment (*i.e.*, no later than February 4, 1991).

In addition, section 402(p)(4) provides that permit applications for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems "shall be filed no later than three years" after the date of enactment of the WQA (*i.e.*, no later than February 4, 1990). Permit applications for discharges from medium municipal systems must be filed "no later than five years" after enactment (*i.e.*, no later than February 4, 1992).

The WQA clarified and amended the requirements for permits for storm water discharges in the new CWA section 402(p)(3). The Act clarified that permits for discharges associated with industrial activity must meet all of the applicable provisions of section 402 and section 301

including technology and water quality based standards. However, the new Act makes significant changes to the permit standards for discharges from municipal storm sewers. Section 402(p)(3)(B) provides that permits for such discharges:

(i) May be issued on a system- or jurisdiction-wide basis;

(ii) Shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers; and

(iii) Shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

These changes are discussed in more detail later in today's rule.

The EPA, in consultation with the States, is required to conduct two studies on storm water discharges that are in the class of discharges for which EPA and NPDES States cannot require permits prior to October 1, 1992. The first study will identify those storm water discharges or classes of storm water discharges for which permits are not required prior to October 1, 1992, and determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. The second study is for the purpose of establishing procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. Based on the two studies the EPA, in consultation with State and local officials, is required to issue regulations no later than October 1, 1992, which designate additional storm water discharges to be regulated to protect water quality and establish a comprehensive program to regulate such designated sources. This program must, at a minimum, (A) Establish priorities, (B) establish requirements for State storm water management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

Section 401 of the WQA amends section 402(1)(2) of the CWA to provide that the EPA shall not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities if the storm water discharge is not contaminated by contact with, or does not come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations.

Section 503 of the WQA amends section 502(14) of the CWA to exclude agricultural storm water discharges from the definition of point source.

III. Remand of 1984 Regulations

On December 4, 1987, the United States Court of Appeals for the District of Columbia Circuit vacated 40 CFR 122.26, (as promulgated on September 26, 1984, 49 FR 37998, September 26, 1984), and remanded the regulations to EPA for further rulemaking (*NRDC* v. *EPA*, No. 80–1607). EPA had requested the remand because of significant changes made by the storm water provisions of the WQA. The effect of the decision was to invalidate the storm water discharge regulations then found at § 122.26.

Storm water discharges which had been issued an NPDES permit prior to February 4, 1987, were not affected by the Court remand or the February 12, 1988, rule implementing the court order (53 FR 4157). (*See* section 402(p)(2)(A) of the CWA.) Similarly, the remand did not affect the authority of EPA or an NPDES State to require a permit for any storm water discharge (except an agricultural storm water discharge) designated under section 402(p)(2)(E) of the CWA. The notice of the remand clarified that such designated discharges meet the regulatory definition of point source found at 40 CFR 122.2 and that EPA or an NPDES State can rely on the statutory authority and require the filing of an application (Form 1 and Form 2C) for an NPDES permit with respect to such discharges on a case-by-case basis.

IV. Codification Rule and Case-by-Case Designations

Codification Rule

On January 4, 1989, (54 FR 255), EPA published a final rule which codified numerous provisions of the WQA into EPA regulations. The codification rule included several provisions dealing with storm water discharges. The codification rule promulgated the language found at section 402(p) (1) and (2) of the amended Clean Water Act at 40 CFR 122.26(a)(1). In addition, the codification rule promulgated the language of Section 503 of the WQA which exempted agricultural storm water discharges from the definition of point source at 40 CFR 122.2, and section 401 of the WQA addressing uncontaminated storm water discharges from mining or oil and gas operations at 40 CFR 122.26(a)(2).

EPA also codified the statutory authority of section 402(p)(2)(E) of the CWA for the Administrator or the State Director, as the case may be, to designate storm water discharges for a permit on a case-by-case basis at 40 CFR 122.26(a)(1)(v).

Case by Case Designations

Section 402(p)(2)(E) of the CWA authorizes case-by-case designations of storm water discharges for immediate permitting if the Administrator or the State Director determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

In determining that a storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States for the purpose of a designation under section 402(p)(2)(E), the legislative history for the provision provides that "EPA or the State should use any available water quality or sampling data to determine whether the latter two criteria (contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States) are met, and should require additional sampling as necessary to determine whether or not these criteria are met." Conference Report, *Cong. Rec.* S16443 (daily ed. October 16, 1986). In accordance with this legislative history, today's rule promulgates permit application requirements for certain storm water discharges, including discharges designated on a case-by-case basis. EPA will consider a number of factors when determining whether a storm water discharge is a significant contributor of pollution to the waters of the United States. These factors include: the location of the discharge with respect to waters of the United States; the size of the discharge; the quantity and nature of the pollutants reaching waters of the United States; and any other relevant factors. Today's rule incorporates these factors at 40 CFR 122.26(a)(1)(v).

Under today's rule, case-by-case designations are made under regulatory procedures found at 40 CFR 124.52. The procedures at 40 CFR 124.52 require that whenever the Director decides that an individual permit is required, the Director shall notify the discharger in writing that the discharge requires a permit and the reasons for the decision. In addition, an application form is sent with the notice. Section 124.52 provides a 60 day period from the date of notice for submitting a permit application. Although this 60 day period may be appropriate for many designated storm water discharges, site specific factors may dictate that the Director provide

additional time for submitting a permit application. For example, due to the complexities associated with designation of a municipal separate storm sewer system for a system- or jurisdiction-wide permit, the Director may provide the applicant with additional time to submit relevant information or may require that information be submitted in several phases.

V. Consent Decree of October 20, 1989

On April 20, 1989, EPA was served notice of intent to sue by Kathy Williams *et al*, because of the Agency's failure to promulgate final storm regulations on February 4, 1989, pursuant to Section 402(p)(4) of the CWA. A suit was filed by the same party on July 20, 1989, alleging the same cause of action, to wit: the Agency's failure to promulgate regulations under section 402(p)(4) of the CWA. On October 20, 1989, EPA entered into a consent decree with Kathy Williams *et al*, wherein the Federal District Court, District of Oregon, Southern Division, decreed that the Agency promulgate final regulations for storm water discharges identified in sections 402(p)(2) (B) and (C) of the CWA no later than July 20, 1990. *Kathy Williams et al.*, v. *William K. Reilly, Administrator, et al.*, No. 89–6265–E (D-Ore.) In July 1990, the consent degree was amended to provide for a promulgation date of October 31. Today's rule is promulgated in compliance with the terms of the consent decree as amended.

VI. Today's Final Rule and Response to Comments

A. Overview

Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to reduce the discharge of pollutants to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Furthermore, EPA in consultation with State and local officials must develop a comprehensive program to designate and regulate other storm water discharges to protect water quality.

This final regulation establishes requirements for the storm water permit application process. It also sets forth the required components of municipal storm water quality management plans, as well as a preliminary permitting strategy for industrial activities. In implementing these regulations, EPA and the States will strive to achieve environmental results in a cost effective manner by placing high priority on pollution prevention activities, and by targeting activities based on reducing risk from particularly harmful pollutants and/or from discharges to high value waters. EPA and the States will also work with applicants to avoid cross media transfers of storm water contaminants, especially through injection to shallow wells in the Class V Underground Injection Control Program.

In addition, EPA recognizes that problems associated with storm water, combined sewer overflows (CSOs) and infiltration and inflow (I&I) are all inter-related even though they are treated somewhat differently under the law. EPA believes that it is important to begin linking these programs and activities and, because of the potential cost to local governments, to investigate the use of innovative, non-traditional approaches to reducing or preventing contamination of storm water.

The application process for developing municipal storm water management plans provides an ideal opportunity between steps 1 and 2 for considering the full range of nontraditional, preventive approaches, including municipalities, public awareness/education programs, use of vegetation and/or land conservancy practices, alternative paving materials, creative ways to eliminate I&I and illegal hook-ups, and potentials for water reuse. EPA has already announced its plans to present an award for the best creative, cost effective approaches to storm water and CSOs beginning in 1991.

This rulemaking establishes permit application requirements for classes of storm water discharges that were specifically identified in section 402(p)(2). These priority storm water discharges include storm water discharges associated with industrial activity and discharges from a municipal separate storm sewer serving a population of 100,000 or more.

This rulemaking was developed after careful consideration of 450 sets of comments, comprising over 3200 pages, that were received from a variety of industries, trade associations, municipalities, State and Federal Agencies, environmental groups, and private citizens. These comments were received during a 90-day comment period which extended from December 7, 1988, to March 7, 1989. EPA received several requests for an extension of the comment period from 30-days up to 90-days. Many arguments were advanced for an extension including: the extent and complexity of the proposal, the existence of other concurrent EPA proposals, and the need for technical evaluations of the proposal. EPA considered these comments as they were received, but declined to extend the comment period beyond 90 days. The standard comment period on proposals normally range from 30 to 60 days. In light of the statutory deadline of February 4, 1989, additional time for the comment period beyond what was already a substantially lengthened comment period would have been inappropriate. The number and extent of the comments received on this proposal indicated that interested parties had substantially adequate time to review and comment on the regulation. Furthermore, the public was invited to attend six public meetings in Washington DC, Chicago, Dallas, Oakland, Jacksonville, and Boston to present questions and comments. EPA is convinced that substantial and adequate public participation was sought and received by the Agency.

Numerous commenters have also requested that the rule be reproposed due to the extent of the proposal and the number of options and issues upon which the Agency requested comments. EPA has decided against a reproposal. The December 7, 1988, notice of proposed rulemaking was extremely detailed and thoroughly identified major issues in such a manner as to allow the public clear opportunities to comment. The comments that were received were extensive, and many provided valuable information and ideas that have been incorporated into the regulation. Accordingly, the Agency is confident it has produced a workable and rational approach to the initial regulation of storm water discharges and a regulation that reflects the experience and knowledge of the public as provided in the comments, and which was developed in accordance with the

procedural requirements of the Administrative Procedures Act (APA). EPA believes that while the number of issues raised by the proposal was extensive, the number of detailed comments indicates that the public was able to understand the issues in order to comment adequately. Thus, a reproposal is unnecessary.

B. Definition of Storm Water

The December 7, 1988, notice requested comment on defining storm water as storm water runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration (other than infiltration contaminated by seepage from sanitary sewers or by other discharges) and drainage related to storm events or snow melt. This definition is consistent with the regulatory definition of "storm sewer" at 40 CFR 35.2005(b)(47) which is used in the context of grants for construction of treatment works. This definition aids in distinguishing separate storm water sewers from sanitary sewers, combined sewers, process discharge outfalls and non-storm water, non-process discharge outfalls.

The definition of "storm water" has an important bearing on the NPDES permitting scheme under the CWA. The following discusses the interrelationship of NPDES permitting requirements for storm water discharges addressed by this rule and NPDES permitting requirements for other non-storm water discharges which may be discharged via the storm sewer as a storm water discharge. Today's rule addresses permit application requirements for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. Storm water discharges associated with industrial activity are to be covered by permits which contain technology-based controls based on BAT/BCT considerations or water quality-based controls, if necessary. A permit for storm water discharges from an industrial facility may also cover other non-storm water discharges from the facility. Today's rule establishes individual (Form 1 and Form 2F) and group application requirements for storm water discharges associated with industrial activity. In addition, EPA or authorized NPDES States with authorized general permit programs may issue general permits which establish alternative application or notification requirements for storm water discharges covered by the general permit(s). Where a storm water discharge associated with industrial activity is mixed with a non-storm water discharge, both discharges must be covered by an NPDES permit (this can be in the same permit or with multiple permits). Permit application requirements for these "combination" discharges are discussed later in today's notice.

Today's rule also addresses permit application requirements for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. Under today's rule, appropriate municipal owners or operators of these systems must obtain NPDES permits for discharges from these systems. These permits are to establish controls to the maximum extent practicable (MEP), effectively prohibit non-storm water discharges to the municipal separate storm sewer system and, where necessary, contain applicable water quality-based controls. Where non-storm water discharges or storm water discharges associated with industrial activity discharge through a municipal separate storm sewer system (including systems serving a population of 100,000 or more as well as other systems), which ultimately discharges to a waters of the United States, such discharges through a municipal storm sewer need to be covered by an NPDES permit that is independent of the permit issued for discharges from the municipal separate storm sewer system. Today's rule defines the term "illicit discharge" to describe any discharge through a municipal separate storm sewer that is not composed entirely of storm water and that is not covered by an NPDES permit. Such illicit discharges are not authorized under the CWA. Section 402(p)(3)(B) of the CWA requires that permits for discharges from municipal separate storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal separate storm sewer. As discussed in more detail below, today's rule begins to implement the "effective prohibition" by requiring municipal operators of municipal separate storm sewer systems serving a population of 100,000 or more to submit a description of a program to detect and control certain non-storm water discharges to their municipal system. Ultimately, such non-storm water discharges through a municipal separate storm sewer must either be removed from the system or become subject to an NPDES permit (other than the permit for the discharge from the municipal separate storm sewer). For reasons discussed in more detail below, in general, municipalities will not be held responsible for prohibiting some specific components of discharges or flows listed below through their municipal separate storm sewer system, even though such components may be considered non-storm water discharges, unless such discharges are specifically identified on a case-by-case basis as needing to be addressed. However, operators of such non-storm water discharges need to obtain NPDES permits for these discharges under the present framework of the CWA (rather than the municipal operator of the municipal separate storm sewer system). (Note that section 516 of the Water Quality Act of 1987 requires EPA to conduct a study of de minimis discharges of pollutants to waters of the United States and to determine the most effective and appropriate methods of regulating any such discharges.)

EPA received numerous comments on the proposed regulatory definition of storm water, many of which proposed exclusions or additions to the definition. Several commenters suggested that the definition should include or not include detention and retention reservoir releases, water line flushing, fire hydrant flushing, runoff from fire fighting, swimming pool drainage and discharge, landscape irrigation, diverted stream flows, uncontaminated pumped ground water, rising ground waters, discharges from potable water sources, uncontaminated waters from cooling towers, foundation drains, non-contact cooling water (such as HVAC or heating, ventilation and air conditioning condensation water that POTWs require to be discharged to separate storm sewers rather than sanitary sewers), irrigation water, springs, roof drains, water from crawl space pumps, footing drains, lawn watering, individual car washing, flows from riparian habitats and wetlands. Most of these comments were made with regard to the concern that these were commonly occurring discharges which did not pose significant environmental problems. It was also noted that, unless these flows are classified as storm water, permits would be required for these discharges.

In response to the comments which requested EPA to define the term "storm water" broadly to include a number of classes of discharges which are not in any way related to precipitation events, EPA believes that this rulemaking is not an appropriate forum for addressing the appropriate regulation under the NPDES program of such non-storm water discharges, even though some classes of non-storm water discharges may typically contain only minimal amounts of pollutants. Congress did not intend that the term storm water be used to describe any discharge that has a de minimis amount of pollutants, nor did it intend for section 402(p) to be used to

provide a moratorium from permitting other non-storm water discharges. Consequently, the final definition of storm water has not been expanded from what was proposed. However, as discussed in more detail later in today's notice, municipal operators of municipal separate storm sewer systems will generally not be held responsible for "effectively prohibiting" limited classes of these discharges through their municipal separate storm sewer systems.

The proposed rule included infiltration in the definition of storm water. In this context one commenter suggested that the term infiltration be defined. Infiltration is defined at 40 CFR 35.2005(b)(20) as water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, inflow. Another commenter urged that ground water infiltration not be classified as storm water because the chemical characteristics and contaminants of ground water will differ from surface storm water because of a longer contact period with materials in the soil and because ground water quality will not reflect current practices at the site. In today's rule, the definition of storm water excludes infiltration since pollutants in these flows will depend on a large number of factors, including interactions with soil and past land use practices at a given site. Further infiltration flows can be contaminated by sources that are not related to precipitation events, such as seepage from sanitary sewers. Accordingly the final regulatory language does not include infiltration in the definition of storm water. Such flows may be subject to appropriate permit conditions in industrial permits. As discussed in more detail below, municipal management programs must address infiltration where identified as a source of pollutants to waters of the United States.

One commenter questioned the status of discharges from detention and retention basins used to collect storm water. This regulation covers discharges of storm water associated with industrial activity and discharges from municipal separate storm sewer systems serving a population of 100,000 or more into waters of the United States. Therefore, discharges from basins that are part of a conveyance system for a storm water discharge associated with industrial activity or part of a municipal separate storm sewer system serving a population of 100,000 or more are covered by this regulation. Flows which are channeled into basins and which do not discharge into waters of the United States are not addressed by today's rule.

Several commenters requested that the term illicit connection be replaced with a term that does not connote illegal discharges or activity, because many discharges of non-storm water to municipal separate storm sewer systems occurred prior to the establishment of the NPDES program and in accordance with local or State requirements at the time of the connection. EPA disagrees that there should be a change in this terminology. The fact that these connections were at one time legal does not confer such status now. The CWA prohibits the point source discharge of non-storm water not subject to an NPDES permit through municipal separate storm sewers to waters of the United States. Thus, classifying such discharges as illicit properly identifies such discharges as being illegal.

A commenter wanted clarification of the terms "other discharges" and "drainage" that are used in the definition of "storm water." As noted above, today's rule clarifies that infiltration is not considered storm water. Thus the portion of the definition of storm water that refers to "other discharges" has also been removed. However, the term drainage has been retained. "Drainage" does not take on any meaning other than the flow of runoff into a conveyance, as the word is commonly understood.

One commenter stated that irrigation flows combined with storm water discharges should be excluded from consideration in the storm water program. The Agency would note that irrigation return flows are excluded from regulation under the NPDES program. Section 402(l)(1) states that the Administrator or the State shall not require permits for discharges composed entirely of return flows from irrigated agriculture. The legislative history of the 1977 Clean Water Act, which enacted this language, states that the word "entirely" was intended to limit the exception to only those flows which do not contain additional discharges from activities unrelated to crop production. Congressional Record Vol. 123 (1977), pg. 4360, Senate Report No. 95-370. Accordingly, a storm water discharge component, from an industrial facility for example, included in such "joint" discharges may be regulated pursuant to an NPDES permit either at the point at which the storm water flow enters or joins the irrigation flow, or where the combined flow enters waters of the United States or a municipal separate storm sewer.

Some commenters expressed concern about including street wash waters as storm water. One commenter argued including street wash waters in the definition of storm water should not be construed to eliminate the need for management practices relating to construction activities where sediment may simply wash into storm drains. EPA agrees with these points and the concerns that storm sewers may receive material that pose environmental problems if street wash waters are included in the definition. Accordingly, such discharges are no longer in the definition as proposed, and must be addressed by municipal management programs as part of the prohibition on non-storm water discharges through municipal separate storm sewer systems.

Several commenters requested that the terms discharge and point source, in the context of permits for storm water discharge, be clarified. Several commenters stated that the EPA should clarify that storm water discharge does not include "sheet flow" off of an industrial facility. EPA interprets this as request for clarification on the status of the terms "point source" and "discharge" under these regulations. In response, this rulemaking only covers storm water discharges from point sources. A point source is defined at 40 CFR 122.2 as "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff." EPA agrees with one commenter that this definition is adequate for defining what discharges of storm water are covered by this rulemaking. EPA notes that this definition would encompass municipal separate storm sewers. In view of this comprehensive definition of point source, EPA need clarify in this rulemaking only that a storm water discharge subject to NPDES regulation does not include storm water that enters the waters of the United States via means other than a "point source." As further discussed below, storm water from an industrial facility which enters and is subsequently discharged through a municipal separate storm sewer is a "discharge associated with industrial

activity" which must be covered by an individual or general permit pursuant to today's rule.

EPA would also note that individual facilities have the burden of determining whether a permit application should be submitted to address a point source discharge. Those unsure of the classification of storm water flow from a facility, should file permit applications addressing the flow, or prior to submitting the application consult permitting authorities for clarification.

One commenter stated that "point source" for this rulemaking should be defined, for the purposes of achieving better water quality, as those areas where "discharges leave the municipal [separate storm sewer] system." EPA notes in response that "point source" as currently defined will address such discharges, while keeping the definition of discharge and point source within the framework of the NPDES program, and without adding potentially confusing and ambiguous additional definitions to the regulation. If this comment is asserting that the term point source should not include discharges from sources through the municipal system, EPA disagrees. As discussed in detail below, discharges through municipal separate storm sewer systems which are not connected to an operable treatment works are discharges subject to NPDES permit requirements at (40 CFR 122.3(c)), and may properly be deemed point sources.

One industry argued that the definition of "point source" should be modified for storm water discharges so as to exclude discharges from land that is not artificially graded and which has a propensity to form channels where precipitation runs off. EPA intends to embrace the broadest possible definition of point source consistent with the legislative intent of the CWA and court interpretations to include any identifiable conveyance from which pollutants might enter the waters of the United States. In most court cases interpreting the term "point source", the term has been interpreted broadly. For example, the holding in *Sierra Club* v. *Abston Construction Co., Inc.*, 620 F.2d 41 (5th Cir. 1980) indicates that changing the surface of land or establishing grading patterns on land will result in a point source where the runoff from the site is ultimately discharged to waters of the United States:

> Simple erosion over the material surface, resulting in the discharge of water and other materials into navigable waters, does not constitute a point source discharge, absent some effort to *change the surface*, to *direct* the water flow or otherwise impede its progress * * * Gravity flow, resulting in a discharge into a navigable body of water, may be part of a point source discharge if the (discharger) at least initially collected or channeled the water and other materials. A point source of pollution may also be present where (dischargers) design spoil piles from discarded overburden such that, during periods of precipitation, erosion of spoil pile walls results in discharges into a navigable body of water by means of ditches, gullies and similar conveyances, even if the (dischargers) have done nothing beyond the mere collection of rock and other materials * * * Nothing in the Act relieves (dischargers) from liability simply because the operators did not actually construct those conveyances, so long as they are reasonably likely to be the means by which pollutants are ultimately deposited into a navigable body of water. Conveyances of pollution formed either as a result of natural erosion or by material means, and which constitute a component of a * * * drainage system, may fit the statutory definition and thereby subject the operators to liability under the Act." 620 F.2d at 45 (emphasis added).

Under this approach, point source discharges of storm water result from structures which increase the imperviousness of the ground which acts to collect runoff, with runoff being conveyed along the resulting drainage or grading patterns.

The entire thrust of today's regulation is to control pollutants that enter receiving water from storm water conveyances. It is these conveyances that will carry the largest volume of water and higher levels of pollutants. The storm water permit application process and permit conditions will address circumstances and discharges peculiar to individual facilities.

One industry commented that the definition of waters of the State under some State NPDES programs included municipal storm sewer systems. The commenter was concerned that certain industrial facilities discharging through municipal storm sewers in these states would be required to obtain an NPDES permit, despite EPA's proposal not to require permits from such facilities generally. In response, EPA notes that section 510 of the CWA, approved States are able to have stricter requirements in their NPDES program. In approved NPDES States, the definition of waters of the State controls with regard to what constitutes a discharge to a water body. However, EPA believes that this will have little impact, since, as discussed below, all industrial dischargers, including those discharging through municipal separate storm sewer systems, will be subject to general or individual NPDES permits, regardless of any additional State requirements.

One municipality commented that neither the term "point source" nor "discharge" should be used in conjunction with industrial releases into urban storm water systems because that gives the impression that such systems are navigable waters. EPA disagrees that any confusion should result from the use of these terms in this context. In this rulemaking, EPA always addresses such discharges as "discharges through municipal separate storm sewer systems" as opposed to "discharges to waters of the United States." Nonetheless, such industrial discharges through municipal storm sewer systems are subject to the requirements of today's rule, as discussed elsewhere.

One commenter desired clarification with regard to what constituted an outfall, and if an outfall could be a pipe that connected two storm water conveyances. This rulemaking defines outfall as a point of discharge into the waters of the United States, and not a conveyance which connects to Sections of municipal separate storm sewer. In response to another comment, this rulemaking only addresses discharges to waters of United States, consequently discharges to ground waters are not covered by this rulemaking (unless there is a hydrological connection between the ground water and a nearby surface water body. *See, e.g., Exxon Coro.* v. *Train*, 554 F.2d 1310, 1312 n.1 (5th Cir. 1977); *McClellan Ecological Seepage Situation* v. *Weinberger*, 707 F.Supp. 1182, 1195–96 (E.D. Cal. 1988)).

In the WQA and other places, the term "storm water" is presented as a single word. Numerous comments were received by EPA as to the appropriate spelling. Many of these comments recommended that two words for storm water is appropriate. EPA has decided to use an approach consistent with the Government Printing Office's approved form where storm water appears as two words.

C. Responsibility for Storm Water Discharges Associated With Industrial Activity Through Municipal Separate Storm Sewers

The December 7, 1988, notice of proposed rulemaking requested comments on the appropriate permitting scheme for storm water discharges associated with industrial activity through municipal separate storm sewers. EPA proposed a permitting scheme that would define the requirement to obtain coverage under an NPDES permit for a storm water discharge associated with industrial activity through a municipal separate storm sewer in terms of the classification of the municipal separate storm sewer. EPA proposed holding municipal operators of large or medium

municipal separate storm sewer systems primarily responsible for applying for and obtaining an NPDES permit covering system discharges as well as storm water discharges (including storm water discharges associated with industrial activity) through the system. Under the proposed approach, operators of storm water discharges associated with industrial activity which discharge through a large or medium municipal separate storm sewer system would generally not be required to obtain permit coverage for their discharge (unless designated as a significant contributor of pollution pursuant to section 402(p)(2)(E)) provided the municipality was notified of: The name, location and type of facility and a certification that the discharge has been tested (if feasible) for non-storm water (including the results of any testing). The notification procedure also required the operator of the storm water discharge associated with industrial activity to determine that: The discharge is composed entirely of storm water; the discharge does not contain hazardous substances in excess of reporting quantities; and the facility is in compliance with applicable provisions of the NPDES permit issued to the municipality for storm water.

In the proposal, EPA also requested comments on whether a decision on regulatory requirements for storm water discharges associated with industrial activity through other municipal separate storm sewer systems (generally those serving a population of less than 100,000) should be postponed until completion of two studies of storm water discharges required under section 402(p)(5) of the CWA.

EPA favored these approaches because they appeared to reduce the potential administrative burden associated with preparing and processing the thousands of permit applications associated with the rulemaking and provide EPA additional flexibility in developing permitting requirements for storm water discharges associated with industrial activity. EPA also expressed its belief, based upon an analysis of ordinances controlling construction site runoff in place in certain cities, that municipalities generally possessed legal authority sufficient to control contributions of industrial storm water pollutants to their separate storm sewers to the degree necessary to implement the proposed rule. EPA commented that municipal controls on industrial sources implemented to comply with an NPDES permit issued to the municipality would likely result in a level of storm water pollution control very similar to that put directly on the industrial source through its own NPDES permit. This was to be accomplished by requiring municipal permitees, to the maximum extent practicable, to require industrial facilities in the municipality to develop and implement storm water controls based on a consideration of the same or similar factors as those used to make BAT/BCT determinations. (*See* 40 CFR 125.3 (d)(2) and (d)(3)).

The great majority of commenters on the December 7, 1988, notice addressed this aspect of the proposal. Based on consideration of the comments received on the notice, EPA has decided that it is appropriate to revise the approach in its proposed rule to require direct permit coverage for all storm water discharges associated with industrial activity, including those that discharge through municipal separate storm sewers. In response to this decision, EPA has continued to analyze the appropriate manner to respond to the large number of storm water discharges subject to this rulemaking. The development of EPA's policy regarding permitting these discharges is discussed in more detail in the section VI.D of today's preamble.

EPA notes that the status of discharges associated with industrial activity which pass through a municipal separate storm sewer system under section 402(p) raises difficult legal and policy questions. EPA believes that treating these discharges under permits separate from those issued to the municipality will most fully address both the legal and policy concerns raised in public comment.

Certain commenters supported EPA's proposal. Some commenters claimed that EPA lacked any authority to permit industrial discharges which were not discharged immediately to waters of the U.S. Other commenters agreed with EPA's statements in the proposal that its approach would result in a more manageable administrative burden for EPA and the NPDES states. However, numerous comments also were received which provided various arguments in support of revising the proposed approach. These comments addressed several areas including the definition of discharge under the CWA, the requirements and associated statutory time frames of section 402(p), as well as the resource and enforcement constraints of municipalities. EPA is persuaded by these comments and has modified its approach accordingly. The key comments on this issue are discussed below.

EPA disagrees with commenters who suggested that EPA lacks authority to permit separately industrial discharges through municipal sewers. The CWA prohibits the discharge of a pollutant except pursuant to an NPDES permit. Section 502(12)(A) of the CWA defines the "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source." [1] There is no qualification in the statutory language regarding the source of the pollutants being discharged. Thus, pollutants from a remote location which are discharged through a point source conveyance controlled by a different entity (such as a municipal storm sewer) are nonetheless discharges for which a permit is required.

EPA's regulatory definition of the term "discharge" reflects this broad construction. EPA defines the term to include

> additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; *discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which does not lead to a treatment works;* and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

40 CFR § 122.2 (1989) (emphasis added). The only exception to this general rule is the one contemplated by section 307(b) of the CWA, *i.e.*, the introduction of pollutants into publicly-owned treatment works. EPA treats these as "indirect discharges," subject not to NPDES requirements, but to pretreatment standards under section 307(b).

In light of its construction of the term discharge, EPA has consistently maintained that a person who sends pollutants from a remote location through a point source into a water of the U.S. may be held liable for the unpermitted discharge of that pollutant. Thus, EPA asserts the authority to require a permit either from the operator of the point source conveyance, (such as a municipal storm sewer or a privately-owned treatment works), or from any person causing pollutants to be present in that conveyance and discharged through the point source, or both. *See Decision of the General Counsel (of EPA) No. 43* ("In re Friendswood Development Co.") (June 11, 1976) (operator of privately owned treatment work and dischargers to it are both subject to NPDES permit requirements). *See also*, 40 CFR 122.3(g), 122.44(m)

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[1] Indeed, the DC Circuit has held, in the storm water context, that EPA may not exempt any point source discharges of pollutants from the requirement to obtain an NPDES permit. *NRDC* v. *Costle*, 569 F.2d 1369, 1377 (DC Cir 1977).

(NPDES permit writer has discretion to permit contributors to a privately owned treatment works as direct dischargers). In other words, where pollutants are added by one person to a conveyance owned/operated by another person, and that conveyance discharges those pollutants through a point source, EPA may permit either person or both to ensure that the discharge is properly controlled. Pollutants from industrial sites discharged through a storm sewer to a point source are appropriately treated in this fashion.

Furthermore, EPA believes that storm water from an industrial plant which is discharged through a municipal storm sewer is a "discharge associated with industrial activity." Today's rule, as in the proposal, defines discharges associated with industrial activity solely in terms of the origin of the storm water runoff. There is no distinction for how the storm water reaches the waters of the U.S. In other words, pollutants in storm water from an industrial plant which are discharged are "associated with industrial activity," regardless of whether the industrial facility operates the conveyance discharging the storm water (or whether the storm water is ultimately discharged through a municipal storm sewer). Indeed, there is no distinction in the "industrial" nature of these two types of discharges. The pollutants of concern in an industrial storm water discharge are present when the storm water leaves the facility, either through an industrial or municipal storm water conveyance. EPA has no data to suggest that the pollutants in industrial storm water entering a municipal storm sewer are any different than those in storm water discharged immediately to a water of the U.S. Thus, industrial storm water in a municipal sewer is properly classified as "associated with industrial activity." Although EPA proposed not to cover these discharges by separate permit, the Agency believes that it is clearly not precluded from doing so.

Many comments also supported the proposed approach, noting that holding municipalities primarily responsible for obtaining a permit which covers industrial storm water discharges through municipal systems would reduce the administrative burden associated with preparing and processing thousands of permit applications—permit applications that would be submitted if each industrial discharger through a large or medium municipal separate storm sewer system had to apply individually (or as part of a group application).

EPA appreciates these concerns. Yet EPA also recognizes that there are also significant problems with putting the burden of controlling these sources on the municipalities (except for designated discharges) which must be balanced with the concerns about the permit application burden on industries. The industrial permitting strategy discussed in section VI.D below attempts to achieve this balance.

EPA also does not believe that the administrative burden will be nearly as significant as originally thought, for several reasons. First, as discussed in section VI.F.2 below and in response to significant public comment, EPA has significantly narrowed the scope of the definition of "associated with industrial activity" to focus in on those facilities which are most commonly considered "industrial" and thought to have the potential for the highest levels of pollutants in their storm water discharges. EPA believes this is a more appropriate way to ensure a manageable scope for the industrial storm water program in light of the statutory language of section 402(p), since it does not attempt to arbitrarily distinguish industrial facilities on the basis of the ownership of the conveyance through which a facility discharges its storm water. Second, EPA's industrial permitting strategy discussed in section VI.D is designed around aggressive use of general permits to cover the vast majority of industrial sources. These general permits will require industrial facilities to develop storm water control plans and practices similar to those that would have been required by the municipality. Yet, general permits will eliminate the need for thousands of individual or group permit applications, greatly reducing the burden on both industry EPA/States. Finally, even under the proposal, EPA believes that a large number of industrial dischargers would have been appropriate for designation for individual permitting under section 402(p)(2)(E), with the attendant individual application requirements. Today's approach will actually decrease the overall burden on these facilities; rather than filing an individual permit application upon designation, these facilities will generally be covered by a general permit.

By contrast, several commenters asserted that not only does EPA have the authority to cover these discharges by separate permit, it is required to by the language of section 402(p). As discussed above, storm water from an industrial plant which passes through a municipal storm sewer to a point source and is discharged to waters of the U.S. is a "discharge associated with industrial activity." Therefore, it is subject to the appropriate requirements of section 402(p). The operator of the discharge (or the industrial facility where the storm water originates) must apply for a permit within three years of the 1987 amendments (*i.e.*, Feb. 4, 1990); [2] EPA must issue a permit by one year later (Feb. 4, 1991); and the permit must require compliance within three years of permit issuance. That permit must ensure that the discharge is in compliance with all appropriate provisions of sections 301 and 402. Commenters asserted that EPA's proposal would violate these two requirements of the law. First, the statute requires all industrial storm water discharges to obtain a permit in the first round of permitting (*i.e.*, February 4, 1990). However, Congress established a different framework to address discharges from small municipal separate storm sewer systems. Section 402(p) requires EPA to complete two studies of storm water discharges, and based on those studies, promulgate additional regulations, including requirements for state storm water management programs by October 1, 1992. EPA is prohibited from issuing permits for storm water discharges from small municipal systems until October 1, 1992 unless the discharge is designated under section 402(p)(2)(E). Thus, industrial storm water discharges from these systems would not be covered by a permit until later than contemplated by statute. Second, permits for municipal storm sewer systems require controls on storm water discharges "to the maximum extent practicable," as opposed to the BAT/BCT requirements of section 301(b)(2). Yet, all industrial storm water discharges must comply with section 301(b)(2). Thus, covering industrial storm water under a municipal storm water permit will not ensure the legally-required level of control of industrial storm water discharges.

In addition to comments on the requirements of section 402(p), EPA received several comments questioning whether EPA's proposal to cover industrial pollutants in municipal separate storm sewers solely in the permit issued to the municipality would ensure adequate control of these pollutants due to both inadequate

[2] It should be noted that EPA did not promulgate the required storm water regulations by February, 1989, as contemplated by section 402(p)(4)(A). As discussed below, today's rule generally requires industrial storm water discharges to file a permit application in one year.

resources and enforcement. Some municipalities stated that the burdens of this responsibility would be too great with regard to source identification and general administration of the program. These commenters claimed they lacked the necessary technical and regulatory expertise to regulate such sources. Commenters also noted that additional resources to control these sources would be difficult to obtain given the restrictions on local taxation in many states and the fact that EPA will not be providing funding to local governments to implement their storm water programs.

Municipalities also expressed concerns regarding enforcement of EPA's proposed approach. Some municipalities remarked that they did not have appropriate legal authority to address these discharges. Several commenters also stated that requiring municipalities to be responsible for addressing storm water discharges associated with industrial activity through their municipal system would result in unequal treatment of industries nationwide because of different municipal requirements and enforcement procedures. Several municipal entities expressed concern with regard to their responsibility and liability for pollutants discharged to their municipal storm sewer system, and further asserted that it was unfair to require municipalities to bear the full cost of controlling such pollutants. Other municipalities suggested that overall municipal storm water control would be impaired, since municipalities would spend a disproportionate amount of resources trying to control industrial discharges through their sewers, rather than addressing other storm water problems. In a related vein, certain commenters suggested that, where industrial storm water was a significant problem in a municipal sewer, EPA's proposed approach would hamper enforcement at the federal/state level, since all enforcement measures could be directed only at the municipality, rather than at the most direct source of that problem.

In response to all of these concerns, EPA has decided to require storm water discharges associated with industrial activity which discharge through municipal separate storm sewers to obtain separate individual or general NPDES permits. EPA believes that this change will adequately address all of the key concerns raised by commenters.

The Agency was particularly influenced by concerns that many municipalities lacked the authority under state law to address industrial storm water practices. EPA had assumed that since several cities regulate construction site activities, that they could regulate other industrial operations in a similar manner. Several commenters suggested otherwise. In light of these concerns, EPA agrees with certain commenters that municipal controls on industrial facilities, in lieu of federal control, might not comply with section 402(p)(3)(A) for those facilities.[3] This calls into question whether EPA's proposed approach would have reasonably implemented Congressional intent to address industrial storm water early and stringently in the permitting process.

EPA also agrees with those commenters who argued that municipal controls on industrial storm water sources were not directly analogous to the pretreatment program under section 307(b), as EPA suggested in the preamble to the proposal. The authority of cities to control the type and volume of industrial pollutants into a POTW is generally unquestioned under the laws of most states, since sewage and industrial waste treatment is a service provided by the municipality. Thus, EPA has greater confidence that cities can and will adopt effective pretreatment programs. By contrast, many cities are limited in the types of controls they can impose on flows into storm sewers; cities are more often limited to regulations on quantity of industrial flows to prevent flooding the system. So too, the pretreatment program allows for federal enforcement of local pretreatment requirements. Enforcement against direct dischargers (including dischargers through municipal storm sewers) is possible only when the municipal requirements are contained in an NPDES permit.

Although today's rule will require industrial discharges through municipal storm sewers to be covered by separate permit, EPA still believes that municipal operators of large and medium municipal systems have an important role in source identification and the development of pollutant controls for industries that discharge storm water through municipal separate storm sewer systems is appropriate. Under the CWA, large and medium municipalities are responsible for reducing pollutants in discharges from municipal separate storm sewers to the maximum extent practicable. Because storm water from industrial facilities may be a major contributor of pollutants to municipal separate storm sewer systems, municipalities are obligated to develop controls for storm water discharges associated with industrial activity through their system in their storm water management program. (*See* section VI.H.7. of today's preamble.) The CWA provides that permits for municipal separate storm sewers shall require municipalities to reduce pollutants to the maximum extent practicable. Permits issued to municipalities for discharges from municipal separate storm sewers will reflect terms, specified controls, and programs that achieve that goal. As with all NPDES permits, responsibility and liability is determined by the discharger's compliance with the terms of the permit. A municipality's responsibility for industrial storm water discharged through their system is governed by the terms of the permit issued. If an industrial source discharges storm water through a municipal separate storm sewer in violation of requirements incorporated into a permit for the industrial facility's discharge, that industrial operator of the discharge may be subject to an enforcement action instituted by the Director of the NPDES program.

Today's rule also requires operators of storm water discharges associated with industrial activity through large and medium municipal systems to provide municipal entities of the name, location, and type of facility that is discharging to the municipal system. This information will provide municipalities with a base of information from which management plans can be devised and implemented. This requirement is in addition to any requirements contained in the industrial facility's permit. As in the proposal, the notification process will assist cities in development of their industrial control programs.

EPA intends for the NPDES program, through requirements in permits for storm water discharges associated with industrial activity, to work in concert with municipalities in the industrial component of their storm water management program efforts. EPA believes that permitting of municipal storm sewer systems and the industrial discharges through them will act in a complementary manner to fully control the pollutants in those sewer systems. This will fully implement the intent of

[3] EPA notes that the legal issue raised by commenters regarding whether industrial storm water would be controlled to BAT if covered by a municipal permit at the MEP level is primarily a theoretical issue. As explained above, the proposal assumed that cities would establish controls on industry very similar to those established in an NPDES permit using best professional judgment. EPA's key concern, rather, is whether cities can, in fact, establish such controls. Thus, today's final rule should not appreciably change the requirements to be imposed on industrial sources, only how those requirements are enforced.

Congress to control industrial as well as large and medium municipal storm water discharges as expeditiously and effectively as possible. This approach will also address the concerns of municipalities that they lack sufficient authority and resources to control all industrial contributions to their storm sewers and will be liable for discharges outside of their control.

The permit application requirements for large and medium municipal separate storm sewer systems, discussed in more detail later in today's preamble, address the responsibilities of the municipal operators of these systems to identify and control pollutants in storm water discharges associated with industrial activity. Permit applications for large and medium municipal separate storm sewer systems are to identify the location of facilities which discharge storm water associated with industrial activity to the municipal system (*see* section VI.H.7. of the preamble). In addition, municipal applicants will provide a description of a proposed management program to reduce, to the maximum extent practicable, pollutants from storm water discharges associated with industrial activity which discharge to the municipal system (*see* section VI.H.7.c of this preamble). EPA notes that each municipal program will be tailored to the conditions in that city. Differences in regional weather patterns, hydrology, water quality standards, and storm sewer systems themselves dictate that storm water management practices will vary to some degree in each municipality. Accordingly, similar industrial storm water discharges may be treated differently in terms of the requirements imposed by the municipality, depending on the municipal program. Nonetheless, any individual or general permit issued to the industrial facility must comply with section 402(p)(3)(A) of the CWA.

EPA intends to provide assistance and guidance to municipalities and permitting authorities for developing storm water management programs that achieve permit requirements. EPA intends to issue a guidance document addressing municipal permit applications in the near term.

Controls developed in management plans for municipal system permits may take a variety of forms. Where necessary, municipal permittees can pursue local remedies to develop measures to reduce pollutants or halt storm water discharges with high levels of pollutants through municipal storm sewer systems. Some local entities have already implemented ordinances or laws that are designed to reduce the discharge of pollutants to municipal separate storm sewers, while other municipalities have developed a variety of techniques to control pollutants in storm water. Alternatively, where appropriate, municipal permittees may develop end-of-pipe controls to control pollutants in these discharges such as regional wet detention ponds or diverting flow to publicly owned treatment works. Finally, municipal applicants may bring individual storm water discharges, which cannot be adequately controlled by the municipal permittees or general permit coverage, to the attention of the permitting authority. Then, at the Director's discretion, appropriate additional controls can be required in the permit for the facility generating the targeted storm water discharge.

One commenter suggested that municipal operators of municipal separate storm sewers should have control over all storm water discharges from a facility that discharges both through the municipal system and to waters of the United States. In response, under this regulatory and statutory scheme, industries that discharge storm water directly into the waters of the United States, through municipal separate storm sewer systems, or both are required to obtain permit coverage for their discharges. However, municipalities are not precluded from exercising control over such facilities through their own municipal authorities.

It is important to note that EPA has established effluent guideline limitations for storm water discharges for nine subcategories of industrial dischargers (Cement Manufacturing (40 CFR part 411), Feedlots (40 CFR part 412), Fertilizer Manufacturing (40 CFR part 418), Petroleum Refining (40 CFR part 419), Phosphate Manufacturing (40 CFR part 422), Steam Electric (40 CFR part 423), Coal Mining (40 CFR part 434), Ore Mining and Dressing (40 CFR part 440) and Asphalt (40 CFR part 441)). Most of the existing facilities in these subcategories already have individual permits for their storm water discharges. Under today's rule, facilities with existing NPDES permits for storm water discharges through a municipal storm sewer will be required to maintain these permits and apply for an individual permit, under § 122.26(c), when existing permits expire. EPA received numerous comments supporting this decision because requiring facilities that have existing permits to comply with today's requirements immediately would be inefficient and not serve improved water quality.

Sections 402(p) (1) and (2) of the CWA provide that discharges from municipal separate storm sewer systems serving a population of less than 100,000 are not required to obtain a permit prior to October 1, 1992, unless designated on a case-by-case basis under section 402(p)(2)(E). However, as discussed above, storm water discharges associated with industrial activity through such municipal systems are not excluded. Thus, under today's rule, all storm water discharges associated with industrial activity that discharge through municipal separate storm sewer systems are required to obtain NPDES permit coverage, including those which discharge through systems serving populations less than 100,000. EPA believes requiring permits will address the legal concerns raised by commenters regarding these sources. In addition, it will allow for control of these significant sources of pollution while EPA continues to study under section 402(p)(6) whether to require the development of municipal storm water management plans in these municipalities. If these municipalities do ultimately obtain NPDES permits for their municipal separate storm sewer systems, early permitting of the industrial contributions may aid those cities in their storm water management efforts.

In the December 7, 1988, proposal, EPA recognized that storm water discharges associated with industrial activity from Federal facilities through municipal separate storm sewer systems may pose unique legal and administrative situations. EPA received numerous comments on this issue, with most of these comments coming from cities and counties. The comments reflected a general concern with respect to a municipality's ability to control Federal storm water discharges through municipal separate storm sewer systems. Most municipalities stated that they do not have the legal authority to adequately enforce against problem storm water discharges from Federal facilities and that these facilities should be required to obtain separate storm water permits. Some commenters stated that they have no Constitutional authority to regulate Federal facilities or establish regulation for such facilities. Some commenters indicated that Federal facilities could not be inspected, monitored, or subjected to enforcement for national security and other jurisdictional reasons. Some commenters argued that without clearly stated legal authority for the municipality, such dischargers should be required to obtain permits. One

municipality pointed out that Federal facilities within city limits are exempted from their Erosion and Sediment Control Act and that permits for these facilities should be required.

Under today's rule, Federal facilities which discharge storm water associated with industrial activity through municipal separate storm sewer systems will be required to obtain NPDES permit coverage under Federal or State law. EPA believes this will cure the legal authority problems at the local level raised by the commenters. EPA notes that this requirement is consistent with section 313(a) of the CWA.

D. Preliminary Permitting Strategy for Storm Water Discharges Associated With Industrial Activity

Many of the comments received on the December 7, 1988, proposal focused on the difficulties that EPA Regions and authorized NPDES States, with their finite resources, will have in implementing an effective permitting program for the large number of storm water discharges associated with industrial activity. Many commenters noted that problems with implementing permit programs are caused not only by the large number of industrial facilities subject to the program, but by the difficulties associated with identifying appropriate technologies for controlling storm water at various sites and the differences in the nature and extent of storm water discharges from different types of industrial facilities.

EPA recognizes these concerns; and based on a consideration of comments from authorized NPDES States, municipalities, industrial facilities and environmental groups on the permitting framework and permit application requirements for storm water discharges associated with industrial activity, EPA is in the process of developing a preliminary strategy for permitting storm water discharges associated with industrial activity. In developing this strategy, EPA recognizes that the CWA provides flexibility in the manner in which NPDES permits are issued.[4] EPA intends to use this flexibility in designing a workable and reasonable permitting system. In accordance with these considerations, EPA intends to publish in the near future a discussion of its preliminary permitting strategy for implementing the NPDES storm water program.

The preliminary strategy is intended to establish a framework for developing permitting priorities, and includes a four tier set of priorities for issuing permits to be implemented over time:

- *Tier I—baseline permitting:* One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity;
- *Tier II—watershed permitting:* Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for permitting.
- *Tier III—industry specific permitting:* Specific industry categories will be targeted for individual or industry-specific permits; and
- *Tier IV—facility specific permitting:* A variety of factors will be used to target specific facilities for individual permits.

Tier I—Baseline Permitting

EPA intends to issue general permits that initially cover the majority of storm water discharges associated with industrial activity in States without authorized NPDES programs. These permits will also serve as models for States with authorized NPDES programs.

The consolidation of many sources under one permit will greatly reduce the otherwise overwhelming administrative burden associated with permitting storm water discharges associated with industrial activity. This approach has a number of additional advantages, including:

- Requirements will be established for discharges covered by the permit;
- Facilities whose discharges are covered by the permit will have an opportunity for substantial compliance with the CWA;
- The public, including municipal operators of municipal separate storm sewers which may receive storm water discharges associated with industrial activity, will have access under section 308(b) of the CWA to monitoring data and certain other information developed by the permittee;
- EPA will have the opportunity to begin to collect and review data on storm water discharges from priority industries, thereby supporting the development of subsequent permitting activities;
- Applicable requirements of municipal storm water management programs established in permits for discharges from municipal separate storm sewer systems will be enforceable directly against non-complying industrial facilities that generate the discharges;
- The public will be given an opportunity to comment on permitting activities;
- The baseline permits will provide a basis for bringing selected enforcement actions by eliminating many issues which might otherwise arise in an enforcement proceeding; and
- Finally, the baseline permits will provide a focus for public comment on the development of subsequent phases of the permitting strategy for storm water discharges, including the development of priorities for State storm water management programs developed under section 402(p)(6) of the CWA.

Initially, the coverage of the baseline permits will be broad, but the coverage is intended to shrink as other permits are issued for storm water discharges associated with industrial activities pursuant to Tier II through IV activities.

2. Tier II—Watershed Permitting

Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual and general permitting. This process can be initiated by identifying receiving waters (or segments of receiving waters) where storm water discharges associated with industrial activity have been identified as a source of use impairment or are suspected to be contributing to use impairment.

3. Tier III—Industry Specific Permitting

Specific industry categories will be targeted for individual or industry-specific general permits. These permits will allow permitting authorities to focus attention and resources on industry categories of particular concern and/or industry categories where tailored requirements are appropriate. EPA will work with the States to coordinate the development of model permits for selected classes of industrial storm water discharges. EPA is also working to identify priority industrial categories in the two reports to Congress required under section 402(p)(5) of the CWA. In addition, group applications that are received can be used to develop model permits for the appropriate industries.

[4] The courts in *NRDC* v. *Train*, 396 F.Supp. 1393 (D.D.C. 1975) *aff'd. NRDC* v. *Costle*, 568 F.2d 1369 (DC Cir. 1977), have acknowledged the administrative burden placed on the Agency by requiring individual permits for a large number of storm water discharges. These courts have recognized EPA's discretion to use certain administrative devices, such as area permits or general permits to help manage its workload. In addition, the courts have recognized flexibility in the type of permit conditions that are established, including requirements for best management practices.

4. Tier IV—Facility Specific Permitting

Individual permits will be appropriate for some storm water discharges in addition to those identified under Tier II and III activities. Individual permits should be issued where warranted by: the pollution potential of the discharge; the need for individual control mechanisms; and in cases where reduced administrative burdens exist. For example, individual NPDES permits for facilities with process discharges should be expanded during the normal process of permit reissuance to cover storm water discharges from the facility.

5. Relationship of Strategy to Permit Applications Requirements

The preliminary long-term permitting strategy described above identifies several permit schemes that EPA anticipates will be used in addressing storm water discharges associated with industrial activity. One issue that arises with this strategy is determining the appropriate information needed to develop and issue permits for these discharges. The NPDES regulatory scheme provides three major options for obtaining permit coverage for storm water discharges associated with industrial activity: (1) Individual permit applications; (2) group applications; and (3) case-by-case requirements developed for general permit coverage.

a. *Individual permit application requirements.* Today's notice establishes requirements for individual permit applications for storm water discharges associated with industrial activity. These application requirements are applicable for all storm water discharges associated with industrial activity, except where the operator of the discharge is participating in a group application or a general permit is issued to cover the discharge and the general permit provides alternative means to obtain permit coverage. Information in individual applications is intended to be used in developing the site-specific conditions generally associated with individual permits.

Individual permit applications are expected to play an important role in all tiers of the Strategy, even where general permits are used. Although general permits may provide for notification requirements that operate in lieu of the requirement to submit individual permit applications, the individual permit applications may be needed under several circumstances. Examples include: where a general permit requires the submission of a permit application as the notice of intent to be covered by the permit; where the owner or operator authorized by a general permit requests to be excluded from the coverage of the general permit by applying for a permit (*see* 40 CFR 122.28(b)(2)(iii) for EPA issued general permits); and where the Director requires an owner or operator authorized by a general permit to apply for an individual permit (*see* 40 CFR 122.28(b)(2)(ii) for EPA issued general permits).

b. *Group applications.* Today's rule also promulgates requirements for group applications for storm water discharges associated with industrial activity. These applications provide participants of groups with sufficiently similar storm water discharges an alternative mechanism for applying for permit coverage.

The group application requirements are primarily intended to provide information for developing industry specific general permits. (Group applications can also be used to issue individual permits in authorized NPDES States without general permit authority or where otherwise appropriate). As such, group application requirements correlate well with the Tier III permitting activities identified in the long-term permitting Strategy.

c. *Case-by-case requirements.* 40 CFR 122.21(a) excludes persons covered by general permits from requirements to submit individual permit applications. Further, the general permit regulations at 40 CFR 122.28 do not address the issue of how a potential permittee is to apply to be covered under a general permit. Rather, conditions for notification of intent (NOI) to be covered by the general permit are established in the permits on a case-by-case basis, and operate in lieu of permit application requirements. Requirements for submitting NOIs to be covered by a general permit can range from full applications (this would be Form 1 and Form 2F for most discharges composed entirely of storm water discharges associated with industrial activity), to no notice. EPA recommends that the NOI requirements established in a general permit for storm water discharges associated with industrial activity be commensurate with the needs of the permit writer in establishing the permit and the permit program. The baseline general permit described in Tier I is intended to support the development of controls for storm water discharges associated with industrial activity that can be supported by the limited resources of the permitting Agency. In this regard, the burdens of receiving and reviewing NOI's from the large number of facilities covered by the permit should also be considered when developing NOI requirements. In addition, NOI requirements should be developed in conjunction with permit conditions establishing reporting requirements during the term of the permit.

NOI requirements in general permits can establish a mechanism which can be used to establish a clear accounting of the number of permittees covered by the general permit, the nature of operations at the facility generating the discharge, their identity and location. The NOI can be used as an initial screening tool to determine discharges where individual permits are appropriate. Also, the NOI can be used to identify classes of discharges appropriate for more specific general permits, as well as provide information needed to notify such dischargers of the issuance of a more specific general permit. In addition, the NOI can provide for the identification of the permittee to provide a basis for enforcement and compliance monitoring strategies. EPA will further address this issue in the context of specific general permits it plans to issue in the near future.

Today's rule requires that individual permit applications for storm water discharges associated with industrial activity be submitted within one year from the date of publication of this notice. EPA is considering issuing general permits for the majority of storm water discharges associated with industrial activity in those States and territories that do not have authorized State NPDES programs (MA, ME, NH, FL, LA, TX, OK, NM, SD, AZ, AK, ID, District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) before that date to enable industrial dischargers of storm water to ascertain whether they are eligible for coverage under a general permit (and subject to any alternative notification requirements established by the general permit in lieu of the individual permit application requirements of today's rule) or whether they must submit an individual permit application (or participate in a group application) before the regulatory deadlines for submitting these applications passes. Storm water application deadlines are discussed in further detail below.

E. Storm Water Discharge Sampling

Storm water discharges are intermittent by their nature, and pollutant concentrations in storm water discharges will be highly variable. Not only will variability arise between given events, but the flow and pollutant

concentrations of such discharges will vary with time during an event. This variability raises two technical problems: how best to characterize the discharge associated with a single storm event; and how best to characterize the variability between discharges of different events that may be caused by seasonal changes and changes in material management practices, for example.

Prior to today's rulemaking, 40 CFR 122.21(g)(7) required that applicants for NPDES permits submit quantitative data based on one grab sample taken every hour of the discharge for the first four hours of discharge. EPA has modified this requirement such that, instead of collecting and analyzing four grab samples individually, applicants for permits addressing storm water discharges associated with industrial activity will provide data as indicators of two sets of conditions: data collected during the first 30 minutes of discharge and flow-weighted average storm event concentrations. Large and medium municipalities will provide data on flow-weighted average storm event concentrations only.

Data describing pollutants in a grab sample taken during the first few minutes of the discharge can often be used as a screen for non-storm water discharges to separate storm sewers because such pollutants may be flushed out of the system during the initial portion of the discharge. In addition, data from the first few minutes of a discharge are useful because much of the traditional structural technology used to control storm water discharges, including detention and retention devices, may only provide controls for the first portion of the discharge, with relatively little or no control for the remainder of the discharge. Data from the first portion of the discharge will give an indication of the potential usefulness of these techniques to reduce pollutants in storm water discharges. Also, such discharges may be primarily responsible for pollutant shocks to the ecosystem in receiving waters.

Studies such as NURP have shown that flow-weighted average concentrations of storm water discharges are useful for estimating pollutant loads and for evaluating certain concentration-based water quality impacts. The use of flow-weighted composite samples are also consistent with comments raised by various industry representatives during previous Agency rulemakings that continuous monitoring of discharges from storm events is necessary to adequately characterize such discharges.

EPA requested comment on the feasibility of the proposed modification of sampling procedures at § 122.21(g)(7) and the ability to characterize pollutants in storm water discharges with an average concentration from the first portion of the discharge compared to collecting and separately analyzing four grab samples. It was proposed that an event composite sample be collected, as well as a grab sample collected during the first 20 minutes of runoff. Comments were solicited as to whether or not this sampling method would provide better definition of the storm load for runoff characterization than would the requirement to collect and separately analyze four grab samples.

Many commenters questioned the ability to obtain a 20 minute sample in the absence of automatic samplers. Some believed that pollutants measured by such a sample can be accounted for in the event composite sample. Others argued that this is an unwarranted sampling effort if municipal storm water management plans are to be geared to achieving annual pollutant load reductions. Many commenters advised that problems accessing sampling stations and mobilizing sampling crews, particularly after working hours, made sampling during the first 20 minutes impractical. These comments were made particularly with respect to municipalities, where the geographical areas could encompass several hundred square miles. Several alternatives were suggested including: the collection of a sample in the first hour, and representative grab sampling in the next three hours, one per hour; or perform time proportioned sampling for up to four hours.

Because of the logistical problems associated with collecting samples during the first few minutes of discharge from municipal systems, EPA will only require such sampling from industrial facilities. Municipal systems will be spread out over many square miles with sampling locations potentially several miles from public works departments or other responsible government agencies. Reaching such locations in order to obtain samples during the first few minutes of a storm event may prove impossible. For essentially the same reasons, the requirement has been modified to encompass the first 30 minutes of the discharge, instead of 20 minutes, for industrial discharges. The rule also clarifies that the sample should be taken during the first 30 minutes or as soon thereafter as practicable. Where appropriate, characterization of this portion of the discharge from selected outfalls or sampling points may be a condition to permits issued to municipalities. With regard to protocols for the collection of sample aliquots for flow-weighted composite samples, § 122.21(g)(7) provides that municipal applicants may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Director or Regional Administrator. In other words, the period may be extended from 15 minutes to 20 or 25 minutes between sample aliquots, or decreased from 15 to 10 or 5 minutes.

Other comments raised issues that apply both to the impact of runoff characterization and the first discharge representation. These primarily pertained to regions that have well defined wet and dry seasons. Comments questioned whether or not it is fair to assume that the initial storm or two of a wet season, which will have very high pollutant concentrations, are actually representative of the runoff concentrations for the area.

In response, EPA believes that it is important to represent the first part of the discharge either separately or as a part of the event composite samples. This loading is made up primarily of the mass of unattached fine particulates and readily soluble surface load that accumulates between storms. This load washes off of the basin's directly connected paved surfaces when the runoff velocities reach the level required for entrainment of the particulate load into the surface flow. It should be noted that for very fine particulates and solubles, this can occur very soon after the storm begins and much sooner than the peak flow. The first few minutes of discharge represents a shock load to the receiving water, in terms of concentration of pollutants, because for many constituents the highest concentrations of the event will occur during this initial period. Due to the need to properly quantify this load, it is not necessary to represent the first discharge from the upper reaches of the outfall's tributary area. In runoff characterization basins, the assumption is that the land use in the basin is homogeneous, or nearly so, and that the first discharge from the lower reaches for all intents and purposes is representative of the entire basin. If a sample is taken during the first 30 minutes of the runoff, it will be composed primarily of first discharge. If the sample is taken at the outfall an hour into the event, it may contain

discharge from the remote portions of the basin. It will not be representative of the discharge because it will also contain later washoff from the lower reaches of the basin, resulting in a low estimation of the first discharge load of most constituents. Conversely, larger suspended particulates that normally are not present in first discharge due to inadequate velocities will appear in this later sampling scenario because of the influence of higher runoff rates in the lower basin. Many commonly used management practices are designed based on their ability to treat a volume of water defined by the first discharge phenomenon. It is important to characterize the first discharge load because most management practices effectively treat only, or primarily, this load.

It should be noted that first discharge runoff is sometimes contaminated by non-storm water related pollutants. In many urban catchments, contaminants that result from illicit connections and illegal dumping may be stored in the system until "flushed" during the initial storm period. This does not negate the need for information on the characteristic first discharge load, but does indicate that the first phase field screen results for illicit connections should be used to help define those outfalls where this problem might exist.

Several methods can be used to develop an event average concentration. Either automatic or manual sampling techniques can be used that sample the entire hydrograph, or at least the first four hours of it, that will result in several discrete samples and associated flow rates that represent the various flow regimes of an event. These procedures have the potential for providing either an event average concentration, an event mean concentration, or discrete definition of the washoff process. Automatic sampling procedures are also available that collect a single composite sample, either on a time-proportioned or flow proportioned basis.

When discrete samples are collected, an event average composite sample can be produced by the manual composite of the discrete samples in equal volumes. Laboratory analysis of time proportioned composite samples will directly yield the event average concentration. Mathematical averaging of discrete sample analysis results will yield an event average concentration.

When discrete samples are collected, a flow-weighted composite sample can be produced based on the discharge record. This is done by manually flow proportioning the volumes of the individual samples. Laboratory analysis of flow weighted composite samples will directly yield an event mean concentration. Mathematical integration of the change in concentrations and mass flux of the discharge for discrete sample data can produce an event mean concentration. This procedure was used during the NURP program.

EPA wishes to emphasize that the reason for sampling the type of storm event identified in § 122.21(g)(7) is to provide information that represents local conditions that will be used to create sound storm water management plans. Based on the method to be used to generate system-wide estimates of pollutant loads, either method, discrete or event average concentrations, may be preferable to the other. If simulation models will be used to generate loading estimates, analysis of discrete samples will be more valuable so that calibration of water quality and hydrology may be performed. On the other hand, simple estimation methods based on event average or event mean concentrations may not justify the additional cost of discrete sample analysis.

EPA believes that the first discharge loading should be represented in the permit application from industrial facilities and, if appropriate, permitting authorities may require the same in the discharge characterization component of permits issued to municipalities. The first discharge load should also be represented as part of an event composite sample. This requirement will assist industries in the development of effective storm water management plans.

EPA requested comments on the appropriateness of the proposed rules and of proposed amendments to the rules regarding discharge sampling. Comments were received which addressed the appropriateness of imposing uniform national guidelines. Several commenters are concerned that uniform national guidelines may not be appropriate due to the geographic variations in meteorology, topography, and pollutant sources. While some assert that a uniform guideline will provide consistency of the sample results, others prefer a program based on regional or State guidelines that more specifically address their situation.

Several commenters, addressing industrial permit application requirements, preferred that the owner/operator be allowed to set an individual sampling protocol with approval of the permit writer. Some commenters were concerned that one event may not be sufficient to characterize runoff from a basin as this may result in gross over-estimation or underestimation of the pollutant loads. Others indicated confusion with regard to sampling procedures, lab analysis procedures, and the purpose of the program.

In response, today's regulations establish certain minimum requirements. Municipalities and industries may vary from these requirements to the extent that their implementation is at least as stringent as outlined in today's rule. EPA views today's rule as a means to provide assurance as to the quality of the data collected; and to this end, it is important that the minimum level of sampling required be well defined.

In response to EPA's proposal that the first discharge be included in "representative" storm sampling, several commenters made their concerns known about the possible equipment necessary to meet this requirement. Several commenters are concerned that in order to get a first discharge sample, automatic sampling equipment will be required. Concerns related to the need for this equipment surfaced in the comments frequently; most advised that the equipment is expensive and that the demand on sampling equipment will be too large for suppliers and manufacturers to meet. Although equipment can be leased, some commenters maintained that not enough rental equipment is available to make this a viable option in many instances.

EPA is not promoting or requiring the use of automated equipment to satisfy the sampling requirements. A community may find that in the long run it would be more convenient to have such equipment since sampling is required not only during preparation of the application, but also may be required during the term of the permit to assure that the program goals are being met. Discharge measurement is necessary in order for the sample data to have any meaning. If unattended automatic sampling is to be performed, then unattended flow measurement will be required too.

EPA realizes that equipment availability is a legitimate concern. However, there is no practical recommendation that can be made relative to the availability of equipment. If automatic sampling equipment is not available, manual sampling is an appropriate alternative.

F. Storm Water Discharges Associated With Industrial Activity

1. Permit Applicability

a. *Storm water discharges associated with industrial activity to waters of the United States.* Under today's rule dischargers of storm water associated

with industrial activity are required to apply for an NPDES permit. Permits are to be applied for in one of three ways depending on the type of facility: Through the individual permit application process; through the group application process; or through a notice of intent to be covered by general permit.

Storm water discharges associated with the industrial activities identified under § 122.26(b)(14) of today's rule may avail themselves of general permits that EPA intends to propose and promulgate in the near future. The general permit will be available to be promulgated in each non-NPDES State, following State certification, and as a model for use by NPDES States with general permit authority. It is envisioned that these general permits will provide baseline storm water management practices. For certain categories of industries, specific management practices will be prescribed in addition to the baseline management practices. As information on specific types of industrial activities is developed, other, more industry-specific general permits will be developed.

Today's rule requires facilities with existing NPDES permits for storm water discharges to apply for individual permits under the individual permit application requirements found at 122.26(c) 180 days before their current permit expires. Facilities not eligible for coverage under a general permit are required to file an individual or group permit application in accordance with today's rule. The general permits to be proposed and promulgated will indicate what facilities are eligible for coverage by the general permit.

b. *Storm water discharges through municipal storm sewers.* As discussed above, many operators of storm water discharges associated with industrial activity are not required to apply for an individual permit or participate in a group application under § 122.26(c) of today's rule if covered by a general permit. Under the December 7, 1988, proposal, dischargers through large and medium municipal separate storm sewer systems were not required, as a general rule, to apply for an individual permit or as a group applicant. Today's rule is a departure from that proposal. Today's rule requires all dischargers through municipal separate storm sewer systems to apply for an individual permit, apply as part of a group application, or seek coverage under a promulgated general permit for storm water discharges associated with industrial activity.

Municipal operators of large and medium municipal separate storm sewer systems are responsible for obtaining system-wide or area permits for their system's discharges. These permits are expected to require that controls be placed on storm water discharges associated with industrial activity which discharge through the municipal system. It is anticipated that general or individual permits covering industrial storm water dischargers to these municipal separate storm sewer systems will require industries to comply with the terms of the permit issued to the municipality, as well other terms specific to the permittee.

c. *Storm water discharges through non-municipal storm sewers.* Under today's rulemaking all operators of storm water discharges associated with industrial activity that discharge into a privately or Federally owned storm water conveyance (a storm water conveyance that is not a municipal separate storm sewer) will be required to be covered by an NPDES permit (*e.g.* an individual permit, general permit, or as a co-permittee to a permit issued to the operator of the portion of the system that directly discharges to waters of the United States). This is a departure from the "either/or" approach that EPA requested comments on in the December 7, 1988, notice. The "either/or" approach would have allowed either the system discharges to be covered by a permit issued to the owner/operator of the system segment that discharged to waters of the United States, or by an individual permit issued to each contributor to the non-municipal conveyance.

EPA requested comments on the advantages and disadvantages of retaining the "either/or" approach for non-municipal storm sewers. An abundance of comment was received by EPA on this particular part of the program. A number of industrial commenters and a smaller number of municipalities favored retaining the "either/or" approach as proposed, while most municipal entities, one industry, and one trade association favored requiring permits for each discharger.

Two commenters stated that private owners of conveyances may not have the legal authority to implement controls on discharges through their system and would not want to be held responsible for such controls. EPA agrees that this is a potential problem. Therefore, today's rule will require permit coverage for each storm water discharge associated with industrial activity.

One commenter supported the concept of requiring all the facilities that discharge to a non-municipal conveyance to be co-permittees. EPA agrees that this type of permitting scheme, along with other permit schemes such as area or general permits, is appropriate for discharges from non-municipal sewers, as long as each storm water discharge through the system is associated with industrial activity and thus currently subject to NPDES permit coverage.

One State agency commented that in the interest of uniformity, all industries that discharge to non-municipal conveyances should be required to conform to the application requirements. One industry stated that the rules must provide a way for the last discharger before the waters of the U.S. to require permits for facilities discharging into the upper portions of the system. EPA agrees with these comments. Today's rule provides that each discharger may be covered under individual permits, as co-permittees to a single permit, or by general permit rather than holding the last discharger to the waters of the United States solely responsible.

In response to one commenter, the term "non-municipal" has been clarified to explain that the term refers to non-publicly owned or Federally-owned storm sewer systems.

Some commenters supporting the approach as proposed, noted that industrial storm water dischargers into such systems can take advantage of the group application process. EPA agrees that in appropriate circumstances, such as when industrial facilities discharging storm water to the same system are sufficiently similar, group applications can be used for discharges to non-municipal conveyances. However, EPA believes that it would be inappropriate to approve group applications for those facilities whose only similarity is that they discharge storm water into the same private conveyance system. The efficacy of the group application procedures is predicated on the similarity of operations and other factors. The fact that several industries discharge storm water to the same non-municipal sewer system alone may not make these discharges sufficiently similar for group application approval.

One commenter suggested that EPA has not established any deadlines for submission of permit applications for storm water discharges associated with industrial activity through non-municipal separate storm sewer systems. EPA wants to clarify that industrial storm water dischargers into privately owned or Federally owned storm water conveyances are required to apply for permits in the same time frame as individual or group applicants (or as otherwise provided for in a general permit).

One commenter stated that the operator of the conveyance that accepts discharges into its system has control and police power over those that discharge into the system by virtue of the ability to restrict discharges into the system. This commenter stated that these facilities should be the entity required to obtain the permit in all cases. Assuming that this statement is true in all respects, the larger problem is that one's theoretical ability to restrict discharges is not necessarily tied to the reality of enforcing those restrictions or even detecting problem discharges when they exist. In a similar vein one commenter urged that a private operator will not be in any worse a position than a municipal entity to determine who is the source of pollution up-stream. EPA agrees that from a hydrological standpoint this may be true. However, from the standpoint of detection resources, police powers, enforcement remedies, and other facets of municipal power that may be brought to bear upon problem dischargers, private systems are in a far more precarious position with respect to controlling discharges from other private sources.

In light of the comments received, EPA has decided that the either/or approach as proposed is inappropriate. Operators of non-municipal systems will generally be in a poorer position to gain knowledge of pollutants in storm water discharges and to impose controls on storm water discharges from other facilities than will municipal system operators. In addition, best management practices and other site-specific controls are often most appropriate for reducing pollutants in storm water discharges associated with industrial activity and can often only be effectively addressed in a regulatory scheme that holds each industrial facility operator directly responsible. The either/or approach as proposed is not conducive to establishing these types of practices unless each discharger is discharging under a permit. Also, some non-municipal operators of storm water conveyances, which receive storm water runoff from industrial facilities, may not be generating storm water discharges associated with industrial activity themselves and, therefore, they would otherwise not need to obtain a permit prior to October 1, 1992, unless specifically designated under section 402(p)(2)(E). Accordingly, EPA disagrees with comments that dischargers to non-municipal conveyances should have the flexibility to be covered by their permit or covered by the permit issued to the operator of the outfall to waters to the United States.

2. Scope of "Associated with Industrial Activity"

The September 26, 1984, final regulation divided those discharges that met the regulatory definition of storm water point source into two groups. The term Group I storm water discharges was defined in an attempt to identify those storm water discharges which had a higher potential to contribute significantly to environmental impacts. Group I included those discharges that contained storm water drained from an industrial plant or plant associated areas. Other storm water discharges (such as those from parking lots and administrative buildings) located on lands used for industrial activity were classified as Group II discharges. The regulations defined the term "plant associated areas" by listing several examples of areas that would be associated with industrial activities. However, the resulting definition led to confusion among the regulated community regarding the distinctions between the Group I and Group II classifications.

In amending the CWA in 1987, Congress did not explicitly adopt EPA's regulatory classification of Group I and Group II discharges. Rather, Congress required EPA to address "storm water discharges associated with industrial activity" in the first round of storm water permitting. In light of the adoption of the term "associated with industrial activity" in the CWA, and the ongoing confusion surrounding the previous regulatory definition, EPA has eliminated the regulatory terms "Group I storm water discharge" and "Group II storm water discharge" pursuant to the December 7, 1987, Court remand and has not revived it. In addition, today's notice promulgates a definition of the term "storm water discharge associated with industrial activity"at § 122.26(b)(14) and clarified the scope of the term.

In describing the scope of the term "associated with industrial activity", several members of Congress explained in the legislative history that the term applied if a discharge was "directly related to manufacturing, processing or raw materials storage areas at an industrial plant." (Vol. 132 Cong. Rec. H10932, HI0936 (daily ed. October 15, 1986); Vol. 133 Cong. Rec. H176 (daily ed. January 8, 1987)). Several commenters cited this language in arguing for a more expansive or less expansive definition of "associated with industrial activity." EPA believes that the legislative history supports the decision to exclude from the definition of industrial activity, at § 122.26(b)(14) of today's rule, those facilities that are generally classified under the Office of Management and Budget Standard Industrial Classifications (SIC) as wholesale, retail, service, or commercial activities.

Two commenters recommended that all commercial enterprises should be required to obtain a permit under this regulation. Another commenter recommended that all the facilities listed in the December 7, 1988, proposal, including those listed in paragraphs (xi) through (xvi) on page 49432 of the December 7, 1988, proposal, should be included. EPA disagrees since the intent of Congress was to establish a phased and tiered approach to storm water permits, and that only those facilities having discharges associated with industrial activity should be included initially. The studies to be conducted pursuant to section 402(p)(5) will examine sources of pollutants associated with commercial, retail, and other light business activity. If appropriate, additional regulations addressing these sources can be developed under section 402(p)(6) of the CWA. As further discussed below, EPA believes that the facilities identified in paragraphs (xi) through (xvi) are more properly characterized as commercial or retail facilities, rather than indutrial facilities.

Today's rule clarifies the regulatory definition of "associated with industrial activity" by adopting the language used in the legislative history and supplementing it with a description of various types of areas that are directly related to an industrial process (*e.g.*, industrial plant yards, immediate access roads and rail lines, drainage ponds, material handling sites, sites used for the application or disposal of process waters, sites used for the storage and maintenance of material handling equipment, and known sites that are presently or have been used in the past for residual treatment, storage or disposal). The agency has also incorporated some of the suggestions offered by the public in comments.

Three commenters suggested that the permit application should focus only on storm water with the potential to come into contact with industrial-related pollutant sources, rather than focusing on how plant areas are utilized. These commenters suggested that facilities that are wholly enclosed or have their operations entirely protected from the elements should not be subject to permit requirements under today's rule. EPA agrees that these comments have merit with regard to certain types of facilities. Today's rule defines the term "storm water discharge associated with

industrial activity" to include storm water discharges from facilities identified in today's rule at 40 CFR 122.21(b)(I4)(xi) (facilities classified as Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25) only if:

areas where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery at these facilities are exposed to storm water. Such areas include: material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment; storage or disposal; shipping and receiving areas; manufacturing buildings; material storage areas for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

The critical distinction between the facilities identified at 40 CFR 122.26(b)(14)(xi) and the facilities identified at 40 CFR 122.26(b)(14)(i)–(x) is that the former are not classified as having "storm water discharges associated with industrial activity" unless certain materials or activities are exposed to storm water. Storm water discharges from the latter set of facilities are considered to be "associated with industrial activity" regardless of the actual exposure of these same materials or activities to storm water.

EPA believes this distinction is appropriate because, when considered as a class, most of the activity at the facilities in § 122.26(b)(14)(xi) is undertaken in buildings; emissions from stacks will be minimal or non-existent; the use of unhoused manufacturing and heavy industrial equipment will be minimal; outside material storage, disposal or handling generally will not be a part of the manufacturing process; and generating significant dust or particulates would be atypical. As such, these industries are more akin or comparable to businesses, such as retail, commercial, or service industries, which Congress did not contemplate regulating before October 1, 1992, and storm water discharges from these facilities are not "associated with industrial activity." Thus, these industries will be required to obtain a permit under today's rule only when the manufacturing processes undertaken at such facilities would result in storm water contact with industrial materials associated with the facility.

Industrial categories in § 122.26(b)(14)(xi) all tend to engage in production activities in the manner described in the paragraph above. Facilities under SIC 20 process foods including meats, dairy food, fruit, and flour. Facilities classified under SIC 21 make cigarettes, cigars, chewing tobacco and related products. Under SIC 22, facilities produce yarn, etc., and/or dye and finish fabrics. Facilities under SIC 23 are in the business of producing clothing by cutting and sewing purchased woven or knitted textile products. Facilities under SIC 2434 and 25 are establishments engaged in furniture making. SIC 265 and 267 address facilities that manufacture paper board products. Facilities under SIC 27 perform services such as bookbinding, plate making, and printing. Facilities under SIC 283 manufacture pharmaceuticals and facilities under 285 manufacture paints, varnishes, lacquers, enamels, and allied products. Under SIC 30 establishments manufacture products from plastics and rubber. Those facilities under SIC 31 (except 311), 323, 34 (except 3441), 35, 36, and 37 (except 373) manufacture industrial and commercial metal products, machinery, equipment, computers, electrical equipment, and transportation equipment, and glass products made of purchased glass. Facilities under SIC 38 manufacture scientific and electrical instruments and optical equipment. Those under SIC 39 manufacture a variety of items such as jewelry, silverware, musical instruments, dolls, toys, and athletic goods. SIC 4221–25 are warehousing and storage activities.

In contrast, the facilities identified by SIC 24 (except and 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373 when taken as a group, are expected to have one or many of the following activities, processes occurring on-site: storing raw materials, intermediate products, final products, by-products, waste products, or chemicals outside; smelting; refining; producing significant emissions from stacks or air exhaust systems; loading or unloading chemical or hazardous substances; the use of unhoused manufacturing and heavy industrial equipment; and generating significant dust or particulates. Accordingly, these are classes of facilities which can be viewed as generating storm water discharges associated with industrial activity requiring a permit. Establishments identified under SIC 24 (except 2434) are engaged in operating sawmills, planing mills and other mills engaged in producing lumber and wood basic materials. SIC 26 facilities are paper mills. Under SIC 28, facilities produce basic chemical products by predominantly chemical processes. SIC 29 describes facilities that are engaged in the petroleum industry. Under SIC 311, facilities are engaged in tanning, currying, and finishing hides and skins. Such processes use chemicals such as sulfuric acid and sodium dichromate, and detergents, and a variety of raw and intermediate materials. SIC 32 manufacture glass, clay, stone and concrete products form raw materials in the form quarried and mined stone, clay, and sand. SIC 33 identifies facilities that smelt, refine ferrous and nonferrous metals from ore, pig or scrap, and manufacturing related products. SIC 3441 identifies facilities manufacturing fabricated structural metal. Facilities under SIC 373 engage in ship building and repairing. The permit application requirements for storm water discharges from facilities in these categories are unchanged from the proposal.

Today's rule clarifies that the requirement to apply for a permit applies to storm water discharges from plant areas that are no longer used for industrial activities (if significant materials remain and are exposed to storm water) as well as areas that are currently being used for industrial activities. EPA would also clarify that all discharges from these areas including those that discharge through municipal separate storm sewers are addressed by this rulemaking.

One commenter questioned the use of the word "or" instead of the word "and" to describe storm water "which is located at an industrial plant 'or' directly related to manufacturing, processing, or raw material storage areas at an industrial plant." The comment expressed the concern that discharges from areas not located at an industrial plant would be subject to permitting by this language and questioned whether this was EPA's intent. EPA agrees that this is a potential source of confusion and has modified this language to reflect the conjunctive instead of the alternative. This change has been made to provide consistency in the rule whereby some areas at industrial plants, such as administrative parking lots which do not have storm water discharges commingled with discharges from manufacturing areas, are not included under this rulemaking.

Two commenters wanted clarification of the term "or process water," in the definition of discharge associated with industrial activity at § 122.26(b)(14). This rulemaking replaces this term with the term "process waste water" which is defined at 40 CFR part 401.

One commenter took issue with the decision to include drainage ponds, refuse sites, sites for residual treatment, storage, or disposal, as areas associated with industrial activity, because it was the commenter's view that such areas are unconnected with industrial activity. EPA disagrees with this comment. If refuse and other sites are used in conjunction with manufacturing or the by-products of manufacturing they are clearly associated with industrial activity. As noted above, Congress intended to include discharges directly related to manufacturing and processing at industrial plants. EPA is convinced that wastes, refuse, and residuals are the direct result or consequence of manufacturing and processing and, when located or stored at the plant that produces them, are directly related to manufacturing and processing at that plant. Storm water drainage from such areas, especially those areas exposed to the elements (*e.g.* rainfall) has a high potential for containing pollutants from materials that were used in the manufacturing process at that facility. One commenter supported the inclusion of these areas since many toxins degrade very slowly and the mere passage of time will not eliminate their effects. EPA agrees and finalizes this part of the definition as proposed. One commenter requested clarification of the term "residual" as used in this context. Residual can generally be defined to include material that is remaining subsequent to completion of an industrial process. One commenter noted that the current owner of a facility may not know what areas or sites at a facility were used in this manner in the past. EPA has clarified the definition of discharge associated with industrial activity to include areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. The Agency believes that the current owner will be in a position to establish these facts.

One commenter suggested including material shipping and receiving areas, waste storage and processing areas, manufacturing buildings, storage areas for raw materials, supplies, intermediates, and finished products, and material handling facilities as additional areas "associated with industrial activity." EPA agrees that this would add clarification to the definition, and has incorporated these areas into the definition at § 122.26(b)(14).

One commenter stated that the language "point source located at an industrial plant" would include outfalls located at the facility that are not owned or operated by the facility, but which are municipal storm sewers on easements granted to a municipality for the conveyance of storm water. EPA agrees that if the industry does not operate the point source then that facility is not required to obtain a permit for that discharge. A point source is a conveyance that discharges pollutants into the waters of the United States. If a facility does not operate that point source, then it would be the responsibility of the municipality to cover it under a permit issued to them. However, if contaminated storm water associated with industrial activity were introduced into that conveyance by that facility, the facility would be subject to permit application requirements as is all industrial storm water discharged through municipal sewers.

EPA disagrees with several comments that road drainage or railroad drainage within a facility should not be covered by the definition. Access roads and rail lines (even those not used for loading and unloading) are areas that are likely to accumulate extraneous material from raw materials, intermediate products and finished products that are used or transported within, or to and from, the facility. These areas will also be repositories for pollutants such as oil and grease from machinery or vehicles using these areas. As such they are related to the industrial activity at facilities. However, the language describing these areas of industrial activity has been clarified to include those access roads and rail lines that are "used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility." For the same reasons haul roads (roads dedicated to transportation of industrial products at facilities) and similar extensions are required to be addressed in permit applications. Two industries stated that haul roads and similar extensions should be covered by permits by rule. EPA is not considering the use of a permit by rule mechanism under this regulation, however this issue will be addressed in the section 402(p)(5) reports to Congress and in general permits to be proposed and promulgated in the near future. EPA would note however that facilities with similar operations and storm water concerns that desire to limit administrative burdens associated with permit applications and obtaining permits may want to avail themselves of the group application and/or general permits.

In response to comments, EPA would also like to clarify that it intends the language "immediate access roads" (including haul roads) to refer to roads which are exclusively or primarily dedicated for use by the industrial facility. EPA does not expect facilities to submit permit applications for discharges from public access roads such as state, county, or federal roads such as highways or BLM roads which happen to be used by the facility. Also, some access roads are used to transport bulk samples of raw materials or products (such as prospecting samples from potential mines) in small-scale prior to industrial production. EPA does not intend to require permit applications for access roads to operations which are not yet industrial activities.

EPA does agree with comments made by several industries that undeveloped areas, or areas that do not encompass those described above, should generally not be addressed in the permit application, or a storm water permit, as long as the storm water discharge from these areas is segregated from the storm water discharge associated with the industrial activity at the facility.

Numerous commenters stated that maintenance facilities, if covered, should not be included in the definition. EPA disagrees with this comment. Maintenance facilities will invariably have points of access and egress, and frequently will have outside areas where parts are stored or disposed of. Such areas are locations where oil, grease, solvents and other materials associated with maintenance activities will accumulate. In response to one commenter, such areas are only regulated in the context of those facilities enumerated in the definition at § 122.26(b)(14), and not similar areas of retail or commercial facilities.

Another commenter requested that "storage areas" be more clearly defined. EPA disagrees that this term needs further clarification in the context of this section of the rule. However, in response to one comment, tank farms at industrial facilities are included. Tank farms are in existence to store products and materials created or used by the facility. Accordingly they are directly related to manufacturing processes.

Regarding storage areas, one commenter stated that the regulations should emphasize that only facilities that are not totally enclosed are required to submit permit applications. EPA does not agree with this interpretation since use of the generic term storage area indicates no exceptions for certain physical characteristics. Thus discharges from enclosed storage areas are also covered by today's rule (except as discussed above). EPA also disagrees with one

comment asserting that small outside storage areas of finished products at industrial facilities should be excluded under the definition of associated with industrial activity. EPA believes that such areas are areas associated with industrial activity which Congress intended to be regulated under the CWA. As noted above, the legislative history refers to storage areas, without reference to whether they are covered or uncovered, or of a certain size.

The same language, in the legislative history cited above, was careful to state that the term "associated with industrial activity" does not include storm water "discharges associated with parking lots and administrative and employee buildings." To accommodate legislative intent, segregated storm water discharges from these areas will not be required to obtain a permit prior to October 1, 1992. Many commenters stated that this was an appropriate method in which to limit the scope of "associated with industrial activity." However, if a storm water discharge from a parking lot at an industrial facility is mixed with a storm water discharge "associated with industrial activity," the combined discharge is subject to permit application requirements for storm water discharges associated with industrial activity. EPA disagrees with some commenters who urged that office buildings and administrative parking lots should be covered if they are located at the plant site. EPA agrees with one commenter that inclusion of storm water discharge from these areas would be overstepping Congressional intent unless such are commingled with storm water discharges from the plant site. Several commenters requested that language be incorporated into the rule which establishes that storm water discharges from parking lots and administrative areas not be included in the definition of associated with industrial activity. EPA agrees and has retained language used in the proposal which addresses this distinction.

Storm water discharges from parking lots and administrative buildings along with other discharges from industrial lands that do not meet the regulatory definition of "associated with industrial activity" and that are segregated from such discharges may be required to obtain an NPDES permit prior to October 1, 1992, under certain conditions. For example, large parking facilities, due to their impervious nature may generate large amounts of runoff which may contain significant amounts of oil and grease and heavy metals which may have adverse impacts on receiving waters. The Administrator or NPDES State has the authority under section 402(p)(2)(E) of the amended CWA to require a permit prior to October 1, 1992, by designating storm water discharges such as those from parking lots that are significant contributors of pollutants or contribute to a water quality standard violation. EPA will address storm water discharges from lands used for industrial activity which do not meet the regulatory definition of "associated with industrial activity" in the section 402(p)(5) study to determine the appropriate manner to regulate such discharges.

Several commenters requested clarification that the definition does not include sheet flow or discharged storm water from upstream adjacent facilities that enters the land or comingles with discharge from a facility submitting a permit application. EPA wishes to clarify that operators of facilities are generally responsible for its discharge in its entirety regardless of the initial source of discharge. However, where an upstream source can be identified and permitted, the liability of a downstream facility for other storm water entering that facility may be minimized. Facilities in such circumstances may be required to develop management practices or other run-on/run-off controls, which segregates or otherwise prevents outside runoff from comingling with its storm water discharge. Some commenters expressed concern about other pollutants which may arrive on a facility's premises from rainfall. This comment was made in reference to runoff with a high or low pH. If an applicant has reason to believe that pollutants in its storm water discharge are from such sources, then that needs to be addressed in the permit application and brought to the attention of the permitting authority, which can draft appropriate permit conditions to reflect these circumstances.

EPA requested comments on clarifying the types of facilities that involve industrial activities and generate storm water. EPA preferred basing the clarification, in part, on the use of Standard Industrial Classification (SIC) codes, which have been suggested in comments to prior storm water rulemakings because they are commonly used and accepted and would provide definitions of facilities involved in industrial activity. Several commenters supported the use by EPA of Standard Industrial Classifications for the same reasons identified by EPA as a generally used and understood form of classification. It was also noted that using such a classification would allow targeting for special notification and educational mailings. Three municipalities and three State authorities commented that SICs were appropriate and endorsed their use as a sound basis for determining which industries are covered.

One municipality questioned how SIC classifications will be assigned to particular industries. SICs have descriptions of the type of industrial activity that is engaged in by facilities. Industries will need to assess for themselves whether they are covered by a listed SIC and submit an application accordingly. Another commenter questioned if Federal facilities that do not have an SIC code identification are required to file a permit application. Federal facilities will be required to submit a permit application if they are engaged in an industrial activity that is described under § 122.26(b)(14). The definition of industrial activity incorporates language that requires Federal facilities to submit permit applications in such circumstances. The language has been further clarified to include State and municipal facilities.

EPA requested comments on the scope of the definition (types of facilities addressed) as well as the clarity of regulation. EPA identified the following types of facilities in the proposed regulation as those facilities that would be required to obtain permits for storm water discharges associated with industrial activity:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are also identified under category (xi) of this paragraph). One commenter (a municipality) agreed with EPA that these industries should be addressed in this rulemaking. No other comments were received on this category. EPA agrees with this comment since these facilities are those that Congress has required EPA to examine and regulate under the CWA with respect to process water discharges. The industries in these categories have generally been identified by EPA as the most significant dischargers of process wastewaters in the country. As such, these facilities are likely to have storm water discharges associated with industrial activity for which permit applications should be required.

One commenter stated that because oil and gas producers are subject to effluent guidelines, EPA is disregarding the intent of Congress to exclude

facilities pursuant to section 402(1). EPA disagrees with this comment. EPA is not prohibited from requiring permit applications from industries with storm water discharge associated with industrial activity. EPA is prohibited only from requiring a permit for oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water that is not contaminated by contact with or has not come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations such discharges. In keeping with this requirement, EPA is requiring permit applications from oil and gas exploration, production, processing, or treatment operations, or transmission facilities that fall into a class of dischargers as described in § 122.26(c)(iii).

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3411, 373 and *(xi). Facilities classified as Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25.* One large municipality and one industry agreed with EPA that facilities covered by these SICs should be covered by this rulemaking. Many commenters, however, took exception to including all or some of these industries. However as noted elsewhere these facilities are appropriate for permit applications.

One commenter stated that within certain SICs industries, such as textile manufacturers use few chemicals and that there is little chance of pollutants in their storm water discharge. EPA agrees that some industries in this category are less likely than others to have storm water discharges that pose significant risks to receiving water quality. However, there are many other activities that are undertaken at these facilities that may result in polluted storm water. Further, the CWA is clear in its mandate to require permit applications for discharges associated with industrial activity. Excluding any of the facilities under these categories, except where the facility manufacturing plant more closely resembles a commercial or retail outlet would be contrary to Congressional intent.

One State questioned the inclusion of facilities identified in SIC codes 20–39 because of their temporary and transient nature or ownership. Agency disagrees that simply because a facility may transfer ownership that storm water quality concerns should be ignored. If constant ownership was a condition precedent to applying for and obtaining a permit, few if any facilities would be subject to this rulemaking.

One State estimated that the proposed definition would lead to permits for 18,000 facilities in its State. Consequently this commenter recommended that the facilities under SIC 20–39 should be limited to those facilities that have to report under section 313 of title III, Superfund Amendments and Reauthorization Act. However, as noted by another commenter, limiting permit requirements to these facilities would be contrary to Congressional intent. While use of chemicals at a facility may be a source of pollution in storm water discharges, other every day activities at an industrial site and associated pollutants such as oil and grease, also contribute to the discharge of pollutants that are to be addressed by the CWA and these regulations. While the number of permit applications may number in the thousands, EPA intends for group applications and general permits to be employed to reduce the administrative burdens as greatly as possible.

Two commenters felt the permit applications should be limited to all entities under SIC 20–39. EPA disagrees that all the industrial activities that need to be addressed fall within these SICs. Discharges from facilities under paragraphs (i) through (xi) such as POTWs, transportation facilities, and hazardous waste facilities, are of an industrial nature and clearly were intended to be addressed before October 1, 1992.

Two commenters stated that SIC 241 should be excluded in that logging is a transitory operation which may occur on a site for only 2–3 weeks once in a 20–30 year period. It was perceived that delays in obtaining permits for such operations could create problems in harvest schedule and mill demand. This commenter stated that runoff from such operations should be controlled by BMPs in effect for such industries and that such a permit would not be practical and would be cost prohibitive.

EPA agrees with the commenter that this provision needs clarification. The existing regulations at 40 CFR 122.27 currently define the scope of the NPDES program with regard to silvicultural activities. 40 CFR 122.27(b)(1) defines the term "silvicultural point source" to mean any discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. Section 122.27(b)(1) also excludes certain sources. The definition of discharge associated with industrial activity does not include activities or facilities that are currently exempt from permitting under NPDES. EPA does not intend to change the scope of 40 CFR 122.27 in this rulemaking. Accordingly, the definition of "storm water discharge associated with industrial activity" does not include sources that may be included under SIC 24, but which are excluded under 40 CFR 122.27. Further, EPA intends to examine the scope of the NPDES silvicultural regulations at 40 CFR 122.27 as it relates to storm water discharges in the course of two studies of storm water discharges required under section 402(p)(5) of the CWA.

In response to one comment, EPA intends that the list of applicable SICs will define and identify what industrial facilities are required to apply. Facilities that warehouse finished products under the same code at a different facility from the site of manufacturing are not required to file a permit application, unless otherwise covered by this rulemaking.

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990 and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations. Several commenters urged that Congress intended to require permits or permit applications only for the manufacturing sector of the oil and gas industry (or those activities that designated in SIC 20 through 39). EPA disagrees with this argument. The fact that Congress used the language cited above and not the appropriate the SIC definition explicitly does not indicate that a broader definition or less exclusive definition was contemplated. According to these comments, all storm water discharges from oil and gas

exploration and production facilities would be exempt from regulation. However, EPA is convinced that a facility that is engaged in finding and extracting crude oil and natural gas from subsurface formations, separating the oil and gas from formation water, and preparing that crude oil for transportation to a refinery for manufacturing and processing into refined products, will have discharges directly relating to the processing or raw material storage at an industrial plant and are therefore discharges associated with industrial activity.

For further clarification EPA is intending to focus only on those facilities that are in SIC 10–14. Furthermore, in response to several comments, this rulemaking will require permit applications for storm water discharges from currently inactive petroleum related facilities within SIC codes 10–14, if discharges from such facilities meet the requirements as described in section VI.F.7.a. and § 122.26(c)(1)(iii). Inactive facilities will have storm water associated with industrial activity irrespective of whether the activity is ongoing. Congress drew no distinction between active and inactive facilities in the statute or in the legislative history.

(iv) Hazardous waste treatment, storage, or disposal facilities that are operating under interim status or a permit under Subtitle C of the Resource, Conservation and Recovery Act. One commenter believed that all RCRA and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) facilities should be specifically identified using SIC codes for further clarification. EPA considers this to be unnecessarily redundant, since the RCRA/CERCLA identification is sufficient.

Several industries asserted that storm water discharge from landfills, dumps, and land application sites, properly closed or otherwise subject to corrective or remedial actions under RCRA, should not be included in the definition. One commenter noted that the runoff from these areas is like runoff from undeveloped areas. One commenter also concluded that landfills, dumps, and land application sites should also be excluded if they are properly maintained under RCRA.

One commenter also rejected the idea of requiring permits from all active and inactive landfills and open dumps that have received any industrial wastes, and subtitle C facilities. This commenter felt that these facilities were already adequately covered under RCRA.

Two industry commenters felt that it would be redundant to have hazardous waste facilities regulated by RCRA and the NPDES storm water program. One felt this was especially so if there are current pretreatment standards.

The Agency disagrees that all activities that may contribute to storm water discharges at RCRA subtitle C facilities are being fully controlled and that requiring NPDES permits for storm water discharges at RCRA subtitle C facilities is redundant. First, the vast majority of permitted hazardous waste management facilities are industrial facilities involved in the manufacture or processing of products for distribution in commerce. Their hazardous waste management activities are incidental to the production-related activities. While RCRA subtitle C regulations impose controls in storm water runoff from hazardous waste management units and require cleanup of releases of hazardous wastes, they generally do not control non-systematic spills or process. These releases, from the process itself or the storage of raw materials or finished products are a potential source of storm water contamination. In addition, RCRA subtitle C (except via corrective action authority) does not address management of "non hazardous" industrial wastes, which nevertheless could also potentially contaminate storm water runoff.

Second, at commercial hazardous waste management facilities, the RCRA subtitle C permitting requirements and management standards do not control all releases of potentially toxic materials. For example, some permitted commercial treatment facilities may store and use chemicals in the treatment of RCRA hazardous wastes. Releases of these treatment chemicals from storage areas are a potential source of storm water contamination.

Finally, many RCRA subtitle C facilities have inactive Solid Waste Management Units (SWMU's) on the facility property. These SWMU's may contain areas on the land surface that are contaminated with hazardous constituents. RCRA requires that hazardous waste management facilities must investigate these areas of potential contamination, and then perform corrective action to remediate any SWMU's that are of concern. However, the corrective action process at these facilities will not be completed for a number of years due to the complexity of the cleanup decisions, and due to the fact that many hazardous waste management facilities do not yet have RCRA permits. Until corrective action has been completed at all such subtitle C facilities, SWMU's are a potential source of storm water contamination that should be addressed under the NPDES program. Finally, under section 1004(27) of RCRA, all point source discharges, including those at RCRA regulated facilities, are to be regulated by the NPDES program. Thus, there is no concern of regulatory overlap, and to the extent that the storm water regulations are effectively implemented, it will help address these units in a way that alleviates the need for expensive corrective action in the future.

(v) Landfills, land application sites, and open dumps that receive or have received industrial wastes and that are subject to regulation under subtitle D of RCRA. EPA received numerous comments supporting the regulation of municipal landfills which receive industrial waste and are subject to regulation under subtitle D of RCRA. EPA agrees with these comments. These industries have significant potential for storm water discharges that can adversely affect receiving water.

Two States argued that landfills should be addressed under the non-point source program. EPA disagrees that the non-point source program is sufficient for addressing these facilities. Further, addressing a class of facilities under the non-point source program does not exempt storm water discharges from these facilities from regulation under NPDES. The CWA requires EPA to promulgate regulations for controlling point source discharges of storm water from industrial facilities. Point sources from landfills consisting of storm water are such discharges requiring an NPDES permit. Several commenters argued that these discharges are adequately addressed by RCRA and that regulating them under this storm water rule would be redundant. However, as discussed above, RCRA expressly does not regulate point source discharges subject to NPDES permits. Given the nature of these facilities and of the material stored or disposed, EPA believes storm water permits are necessary. Similarly EPA rejects the comment that storm water discharges from these facilities are already adequately regulated by State authority. Congress has mandated that storm water discharges associated with industrial activity have an NPDES permit.

One commenter wanted EPA to define by size what landfills are covered. In response, it is the intent of these regulations to require permit applications from all landfills that receive industrial waste. Storm water discharges from such facilities are addressed because of the nature of the material with which the storm water comes in contact. The size of facility

will not dictate what type of waste is exposed to the elements.

One commenter requested that the definition of industrial wastes be clarified. For the purpose of this rule, industrial waste consists of materials delivered to the landfill for disposal and whose origin is any of the facilities described under § 122.26(b)(14) of this regulation.

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093. One commenter suggested that the recycling of materials such as paper, glass, plastics, etc., should not be classified as an industrial activity. EPA disagrees that such facilities should be excluded on that basis. These facilities may be considered industrial, as are facilities that manufacture such products absent recycling.

Other facilities exhibit traits that indicate industrial activity. In junkyards, the condition of materials and junked vehicles and the activities occurring on the yard frequently result in significant losses of fluids, which are sources of toxic metals, oil and grease and polychlorinated aromatic hydrocarbons. Weathering of plated and non-plated metal surfaces may result in contributions of toxic metals to storm water. Clearly such facilities cannot be classified as commercial or retail.

One municipality felt that "significant recycling" should be defined or clarified. EPA agrees that the proposed language is ambiguous. It has been clarified to require permit applications from facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093. These SIC codes describe facilities engaged in dismantling, breaking up, sorting, and wholesale distribution of motor vehicles and parts and a variety of other materials. The Agency believes these SIC codes clarify the term significant recycling.

One municipality stated that regulation of these facilities under NPDES would be duplicative if they are publicly owned facilities. One State expressed the view that automobile junkyards, salvage yards could not legitimately be considered industrial activity. As noted above, EPA disagrees with these comments. Facilities that are actively engaged in the storage and recycling of products including metals, oil, rubber, and synthetics are in the business of storing and recycling materials associated with or once used in industrial activity. These activities are not commercial or retail because they are engaged in the dismantling of motors for distribution in wholesale or retail, and the assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials, which EPA views as industrial activity. Further, being a publicly owned facility does not confer non-industrial status.

(vii) Steam electric power generating facilities, including coal handling sites, and onsite and offsite ancillary transformer storage areas. Most of the comments were against requiring permit applications for onsite and offsite ancillary transformer facilities. One commenter stated that these transformers did not leak in storage and if there were leakage problems in handling transformers, such leaks were subject to Federal and State spill clean-up procedures. The same commenter suggested that if EPA required applications from such facilities that it exclude those that have regular inspections, management practices in place, or those that store 50 transformers at any one time.

EPA agrees that such facilities should not be covered by today's rule. As one commenter noted, the Toxic Substances Control Act (TSCA) addresses pollutants associated with transformers that may enter receiving water through storm water discharges. EPA has examined regulations under TSCA and agrees that regulation of storm water discharges from these facilities should be the subject of the studies being performed under section 402(p)(5), rather than regulations established by today's rule. Under TSCA, transformers are required to be stored in a manner that prevents rain water from reaching the stored PCBs or PCB items. 40 CFR 761.65(b)(1)(i). EPA considers transformer storage to be more akin to retail or other light commercial activities, where items are inventoried in buildings for prolonged periods for use or sale at some point in the future, and where there is no ongoing manufacturing or other industrial activity within the structure.

One commenter stated that this category of industries should be loosened so that all steam electric facilities are addressed—oil fired and nuclear. EPA believes that the language as proposed broadly defines the type of industrial activity addressed without specifying each mode of steam electric production. One commenter noted that the EPA has no authority under the CWA (*Train* v. *CPIR, Inc.*, 426 U.S. 1 (1976) to regulate the discharge of source, special nuclear and by-product materials which are regulated under the Atomic Energy Act. EPA agrees permit applications may not address those aspects of such facilities, however the facility in its entirety may not necessarily be exempt. A permit application will be appropriate for discharges from non-exempt categories.

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, material handling facilities, equipment cleaning operations or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or which are identified in another subcategory of facilities under EPA's definition of storm water discharges associated with industrial activity. One commenter requested clarification of the terms "vehicle maintenance." Vehicle maintenance refers to the rehabilitation, mechanical repairing, painting, fueling, and lubricating of instrumentalities of transportation located at the described facilities. EPA is declining to write this definition into the regulation however since "vehicle maintenance" should not cause confusion as a descriptive term. One commenter wanted railroad tracks where rail cars are set aside for minor repairs excluded from regulation. In response, if the activity involves any of the above activities then a permit application is required. Train yards where repairs are undertaken are associated with industrial activity. Train yards generally have trains which, in and of themselves, can be classified as heavy industrial equipment. Trains, concentrated in train yards, are diesel fueled, lubricated, and repaired in volumes that connote industrial activity, rather than retail or commercial activity.

One commenter argued that if gasoline stations are not considered for permitting, then all transportation facilities should be exempt. EPA disagrees with the thrust of this comment. Transportation facilities such as bus depots, train yards, taxi stations, and airports are generally larger than individual repair shops, and generally engage in heavier more expansive forms of industrial activity. In keeping with Congressional intent to cover all industrial facilities, permit applications from such facilities are appropriate. In contrast, EPA views gas stations as retail commercial facilities not covered

by this regulation. It should be noted that SIC classifies gas stations as retail.

(ix) POTW lands used for land application treatment technology/ sludge disposal, handling or processing areas, and chemical handling and storage areas. One commenter wanted more clarification of the term POTW lands. Another commenter requested clarification of the terms sludge disposal, sludge handling areas, and sludge processing areas. One State recommended that a broader term than POTW should be used. EPA notes that on May 2, 1989, it promulgated NPDES Sewage Sludge Permit Regulations; State Sludge Management Program Requirements at 40 CFR part 501. This regulation identified those facilities that are subject to section 405(f) of the CWA as "treatment works treating domestic sewage."

In response to the above comments, EPA has decided to use this language to define what facilities are required to apply for a storm water permit. Under this rulemaking "treatment works treating domestic sewage," or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge, with a design flow of 1.0 mgd or more, or facilities required to have an approved pretreatment program under 40 CFR part 403, will be required to apply for a storm water permit. However, permit applications will not be required to address land where sludge is beneficially reused such as farm lands and home gardens or lands used for sludge management that are not physically located within the confines (offsite facility) of the facility or where sludge is beneficially reused in compliance with section 405 of the Clean Water Act (proposed rules were published on February 6, 1989, at 54 FR 5746). EPA believes that such activity is not "industrial" since it is agricultural or domestic application (non-industrial) unconnected to the facility generating the material.

EPA received many comments on the necessity and appropriateness of requiring permit applications for storm water discharges from POTW lands. It was anticipated by numerous commenters that the above cited sludge regulations would adequately address storm water discharges from lands where sludge is applied. However, the sewage sludge regulations do not directly address NPDES permit requirements for storm water discharges from POTW lands and related areas to the extent required by today's rulemaking; the regulations cover only permits for use or disposal of sludge. Also, the regulations proposed on February 4, 1989, cover primarily the technical standards for the composition of sewage sludge which is to be used or disposed. They do not include detailed permitting requirements for discharges of storm water from lands where sludge has been applied to the land. To that extent, EPA is not persuaded by these commenters that POTWs and POTW lands should be excluded from these storm water permit application requirements.

Two commenters noted that some States already regulate sludge use or disposal activities substantially and that EPA should refrain from further regulation. EPA disagrees that this is a basis for excluding facilities from Federal requirements. Notwithstanding regulations in existence under State law, EPA is required by the CWA to promulgate regulations for permit application for storm water associated with industrial activity. Under the NPDES program, States are able to promulgate more rigorous requirements. However a minimum level of control is required under Federal law. One commenter also indicated that a State's sludge land application sites must follow a well defined plan to ensure there is no sludge related runoff. Notwithstanding that a State may require storm water controls for sludge land applications, as noted above, EPA is required to promulgate regulations requiring permit applications from appropriate facilities. EPA views facilities such as waste treatment plants that engage in on-site sludge composting, storage of chemicals such as ferric chloride, alum, polymers, and chlorine, and which may experience spills and bubbleovers are suitable candidates for storm water permits. Facilities using such materials are not characteristic of commercial or retail activities. Use and storage of chemicals and the production of material such as sludge, with attendant heavy metals and organics, is activity that is industrial in nature. The size and scope of activities at the facility will determine the extent to which such activities are undertaken and such materials used and produced at the facility. Accordingly, EPA believes limiting the facilities covered under this category to those of 1.0 mgd and those covered under the industrial pretreatment program is appropriate.

To the extent that permit applicants are already required to employ certain management practices regarding storm water, these may be incorporated into permits and permit conditions issued by Federal and State permitting authorities. EPA has selected facilities identified under 40 CFR part 501 (*i.e.* those with a design flow of 1.0 mgd or more or those required to have an approved pretreatment program) since these facilities will have largest contribution of industrial process discharges. Sludge from such facilities will contain higher concentrations of heavy metal and organic pollutants.

One commenter stated that sludge disposal is a public activity that should be addressed in a public facility's storm water management program under a municipal storm water management program. EPA disagrees. Industrial facilities, whether publicly owned or not, are required to apply for and obtain permits when they are designated as industrial activity.

Another comment stated that a permit should not be required for facilities that collect all runoff on site and treat it at the same POTW. EPA believes that a permit application should be required from such facilities. However, the above practice can be incorporated as a permit condition for such a facility. One commenter stated storm water from sludge and chemical handling areas can be routed through the headworks of the POTW. The agency agrees that this may be an appropriate management practice for POTWs as long as other NPDES regulatory requirements are fulfilled with regard to POTWs.

(x) Construction activities, including clearing, grading and excavation activities except operations that result in the disturbance of less than five acre total land area which are not part of a larger common plan of development or sale. EPA addresses whether these facilities should be covered by today's rule in section VI.F.8.

The December 7, 1988, proposal also requested comments on including the following other categories of discharges in the definition of industrial activities: (xii) Automotive repair shops classified as Standard Industrial Classification 751 or 753; (xiii) Gasoline service stations classified as Standard Industrial Code 5541; (xiv) Lands other than POTW lands (offsite facilities) used for sludge management; (xv) Lumber and building materials retail facilities classified as Standard Industrial Classification 5211; (xvi) Landfills, land application sites, and open dumps that do not receive industrial wastes and that are subject to regulation under subtitle D of RCRA; (xvii) Facilities classified as Standard Industrial Classification 46 (pipelines, except natural gas), and 492 (gas production and distribution); (xviii) Major electrical powerline corridors.

EPA received numerous comments on whether to require permit applications for these particular facilities. The December 7, 1988, proposal reflected EPA's intent not to require permits for these facilities, but rather to address these facilities in the two studies required by CWA sections 402(p)(5) and (6). After reviewing the comments on this issue, EPA believes that these facilities should be addressed under these sections of the CWA. Most of these facilities are classified as light commercial and retail business establishments, agricultural, facilities where residential or domestic waste is received, or land use activities where there is no manufacturing. It should be noted that although EPA is not requiring the facilities identified as categories (xii) to (xviii), in the December 7, 1988, proposal to apply for a permit application under this rulemaking, such facilities may be designated under section 402(p)(2)(E) of the CWA.

Three commenters recommended that EPA clarify that non-exempt Department of Energy and Department of Defense facilities should be covered by the storm water regulation. The regulation clearly states that Federal Facilities that are engaged in industrial activity (*i.e.* those activities in § 122.26(b)(14)(i)–(xi)) are required to submit permit applications. Those applying for permits covering Federal facilities should consult the Standard Industrial Classifications for further clarification.

One commenter questioned how EPA intended to regulate municipal facilities engaged in industrial activities. Municipal facilities that are engaged in the type of industrial activity described above and which discharge into waters of the United States or municipal separate storm sewer systems are required to apply for permits. These facilities will be covered in the same manner as other industrial facilities. The fact that they are municipally owned does not in any way exclude them from needing permit applications under this rulemaking.

One commenter suggested exempting those facilities that have total annual sales less than five million dollars or occupy less than five acres of land. Another commenter thought that all minor permittees should be exempt. EPA believes that the quality of storm water and the extent to which discharges impact receiving water is not necessarily related to the size of the facility or the dollar value of its business. What is important in this regard, is the extent to which steps are taken at facilities to curb the quantity and type of material that may pollute storm water discharges from these facilities. Therefore EPA has not excluded facilities from permitting on such a basis. This same commenter stated that the proposed rules should not address facilities with multiple functions (industrial and retail). EPA disagrees. If a facility engages in activity that is defined in paragraphs (i) through (xi) above, it is required to apply for a permit regardless of the fact that it also has a retail element. Such facilities need only submit a permit application for the industrial portion of the facility (as long as storm water from the non-industrial portion is segregated, as discussed above). This commenter also felt that more studies needed to be undertaken to determine the best way to regulate industries. EPA agrees that storm water problems need further study and for that reason EPA has devoted substantial manpower and resources to complete comprehensive studies under section 402(p)(5), while also addressing industrial sources that need immediate attention under this rulemaking.

One commenter requested that EPA give examples of storm water discharges from each of the facilities that have been designated for submitting permit applications. Agency believes that this is unnecessary and impractical since every facility, regardless of the type of industry, will have different terrain, hydrology, weather patterns, management practices and control techniques. However, EPA intends to issue guidance on filing permit applications for storm water discharges from industrial facilities which details how an industry goes about filing an industrial permit and dealing with storm water discharges.

Today's rulemaking for storm water discharges associated with industrial activity at § 122.26(c)(1)(i) includes special conditions for storm water discharges originating from mining operations, oil or gas operations (§ 122.26(c)(1)(iii)), and from the construction operations listed above (§ 122.26(c)(1)(ii)). These requirements are discussed in more detail in section VI.F.7 and section VI.F.9 of today's notice.

3. Individual Application Requirements

Today's rule establishes individual and group permit application requirements for storm water discharges associated with industrial activity. These requirements will address facilities precluded from coverage under the general permits to be proposed and promulgated by EPA in the near future. EPA considers it necessary to obtain the information required in individual permit applications from certain facilities because of the nature of their industrial activity and because of existing institutional mechanisms for issuing and tracking NPDES permits. Furthermore, some States will not have general permitting authority. Facilities located in such States will be required to submit individual applications or participate in a group application. The following response to comments received on these requirements pertains to these facilities.

Under the September 26, 1984, regulation operators of Group I storm water discharges were required to submit NPDES Form 1 and Form 2C permit applications. In response to post-regulation comments received on that rule, EPA proposed new permit application requirements (March 7, 1985, (50 FR 9362) and August 12, 1985, (50 FR 32548)) which would have decreased the analytical sampling requirements of the Form 2C and provided procedures for group applications. Passage of the WQA in 1987 gave the EPA additional time to consider the appropriate permit application requirements for storm water discharges. On December 7, 1988, application requirements were proposed and numerous comments were received. Based upon these comments, modifications and refinements have been made to the industrial storm water permit application.

Some commenters expressed the view that the permit application requirements are too burdensome, require too much paperwork, are of dubious utility, and focus too greatly on the collection of quantitative data. EPA disagrees. In comparison to prior approaches for permitting storm water discharges and other existing permitting programs, EPA has streamlined the permit application process, limited the quantitative data requirements, and required narrative information that will be used to determine permit conditions that relate to the quality of storm water discharge. To the extent that EPA needs non-quantitative information to develop appropriate permit conditions, EPA disagrees with the view of some commenters that the information required is excessive. In response to comments on earlier rulemakings and a comment received on the December 7, 1988, proposal (stressing that the emphasis should be on site management, rather than monitoring, sampling, and reporting) EPA has shifted the emphasis of the permit application requirements for storm water discharges associated with industrial activity from the existing requirements for collection of

quantitative data (sampling data) in Form 2C towards collection of less quantitative data supplemented by additional information needed for evaluation of the nature of the storm water discharges.

The permit application requirements proposed for storm water discharges reduce the amount of quantitative data required in the permit application and exempt discharges which contain entirely storm water (*i.e.* contain no other discharge that, without the storm water component, would require an NPDES permit), from certain reporting requirements of Form 2C. The proposed modifications also would exempt applicants for discharges which contain entirely storm water from several non-quantitative information collection provisions currently required in the Form 2C. The proposed modifications would rely more on descriptive information for assessing impacts of the storm water discharge. One commenter proposed that information that the applicant has submitted for other permits be incorporated by reference into the storm water permit application. EPA disagrees that incorporation by reference is appropriate. The permitting authority will need to have this information readily available for evaluating permit application and permit conditions. Furthermore, EPA feels that the applicant is in the best position to provide the information and verify its accuracy. However, if the applicant has such information and it accurately reflects current circumstances, then the applicant can rely on the information for meeting the information requirements of the application. Another commenter suggested that EPA should only require the information in § 122.26(c)(1) (A) and (B) (*i.e.*, the requirement for a topographic map indicating drainage areas and estimate of impervious areas and material management practices). As explained in greater detail below, EPA is convinced that some quantitative data and the other narrative requirements are necessary for developing appropriate permit conditions.

Form 2F addressing permit applications for storm water discharges associated with industrial activity is included in today's final rule. A complete permit application for discharges composed entirely of storm water, will be comprised of Form 2F and Form 1. Operators of discharges which are composed of both storm water and non-storm water will submit, where required, a Form 1, an entire Form 2C (or Form 2D) and Form 2F when applying. In this case, the applicant will provide quantitative data describing the discharge during a storm event in Form 2F and quantitative data describing the discharge during non-storm events in Form 2C. Non-quantitative information reported in the Form 2C will not have to be reported again in the Form 2F.

Under today's rule, Form 2F for storm water discharges associated with industrial activity would not require the submittal of all of the quantitative information required in Form 2C, but would require that quantitative data be submitted for:

- Any pollutant limited in an effluent guideline for an industrial applicant's subcategory;
- Any pollutant listed in the facility's NPDES permit for its process wastewater;
- Oil and grease, TSS, COD, pH, BOD5, total phosphorus, total Kjeldahl nitrogen; nitrate plus nitrite nitrogen; and
- Any information on the discharge required under 40 CFR 122.2l(g)(7) (iii) and (iv).

In order to characterize the discharge(s) sampled, applicants need to submit information regarding the storm event(s) that generated the sampled discharge, including the date(s) the sample was taken, flow measurements or estimates of the duration of the storm event(s) sampled, rainfall measurements or estimates from the storm event(s) which generated the sampled runoff, and the duration between the storm event sampled and the end of the previous storm event. Information regarding the storm event(s) sampled is necessary to evaluate whether the discharge(s) sampled was generally representative of other discharges expected to occur during storm events and to characterize the amount and nature of runoff discharges from the site.

One commenter stated that the quantitative information should be limited to those pollutants that are expected to be known to the applicant. EPA believes this would be inappropriate since there will be no way of determining initially whether these pollutants are present despite the expectations of the applicant. Once the data is provided, permits can be drafted which address specific pollutants. This rulemaking requires that the applicant test for oil and grease, COD, pH, BOD5, TSS, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen and total phosphorus. Oil and grease and TSS are a common component of storm water and can have serious impacts on receiving waters. Oxygen demand (COD and BOD5) will help the permitting authority evaluate the oxygen depletion potential of the discharge. BOD5 is the most commonly used indicator of potential oxygen demand. COD is considered a more inclusive indicator of oxygen demand, especially where metals interfere with the BOD5 test. The pH will provide the permitting authority with important information on the potential availability of metals to the receiving flora, fauna and sediment. Total Kjeldahl nitrogen, nitrate plus nitrite nitrogen and total phosphorus are measures of nutrients which can impact water quality. Because this data is useful in developing appropriate permit conditions, EPA disagrees with the argument made by one commenter that quantitative data requirements should be a permit condition and not part of the application process.

In the proposed rule, the Agency used total nitrogen as a parameter. This has been changed to total Kjeldahl nitrogen and nitrate plus nitrite nitrogen for clarity.

Today's rule defines sampling at industrial sites in terms of sampling for those parameters that have effluent limits in existing NPDES permits, as well as for any other conventional or nonconventional parameter that might be expected to be found at the outfall. Comments on the appropriateness of the defined parameters were solicited by the proposal. Numerous commenters maintained that either the parameter list be made industry specific, or that pollutant categories not detected in the initial screen be exempted from further testing. Some suggested that only conventional pollutants, inorganics, and metals be sampled unless reason for others is found.

In terms of specific water quality parameters, it was recommended that surfactants not be tested for unless foam is visible. One commenter also suggested that fecal coliform sampling is inappropriate for industrial permits applications. One commenter favored testing for TOC instead of VOC. In response, VOC has been eliminated from the list of parameters because it will not yield specific usable data. VOC is not specifically required in any sampling in today's rule, except where priority pollutant scans are required.

Some recommended that procedures be modified to facilitate quicker, less expensive lab analyses. Concern was also raised that industry might be required to collect its own rainfall data if there is no nearby observation station. Some commenters stated that EPA should not allow automatic sampling for either biological or oil and grease sampling due to the potential for contamination in sampling equipment.

In response, EPA believes that the sampling requirements for industry in today's rule are reasonable and not burdensome. These requirements address parameters that have effluent limits in existing NPDES permits, as well as for any other conventional or nonconventional parameter that might be expected to be found at the applicants outfall. Under this procedure both industry-specific and site-specific contaminants are already identified in the existing permit. Whether all these parameters need to be made a part of any discharge characterization plans, under the terms of the permit, will be a case-by-case determination for the permitting authority. EPA maintains that the test for surfactants (if in effluent guidelines or in the facility's NPDES permit for process water) is justifiable even when a foam is not obvious at the outfall. The presence of detergents in storm water may be indicated by foam, but the absence of foam does not indicate that detergents are not present.

EPA requested comments on fecal coliform as a parameter. Fecal coliform was included on the list as an indicator of the presence of sanitary sewage. In large concentrations, fecal coliform may be an effective indicator of sanitary sewage as opposed to other animal wastes. EPA believes that sanitary cross connections will also be found at industrial facilities. Furthermore, the test for fecal coliform is an inexpensive test and its inclusion or exclusion should make little impact financially on the individual application costs. Sampling for volatile organic carbon shall be accomplished when required, as it is an appropriate indicator of industrial solvents and organic wastes.

In response to comments, EPA acknowledges that there are certain pollutants that are capable of leaving residues in automatic sampling devices that will potentially contaminate subsequent samples. In these cases, such as for biological monitoring, if such a problem is perceived to exist and it is expected that the contaminant will render the subsequent samples unusable, manual grab samples may be needed. This would include grab samples for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. EPA is not disallowing the use of automatic sampling because of possible contamination, as this type of sampling may be the best method for obtaining the necessary samples from a selected storm events.

In addition to the conventional pollutants listed above, this final rule requires applicants, when appropriate, to sample other pollutants based on a consideration of site-specific factors. These parameters account for pollutants associated with materials used for production and maintenance, finished products, waste products and non-process materials such as fertilizers and pesticides that may be present at a facility. Applicants must sample for any pollutant limited in an effluent guideline applicable to the facility or limited in the facility's NPDES permit. These pollutants will generally be associated with the facility's manufacturing process or wastes. Other process and non-process related pollutants, will be addressed by complying with the requirements of 40 CFR 122.21(g)(7) (iii) and (iv).

Section 122.21(g)(7)(iii) requires applicants to indicate whether they know or have reason to believe that any pollutant listed in Table IV (conventional and nonconventional pollutants) of appendix D to 40 CFR part 122 is discharged. If such a pollutant is either directly limited or indirectly limited by the terms of the applicant's existing NPDES permit through limitations on an indicator parameter, the applicant must report quantitative data. For pollutants that are not contained in an effluent limitations guideline, the applicant must either report quantitative data or describe the reasons the pollutant is expected to be discharged. With regard to pollutants listed in Table II (organic pollutants) or Table III (metals, cyanide and total phenol) of appendix D, the applicant must indicate whether they know or have reason to believe such pollutants are discharged from each outfall and, if they are discharged in amounts greater than 10 parts per billion (ppb), the applicant must report quantitative data. An applicant qualifying as a small business under 40 CFR 122.21(g)(8), (*e.g.*, coal mines with a probable total annual production of less than 100,000 tons per year or, for all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars)), is not required to analyze for pollutants listed in Table II of appendix D (the organic toxic pollutants).

Section 122.21(g)(7)(iv) requires applicants to indicate whether they know or have reason to believe that any pollutant in Table V of appendix D to 40 CFR part 122 (certain hazardous substances) is discharged. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report any existing quantitative data it has for the pollutant.

When collecting data for permit applications, applicants may make use of 40 CFR 122.2l(g)(7), which provides that "when an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls." Where the facility has availed itself of this provision, an explanation of why the untested outfalls are "substantially identical" to tested outfalls must be provided in the application. Where the amount of flow associated with the outfalls with substantially identical effluent differs, measurements or estimates of the total flow of each of the outfalls must be provided. Several commenters stated that the time and expense associated with sampling and analysis would be saved if the applicant was able to pick substantially identical outfalls without prior approval of the permitting authority. EPA disagrees that this would be an appropriate devolution of authority to the permit applicant. The permitting authority needs to ensure that these outfalls have been grouped according to appropriate criteria (for example do the outfalls serve similar drainage areas at the facility). Furthermore, EPA is not requiring that the permit applicant engage in sampling to demonstrate that the outfalls are indeed substantially identical, because that would of course defeat the purpose of § 122.21(g)(7). The procedure for establishing identical outfalls is not that onerous and provides a means for industry to save substantially on time and resources for sampling.

EPA proposed and requested comment on a requirement that the facility must sample a storm event that is typical for the area in terms of duration and severity The storm event must be greater than 0.1 inches and must be at least 96 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. In general, variance of the parameters (such as the duration of the event and the total rainfall of the event) should not exceed 50 percent from the parameters of the average rainfall event in that area. EPA also requested comments on addressing snow melt events under this definition.

Commenters stated that: median or average rainfall is not an acceptable approach; the minimum depth and duration of rainfall must be specified; the allowable 50% variation is questionable; the total depth of the storm is irrelevant; and the storm should be viewed based on the average intensity of the storm. One commenter

suggested that using the median rainfall event would be a better approach than the average rainfall event.

Others insisted that "representative" or typical storms do not exist in semi-arid climates and that representative rainfall must be site-specific (regional) and seasonal. Several commenters contended that the requirement for 96 dry hours between events is not acceptable, with 48 and 72 hours identified as possible alternatives.

One commenter believed that a typical standard design storm, such as the 1-year, 24-hour, or 10-year, 1-hour, would be preferable. Another commenter felt that the storm event should be based on the rainfall required to generate a minimum discharge level. One commenter questioned whether the storm is to be sampled at all sites simultaneously.

To clarify its decision on what storm event should be sampled, EPA notes that its selection of the storm event considers both regional and seasonal variation of precipitation. This is evidenced in the rule with regard to sites in the municipal application (three events sampled), and in the requirements for industrial group applications (a minimum of two applicants, or one applicant in groups of less than 10, to be represented in each precipitation zone (*see* section VI.F.4 below).

The definition of a 0.1 inch minimum was determined by NURP and other studies to be the minimum rainfall depth capable of producing the rainfall/runoff characteristics necessary to generate a sufficient volume of runoff for meaningful sample analysis. EPA believes by requiring the average storm to be used as the basis for sampling that depth, duration, and therefore average rainfall intensity are being regionally defined. The Agency has also added the option of using the median rainfall event instead of the average. The potential for monitoring events that may not meet this specification should be minimized by allowing the proposed 50 percent variation in rainfall depth and/or duration from event statistics. However, the 50 percent variation need only be met when possible. Further, there is flexibility in the rule where the Director may allow or establish site specific requirements such as the minimum duration between the previous measurable storm event and the storm event sampled, the amount of precipitation from the storm event to be sampled, and the form of precipitation sampled (snowmelt or rainfall). If data is obtained from a rain event that does not meet the criteria above, the Director has the discretion to accept the data as valid.

The December 7, 1988, proposal called for a 96-hour period between events of measurable rainfall, here defined as 0.1 inch, which provided a four day minimum for the accumulation of pollutants on the surface of the outfalls' tributary areas. The key word in the definition is "measurable", which means that the 96-hour period did not necessarily have to be dry, only that no cleansing rainfall (*i.e.* 0.1 inch rain event) has occurred. However, after reviewing comments on this issue EPA has decided to change the period to 72 hours. Many commenters indicated that 96 hours is too restrictive and that securing a sample under such circumstances would be unnecessarily difficult. EPA agrees that the quality or representativeness of the sample would not be adversely affected by this change.

EPA does not agree with comments that the requirement of a particular "design" storm would be appropriate. Many commenters have expressed concern that they might sample an event not meeting the requirements for industrial group applications as defined. Because there is no way to know with sufficient certainty beforehand that an upcoming event will approximate a one-year, twenty-four hour storm, many events would be unnecessarily sampled before this event is realized.

EPA does not intend that a municipality or industry be required to sample all required outfalls for a single storm. This would represent a unmanageable investment in equipment and manpower. In some areas, it may be necessary to sample multiple sites for a single event due to the irregularity of rainfall, but not all sites.

EPA described parameters for selecting storm events for sampling of municipal and industrial outfalls in the December 7, 1988, proposal. EPA has received several comments regarding the problems that rainfall measurement in general presents. A recurring comment relative to reporting rainfall, and in verifying that the storm itself is representative, deals with the spatial distribution of rainfall. The rainfall measured at an airport does not always represent rainfall at the site, particularly in summer months when thunderstorms are prevalent. One commenter stated that it would be easier to base the selected storm on either a minimum discharge, or on a discharge duration other than on the total precipitation, because these parameters are easily measured at the site and are not dependent on the airport gauges receiving the same rainfall as the site. A few commenters questioned how to determine typical storm characteristics. One commenter advised that NOAA rainfall reporting stations provide data that represent only daily rainfall totals, not storm event data. One commenter pointed out that the time frame of the sampling requirement does not consider that a particular region may be in the midst of a multi-year drought cycle, and that what little rainfall occurs may have uncharacteristically high levels of pollutants.

The type of rain event sampled is an important parameter in any attempt to characterize system-wide loads based on the sampling results. Rainfall gauges that report only event total depth will provide the information necessary to characterize most events, provided that a reasonable estimate of the event duration can be made. If simulation models are to be used in estimating system-wide loads, rainfall measurement based on time and depth of rainfall will be needed. If the recording stations are not believed to accurately reflect this distribution, then the data will need to be collected by the applicant at a location central to the tributary area of the outfall.

The rainfall data collected by NOAA are in most cases available in the form of hourly rainfall depths. This information can be analyzed to develop characteristic storm depths and durations. In some cases, this information has already been analyzed for many long term reporting stations by various municipalities, states, and universities. The results of these investigations should be available to the applicants.

EPA realizes that prolonged rainless periods occur for both semi-arid areas and areas experiencing droughts and that the first storm after a prolonged dry period may well not be representative of "normal" runoff conditions. In order for the appropriate system-wide characterization of loads to be made, data must be collected. With regard to the municipal permit application, today's rule states that runoff characterization data will be collected during three events at from five to ten sites. The rule gives the Director the flexibility of modifying these requirements.

EPA has defined the parameters for selecting the storm event to be sampled such that at the discretion of the Director, seasonal, including winter, sampling might be required. EPA has received several comments regarding the problems that snowmelt sampling may present. Several commenters are

opposed to monitoring of snowmelt events. The reasons cited include equipment problems and the unreasonableness of expecting this sampling, because of temperatures and the time required for personnel to be waiting for events. A few comments addressed the issues of snow pack depth, ambient temperature, and solar radiation levels, and that the snow pack may filter suspended solids or refreeze such that final melting is uncharacteristically over-polluted relative to normal conditions. Another commenter contended that it is impossible to manage the melting process and therefore unreasonable to expect controls to be implemented relative to snowmelt. In essence, it is contended that there is no first discharge unless the snow pack depth is low and melts quickly.

A few commenters favor monitoring snowmelt, for precisely the same reason that most oppose it: that the runoff from snowmelt is the most polluted runoff generated in some areas on an annual basis. Where this is the case, sampling snowmelt should be undertaken in order to accurately assess impacts to receiving streams. EPA is confident that in areas where automated sampling cannot be relied upon, grab sampling can probably be performed because the nature of the snowmelt process tends to make the timing of samples less of a problem when compared to typical rainfall events. EPA disagrees that management practices, either at industrial facilities or with regard to municipalities, cannot address snowmelt. Some areas may need to reassess their salt application procedures. In addition retention and detention devices may address snowmelt, as well as erosion controls at construction sites. Thus, obtaining samples of snowmelt is appropriate to allow development of such permit conditions.

Today's rule also modifies the Form 2C requirements by exempting applicants from the requirements at § 122.21(g)(2) (line drawings), (g)(4) (intermittent flows), (g)(7) (i), (ii), and (v) (various sampling requirements to characterize discharges) if the discharge covered by the application is composed entirely of storm water. Permit applications for discharges containing storm water associated with industrial activity would require applicants to provide other non-quantitative information which will aid permit writers to identify which storm water discharges are associated with industrial activity and to characterize the nature of the discharge.

Numerous comments were received regarding the requirement to submit a topographic map and site drainage map. Many of these comments offered alternatives to EPA's proposal. Two commenters suggested that a simple sketch of the site would be sufficient. Two commenters stated that one or the other should be adequate. One commenter believed that the drainage map was a good idea, but that the topographic map should be optional. Several commenters submitted that a topographic map was sufficient and that only SPCC plans or SARA submittals should supplement that. Another commenter argued that information relating to the location of the nearest surface water or drinking wells would be sufficient. Other commenters believed that a drainage map alone would indicate all relevant site specific information. Numerous commenters expressed concern that the drainage area map would be too detailed and that one which depicts the general direction of flow should be sufficient. Clarification was requested on whether the final rule would require the location of any drinking water wells. One commenter stated that a U.S.G.S. 7.5 quadrangle map will not illustrate drainage systems in all cases, and that therefore the requirement should be optional.

Several commenters agreed with EPA's proposal. One commenter maintained that drainage maps should be required from developments greater than three acres and from all individual applicants. Several commenters agreed with EPA's proposal that both maps should be provided, with arrows indicating site drainage and entering and leaving points. It was advised that drainage maps are useful in locating sources of storm water contamination, and it is useful to identify areas and activities which require source controls or remedial action. One commenter recommended that the map should extend far enough offsite to demonstrate how the privately owned system connects to the publicly owned system.

After considering the merits of all the comments and the reasons supporting EPA's proposal, EPA is convinced that a topographic map and a site drainage map are necessary components of the industrial application. Existing permit application regulations at 40 CFR 122.21(f)(7) require all permit applicants to submit as part of Form 1 a topographic map extending one mile beyond the property boundaries of the source depicting: the facility and each intake and discharge structure; each hazardous waste treatment, storage, or disposal facility; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in the map area in public records or otherwise known to the applicant within one-quarter mile of the facility property boundary. (*See* 47 FR 15304, April 8, 1982.) However, as indicated by the comments the information provided under § 122.21(f)(7) is generally not sufficient by itself for evaluating the nature of storm water discharges associated with industrial activity.

As stated in comments, a drainage map can provide more important site specific information for evaluating the nature of the storm water discharge in comparison to existing requirements, which require a larger map with only general information. The volume of storm water discharge and the pollutants associated with it will depend on the configuration and activities occurring at the industrial site. One commenter suggested that it would be appropriate to submit an aerial photograph of the site with all the topographic and drainage information superimposed on the photograph. EPA agrees that this may be an appropriate method of providing this information. EPA is not requiring a specific format for submitting this information.

EPA is also requiring that a narrative description be submitted to accompany the drainage map. The narrative will provide a description of on-site features including: existing structures (buildings which cover materials and other material covers; dikes; diversion ditches, etc.) and non-structural controls (employee training, visual inspections, preventive maintenance, and housekeeping measures) that are used to prevent or minimize the potential for release of toxic and hazardous pollutants; a description of significant materials that are currently or in the past have been treated, stored or disposed outside; and the method of treatment, storage or disposal used. The narrative will also include: a description of activities at materials loading and unloading areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; a description of the soil; and a description of the areas which are predominately responsible for first flush runoff. This requirement is unchanged from the proposal.

Some commenters believed that information on pesticides, herbicides, and fertilizers and similar products is irrelevant, incidental to the facility's production activities, and should not be

addressed by this rulemaking. EPA disagrees. As these materials are applied outside and hence subject to storm events, they are significant sources of pollutants in storm water discharges whether applied in residential or industrial settings. By providing this information in the permit application the permit writer will be able to determine whether such activity is associated with industrial activity and the subject of appropriate permit conditions. Nominal or incidental application of these materials at industrial facilities and non-detects in sampling of storm water discharges for the permit application will result, in most cases, in these materials not being addressed specifically in storm water permits.

Today's rule also requires that permit applicants for storm water discharges associated with industrial activity certify that all of the outfalls covered in the permit application have been tested or evaluated for non-storm water discharges which are not covered by an NPDES permit. (The applicant need not test for nonstorm water if the certification of the plant storm water discharges can be evaluated through the use of schematics or other adequate method). Section 405 of the WQA added section 402(p)(3)(B)(ii) to the CWA to require that permits for municipal separate storm sewers effectively prohibit non-storm water discharges to the storm sewer system. As discussed in part VI.F.7.b of today's preamble, untreated non-storm water discharges to storm sewers can create severe, widespread contamination problems and removing such discharges presents opportunities for dramatic improvements in the quality of such discharges. Although section 402(p)(3)(B)(ii) specifically addresses municipal separate storm sewers, EPA believes that illicit non-storm water discharges are as likely to be mixed with storm water at a facility that discharges directly to the waters of the United States as it is at a facility that discharges to a municipal storm sewer. Accordingly, EPA feels that it is appropriate to consider potential non-storm water discharges in permit applications for storm water discharges associated with industrial activity. The certification requirement would not apply to outfalls where storm water is intentionally mixed with process waste water streams which are already identified in and covered by a permit.

This rulemaking requires applicants for individual permits to submit known information regarding the history of significant spills at the facility. Several commenters indicated that the extent to which this information is required should be modified. One commenter stated that the requirement should be limited to those spills that resulted in a complaint or enforcement action. EPA disagrees. EPA believes that significant spills at a facility should generally include releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (*see* 40 CFR 110.10 and 40 CFR 117.21) or section 102 of CERCLA (*see* 40 CFR 302.4). Such a requirement is consistent with these regulations and the perception that such spills are significant enough to mandate the reporting of their occurrence. Some commenters stated that industries have already submitted this information in other contexts and should not be required to have to do it again. For the same reason another commenter felt that submittal of this information represents a waste of manpower and resources. EPA disagrees that requiring this information is unduly burdensome. If this information has already been provided for another purpose it follows that it is readily available to the industrial applicant. Thus, the burden of providing this information cannot be considered undue. Furthermore, the permit authority will need to have this available in order to determine which drainage areas are likely to generate storm water discharges associated with industrial activity, evaluate pollutants of concern, and develop appropriate permit conditions. However, to keep this information requirement within reasonable limits and limited to information already available to individual facilities, EPA has declined to expand the reporting requirements to spills of other materials, such as food as one commenter has suggested. However, EPA has decided to add raw materials used in food processing or production to the list of significant materials. Materials such as these may find their way into storm water discharges in such quantities that serious water quality impacts occur. These materials may find there way into storm water from transportation vehicles carrying materials into the facility, loading docks, processing areas, storage areas, and disposal sites.

One commenter urged that any information requested should be limited to a period of three years, which is the general NPDES records retention requirement under 40 CFR 122.21(p) and 40 CFR 112.7(d)(8). EPA agrees with this comment and has limited historical information requirements to the 3 years prior to the date the application is submitted. In this manner this regulation will be consistent with records keeping practices under the NPDES and Oil Spill Prevention programs, except sludge programs.

The December 7, 1988, proposal required the applicant to submit a description of each past or present area used for outdoor storage or disposal of significant materials. One commenter felt that the definition of significant material was too imprecise. EPA disagrees that the language should be made more precise by delineating every conceivable material that may add pollutants to storm water. Rather the definition is broad, to encourage permit applicants to list those materials that have the potential to cause water quality impacts. Stating what materials are addressed in meticulous detail may result in potentially harmful materials remaining unconsidered in permits. However, EPA has decided to add "fertilizers, pesticides, and raw materials used in the production or processing of food" to the definition in response to the comment of one State authority that such materials need to be accounted for due to their potential danger to storm water discharge quality. This same commenter recommended that "hazardous chemicals" should be added. EPA agrees, and will delineate those chemicals as "hazardous substances" which are designated under section 101(14) of CERCLA. Further clarification has been added by requiring the listing of any chemical the facility is required to report pursuant to section 313 of title III of SARA.

Another commenter felt that EPA should not require information of past storage of significant materials. EPA agrees that this proposed requirement is overbroad and has limited the time frame to those materials that were stored in areas 3 years or fewer from the date of the permit application. The 3-year limit is consistent with other Agency reporting requirements as discussed above.

One commenter questioned EPA's proposal not to provide for a waiver from the requirement to submit quantitative data if the applicant can demonstrate that it is unnecessary for permit issuance. Another commenter said that a waiver is inappropriate. EPA believes relevant quantitative data are essential to the process, but in this rulemaking the number of pollutants that must be sampled and analyzed is reduced compared to previous regulations. The proposed requirements for quantitative data are limited to pollutants that are appropriate for given

site-specific operations, thereby making a waiver unnecessary.

Although the concept of a waiver is attractive because of the perceived potential reduction in burdens for applicants, EPA believes that because the storm water discharge testing requirements have already been streamlined, a waiver would not in practice provide significant reductions in burden for either applicants or permit issuing authorities. Requirements to provide and verify data demonstrating that a waiver is appropriate for a storm water discharge may prove to be more of a burden to the applicant and the permitting authorities. Establishing such a waiver procedure would be administratively complex and time-consuming for both EPA and the applicants, without any justifiable benefit. Therefore, this rulemaking does not include a waiver provision.

In response to one commenter, EPA wishes to emphasize that if a facility has zero storm water discharge because it is discharging to a detention pond only, a permit application is not required. Only those discharges to the waters of the United States or municipal systems need submit notifications, individual or group permit applications, or notices of intent where applicable. However, if the detention pond overflows or the discharger anticipates that it may overflow, then a permit application should be submitted.

Two commenters agreed with EPA's proposed requirement to have a description of past and present material management practices and controls. EPA believes that this is important information directly relating to the quality of storm water that can be expected at a particular facility and this requirement is retained in today's rule. However, as with other historical information requirements, EPA is limiting past practices to those that occurred within three years of the date that the application is submitted. One commenter argued that past practices should not be considered unless there is evidence that past practices cause current storm water quality problems. EPA anticipates that the information submitted by the applicant will be used to make this determination and that appropriate permit conditions can be developed accordingly.

One commenter requested clarification on the certification requirement that the data and information in the application is true and complete to the best of the certifying officer's knowledge. This is a fundamental and integral part of all NPDES permit applications. It essentially requires the signatory to assure the permit writer, based upon his or her personal knowledge, that the information has been submitted without a negligent, reckless, or purposeful misrepresentation. EPA intends to interpret this requirement in the same manner for storm water applications as other applications.

4. Group Applications

Today's final rule provides some industries with the option of participating in a group application, in lieu of submitting individual permits. There are several reasons for the group application. First, the group application procedure provides adequate information for issuing permits for certain classes of storm water discharges associated with industrial activity. Second, numerous commenters supported the concept of the group application as a way to reduce the costs and administrative burdens associated with storm water permit applications. Third, group applications will reduce the burden on the regulated community by requiring the submission of quantitative data from only selected members of the group. Fourth, the group application process will reduce the burden on the permit issuing authority by consolidating information for reviewing permit applications and for developing general permits suited to certain industrial groups. Where general permits are not appropriate or cannot be issued, a group application can be used to develop model individual permits, which can significantly reduce the burden of preparing individual permits.

As noted above in today's preamble, EPA intends to promulgate a general permit that will cover many types of industrial activity. Industrial dischargers eligible for such permits will generally be required to seek coverage by submittal of a notice of intent. Facilities that are ineligible for coverage under the general permit will be required to submit an individual permit application or submit a group application. The group application process promulgated today will serve as an important component to implement Tier III of EPA's industrial storm water permitting strategy discussed above. The general permit which EPA intends to promulgate in the near future shall set forth what types of facilities are eligible for coverage.

Some commenters criticized the group application procedure as an abdication of EPA's responsibility to effectively deal with pollutants in storm water discharges. One commenter stated that every facility subject to these regulations should be required to submit quantitative data. In response EPA believes, as do numerous commenters, that the group application procedure is a legitimate and effective way of dealing with a large volume of currently uncontrolled discharges. The only difference between the group application procedure and issuing individual permits based on individual applications is that the quantitative data requirements from individual facilities will be less if certain procedures are followed. EPA is convinced that marked improvements in the process of issuing permits will be achieved when these procedures are followed. Where the storm water discharge from a particular facility is identified as posing a special environmental risk, it can be required to submit individual applications and therefore separate quantitative data. It should also be noted that submittal of a group application does not exempt a facility from submitting quantitative data on its storm water discharge during the term of the permit.

The final rule refines and clarifies some of the requirements of the group application approach set forth in the December 7, 1988 proposal. Several commenters requested that EPA add a provision which would allow a facility that becomes subject to the regulations to "add on" to a group application after that group application has already been submitted. One commenter indicated that some trade associations are prohibited from engaging in an activity which would not apply to all its members, and that an "add on" provision was needed in the event such a prohibition was invoked. Another commenter noted that where a group is particularly large, for example one that consists of several thousand members, that it would be a logistical feat to ensure that all facilities eligible as members of the group are properly identified and listed on the application within the 120 day deadline for submitting part 1A of the application.

EPA believes that a group applicant should have a limited ability to add facilities to the group after part 1A has been submitted and that a provision which allows a group or group representative an unbridled ability to "add on" is impractical for a number of reasons. First, 10% of the facilities must submit quantitative data. Adding facilities after the group has been formed and approved would change the number of facilities that have to submit quantitative data on behalf of the group. This would result in an unwarranted administrative burden on the reviewing authority, which is in the position of having to examine the quantitative data and determine the appropriateness of group members (and those that are

required to submit quantitative data) within 2 months of receiving part 1 of the group application. Further, during the permit application process permitting authorities will be developing permit conditions for an identified and pre-determined group of facilities. Allowing potentially significant numbers of permit applicants to suddenly inject themselves into a group application could unnecessarily hamper or disrupt the timely development of general and model permits. In addition, if a facility were "added on" the number of facilities having to submit quantitative data may drop below 10%. Thus the facility desiring to "add on" may be put in the position of having to submit the quantitative data themselves, which would clearly defeat the purpose of being a part of the group application.

Nevertheless, EPA has added a provision to 122.26(e) which enables facilities to add on to a group application at the discretion of the EPA's Office of Water Enforcement and Permits, and upon a showing of good cause by the group applicant. For the reasons noted above, EPA anticipates this provision will be invoked only in limited cases where good cause is shown. Facilities not properly identified in the group application, and which cannot meet the good cause test will be required to submit individual permit applications. EPA will advise such facilities within 30 days of receiving the request as to whether the facility may add on.

However, the "add on" facility must meet the following requirements: The application for the additional facility is made within 15 months of the final rule; and the addition of the facility does not reduce the percentage of the facilities that are required to submit quantitative data to below 10% unless there are over 100 facilities that are submitting quantitative data. Approval to become part of a group application is obtained from the group or the trade association and is certified by a representative of the group; approval for adding on to a group is obtained from the Office of Water Enforcement and Permits.

Several commenters stated that the application requirements for groups are so burdensome that the advantages of the process are undermined. These concerns are addressed in greater detail below. Among the requirements which commenters objected are the requirements to list every group member's company by name and address. EPA is convinced that a condition precedent to approving a group application is at least identifying the members of the group. Without such information it would be impossible to determine if all the facilities are sufficiently similar. EPA disagrees that industries will be dissuaded from using the group application process because the advantages of the process are undermined. Although commenters perceived many burdens associated with individual permit applications, by far the most significant burden identified by the comments is the requirement for obtaining and submitting quantitative data. The group application significantly reduces this burden by requiring only10% of the facilities to submit quantitative data if the number in the group is over 100. If the number in the group is over 1000, then only 100 of the facilities need submit quantitative information. If group applicants develop cost sharing procedures to reduce the financial and administrative burdens of submitting quantitative data, it is evident that utilizing the group application could save industries as much as 90% on the most economically burdensome aspect of the application.

Several commenters perceived that the group application procedure did not offer them significant savings because under the proposal their particular industry would only be required to test for COD, BOD5, pH, TSS, oil and grease, nitrogen, and phosphorous. These commenters stated that sampling for these pollutants is not particularly expensive. EPA believes that even if a group is required only to submit minimal quantitative data on particular pollutants, substantial savings can accrue to a particular industry if the group has many members. This is particularly true when the number of outfalls to be sampled, the information on storm events, and flow measurements are factored into the cost analysis. An additional benefit for members of the group as well as for permit issuing agencies is that the process of developing a permit, including drafting and responding to public comments on the permit, is consolidated by the group application process. Accordingly, it is less resource intensive for the group to work with permit issuance authorities to develop well founded permit conditions.

One commenter raised a concern about the situation where one of the facilities that is designated for submitting quantitative data drops out of the group. If this happened, then another facility would have to submit quantitative data. In response, EPA notes that one approach would be for the group to have one or two more facilities submit quantitative data than needed to avoid problems from such a departure or to account for new additions to the group. Certainly this issue goes directly to the facility selection process which is a critical component of the group application; the facilities need to be carefully selected and reviewed by the group to prevent such difficulties.

Several comments indicated a confusion over what facilities are eligible to take advantage of the group application procedure. Any industry or facility that is required to submit a storm water permit application under these regulations is eligible to participate in a group application. However, whether a facility can obtain a storm water permit under a group application procedure will depend upon whether that facility is a member of the same effluent guideline subcategory, or is sufficiently similar to other members of the group to be appropriate for a general permit or individual permit issued pursuant to the group application Accordingly, group applications are not limited to national trade associations. The agency believes that the language in § 122.26(c)(2) adequately addresses these concerns. The process does not prohibit a particular company with multiple facilities from filing a group application as long as those facilities are sufficiently similar.

One commenter expressed concern that a single company would not be able to take advantage of the group application benefits unless the company had more than ten facilities. Under such circumstances the company would have to become integrated with a larger group of facilities owned by other companies in order to take advantage of the benefits afforded by the group application procedure. In response, the Agency is providing for a group application of between four and ten members, however at least half the facilities must submit data. One commenter stated that the number of facilities required to submit quantitative data should be determined on a case by case basis. EPA believes that 10 percent for groups with over ten members will be easiest to implement for both industry and EPA, and will ensure that adequate representative quantitative data are obtained so that meaningful determinations of facility similarity can be made and appropriate permit conditions in general or model permits can be developed.

Another commenter suggested that one facility with a multitude of storm water discharge points should be able to use the group permit application to reduce the amount of quantitative data

that it is required to submit. This is an accurate observation but only to the extent that the facility combines with several other facilities to form a group, in which case only 10% of the facilities need submit quantitative data. The group application procedure in today's rule is designed for use by multiple facilities only. However, if an individual facility has 10 outfalls with ten substantially identical effluents the discharger may petition the Director to sample only one of the outfalls, with that data applying to the remaining outfalls. See § 122.21(g)(7). Thus, existing authority already allows for a "group-like" process for sampling a subset of storm water outfalls at a single facility.

Concern was expressed that the spill reporting requirement from each facility in part 1B would preclude any group from demonstrating that the facilities sampled are "representative," because the incidence of past spills is very site-specific. EPA notes that since it has dropped the part 1B requirements for other reasons discussed below, this comment is now moot.

Numerous commenters noted that if a facility is part of a group application and is subsequently rejected as a group applicant, such an entity would not have a full year to submit an individual permit application. EPA agrees that this is a significant concern. Accordingly, those facilities that apply as a member of a group application will be afforded a full year from the time they are notified of their rejection as a member of the group to file an individual application. EPA notes that it intends to act on group application requests within 60 days of receipt; thus this approach will only provide facilities that are rejected from a group application a short extension of the deadline for other individual applications.

One commenter complained that the cost of defending a group's choice of representative facilities may exceed the cost of submitting an individual permit application, thereby reducing the incentive to apply as group. The agency anticipates that the selection process will be one open to negotiation between the affected parties and one that will end in a mutually satisfactory group of facilities. It is the intent of EPA to reduce the costs of submitting a permit application as much as possible, while providing adequate information to support permitting activities.

Another commenter argued that the use of model permits will create a disincentive for participating in a group because model permits may be used by the permit issuing authority to issue individual permits for discharges from similar facilities that did not participate in the group application. EPA does not agree. The benefit of applying as a group applicant is to take advantage of reduced representative quantitative data requirements. This incentive will exist regardless of whether or how model permits are used. Further, technology transfer can occur during the development of permits based on individual applications as well as those based on group applications.

One commenter suggested moving some of the facility specific information requirements of part 1 of the group application to part 2 of the group application in order to provide more incentive to apply as a group. EPA has considered this and believes such a change would be inappropriate. Part 1 information will be used to make an informed decision about whether individual facilities are appropriate as group members and appropriate for submitting representative quantitative data. Furthermore, information burdens from providing site specific factors in part 1 is relatively minimal, and the information requirements in the proposed part 1B application have been eliminated.

One commenter suggested that trade associations develop model permits since they have the most knowledge about the characteristics of the industries they represent. As noted above, EPA expects that the industries and trade associations will have input, through the permit application process, as to how permit conditions for storm water discharges are developed. While the applicant can submit proposed permit conditions with any type of application, EPA however cannot delegate the drafting of model permits to the permittees. EPA is developing and publishing guidance in conjunction with this rulemaking for developing permit conditions.

One commenter suggested that new dischargers should be able to take advantage of general permits developed pursuant to group applications. As with other general permits, EPA anticipates that such discharges will be able to fall within the scope of a general permit based on a group application where appropriate.

One commenter stated that the group application does not benefit municipalities since there is no requirement for industrial discharges through municipal sewers to apply for a permit. As noted in a previous discussion, industrial discharges through municipal sewers must be covered by an NPDES permit. Such facilities may avail themselves of the group application procedure. Also, municipalities are not precluded from developing a group application procedure under their management plan for industries that discharge into their municipal system, in order to streamline developing controls for such industries.

One industry wanted clarification that facilities located within a municipality would be eligible to participate in a group application. All industrial activities required to submit an individual permit are entitled to submit as part of group application, except those with existing NPDES permits covering storm water. Those facilities that discharge through a municipal separate storm sewer systems required to submit an individual application (because they do not fall within a general permit) are not precluded from using the group application procedure if appropriate.

Other municipalities expressed confusion over the industrial group application concept. The following responds to these comments. First, municipalities are not eligible for participation in a group application because the group application process is designed for industrial activities. Sampling requirements for municipal permit applications are already limited to a small subset of the outfalls from the system, as discussed below. Furthermore, permits for municipal separate storm sewer systems will be issued on a system-wide or jurisdiction-wide basis, rather than individually for each outfall. Thus, today's regulation already incorporates a "grouplike" permit application process for municipalities. Furthermore, it is highly unlikely that various municipal storm sewer systems would be "substantially similar" enough to justify group treatment in the same way as industrial facilities. In response to another comment, this regulation does not directly give the municipality enforcement power over members of an industrial group who may be discharging through its system. Only the permitting authority and private citizens and organizations (including the municipality acting in such a capacity) will have enforcement power over members of the group once permits are issued to those members.

One commenter believed that the States with authorized NPDES programs rather than EPA should establish permit terms for permits based on group applications. In response to this comment, EPA wishes to clarify its role in the group application process. Group applications will be submitted to EPA headquarters where they will be reviewed and summarized. The

summaries of the group application will be distributed to authorized NPDES States. EPA wishes to emphasize that NPDES States are not bound by draft model permits developed by EPA. States may adopt model permits for use in their particular area, making adjustments for local water quality standards and other regional characteristics. Where general permit coverage is believed to be inappropriate, facilities may be required to apply for individual permits. One commenter objected to the group application procedure because it is not consistent with existing Federal permitting procedures, which will lead to confusion in the regulated community. The agency disagrees with this assessment. The group application is a departure from established NPDES program procedures. However, the comments, when viewed in their entirety, reflect widespread support from the regulated community for a group application procedure. Further, the comments reflect that those affected by this rulemaking understand the components of the group application and the procedures under which permits will be obtained pursuant to the group application.

One commenter expressed concern regarding how BAT limits for groups of similar industries will be developed. Technology based limits will be developed based on the information received from the group applicants. If the group applicants possess similar characteristics in terms of their discharge, BAT/BCT limitations and controls will be developed accordingly for those members of the group. If the discharge characteristics are not similar then applying industries are not appropriate for the group.

One commenter has suggested that the proposed group application is too complex with regard to the part 1A, part 1B, and part 2 group application requirements and that EPA should repropose these provisions. As discussed below, EPA has simplified the industrial group application requirements by eliminating the part 1B application. Thus, reproposal is unnecessary.

One commenter criticized the group application concept as not achieving any type of reduction in administrative burden for NPDES States. EPA disagrees with this assessment. If industries take advantage of the group application procedure, EPA will have an opportunity to review information describing a large number of dischargers in an organized manner. EPA will perform much of the initial review and analysis of the group application, and provide NPDES States with summaries of the applications thereby reducing the burden on the States. Furthermore, the procedure encourages a potentially large number of facilities to be covered by a general permit, which will clearly reduce the administrative burden of issuing individual permits.

The final rule establishes a regulatory procedure whereby a representative entity, such as a trade association, may submit a group application to the Office of Water Enforcement and Permits (OWEP) at EPA headquarters, in which quantitative data from certain representative members of a group of industrial facilities is supplied. Information received in the group application will be used by EPA headquarters to develop models for individual permits or general permits. These model permits are not issued permits, but rather they will be used by EPA Regions and the NPDES States to issue individual or general permits for participating facilities in the State. In developing such permits, the Region or NPDES State will, where necessary, adapt the model permits to take into account the hydrological conditions and receiving water quality in their area. One commenter expressed the view that having this procedure managed by EPA headquarters would cause delays and it should be delegated to the States and Regions. EPA disagrees that delay will ensue using this procedure. Furthermore, consistency in development of model and general permits can be achieved if application review is coordinated at EPA headquarters.

a. Facilities Covered. Under this rule the group application is submitted for only the facilities specifically listed in the application and not necessarily for an entire industry. The facilities in the group application selected to do sampling must be representative of the group, not necessarily of the industry.

Facilities that are sufficiently similar to those covered in a general permit (issued pursuant to a group application) that commence discharging after the general permit has been issued, must refer to the provisions of that general permit to determine if they are eligible for coverage. Facilities that have already been issued an individual permit for storm water discharges will not be eligible for participation in a group application. Several commenters believed that this restriction is inequitable since they have experienced the administrative burden of submitting a permit application. EPA disagrees. Industries that have already obtained a permit for storm water discharges have developed a storm water management program, engaged in the collection of quantitative data, and possess familiarity and experience with submitting storm water permit applications. The Agency sees no point to instituting an entirely new permit application process for facilities that have storm water permits issued individually. It makes little sense for these industries to be involved with submitting another permit application before their current permit expires.

As noted above, once a general permit has been issued to a group of dischargers, a new facility may request that they be covered by the general permit. The permitting authority can then examine the request in light of the general permit applicability requirements and determine whether the facility is suitable or not.

b. Scope of Group Applications. Numerous comments were received on how facilities should be evaluated as members of a group application. Several commenters stated that effluent limitation guideline subcategories are not relevant to pollutants found in storm water, but rather to the facility's everyday activities, and therefore similarity should be based on each facility's discharge or the similarity of pollutants expected to be found in a facility's discharge. Other commenters felt that similarity of operations at facilities should be the criteria. Others, believed that an examination of the facility's impact on storm water quality should be the applied criteria. Other commenters suggested that EPA provide more guidance as to how broadly groups can be defined and that a failure to do so would discourage facilities from going to the trouble and expense of entering into the group application process. Some commenters were concerned that facilities would be rejected as a group because of variations in processes and process wastewater characteristics.

EPA does not agree that effluent limitation guideline subcategories are inappropriate as a method for determining group applications. EPA guideline subcategories are functional classifications, breaking down facilities into groups, for purposes of setting effluent limitations guidelines. The use of EPA subcategories will save time for both applicants and permitting authorities in determining whether a particular group is appropriate for a group application. Furthermore, EPA believes that this method of grouping provides adequate guidance for determining what facilities are grouped together. Establishing groups on the extent to which a facility's discharge

affects storm water quality would not provide applicants with sufficient guidance as to the appropriateness of individual industries for group applications and would not provide information needed to draft appropriate model permit conditions for potentially different types of industries, industrial processes, and material management practices.

However, EPA recognizes that the subcategory designations may not always be available or an effective methodology for grouping applicants. Also, there are situations where processes that are subject to different subcategories are combined. EPA agrees that the group application option should be flexible enough to allow groups to be created where subcategories are too rigid or otherwise inappropriate for developing group applications or where facilities are integrated or overlap into other subcategories. For these reasons, this rulemaking does not limit the submission to EPA subcategories alone, but rather allows groups to be formed where facilities are similar enough to be appropriate for general permit coverage.

In determining whether a group is appropriate for general permit coverage, EPA intends that the group applicant use the factors set forth in 40 CFR 122.28(a)(2)(ii), the current regulations governing general permits, as a guide. If facilities all involve the same or similar types of operations, discharge the same types of wastes, have the same effluent limitation and same or similar monitoring requirements, where applicable, they would probably be appropriate for a group application. To that extent, facilities that attempt to form groups where the constituent makeup of its process wastewater is dissimilar may run the risk of not being accepted for purposes of a group application.

Some commenters expressed the view that categories formed using general permit factors are too broad or that the language is too vague. One commenter expressed the view that the standard is too subjective and that permit writers will be evaluating the similarity of discharge too subjectively, while other commenters felt that the criteria should be broad and flexible. Other commenters stated that the effluent guideline subcategory or general permit coverage factors are not related to storm water discharges, because much of the criteria are based upon what is occurring inside the plant, rather than activities outside of the plant. EPA believes that these criteria are reasonable for defining the scope of a group application. EPA disagrees that the procedure, which is adequate for the issuance of general permits, is inadequate for the development of a group application. EPA believes that the activities inside a facility will generally correspond to activities outside of the plant that are exposed to storm events, including stack emissions, material storage, and waste products. Furthermore, if facilities are able to demonstrate their storm water discharge has similar characteristics, that is one element in the analysis needed for establishing that the group is appropriate. EPA disagrees that the criteria are too vague. If facilities are concerned that general permit criteria is insufficient guidance, then subcategories under 40 CFR subchapter N should be used. EPA believes that the program will function best if flexibility for creating groups is maintained.

If a NPDES approved State feels that a tighter grouping of applicants is appropriate individual permit applications can be requested from those permit applicants. One commenter indicated that it was not clear whether the group application procedure could be used for all NPDES requirements. EPA would clarify that the group application is designed only to cover storm water discharges from the industrial facilities identified in § 122.26(b)(14).

As noted above, EPA wishes to clarify that facilities with existing individual NPDES permits for storm water are not eligible to participate in the group application process. From an administrative standpoint EPA is not prepared to create an entirely different mechanism for permitting industries which already have such permits.

c. Group Application Requirements. The group application, as proposed, included the following requirements in three separate parts. Part 1A of a group application included: (A) Identification of the participants in the group application by name and location; (B) a narrative description summarizing the industrial activities of participants; (C) a list of significant materials stored outside by participants; and (D) identification of 10 percent of the dischargers participating in the group application for submitting quantitative data. A proposed part 1B of the group application included the following information from each participant in the group application: (A) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) and related information; (B) an estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall and a narrative description of significant materials; (C) a certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested for the presence of non-storm water discharges; (D) existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility; (E) a narrative description of industrial activities at the facility that are different from or that are in addition to the activities described under part 1A; and (F) a list of all constituents that are addressed in a NPDES permit issued to the facility for any of non-storm water discharge. Part 2 of a group application required quantitative data from 10 percent of the facilities identified.

Some commenters felt that spill histories, drainage maps, material management practices, and information on significant materials stored outside are too burdensome or meaningless for evaluating similarity of discharges among group applicants. Several commenters stated that such requirements where the group may consist of several thousand facilities were impractical and would not assist EPA in developing model permits. Many commenters insisted that the requirements imposed in part 1B would effectively discourage use of the group application procedure. EPA agrees in large part with these comments. After reevaluating the components of part 1B, and the entire rationale for instituting the group application procedure, EPA has decided to excise part 1B from the requirements, and rely on part 1A and part 2 for developing appropriate permit condition. Where appropriate, EPA may require facilities to submit the information, formerly in part 1B, during the term of the permit. In other cases, EPA will establish which facilities must submit individual permit applications where more site specific permits are appropriate.

Under the revised part 1 and part 2, EPA will receive information pertaining to the types of industrial activity engaged in by the group, materials used by the facilities, and representative quantitative data. EPA can use such information to develop management practices that address pollutants in storm water discharges from such facilities. For most facilities, general good housekeeping or management practices will eliminate pollutants in storm water. Such requirements can be further refined by determining the nature of a group's industrial activity and by obtaining information on material used at the facility and representative quantitative data from a

percentage of the facilities. Thus, EPA is confident that model permits and general permits can be developed from the information to be submitted under part 1 and part 2.

One commenter felt that more guidance on what makes a facility representative for sampling as part of a group is needed. In response, the Agency believes the rule as currently drafted provides adequate notice.

Another commenter asked how much sampling needed to be done and how much monitoring will transpire over the life of the permit for members of a group. This will vary from permit to permit and will be determined in permit proceedings. This rulemaking only covers the quantitative data that is to be submitted in the context of the group permit application.

One commenter indicated that because of the amount of diversity in the operations of a particular industry, obtaining a sample that could be considered representative would be extremely difficult. EPA recognizes that obtaining representative quantitative data through the group application process will prove to be difficult; however, EPA has sought to minimize these perceived problems. Under the group application concept, industries must be sufficiently similar to qualify. Industries which have significantly different operations from the rest of the group that affects the quality of their storm water discharge may be required to obtain an individual permit. Use of the nine precipitation zones will enable the data in the permit application to be more easily analyzed and patterns observed on the basis of hydrology and other regional factors. How EPA will evaluate the representativeness of the sample is discussed below.

Several commenters asked why the precipitation zone of group members is relevant to the application. The need to identify precipitation zones arises because the amount of rainfall is likely to have a significant impact on the quality of the receiving water. According to an EPA study (Methodology for Analysis of Detention Basins for Control of Urban Runoff Quality; Office of Water, Nonpoint Source Branch, Sept. 1986) the United States can be divided into nine general precipitation zones. These zones are characterized by differences in precipitation volume, precipitation intensity, precipitation duration, and precipitation intervals. Industrial facilities that seek general permits via the group application option may show significantly different loading rates as a result of these regional precipitation differences. As an example, precipitation in Seattle, Washington, located in Zone 7, approaches the mean annual storm intensity of .024 inches/hour with a mean annual storm duration of 20 hours for that Zone. In contrast, precipitation in Atlanta, Georgia, located in Zone 3 approaches the mean annual storm intensity of .102 inches/hour and a mean storm duration of 6.2 hours for that Zone. Atlanta, receives on the average four times more precipitation per hour with storms lasting one-third as long. As a result of these differences, if identical facilities within a group application were situated in each of these areas, their storm water discharges would likely exhibit different pollutant characteristics. Accordingly, data should be submitted from facilities in each zone.

One commenter felt that the EPA should abandon or modify its rainfall zone concept, because storm water quality will depend more on what materials are used at the facility than rainfall. EPA disagrees. Because storm water loading rates may differ significantly as a result of regional precipitation differences, it is necessary that for each precipitation zone containing representatives of a group application, the group must provide samples from some of those representatives. In comments to previous rulemakings it was argued that the amount of rainfall will affect the degree of impact a storm water discharge may have on the receiving stream.

One commenter stated that the precipitation zones illustrated in appendix E of the proposed rulemaking do not adequately reflect regional differences in precipitation and that in some cases the zones cut through cities where there are concentrations of industries without differences in their precipitation patterns. The rainfall zone map is a general guide to determining what areas of the country need to be addressed when determining representative rainfall events and quantitative data. When dealing with rainfall on a national scale, it is near impossible to make generalized statements with a great deal of accuracy. In the case of rainfall zones, rainfall patterns may be similar for facilities in close proximity to each other but none the less in different rainfall zones. In response, EPA has created these zones to reflect regional rainfall patterns as accurately as possible. Because of the variable nature of rainfall such circumstances are sure to arise. However, in order to obtain a degree of representativeness EPA is convinced that the use of these rainfall zones as described is appropriate for the submittal of group applications and the quantitative data therein.

The second and third requirements of part 1 of the group application instruct the applicant to describe the industrial activity (processes) and the significant materials used by the group. For the significant materials listed, the applicant is to discuss the materials management practices employed by members of the group. For example, the applicant should identify whether such materials are commonly covered, contained, or enclosed, and whether storm water runoff from materials storage areas is collected in settling ponds prior to discharge or diverted away from such areas to minimize the likelihood of contamination. Also, the approximate percentage of facilities in the group with no practices in place to minimize materials stored outside is to be identified.

EPA considers that the processes and materials used at a particular facility may have a bearing on the quality of the storm water. Thus, if there are different processes and materials used by members of the group, the application must identify those facilities utilizing the different processes and materials, with an explanation as to why these facilities should still be considered similar.

One commenter felt that a facility should be able to describe in its permit application the possibility of individual materials entering receiving waters. EPA supports the applicant adding site specific information which will assist the permit writer making an informed decision about the nature of the facility, the quality of its storm water discharge, and appropriate permit conditions.

The fourth element of part 1 of the group application is a commitment to submit quantitative data from ten percent of the facilities listed. EPA proposed that there must be a minimum of ten and a maximum of one hundred facilities within a group that submit data. Comments reflected some dissatisfaction with this requirement. Some commenters asserted that ten percent was too high a number and would discourage group applications, while one commenter suggested a lesser percentage would be appropriate where the group can certify that facilities are representative. One commenter suggested that EPA have the discretion to allow for a smaller percentage. Several commenters argued that EPA should be satisfied with fewer than ten percent because EPA often relies on data from less than ten percent of the plants in a subcategory when promulgating effuent guidelines and that EPA should rely on data collection goals

with affected groups as was done in the 1985 storm water proposal. Other commenters pointed out that an anomalous situation could arise where the group was small and facilities were scattered throughout the precipitation zones. For example, if a group consisted of 20 members where a minimum of ten facilities had to submit samples, and two or more members were in each precipitation zone; a total of 18 facilities (90% of the group) would have to submit quantitative data. EPA believes that there must be a sufficient number of facilities submitting data for any patterns and trends to be detectable. However, in light of these comments EPA has decided to modify the language in § 122.26(c) to allow 1 discharger in each precipitation zone to submit quantitative data where 10 or fewer of the group members are located in a particular precipitation zone. EPA believes, however, that one hundred facilities would in most cases be sufficient to characterize the nature of the runoff and thus 100 should remain the maximum. If the data are insufficient, EPA has the authority to request more sampling under section 308 of the CWA.

One commenter suggested that the ten facility cutoff was unreasonable, and that instead of cutting off the group at ten, allow a smaller number in the group and allow the facilities to sample ten percent of their outfalls instead. EPA agrees, in part, and will allow groups of between four and ten to submit a group application. However, the ten percent rule would not be effective in such cases. Therefore, at least half the facilities in a group of four to ten will be required to provide quantitative data from at least one outfall, with each precipitation zone represented by at least one facility.

For any group application, in addition to selecting a sufficient number of facilities from each precipitation zone, facilities selected to do the sampling should be representative of the group as a whole in terms of those characteristics identifying the group which were described in the narrative, i.e., number and range of facilities, types of processes used, and any other relevant factors. If there is some variation in the processes used by the group (40 percent of the group of food processors are canners and 60 percent are canners and freezers, for example), the different processes are to be represented. Also, samples are to be provided from facilities utilizing the materials management practices identified, including those facilities which use no materials management practices. The representation of these different factors, to the extent feasible, is to be roughly equivalent to their proportion in the group.

EPA wishes to emphasize that the provision that ten percent of the facilities need to submit quantitative data only applies to the permit application process. The general or individual permit itself may require quantitative data from each facility.

Submittal of Part 2 of the Group Application. As with part 1, part 2 of the Group Application would be submitted to the Office of Water Enforcement and Permits, in Washington, DC. If the information is incomplete, or simply is found to be an inadequate basis for establishing model permit limits, EPA has the authority under section 308 of the Clean Water Act to require that more information be submitted, which may include sampling from facilities that were part of the group application but did not provide data with the initial submission. If the group application is used by a Region or NPDES State to issue a general permit, the general permit should specify procedures for additional coverage under the permit.

If a part 2 is unacceptable or insufficient, EPA has the option to request additional information or to require that the facilities that participated in the group application submit complete individual applications (e.g. facilities that have submitted Form 1 with the group application may be required to submit Form 2F, or facilities which have submitted complete Form 1 and Form 2F information in the group application generally would not have to submit additional information).

Once the group applications are reviewed and accepted, EPA will use the information to establish draft permit terms and conditions for models for individual and general permits. NPDES approved States and EPA regional offices will continue to be the permit-issuing authority for storm water discharges. The NPDES approved States accepting the group application approach and the EPA Regions may then take the model permits and adapt them for their particular area, making adjustments for local water quality standards and other localized characteristics, and making determinations as to the need for an individual storm water permit where general permit coverage is felt to be inappropriate. Permits would be proposed by the Region or NPDES approved State in accordance with current regulations for public comment before becoming final. In NPDES States without general permit authority, or where an individual permit is deemed appropriate, the model permit can serve as the basis for issuing an individual permit.

The group application is an NPDES permit application just like any other and, as such, would be handled through normal permitting procedures, subject to the regulatory provisions applicable to permit issuance. Incomplete or otherwise inadequate submissions would be handled in the same manner as any other inadequate permit application. The permit issuing authority would retain the right to require submission of Form 1, Form 2C and Form 2F from any individual discharger it designates.

Some commenters offered other procedures for developing a group application procedure; however, these were frequently entirely different approaches or so novel that a reproposal would be required. One commenter suggested that those industries that are identified as being likely to pollute should be required to submit quantitative data. Numerous commenters contended that a generic approach for meeting the required information requirements for group applications would allow EPA to develop adequate general permits. EPA does not view these approaches as appropriate.

5. Group Application: Applicability in NPDES States

Many commenters expressed concern about how the group application procedure will work within the framework of an NPDES approved State. The relationship between EPA and the States that are authorized to administer the NPDES program, including implementation of the storm water program, is a complicated aspect of this rulemaking. Approved States (there are 38 States and one territory so approved) must have requirements that are at least as stringent as the Federal program; they may be more stringent if they choose. Authority to issue general permits is optional with NPDES States.

EPA has determined that ten percent of the facilities must provide quantitative data in the permit application as noted above. Furthermore, these applications are submitted to EPA headquarters. Consequently States, whether NPDES approved or not, are not in a position to reject or modify this requirement. Such States may determine the amount of sampling to be done pursuant to permit conditions. If they choose to issue general permits they may include such authority in their NPDES program and,

upon approval of the program by EPA, may then issue general permits. Within the context of the NPDES provisions of the CWA, if States do not have general permitting authority, then general permits are not available in those States.

In response to one comment, EPA does not have authority to issue general or individual permits to facilities in NPDES approved states. Today's rule provides a means for affected industries to be covered by general permits developed via the group application procedure as well as from general permits developed independently of the group application process. Accordingly, today's rule anticipates that most NPDES States will seek general permit issuance authority to implement the storm water program in the most efficient and economical way. Without general permit issuance authority NPDES States will be required to issue individual permits covering storm water discharges to potentially thousands of industrial facilities.

One commenter recommended that States with approved NPDES programs should be involved in determining what industries are representative for submitting quantitative data. EPA recognizes that States will have an interest in this determination and may possess insight as to the appropriateness of using some facilities. However, EPA may be managing hundreds of group applications and approving or disapproving them as expeditiously as possible. EPA believes that involving the States in this already administratively complex and time consuming undertaking would be counterproductive. In any event, NPDES approved States are not bound by the determinations of EPA as to the appropriateness of groups or the issuance of permits based on model permits or individual permits. However, States will be encouraged to use model permits that are developed by EPA. EPA will endeavor to design general and model permits that are effective while also adaptable to the concerns of different States. Again, States are able to develop more stringent standards where they deem it to be appropriate. There are currently seventeen States that have authority to issue general permits: Arkansas, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana, New Jersey, North Dakota, Oregon, Rhode Island, Utah, Washington, West Virginia and Wisconsin. As suggested in the comments, EPA is encouraging more States to develop general permit issuing authority in order to facilitate the permitting process.

One commenter advised that the rules should state that a NPDES approved State may accept a group application or require additional information. EPA has decided not to explicitly state this in the rule. However, this comment does raise some points that need to be addressed. Because the group application option is a modification of existing NPDES permit application requirements, the State is free to adopt this option, but is not required to. If the State chooses to adopt the group application and it does not have general permit authority, the group application can be used to issue individual permits. If an approved NPDES State chooses to not issue permits based on the group application, facilities that discharge storm water associated with industrial activity that are located in that State must submit individual applications to the State permitting authority. Before submitting a group application, facilities should ascertain from the State permitting authority whether that State intends to issue permits based upon a group application approved by EPA for the purpose of developing general permits. For facilities that discharge storm water associated with industrial activity which are named in a group application, the Director may require an individual facility to submit an individual application where he or she determines that general permit coverage would be inappropriate for the particular facility.

One commenter stressed that EPA should streamline the procedure for States desiring to obtain general permit coverage. EPA has, over the last year, streamlined this procedure and encourages States to take advantage of this procedure. EPA recommends that States consider obtaining general permit authority as a means to efficiently issue permits for storm water discharges. These States should contact the Office of Water Enforcement and Permits at EPA Headquarters as soon as possible.

6. Group Application: Procedural Concerns

One commenter claimed that the proposed group application process and procedures violated federal law. This commenter claimed that EPA was abrogating its responsibility by allowing a trade association to design a data collection plan in lieu of completing an NPDES application form designed by EPA, thus violating the Federal Advisory Committee Act. The commenter stated that EPA would be improperly influenced by special interests if trade associations were able to design their own storm water data gathering plans. The commenter further asserted that any decisions by EPA on the content of specific group applications would be rulemakings and thus subject to the provisions of the Administrative Procedure Act.

EPA disagrees with the comment that the group application violates the Federal Advisory Committee Act (FACA). FACA governs only those groups that are established or "utilized" by an agency for the purpose of obtaining "advice" or "recommendations." The group application option does not solicit or involve any "advice" or "recommendations." It simply allows submission of data by certain members of a group in accordance with specific regulatory criteria for determining which facilities are "representative" of a group. As such, the group application is merely a submission in accordance and in compliance with specific regulatory requirements and does not contain discretionary uncircumscribed "advice" or "recommendations" as to which facilities are representative of a group.

Thus, the determination of which facilities should submit testing data in accordance with regulatory criteria is little different from many other regulatory requirements where an applicant must submit information in accordance with certain criteria. For example, under 40 CFR 122.21 all outfalls must be tested except where two or more have "substantially identical" effluents. Similarly, quantitative data for certain pollutants are to be provided where the applicant knows or "has reason to believe" such pollutants are discharged. Both of these provisions allow the applicant to exercise discretion in making certain judgments but such action is circumscribed by regulatory standards. EPA further has authority to require these facilities to submit individual applications. In none of these instances are "recommendations" or "advice" involved. EPA also notes that it is questionable whether, in providing for group applications, it is "soliciting" advice or recommendations from groups or that such groups are being "utilized" by EPA as a "preferred source" of advice. See 48 FR 19324 (April 28, 1983). Furthermore, this data collection effort may be supplemented by EPA if, after review of the data, EPA determines additional data is necessary for permit issuance. Other information gathering may act as a check on the group applications received.

EPA also does not agree with this commenter's claim that the group application scheme represents an

impermissible delegation of the Administrator's function in violation of the CWA regarding data gathering. The Administrator has the broadest discretion in determining what information is needed for permit development as well as the manner in which such information will be collected. The CWA does not require every discharger required to obtain a permit to file an application. Nor does the CWA require that the Administrator obtain data on which a permit is to be based through a formal application process (see 40 CFR 122.21). For years "applications" have not been required from dischargers covered by general permits. EPA currently obtains much information beyond that provided in applications pursuant to section 308 of the CWA. This is especially true with respect to general permit and effluent limitations guidelines development. The group application option is simply another means of data gathering. The Administrator may always collect more data should he determine it necessary upon review of a groups' data submission. And, he may obtain such additional data by whatever means permissible under the Statute that he deems appropriate. Thus, it can hardly be said that by this initial data gathering effort the Administrator has delegated his data gathering responsibilities. In addition, since groups are required to select "representative" facilities, etc., in accordance with specific regulatory requirements established by the Administrator and because EPA will scrutinize part 1 of the group applications and either accept or reject the group as appropriate for a group application, no impermissible delegation has occurred. EPA will make an independent determination of the acceptability of a group application in view of the information required to be submitted by the group applicant, other information available to EPA (such as information on industrial subcategories obtained in developing effluent limitations guidelines as well as individual storm water applications received as a result of today's rule) and any further information EPA may request to supplement part 1 pursuant to section 308 of the CWA. Moreover, any concerns that a general permit may be based upon biased data can be dealt with in the public permit issuance process.

Finally, EPA also does not agree that the group application option violates the Administrative Procedures Act. Again, the group application scheme is simply a data gathering device. EPA could very well have determined to gather data informally via specific requests pursuant to section 308 of the CWA. In fact, general permit and effluent limitations guideline development proceed along these lines. It would make little sense if the latter informal data gathering process were somehow illegal simply because it is set forth in a rule that allows applicants some relief upon certain showings. In this respect, several of EPA's existing regulations similarly allow an applicant to be relieved from certain data submission requirements upon appropriate demonstrations. For example, testing for certain pollutants and or certain outfalls may be waived under certain circumstances. Most importantly, the operative action of concern that impacts on the public is individual or general permit issuance based upon data obtained. As previously stated, ample opportunity for public participation is provided in the permit issuance proceeding.

7. Permit Applicability and Applications for Oil and Gas and Mining Operations

Oil, gas and mining facilities are among those industrial sites that are likely to discharge storm water runoff that is contaminated by process wastes, toxic pollutants, hazardous substances, or oil and grease. Such contamination can include disturbed soils and process wastes containing heavy metals or suspended or dissolved solids, salts, surfactants, or solvents used or produced in oil and gas operations. Because they have the potential for serious water quality impacts, Congress recognized, throughout the development of the storm water provisions of the Water Quality Act of 1987, the need to control storm water discharges from oil, gas, and mining operations, as well as those associated with other industrial activities.

However, Congress also recognized that there are numerous situations in the mining and oil and gas industries where storm water is channeled around plants and operations through a series of ditches and other structural devices in order to prevent pollution of the storm water by harmful contaminants. From the standpoint of resource drain on both EPA as the permitting agency and potential permit applicants, the conclusion was that operators that use good management practices and make expenditures to prevent contamination must not be burdened with the requirement to obtain a permit. Hence, section 402(1)(2) creates a statutory exemption from storm water permitting requirements for uncontaminated runoff from these facilities.

To implement section 402(1)(2), EPA intends to require permits for contaminated storm water discharges from oil, gas and mining operations. Storm water discharges that are not contaminated by contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations will not be required to obtain a storm water discharge permit.

The regulated discharge associated with industrial activity is the discharge from any conveyance used for collecting and conveying storm water located at an industrial plant or directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Industrial plants include facilities classified as Standard Industrial Classifications (SIC) 10 through 14 (the mining industry), including oil and gas exploration, production, processing, and treatment operations, as well as transmission facilities. See 40 CFR 122.26(b)(14)(iii). This also includes plant areas that are no longer used for such activities, as well as areas that are currently being used for industrial processes.

a. Oil and Gas Operations. In determining whether storm water discharges from oil and gas facilities are "contaminated", the legislative history reflects that the EPA should consider whether oil, grease, or hazardous materials are present in storm water runoff from the sites described above in excess of reportable quantities (RQs) under section 311 of the Clean Water Act or section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). [Vol. 132 Cong. Rec. H10574 (daily ed. October 15, 1986) Conference Report].

Many of the comments received by EPA regarding this exemption focused on the concern that EPA's test for requiring a permit is and would subject an unnecessarily large number of oil and gas facilities to permit application requirements. Specific comments made in support of this concern are addressed below.

A primary issue raised by commenters centered on how to determine when a storm water discharge from an oil or gas facility is "contaminated", and therefore subject to the permitting program under section 402 of the CWA. Many of the comments received from industry representatives objected to the Agency's intent as expressed in the proposal to use past discharges as a trigger for submitting permit applications.

The proposed rule provided that the notification requirements for releases in excess of RQs established under the CWA and CERCLA would serve as a

basis for triggering the submittal of permit applications for storm water discharges from oil and gas facilities. As described in the proposal, oil and gas operations that have been required to notify authorities of the release of either oil or a hazardous substance via a storm water route would be required to submit a permit application. In other words, any facility required to provide notification of the release of an RQ of oil or a hazardous substance in storm water in the past would be required to apply for a storm water permit under the current rule. In addition, any facility required to provide notification regarding a release occurring from the effective date of today's rule forward would be required to apply for a storm water permit.

Commenters maintained that the use of historical discharges to require permit applications is inconsistent with the language and intent of section 402(1)(2) of the CWA, and relevant legislative history, both of which focus on present contamination. Requiring storm water permits based solely on the occurrence of past contaminated discharges, even where no present contamination is evident, would go beyond the statutory requirement that EPA not issue a permit absent a finding present contamination. Commenters also noted that the proposal did not take into account the fact that past problems leading to such releases may have been corrected, and that requiring an NPDES permit may no longer be necessary. The result of such a requirement, commenters maintained, would be an excessive number of unnecessary permit applications being submitted, at significant cost and minimal benefit to both regulated facilities and regulating authorities.

Commenters also indicated that using the release of reportable quantities of oil, grease or hazardous substances as a permit trigger would identify discharges of an isolated nature, rather than the continuous discharges, which should be the focus of the NPDES permit program under section 402. Such an approach, commenters maintained, is inconsistent with existing regulations under section 311 of the CWA, and would result in permit applications from facilities that are more appropriately regulated under section 311.

Despite these criticisms, many commenters recognized that the Agency is left with the task of determining when discharges from oil and gas facilities are contaminated, in order to regulate them under section 402(1)(2). It was suggested by numerous commenters that the EPA adopt an approach similar to that used under section 311 of the CWA for Spill Prevention Control and Countermeasure (SPCC) Plans. Under SPCC, facilities that are likely to discharge oil into waters of the United States are required to maintain a SPCC plan. In the event the facility has a spill of 1,000 gallons or 2 or more reportable quantities of oil in a 12 month period, the facility is required to submit its SPCC plan to the Agency. The triggering events proposed by the commenters for storm water permits for oil and gas operations are six reportable sheens or discharges of hazardous substances (other than oil) in excess of section 311 or section 102 reportable quantities via a storm water point source route over any thirty-six month period. It was suggested that if this threshold is reached, an operator would then file a permit application (or join a group application) based upon the presumption that its current storm water discharges are contaminated.

In response to these comments, the Agency believes that past releases that are reportable quantities can be a valid indicator of the potential for present contamination of discharges. The legislative history as cited above supports this conclusion. EPA would note that the existence of a RQ release would serve only as a triggering mechanism for a permit application. Under the proposed rule, evidence of past contamination would merely require submission of a permit application and would not be used as conclusive evidence of current contamination. The determination as to whether a permit would be actually required due to current contaminated discharge would be made by the permitting authority after reviewing the permit application. The fact of a past RQ release does not necessarily imply a conclusive finding of contamination, only that sufficient potential for contamination exists to warrant a permit application or the collection of other further information. Today's rule does not change the proposed approach in this respect. Thus, EPA does not believe that today's rule exceeds the authority of section 402(1)(2).

EPA believes that there is no legal impediment to using past RQ discharges as a trigger for requiring a storm water permit application. EPA notes that, as mentioned above, even those commenters who objected to the proposed test on legal authority grounds merely offered an alternate test that requires more releases to have occurred within a shorter period of time before a permit application is required.

Therefore, the only disagreement that remains is over what constitutes a reasonable test that will identify facilities with the potential for storm water contamination. EPA notes that neither the statute nor the legislative history provides any guidance on this question. Furthermore, EPA disagrees with the commenters who suggested that 6 releases in the past 3 years or 2 releases in the past year are necessarily more valid measures of the potential for current contamination than EPA's proposed test. There is no statistical or other basis for preferring one test to the other. However, EPA does agree with those commenters that suggest that a single release in the distant past may not accurately reflect current conditions and the current potential for contamination.

EPA has therefore amended today's rule to provide that only oil and gas facilities which have had a release of an RQ of oil or hazardous substances in storm water in the past three years will be required to submit a permit application. EPA believes that limiting the permit trigger to events of the past three years will address commenters' concerns regarding the use of "stale history" in determining whether an application is required. EPA notes that the three year cutoff is consistent with the requirement for industrial facilities to report significant leaks or spills at the facility in their storm water permit applications. See 40 CFR 122.26(c)(1)(i)(D).

Commenters asserted that EPA and the States must have some reasonable basis for concluding that a storm water discharge is contaminated before requiring permit applications or permits. Commenters believed that § 122.26(c)(1)(iii)(B) as proposed implied that the Agency's authority in this respect is unrestricted. In response, EPA may collect such data by whatever appropriate means the statute allows, in order to obtain information that a permit is required. Usually, the most practical tool for doing so is the permit application itself. However, if necessary to supplement the information made available to the Agency, EPA has broad authority to obtain information necessary to determine whether or not a permit is required, under section 308 of the Clean Water Act. Given the plain language of the CWA and the Congressional intent as manifested in the legislative history, the Agency is convinced that the approach described above is appropriate. Yet, as further discussed below, EPA has also deleted as redundant § 122.26(c)(1)(iii)(B).

Regarding the types of facilities included in the storm water regulation, a number of commenters suggested that the Agency has misconstrued the meaning of facilities "associated with

industrial activity", and has proposed an overly broad definition of such facilities in the oil and gas industry. Specifically, commenters suggested that only the manufacturing sector of the oil and gas industry should be subject to storm water permit application requirements, and that exploration and production activities, gas stations, terminals, and bulk plants should all be exempted from storm water permitting requirements. Commenters maintain that this broad interpretation would subject many oil and gas facilities to the storm water permit requirements, when these were not intended by Congress to be so regulated. As a second point related to this issue, some commenters felt that transmission facilities were not intended to be regulated under the storm water provisions, and should be exempted from permit requirements. This would be consistent, it was argued, with legislative history which concluded that transmission facilities do not significantly contribute to the contamination of water.

The Agency disagrees that these facilities do not fall under the storm water permitting requirements as envisioned by Congress. SIC 13, which is relied upon by EPA to identify these oil and gas operations, describes oil and gas extraction industries as including facilities related to crude oil and natural gas, natural gas liquids, drilling oil and gas wells, oil and gas exploration and field services. Moreover, legislative history as it applies to industrial activities, and thus to oil and gas (mining) operations, expressly includes exploration, production, processing, transmission, and treatment operations within the purview of storm water permitting requirements and exemptions. EPA's intent is for storm water permit requirements (and the exemption at hand) to apply to the activities listed above (exploration, production, processing, treatment, and transmission) as they relate to the categories listed in SIC 13.

Commenters requested clarification from the Agency that storm water discharges from oil and gas facilities require a permit or the filing of a permit application only when they are contaminated at the point of discharge into waters of the United States. Commenters noted that large amounts of potentially contaminated stormwater may not enter waters of the United States, or may enter at a point once the discharge is no longer "contaminated". In these cases, it should be clear that no permit or permit application is required.

EPA agrees that oil and gas exploration, production, processing, or treatment operations or transmission facilities must only obtain a storm water permit when a discharge to waters of the U.S. (including those discharges through municipal separate storm sewers) is contaminated. A permit application will be required when any discharge in the past three years or henceforth meets the test discussed above.

Under the proposed rule, the Agency stated at § 122.26(c)(1)(iii)(B) that the Director may require on a case-by-case basis the operator of an existing or new storm water discharge from an oil or gas exploration, production, processing, or treatment operation, or transmission facility to submit an individual permit application. The Agency has removed this section since CWA section 402(1)(2), as codified in 122.26(c)(1)(iii)(A), adequately addresses every situation where a permit should be required for these facilities.

b. Use of Reportable Quantities to Determine if a Storm Water Discharge from an Oil or Gas Operation is Contaminated. Section 311(b)(5) of the CWA requires reporting of certain discharges of oil or a hazardous substance into waters of the United States (see 44 FR 50766 (August 29, 1979)). Section 304(b)(4) of the Act requires that notification levels for oil and hazardous substances be set at quantities which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public or private property, shorelines and beaches. Facilities which discharge oil or a hazardous substance in quantities equal to or in excess of an RQ, with certain exceptions, are required to notify the National Response Center (NRC).

Section 102 of CERCLA extended the reporting requirement for releases equal to or exceeding an RQ of a hazardous substance by adding chemicals to the list of hazardous substances, and by extending the reporting requirement (with certain exceptions) to any releases to the environment, not just those to waters of the United States.

Pursuant to section 311 of the CWA, EPA determined reportable quantities for discharges by correlating aquatic animal toxicity ranges with 5 reporting quantities, i.e., 1-, 10-, 100-, 1000-, and 5000- pounds per 24 hour period levels. Reportable quantity adjustments made under CERCLA rely on a different methodology. The strategy for adjusting reportable quantities begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each designated hazardous substance. The intrinsic properties examined, called "primary criteria," are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, and chronic toxicity. In addition, substances that were identified as potential carcinogens have been evaluated for their relative activity as potential carcinogens. Each intrinsic property is ranked on a five-tier scale, associating a specific range of values on each scale with a particular reportable quantity value. After the primary criteria reportable quantities are assigned, the hazardous substances are further evaluated for their susceptibility to certain extrinsic degradation processes (secondary criteria). Secondary criteria consider whether a substance degrades relatively rapidly to a less harmful compound, and can be used to raise the primary criteria reportable quantity one level.

Also pursuant to section 311, EPA has developed a reportable quantity for oil and associated reporting requirements at 40 CFR part 110. These requirements, known as the oil sheen regulation, define the RQ for oil to be the amount of oil that violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited.

Reportable quantities developed under the CWA and CERCLA were not developed as effluent guideline limitations which establish allowable limits for pollutant discharges to surface waters. Rather, a major purpose of the notification requirements is to alert government officials to releases of hazardous substances that may require rapid response to protect public health, welfare, and the environment. Notification based on reportable quantities serves as a trigger for informing the government of a release so that the need for response can be evaluated and any necessary response undertaken in a timely fashion. The reportable quantities do not themselves represent any determination that releases of a particular quantity are actually harmful to public health, welfare, or the environment.

EPA requested comment on the use of RQs for determining contamination in discharges from oil and gas facilities. As noted above numerous commenters supported the concept of using reportable quantities under certain circumstances. Comments on the measurement of oil sheens for the purpose of triggering a permit application were divided. Some commented that it is much too stringent because the amount of oil creating a

sheen may be a relatively small amount. Others viewed the test as a quick, easy, practical method that has been effective in the past.

In relying on the reporting requirements associated with releases in excess of RQs for oil or hazardous substances to trigger the submittal of permit applications for oil and gas operations, the Agency believes that the use of the reporting requirements for oil will be particularly useful. The Agency believes that the release of oil to a storm water discharge in amounts that cause an oil sheen is a good indicator of the potential for water quality impacts from storm water releases from oil and gas operations. In addition, given the extremely high number of such operations (the Agency estimates that there are over 750,000 oil wells alone in the United States), relying on the oil sheen test to determine if storm water discharges from such sites are "contaminated" will be a far easier test for operators to determine whether to file a storm water permit application than a test based on sampling. The detection of a sheen does not require sophisticated instrumentation since a sheen is easily perceived by visual observation. EPA agrees with those comments calling the oil sheen test an appropriate measure for triggering a storm water permit application. In adopting this approach, EPA recognizes, as pointed out by many commenters that an oil sheen can be created with a relatively small amount of oil.

One commenter suggested that contamination must be caused by contact with on-site material before being subject to permit application requirements. The Agency agrees with this comment. Those facilities that have had releases in excess of reportable quantities will generally have contamination from contact with on-site material as described in the CWA. Thus, use of the RQ test is an appropriate trigger. As discussed above, determination of whether contamination is present to warrant issuance of a permit will be made in the context of the permit proceeding.

One commenter believed that the use of RQs is inappropriate because "the statute intended to exempt only oil and gas runoff that is not contaminated at all." The Agency wishes to clarify that reportable quantities are being used to determine what facilities need to file permit applications and to describe what is meant by the term "contaminated." The Director may require a permit for any discharges of storm water runoff contaminated by contact with any overburden, raw material, intermediate product, finished product, by product or waste product at the site of such operations. The use of RQs is solely a mechanism for identifying the facilities most likely to need a storm water permit consistent with the legislative history of section 402(l)(2).

c. Mining Operations. The December 7, 1988 proposal would establish background levels as the standard used to define when a storm water discharge from a mining operation is contaminated. When a storm water discharge from a mining site was found to contain pollutants at levels that exceed background levels, the owner or operator of the site was required to submit a permit application for that operation. The proposal was founded upon language in the legislative history stating that the determination of whether storm water is contaminated by contact with overburden, raw material, intermediate product, finished product, byproduct, or waste products "shall take into consideration whether these materials are present in such stormwater runoff . . . above natural background levels". [Vol. 132 Cong. Rec. H10574 (daily ed. Oct. 15, 1986) Conference Report].

Comments received on this component of the rule suggested that background levels of pollutants would be very difficult to calculate due to the complex topography frequently encountered in alpine mining regions. For example, if a mine is located in a mountain valley surrounded on all sides by hills, the site will have innumerable slopes feeding flow towards it. Under such circumstances, determining how the background level is set would prove impractical. Commenters indicated that it is very difficult to measure or determine background levels at sites where mining has occurred for prolonged periods. In many instances, data on original background levels may not be available due to long-term site activity. As a result, any background level established will vary based on the type and level of previous activity. In addition, mining sites typically have background levels that are naturally distinct from the surrounding areas. This is due to the geologic characteristics that makes them valuable as mining sites to begin with. This also makes it difficult to establish accurate background levels.

Because of these concerns EPA has decided to drop the use of background levels as a measure for determining whether a permit application is required. Accordingly, a permit application will be required when discharges of storm water runoff from mining operations come into contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site. Similar to the RQ test for oil and gas operations, EPA intends to use the "contact" test solely as a permit application trigger. The determination of whether a mining operation's runoff is contaminated will be made in the context of the permit issuance proceedings.

If the owner or operator determines that no storm water runoff comes into contact with overburden, raw material, intermediate product, finished product, byproduct, or waste products, then there is no obligation to file a permit application. This framework is consistent with the statutory provisions of section 402(1)(2) and is intended to encourage each mining site to adopt the best possible management controls to prevent such contact.

Several commenters stated that EPA's use of total pollutant loadings for determining permit applicability is not consistent with the general framework of the NPDES program. Their concern is that such evaluation criteria depart from how the NPDES program has been administered in the past, based on concentration limits. In addition, commenters requested that EPA clarify that information on mass loading will be used for determining the need for a permit only. Since the analysis of natural background levels as a basis for a permit application has been dropped from this rulemaking, these issues are moot.

Commenters noted that the proposed rule did not specify what impact this rulemaking has on the storm water exemptions in 40 CFR 440.131. The commenters recommended not changing any of these provisions. Some commenters indicated that mining facilities that have NPDES permits should not be subject to additional permitting under the storm water rule. EPA does not intend that today's rule have any effect on the conditional exemptions in 40 CFR 440.131. Where a facility has an overflow or excess discharge of process-related effluent due to stormwater runoff, the conditional exemptions in 40 CFR 440.131 remain available.

Several commenters note that the term overburden, as used in the context of the proposed storm water rule, is not defined and recommended that this term should be defined to delineate the scope of the regulation. EPA agrees that the term overburden should be defined to help properly define the scope the storm water rule. In today's rule, the term

overburden has been clarified to mean any material of any nature overlying a mineral deposit that is removed to gain access to that deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations. This definition is patterned after the overburden definition in SMCRA, and is designed to exclude undisturbed lands from permit coverage as industrial activity. However, the definition provided in this regulation may be revised at a later date, to achieve consistency with the promulgation of RCRA Subtitle D mining waste regulations in the future.

Numerous commenters raised issues pertaining to the inclusion of inactive mining areas as subject to the stormwater rule. Some commenters indicated that including inactive mine operations in the rule would create an unreasonable hardship on the industry. EPA has included inactive mining areas in today's rule because some mining sites represent a significant source of contaminated stormwater runoff. EPA has clarified that inactive mining sites are those that are no longer being actively mined, but which have an identifiable owner/operator. The rule also clarifies that active and inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities required for the sole purpose of maintaining the mining claim are undertaken. The Agency would clarify that claims on land where there has been past extraction, beneficiation, or processing of mining materials, but there is currently no active mining are considered inactive sites. However, in such cases the exclusion discussed above for uncontaminated discharges will still apply.

EPA's definition of active and inactive mining operations also excludes those areas which have been reclaimed under SMCRA or, for non-coal mining operations, under similar applicable State or Federal laws. EPA believes that, as a general matter, areas which have undergone reclamation pursuant to such laws have concluded all industrial activity in such a way as to minimize contact with overburden, mine products, etc. EPA and NPDES States, of course, retain the authority to designate particular reclaimed areas for permit coverage under section 402(p)(2)(E).

The proposed rule had included an exemption for areas which have been reclaimed under SMCRA, although the language of the proposed rule inadvertently identified the wrong universe of coal mining areas. The final rule language has been revised to clarify that areas which have been reclaimed under SMCRA (and thus are no longer subject to 40 CFR part 434 subpart E) are not subject to today's rule. Today's rule thus is consistent with the coal mining effluent guideline in its treatment of areas reclaimed under SMCRA.

In response to comments, EPA has also expanded this concept to exclude from coverage as industrial activity non-coal mines which are released from similar State or Federal reclamation requirements on or after the effective date of this rule. EPA believes it is appropriate, however, to require permit coverage for contaminated runoff from inactive non-coal mines which may have been subject to reclamation regulations, but which have been released from those requirements prior to today's rule. EPA does not have sufficient evidence to suggest that each State's previous reclamation rules and/or Federal requirements, if applicable, were necessarily effective in controlling future storm water contamination.

8. Application Requirements for Construction Activities

As discussed above, EPA has included storm water discharges from activities involving construction operations that result in the disturbance of five acres total land in the regulatory definition of storm water discharges associated with industrial activity.

This is a departure from the proposed rule which required permit applications for discharges from activities involving construction operations that result in the disturbance of less than one acre total land area and (which are not part of a larger common plan of development or sale; or operations that are for single family residential projects, including duplexes, triplexes, or quadruplexes, that result in the disturbance of less than five acre total land areas and which are not part of a larger common plan of development or sale). The reasons for this change are noted below.

Many commenters representing municipalities, States, and industry requested that clearing, grading, and excavation activities not be included in the definition of storm water discharges associated with industrial activity. It was suggested that EPA delay including construction activities until after the studies mandated in section 402(p)(5) of the CWA are completed. Other commenters felt that NPDES permits are not appropriate for construction discharges due to their short term, intermediate and seasonal nature. Another commenter felt that only the construction activities on the sites of the industrial facilities identified in the other subsections of the definition of "associated with industrial activity" should be included.

EPA believes that storm water permits are appropriate for the construction industry for several reasons. Construction activity at a high level of intensity is comparable to other activity that is traditionally viewed as industrial, such as natural resource extraction. Construction that disturbs large tracts of land will involve the use of heavy equipment such as bulldozers, cranes, and dump trucks. Construction activity frequently employs dynamite and/or other equipment to eliminate trees, bedrock, rockwork, and to fill or level land. Such activities also engage in the installation of haul roads, drainage systems, and holding ponds that are typical of the industrial activity identified in § 122.26(b)(14)(i-x). EPA cannot reasonably place such activity in the same category as light commercial or retail business.

Further, the runoff generated while construction activities are occurring has potential for serious water quality impacts and reflects an activity that is industrial in nature. Where construction activities are intensive, the localized impacts of water quality may be severe because of high unit loads of pollutants, primarily sediments. Construction sites can also generate other pollutants such as phosphorus, nitrogen and nutrients from fertilizer, pesticides, petroleum products, construction chemicals and solid wastes. These materials can be toxic to aquatic organisms and degrade water for drinking and water-contact recreation. Sediment runoff rates from construction sites are typically 10 to 20 times that of agricultural lands, with runoff rates as high as 100 times that of agricultural lands, and 1,000 to 2,000 times that of forest lands. Even small construction sites may have a significant negative impact on water quality in localized areas. Over a short period of time, construction sites can contribute more sediment to streams than was previously deposited over several decades.

EPA is convinced that because of the impacts of construction discharges that are directly to waters of the United States, such discharges should be addressed by permits issued by Federal or NPDES State permitting authorities. It is evident from numerous studies and reports submitted under section 319 of the CWA that discharges from construction sites continue to be a major source of water quality problems and water quality standard violations.

Accordingly EPA is compelled to address these source under these regulations and thereby regulate these sources under a nationally consistent program with an appropriate level of enforcement and oversight.

Techniques to prevent or control pollutants in storm water discharges from construction are well developed and understood. A primary control technique is good site planning. A combination of nonstructural and structural best management practices are typically used on construction sites. Relatively inexpensive nonstructural vegetative controls, such as seeding and mulching, are effective control techniques. In some cases, more expensive structural controls may be necessary, such as detention basins or diversions. The most efficient controls result when a comprehensive storm water management system is in place. Another reason that EPA has decided to address this class of discharges is that it is part of the Agency's recent emphasis on pollution prevention. Studies such as NURP indicate that it is much more cost effective to develop measures to prevent or reduce pollutants in storm water during new development than it is to correct there problems later on. Many of these prevention and control practices, which can take the form of grading patterns as well as other controls, generally remain in place after the construction activities are completed.

a. Permit Application Requirements. In today's rulemaking, EPA has set forth distinct permit application requirements for these construction activities, at § 122.26(c)(1)(ii), to be used where general permits to be developed and promulgated by EPA are inapplicable. Such facilities will be required to provide a map indicating the site's location and the name of the receiving water and a narrative description of:

- The nature of the construction activity;
- The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;
- Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a description of applicable Federal requirements and State or local erosion and sediment control requirements;
- Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a description of applicable State or local requirements, and
- An estimate of the runoff coefficient (fraction of total rainfall that will appear as runoff) of the site and the increase in impervious area after the construction addressed in the permit application is completed, a description of the nature of fill material and existing data describing the soil or the quality of the discharge.

Permit application requirements for construction activities do not include the submission of quantitative data. EPA believes that the changing nature of construction activities at a site to be covered by the permit application requirements generally would not be adequately described by quantitative data. The comments received by EPA support this determination. One State commented that a program they instituted has been based on quantitative data for the past 10 years and has proven to be very awkward, even unworkable.

Twenty commenters responded to the issue of appropriate construction site application deadlines including: Three towns (<100,000 population); one medium municipality; one large municipality; one agency associated with a large municipality; three agencies associated counties; three agencies associated with States; two industries; five industrial associations; and one private organization representing industry. The commenters primarily focused on actual deadlines and permitting authority response time.

Applicants for permits to discharge storm water into the waters of the United States from a construction site would normally be required to submit permits in the same time frame as new sources and new discharges. This rulemaking requires permit applications from such sources to be submitted at least 180 days prior to the date on which the discharge is to commence. Four commenters agreed with the application deadline of 180 days prior to commencement of discharge. Three commenters felt it would be difficult to apply 180 days prior to when the discharge was to begin. Three commenters recommended shortening the time period to 90 days. Numerous other commenters were concerned over delays during the permitting authority's review of the permit application. The commenters requested that a maximum response time be set in the regulation. Suggested maximum response times were 90 and 30 days.

In response to these comments, EPA has changed the application deadline for construction permits from at least 180 days prior to discharge to at least 90 days prior to the date when construction is to commence. This change reflects EPA's recognition of the nature of construction operations in that developers/builders may not be aware of projects 180 days before they are scheduled to begin.

Numerous commenters expressed concern over who should be responsible for applying for the permit. Two commenters felt the owner should be responsible so that construction bid documents can include the storm water management requirements and to avoid confusion among multiple subcontractors. One commenter thought that either the owner/developer, or general contractor should be responsible. Another commenter suggested that the designer should obtain the permit which would allow all necessary erosion controls to be part of the project plan. Several commenters requested that the responsibility simply be more clearly defined.

In response to these comments, EPA would clarify that the operator will generally be responsible for submitting the permit application. Under existing regulations at § 122.21(b), when a facility is owned by one person but operated by another, then it is the duty of the operator to apply for the permit. Due to the temporary nature of construction activities, EPA believes that the operator is the most appropriate person to be responsible for both short and long term best management practices included on the site. EPA considers the term "operator" to include a general contractor, who would generally be familiar enough with the site to prepare the application or to ensure that the site would be in compliance with the permit requirements. General contractors, in many cases, will often be on site coordinating the operation among his/her staff and any subcontractors. Furthermore, the operator/general contractor would be much more familiar with construction site operations than the owner and should be involved in the site planning from its initial stages. The application requirements in today's rule are designed to provide flexibility in developing controls to reduce pollutants in storm water discharges from construction sites. A significant aspect to this is the role of State and local authorities in control of construction storm water discharges. Sixty-three commenters addressed the question of what the role of State and local authorities should be. Most of these commenters supported local government control of construction discharges and that qualified State programs should satisfy Federal requirements.

Many commenters representing municipalities, States, and industry, felt that local government should have full control over construction storm water

discharges, either under existing programs or those required by their municipal permit. EPA agrees with these comments as far as discharges through municipal storm sewers are concerned. EPA is requiring municipalities that are required to submit municipal permit applications under this regulation to describe their program for controlling storm water discharges from construction activities into their separate storm sewers. It is envisioned that municipalities will have primary responsibility over these discharges through NPDES municipal storm water permits. However, EPA also plans to cover such discharges under general permits to be promulgated in the near future.

In response to several comments that the regulation should provide flexibility for qualified State programs to satisfy Federal requirements, the application requirements recognize that many States have implemented erosion and sediment control programs. The permit application requires a brief description of these programs. This is intended to ensure consistency between NPDES permit requirements and other State controls. Permit applicants will be in the best position to pass on this site-specific information to the permitting authority. States or Federal NPDES authorities will have the ability to exercise authority over these discharges as will other State and local authorities responsible for construction. EPA envisions NPDES permitting efforts will be coordinated with any existing programs.

The proposed rule requested comments on appropriate measures to reduce pollutants in construction site runoff. Numerous commenters representing municipalities, States, and industry responded. Some commenters recommended specific best management practices (BMPs) whereas others suggested ways in which the measures should be incorporated into the program. One commenter suggested that EPA establish design and performance standards for appropriate BMPs. One State commenter recommended requiring a schedule or sequence for use of BMPs. A municipality suggested developing guidance on erosion control at construction sites and disseminating the guidance to educate contractors and construction workers in proper erosion control techniques. The Agency is continuing to review these recommendations for the purposes of permit development and issuance.

Another commenter suggested that further research be done to determine the effectiveness of particular BMPs in reducing pollutants in construction site runoff. EPA agrees that more research and studies can be undertaken to develop methodologies for more effective storm water controls and will continue to lookat these concerns pursuant to section 402(p)(5) studies. However, EPA is convinced that enough information, technology, and proven BMP's are available to address these discharges in this regulation.

Specific BMPs suggested by the commenters include: wheel washing; locked exit roadways, street cleaning methods which exclude sheet washing; clearing and grading codes; construction standards; riparian corridors; solids retention basins; soil erosion barriers; selected excavation; adequate collection systems; vegetate disturbed areas; proper application of fertilizers; proper equipment storage; use of straw bales and filter fabrics; and use of diversions to reduce effective length of slopes. EPA is continuing to evaluate these suggestions for developing appropriate permit conditions for construction activity.

b. Administrative Burdens. Many commenters representing municipalities, States, and industry commented on the administrative burdens of individually permitting each construction site discharging to waters of the United States. The extensive use of general permits for storm water discharges from construction activities that are subject to NPDES requirements is anticipated to minimize administrative delays associated with permit issuance. Many commenters strongly endorsed extensive use of general permits. In addition the Agency will provide as much assistance as possible for developing appropriate permit conditions.

Many commenters responded to the use of acreage limits in determining which construction sites are required to submit a permit application, including several cities, counties and States. Some commenters generally supported the use of an acre limit. Many commenters suggested increasing the acreage limit. Several suggested using a five acre limit for both residential and nonresidential development. Others suggested greater acreage as the cutoff. Two commenters concurred with the proposed limit of one acre/five acres and one commenter suggested lowering the residential limit to one acre.

Other factors were suggested as a means to create a cutoff for requiring permit applications. Several commenters suggested exempting construction that would be completed with a certain time frame, such as construction of less than 12 months. EPA believes that this is inappropriate because some construction can be intensive and expansive, but nonetheless take place over a short period of time, such as a parking lot. One commenter suggested basing the limit on the quantity of soil moved, i.e., cubic yards. In response, this approach would not be particularly helpful since removal of soil will not necessarily relate to the amount of land surface disturbed and exposed to the elements. Another commenter suggested that where there is single family detached housing construction that should trigger applications as well as the proposed acreage limit. This would not be appropriate since EPA is attempting to focus only on those construction activities that resemble industrial activity. After considering these and similar comments EPA has limited the definition of "storm water discharge associated with industrial activity" by exempting from the definition those construction operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale. In considering the appropriate scope of the definition of storm water discharge associated with industrial activity as it relates to construction activities, EPA recognized that a wide variety of factors can affect the water quality impacts associated with construction site runoff, including the quality of receiving waters, the size of the area disturbed, soil conditions, seasonal rainfall patterns, the slope of area disturbed, and the intensity of construction activities. These factors will be considered by the permit writer when issuing the permit. However, as noted above, EPA views such site-specific factors to be too difficult to define in a regulatory framework that is national in scope. For example, attempting to adjust permit application triggers based upon a myriad of regional rainfall patterns is not a practical solution. However, permit conditions adjusted for specific geographical areas may be appropriate.

Under the December 7, 1988, proposal the definition of industrial activity exempted: construction operations that resulted in the disturbance of less than one acre total land area which was not part of a larger common plan of development or sale; or operations for single family residential projects, including duplexes, triplexes, or quadruplexes, that result in the disturbance of less than five acre total land areas which were not part of a larger common plan of development or sale. EPA distinguished between single family residential development and

other commercial development because other commercial development is more likely to occur in more densely developed areas. Also, it was reasoned that other commercial development provides a more complete opportunity to develop controls that remain in place after the construction activity is completed, since continued maintenance after the permit has expired, is more feasible.

However, EPA has decided to depart from the proposal and use an unqualified five acre area in today's final rule. This limit has been selected, in part, because of administrative concerns. EPA recognizes that State and local sediment and erosion controls may address construction activities disturbing less five acres for residential development; the five acre limit in today's rule is not intended to supersede more stringent State or local sediment and erosion controls. In light of the comments, EPA is convinced that the acreage limit is appropriate for identifying sites that are amount to industrial activity. Several comments suggested higher acreage limits without giving a supporting rationale except administrative concerns. Several commenters agreed that the five acre limit is suitable, but again without specifying why they agreed. EPA is convinced, however, that the acreage limits as finalized in today's rule reflect an earth disturbance and/or removal effort that is industrial in magnitude. Disturbances on large tracts of land will employ more heavy machinery and industrial equipment for removing vegetation and bedrock.

For construction facilities that are not included in the definition of storm water discharge associated with industrial activity, EPA will consider the appropriate procedures and methods to reduce pollutants in construction site runoff under the studies authorized by section 402(p)(5) of the CWA. EPA will also consider under section 402(p)(5) appropriate procedures and methods during post-construction for maintaining structural controls developed pursuant to NPDES permits issued for storm water discharges associated with industrial activity from construction sites.

Numerous commenters requested clarification as to whether permits for storm water discharges from construction activities at an industrial facility are required. EPA is requiring permits for all storm water discharges from construction activities where the land disturbed meets the requirements established in § 122.26(b)(14)(x) and which discharge into waters of the United States. The location of the construction activity or the ultimate land use at the site does not factor into the analysis.

G. Municipal Separate Storm Sewer Systems

1. Municipal Separate Storm Sewers

Today's rule defines "municipal separate storm sewer" at § 122.26(b)(8) to include any conveyance or system of conveyances that is owned or operated by a State or local government entity and is designed for collecting and conveying storm water which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. It is important to note that today's permit application requirements for discharges from municipal separate storm sewer systems serving a population of 100,000 or more do not apply to discharges from combined sewers (systems designed as both a sanitary sewer and a storm sewer). For purposes of calculating whether a municipal separate storm sewer system meets the large or medium population criteria, a municipality may petition to have the population served by a combined sewer deducted from the total population. Section 122.26(f) of today's rule describes this procedure.

EPA requested comments on whether different language for the definition of municipal separate storm sewer would clarify responsibility under the NPDES permit system. Comments were also requested on whether the definition needed to be clarified by explicitly stating that municipal streets and roads with drainage systems (curb and gutter, ditches, etc.) are part of the municipal storm sewer system, and that the owners or operators of such roads are responsible for such discharges. Numerous comments were received by EPA on this issue. Some commenters questioned whether road culverts and road ditches were municipal separate storm sewers, while others specifically recommended that further clarifying language should be added so that owners and operators of roads and streets understand that they are covered by this regulation. In light of these comments, EPA has clarified that municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains that discharge into the waters of the United States are municipal separate storm sewers. One commenter asked if "other wastes" in the proposed definition of municipal separate storm sewer (40 CFR 122.26 (b)(8)(i)) included storm water. In response, EPA has added "storm water" to this definition in order to clarify that the rule addresses such systems.

EPA requested comments on whether legal classifications such as "storm sewers that are not private (e.g. public, district or joint district sewers)" would provide a clearer definition of municipal separate storm sewer than an owner or operator criterion, especially for the purpose of determining responsibility under the NPDES program. Most commenters agreed that the owner/operator concept, and the additional language noted above, is sufficient for this purpose. EPA also requested comments on to what extent the owner/operator concept should apply to municipal governments with land-use authority over lands which contribute storm water runoff to the municipal storm sewer system, and how the responsibility should be clarified. In response to comments on this point, EPA has addressed these concerns in the context of clarifying what municipal entities are responsible for applying for a permit covering storm water discharges from municipal systems in section VI.H. below.

One commenter expressed a desire for clarification as to whether conveyances that were once used for the conveyance of storm water, but are no longer used in that manner, are covered by the definition. EPA emphasizes that this rulemaking only addresses conveyances that are part of a separate storm sewer system that discharges storm water into waters of the United States.

One commenter stated that if EPA intends to regulate roadside collection systems then EPA must repropose since these were not considered by the public. EPA disagrees with this comment since one of the options specifically addressed the inclusion of roadside drainage systems and roads in the definition of municipal separate storm sewer system. In addition, the public recognized the issue in comments on the proposal. EPA would note that several commenters specifically endorsed EPA's inclusion of these conveyances.

2. Effective Prohibition on Non-Storm Water Discharges

Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather,

an "effective prohibition" would require separate NPDES permits for non-storm water discharges to municipal storm sewers. In many cases in the past, applicants for NPDES permits for process wastewaters and other non-storm water discharges have been granted approval to discharge into municipal separate storm sewers, provided that the permit conditions for the discharge are met at the point where the discharge enters into the separate storm sewer. Permits for such discharges must meet applicable technology-based and water-quality based requirements of Sections 402 and 301 of the CWA. If the permit for a non-storm water discharge to a municipal separate storm sewer contains water-quality based limitations, then such limitations should generally be based on meeting applicable water quality standards at the boundary of a State established mixing zone (for States with mixing zones) located in the receiving waters of the United States.

All options will be considered when an applicant applies for a NPDES permit for a non-storm water discharge to a municipal separate storm sewer. In some cases, permits will be denied for discharges to storm sewers that are causing water quality problems in receiving waters. However, not all discharges present such problems; and in these cases EPA or State permit writers may allow such discharges to municipal separate storm sewers within appropriate permit limits.

Today's rule has two permit application requirements that are designed to begin implementation of the effective prohibition. The first requirement discussed in VI.H.6.a., below, addresses a screening analysis which is intended to provide sufficient information to develop priorities for a program to detect and remove illicit discharges. The second provision, discussed in VI.H.7.b., requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems.

Several commenters suggested that either the definition of "storm water" should include some additional classes of nonprecipitation sources, or that municipalities should not be held responsible for "effectively prohibiting" some classes of nonstorm water discharges into their municipal storm sewers. The various types of discharges addressed by these comments include detention and retention reservoir releases, water line flushing, fire hydrant flushing, runoff from fire fighting, swimming pool drainaqe and discharge, landscape irrigation, diverted stream flows, uncontaminated pumped ground water, rising ground water, discharges from potable water sources, uncontaminated waters from cooling towers, foundation drains, non-contact cooling water (such as heating, ventilation, air conditioning (HVAC) water that POTWs require to be discharged to separate storm sewers rather than sanitary sewers), irrigation water, springs, roofdrains, water from crawl space pumps, footing drains, lawn watering, individual car washing, flows from riparian habitats and wetlands. Most of these comments were made with regard to the concern that these were commonly occurring discharges which did not pose significant environmental problems.

EPA disagrees that the above described flows will not pose, in every case, significant environmental problems. At the same time, it is unlikely Congress intended to require municipalities to effectively prohibit individual car washing or discharges resulting from efforts to extinguish a building fire and other seemingly innocent flows that are characteristic of human existence in urban environments and which discharge to municipal separate storm sewers. It should be noted that the legislative history is essentially silent on this point. Accordingly, EPA is clarifying that section 402(p)(3)(B) of the CWA (which requires permits for municipal separate storm sewers to 'effectively' prohibit non-storm water discharges) does not require permits for municipalities to prohibit certain discharges or flows of nonstorm water to waters of the United States through municipal separate storm sewers in all cases. Accordingly, § 122.26(d)(2)(iv)(B)(1) states that the proposed management program shall include: "A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; the program description shall address the following categories of non-storm water discharges or flows only where such discharges are identified by the municipality as sources of pollutants to waters of the United States: Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers, uncontaminated pumped ground water discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash waters. Program descriptions shall address discharges from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States."

However, the Director may include permit conditions that either require municipalities to prohibit or otherwise control any of these types of discharges where appropriate. In the case of fire fighting it is not the intention of these rules to prohibit in any circumstances the protection of life and public or private property through the use of water or other fire retardants that flow into separate storm sewers. However, there may be instances where specified management practices are appropriate where these flows do occur (controlled blazes are one example).

Conveyances which continue to accept other "non-storm water" discharges (e.g. discharges without an NPDES permit) with the exceptions noted above do not meet the definition of municipal separate storm sewer and are not subject to section 402(p)(3)(B) of the CWA unless the non-storm water discharges are issued separate NPDES permits. Instead, conveyances which continue to accept non-storm water discharges which have not been issued separate NPDES permits are subject to sections 301 and 402 of the CWA. For example, combined sewers which convey storm water and sanitary sewage are not separate storm sewers and must comply with permit application requirements at 40 CFR 122.21 as well as other regulatory criteria for combined sewers.

3. Site-Specific Storm Water Quality Management Programs for Municipal Systems

Section 402(p)(3)(iii) of the CWA mandates that permits for discharges from municipal separate storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP), including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Director determines appropriate for the control of such pollutants.

When enacting this provision, Congress was aware of the difficulties in regulating discharges from municipal

separate storm sewers solely through traditional end-of-pipe treatment and intended for EPA and NPDES States to develop permit requirements that were much broader in nature than requirements which are traditionally found in NPDES permits for industrial process discharges or POTWs. The legislative history indicates, municipal storm sewer system "permits will not necessarily be like industrial discharge permits. Often, an end-of-the-pipe treatment technology is not appropriate for this type of discharge." [Vol. 132 Cong. Rec. S16425 (daily ed. Oct. 16, 1986)].

A shift towards comprehensive storm water quality management programs to reduce the discharge of pollutants from municipal separate storm sewer systems is appropriate for a number of reasons. First, discharges from municipal storm sewers are highly intermittent, and are usually characterized by very high flows occurring over relatively short time intervals. For this reason, municipal storm sewer systems are usually designed with an extremely high number of outfalls within a given municipality to reduce potential flooding. Traditional end-of-pipe controls are limited by the materials management problems that arise with high volume, intermittent flows occurring at a large number of outfalls. Second, the nature and extent of pollutants in discharges from municipal systems will depend on the activities occurring on the lands which contribute runoff to the system. Municipal separate storm sewers tend to discharge runoff drained from lands used for a wide variety of activities. Given the material management problems associated with end-of-pipe controls, management programs that are directed at pollutant sources are often more practical than relying solely on end-of-pipe controls.

In past rulemakings, much of the criticism of the concept of subjecting discharges from municipal separate storm sewers to the NPDES permit program focused on the perception that the rigid regulatory program applied to industrial process waters and effluents from publicly owned treatment works was not appropriate for the site-specific nature of the sources which are responsible for the discharge of pollutants from municipal storm sewers.

The water quality impacts of discharges from municipal separate storm sewer systems depend on a wide range of factors including: The magnitude and duration of rainfall events, the time period between events, soil conditions, the fraction of land that is impervious to rainfall, land use activities, the presence of illicit connections, and the ratio of the storm water discharge to receiving water flow. In enacting section 405 of the WQA, Congress recognized that permit requirements for municipal separate storm sewer systems should be developed in a flexible manner to allow site-specific permit conditions to reflect the wide range of impacts that can be associated with these discharges. The legislative history accompanying the provision explained that "[p]ermits for discharges from municipal separate stormwater systems * * * must include a requirement to effectively prohibit non-stormwater discharges into storm sewers and controls to reduce the discharge of pollutants to the maximum extent practicable, * * * These controls may be different in different permits. All types of controls listed in subsection [(p)(3)(C)] are not required to be incorporated into each permit" [Vol. 132 Cong. Rec. H10576 (daily ed. October 15, 1986) Conference Report]. Consistent with the intent of Congress, this rule sets out permit application requirements that are sufficiently flexible to allow the development of site-specific permit conditions.

Several commenters agreed with this approach. One municipality recommended that there be as much flexibility as possible so that the permitting authority can work with each municipality in developing meaningful long-term goals with plans for improving storm water quality. This commenter noted that too many specific regulations that apply nationwide do not take into consideration the climatic and governmental differences within the States. EPA agrees that as much flexibility as possible should be incorporated into the program. However, flexibility should not be built into the program to such an extent that all municipalities do not face essentially the same responsibilities and commitment for achieving the goals of the CWA. EPA believes that these final regulations build in substantial flexibility in designing programs that meet particular needs, without abandoning a nationally consistent structure designed to create storm water control programs.

4. Large and Medium Municipal Storm Sewer Systems

During the 1987 reauthorization of the CWA, Congress established a framework for EPA to implement a permit program for municipal separate storm sewers and establishing phased deadlines for its implementation. The amended CWA establishes priorities for EPA to develop permit application requirements and issue permits for discharges from three classes of municipal separate storm sewer systems. The CWA requires that NPDES permits be issued for discharges from large municipal separate storm sewer systems (systems serving a population of more than 250,000) by no later than February 4, 1991. Permits for discharges from medium municipal separate storm sewer systems (systems serving a population of more than 100,000, but less than 250,000) must be issued by February 4, 1992. After October 1, 1992, the requirements of sections 301 and 402 of the CWA are restored for all other discharges from municipal separate storm sewers.

The priorities established in the Act are based on the size of the population served by the system. Municipal operators of these systems are generally thought to be more capable of initiating storm water programs and discharges from municipal separate storm sewers serving larger populations are thought to present a higher potential for contributing to adverse water quality impacts. NURP and other studies have verified that the event mean concentration of pollutants in urban runoff from residential and commercial areas remains relatively constant from one area to another, indicating that pollutant loads from urban runoff strongly depend on the total area and imperviousness of developed land, which in turn is related to population.

The term "municipal separate storm sewer system" is not defined by the Act. By not defining the term, Congress intended to provide EPA discretion to define the scope of municipal systems consistent with the objectives of developing site-specific management programs in NPDES permits. EPA considered two key issues in defining the scope of municipal separate storm sewer system: (1) What is a reasonable definition of the term "system," and (2) how to determine the number of people "served" by a storm sewer system. EPA found these two issues to be intertwined. Different approaches to defining the scope of a system allowed for greater or lesser certainty in deterining the population served by the system.

In the December 7, 1988, proposal, EPA described seven options for defining "municipal separate storm sewer system." In developing these options the EPA considered:

- The inter-jurisdiction complexities associated with municipal governments;
- The fact that many municipal storm water management programs have traditionally focused on water quantity

concerns, and have not evaluated water quality impacts of system discharges or developed measures to reduce pollutants in such discharges;

• The advantages of developing system-wide storm water management programs for municipal systems;

• The geographic basis necessary for planning of comprehensive management programs to reduce pollutants in discharges from municipal separate storm sewers to the maximum extent practicable;

• The geographic basis necessary to provide flexibility to target controls on areas where water quality impacts associated with discharges from municipal systems are the greatest and to provide an opportunity to develop cost effective controls;

• The need to establish a reasonable number of permits for municipal systems during the initial phases of program development that will provide an adequate basis for a storm water quality management program for over 13,000 municipalities after the October 1, 1992 general prohibition on storm water permits expires; and

• Congressional intent to allow the development of jurisdiction-wide, comprehensive storm water management programs with priorities given to the most heavily populated areas of the country.

a. Overview of Proposed Options and Comments. The December 7, 1988, proposal requested comment on seven options for defining large and medium municipal separate storm sewer system. With the addition of a watershed-based approach suggested by certain commenters, eight options or approaches were addressed by the over 200 commenters on this issue: Option 1—systems owned or operated by incorporated places augmented by integrated discharges; Option 2—systems owned or operated by incorporated places augmented with significant other municipal discharges; Option 3—systems owned or operated by counties; Option 4—systems owned and operated by States or State departments of transportation; Option 5—systems within the boundaries of an incorporated place; Option 6—systems within the boundaries of counties; Option 7—systems in census designated urbanized areas; and Option 8—systems defined by watershed boundaries.

Generally, these options can be classified into two categories. The first category of options, Options 1, 2 and 3, define municipal systems in terms of the municipal entity which owns or operates storm sewers within municipal boundaries of the requisite population. The second category of options would define municipal systems on a geographic basis. Under Options 4, 5, 6, 7 and 8 all municipal separate storm sewers within the specified geographic area would be part of the municipal system, regardless of which municipal entity owns or operates the storm sewer. EPA did not propose to define the scope of a municipal separate storm sewer system in engineering terms because of practical problems determining the boundaries of and the populations served by "systems" defined in such a manner. In addition an engineering approach based on physical interconnections of storm sewer pipes by itself does not provide a rational basis for developing a storm water program to improve water quality where a large number of individual storm water catchments are found within a municipality.

In the December 7, 1988, proposal, EPA favored those options that relied primarily on the municipal entity which owns or operates or otherwise has jurisdiction over storm sewers. These options were preferred because it was anticipated that the administrative complexities of developing the permit programs would be reduced by decreasing the number of affected municipal entities. However, most commenters were not satisfied that such an approach would reduce administrative burdens or complexities.

The diversity of arguments and rationales offered in comments justifying the selection of particular option, or combinations thereof, were generally a function of geographic, climatic, and institutional differences around the country. As such, there was little substantive agreement with how this program should be implemented as far as defining large and medium municipal separate storm sewer systems. Of all the options, Option 1 generally received the most favorable comment. However, the overwhelming majority of comments suggested different options or other alternatives. Having reviewed the comments at length, EPA is convinced that the definition of municipal separate storm sewers should possess elements of several of the options enumerated above and a mechanism that enables States or EPA Regions to define a system that best suits their various political and geographical conditions.

The following comments were the most pervasive, and represent those issues and concerns of greatest importance to the public: (1) The approach chosen initially must be realistic and achievable administratively; (2) the definition must be flexible enough to accommodate development of the program on a watershed basis, and incorporate elements of existing programs and frameworks and regional differences in climate, geography, and political institutions; (3) permittees must have legal authority and control over land use; (4) discharges from State highways, identified as a significant source of runoff and pollutants, should be included in the program and combined in some manner with one or more of the other options; (5) the definition should address how the inclusion of interrelated discharges into the municipal separate storm sewer system are timed, decided upon, dealt with, etc.; (6) any approach must address the major sources of pollutants; (7) development of co-permittee management plans must be coordinated or developed on a regional basis and in the same time frame—fragmented or balkanized programs must be avoided; (8) municipalities should be regulated as equitably as possible; (9) flood control districts should be addressed as a system or part of a system; (10) the definition must conform to the legal requirements of the Clean Water Act; and (11) the definition should limit the number of co-permittees as much as possible.

b. Definition of large and medium municipal separate storm sewer system. A combination of the options outlined in the 1988 proposal would address most of these concerns, while achieving a realistic and environmentally beneficial storm water program. Accordingly, EPA has adopted the following definition of large and medium municipal separate storm sewer systems. Large and medium separate storm sewer systems are municipal separate storm sewers that:

(i) Are located in an incorporated place with a population of 100,000 or more or 250,000 or more as determined by the latest Decennial Census by the Bureau of Census (see appendices F and G of part 122 for a list of these places based on the 1980 Census);

(ii) Are located within counties having areas that are designated as urbanized areas by latest decennial Bureau of Census estimates and where the population of such areas exceeds 100,000, after the population in the incorporated places, townships or towns within such counties is excluded (see appendices H and I for a listing of these counties based on the 1980 census) (incorporated places, towns, and townships within these counties are excluded from permit application requirements unless they fall under paragraph (i) or are designated under paragraph (iii)); or (iii) are owned or

operated by a municipality other than those described in paragraph (i) or (ii) that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraphs (i) or (ii). In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subparagraph (i);

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; or

(E) Other relevant factors.

(iv) The Director may, upon petition, designate as a system, any municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (i), (ii), and (iii).

Under today's rule at § 122.26(a)(3)(iii) the regional authority shall be responsible for submitting a permit application under the following guidelines: The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due; the permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application; each of the operators of municipal separate storm systems described in paragraphs 122.26(b)(4) (i), (ii), and (iii) and (7)(i), (ii), and (iii), that are under the purview of the designated regional authority, shall comply with the application requirements of § 122.26(d).

As noted above, the finalized definition of large and medium municipal separate storm sewer system is combination of the approaches as proposed. (In the following discussion "paragraph (i)" refers to §§ 122.26 (b)(4)(i) and (b)(7)(i); "paragraph (ii)" refers to §§ 122.26(b)(4)(ii) and (b)(7)(ii); "paragraph (iii)" refers to §§ 122.26 (b)(4)(iii) and (b)(7)(iii); and "paragraph (iv)" refers to §§ 122.26 (b)(4)(iv) and (b)(7)(iv)). Paragraph (i) originates from proposed Option 5 (boundaries of incorporated places); paragraph (ii) originates from Option 6 (boundaries of counties) and Option 7 (urbanized areas); paragraph (iii) originates from Options 1 and 5; and paragraph (iv) is an outgrowth of comments on all options, especially Option 4 (State owned systems/State highways) and Option 8 (watersheds).

This definition creates a system by virtue of the fact that storm sewers within defined geographical and political areas, and the owner/operators of separate storm sewers in those areas, are addressed or required to obtain permits. Although within these systems, different segments and discharges of storm water conveyances may be owned or operated by different public entities, EPA is convinced by comments that discharges from such conveyances are interrelated to such an extent that all of these conveyances may be properly considered a "system." These comments are identified and discussed in greater detail below.

c. Response to comments. Many commenters urged that the approach taken must be administratively achievable. Option 5 of the proposal (boundaries of incorporated places), which can be equated to paragraphs (i) and (iii) above, was identified by several commenters as the most workable of all the options. Many commenters stated that Option 1 (systems owned or operated by incorporated places) was inappropriate because of special districts and other owners of systems within the incorporated area; and although EPA proposed a designation provision for interrelated discharges in Option 1, commenters advised that it would be impossible to identify these systems, account for their discharges, and exclude or include them in a timely manner if Option 1 was selected (Option 1 only addresses those systems owned or operated by the incorporated place). The final rule would obviate these concerns, since all the publicly owned sewers within the boundaries of the municipality will be required to be covered by a permit.

Other commenters noted that cities sometimes have storm water conveyances owned or operated by numerous entities. One municipality commented that these problems could be more easily resolved using a unified permit/district wide approach, which the final approach outlined above can accomplish. One county stated that Option 1 of the proposal would result in a permanent balkanization of stormwater programs and that a regional approach focusing on the entire system should be established. Another municipality recommended that all the systems of conveyances within the incorporated city boundaries be issued a permit. In rejecting Option 1 of the proposal, one municipality stated that program inefficiencies would result from implementing a piecemeal program in a contiguous urban environment with different owners and operators. One State conveyed similar concerns. Using a geographical approach, as described in paragraph (i) of the final definition, will best address all of these concerns.

One commenter criticized proposed Option 1 as being contrary to the legal requirements of the WQA, and a further example of EPA's continuing attempt to minimize the scope of a national storm water program. It was noted that the legislative history regarding requirements for large and medium municipal separate storm sewer systems in section 402(p) of the CWA generally does not reference incorporated cities or towns. As a result, the commenter recommended that the term "municipal" in municipal separate storm sewer system refer to separate storm sewers operated by municipal entities meeting the definition of "municipality" in section 502 of the CWA and that the scope of the term "municipal separate storm sewer system" be defined as broadly as possible. This approach would result in defining large and medium municipal separate storm sewer systems to include all municipal separate storm sewers within the 410 counties with a population of 100,000 or more. EPA has adopted the commenter's recommendation to extend the scope of the program to the extent that today's rule covers all municipal separate storm sewers within certain areas rather than only those operated by an incorporated place. EPA disagrees however that it must define the term "system" to include sewers within any municipal boundary of sufficient population with reference to section 502(4). By not providing explicit definitions, section 402(p)(3)(B) of the CWA gives EPA discretion to define how municipal separate storm sewer systems are defined. There is no indication in the language of the CWA or the legislative history that Congress intended that the scope of "municipality" and the scope of "municipal separate storm sewer system" to be identical, particularly since the latter term is not defined in the statute. Furthermore, for the reasons discussed elsewhere in this section, EPA believes that today's definition is a reasonable accommodation of the many conflicting concerns surrounding the proper way to delineate the extent of a

municipal separate storm sewer system serving over 100,000 people.

Several commenters concluded that EPA should be flexible enough to allow the permitting authority broad discretion to establish system wide permits, with flood control districts and/or counties acting as co-permittees with the various incorporated cities within the district boundaries. Commenters expressed concern that Option 1 would not allow for such flexibility.

Arguments that were advanced by commenters in support of proposed Option 1 are equally applicable to paragraph (i), above. Like proposed Option 1, the approach outlined above targets major cities. However, it also has the advantage of addressing municipal separate storm sewer systems which may be interrelated to those owned by the city, a benefit recognized by one municipality that endorsed the selection of proposed Option 5. This will also give the permitting authority more discretion to establish co-permittee relationships.

Paragraph (ii) of the final definition also uses a geographical approach to the definition of municipal storm sewer systems to include municipal storm sewers within urbanized counties. Thus, it closely resembles Option 7 of the proposal. The counties identified in paragraph (ii) have, based on the 1980 Census, a population of 100,000 or more in urbanized,[5] unincorporated portions of the county. In the unincorporated areas of these counties (or in the 20 States where the Census recognizes minor civil divisions, unincorporated county areas outside of towns or townships), the county is the primary local government entity. In these cases, the county performs many of the same functions as incorporated cities with a population of 100,000, and is generally expected to have the necessary legal and land use authority in these areas to begin to implement storm water management programs. Due to the urbanized nature of their population, discharges from the municipal separate storm sewers in these counties will have many similarities to discharges from municipal systems in incorporated cities with a population of 100,000 or more. Addressing these counties in this fashion will not adversely affect small municipalities (incorporated places, towns and townships) within the county, as municipal separate storm sewers that are located in the small incorporated places, townships or towns within these counties are not automatically included as part of the system.

EPA has focused on the unincorporated areas because permit applications cannot be required from systems that serve a population less than 100,000, unless designated. EPA received the comment that if the sewers in incorporated places within such counties were included as part of the system for that county, there would be the potential for systems serving a population less than 100,000 to be improperly subject to permit requirements. EPA agrees with the comment, except that EPA reserves the authority to designate sewers in small incorporated places as part of the system subject to permitting, pursuant to paragraph (iii) of the final definition. Incorporated areas within the identified counties will be required to file permit applications if the population served by the municipal separate storm sewer system is 100,000 or more.

As one commenter noted, the counties addressed by the definition will generally be areas of high growth with a growing tax base that can finance a storm water management program. Numerous counties affected by paragraph (ii) commented on the proposal. Several of these indicated a preference for the county government as the permittee. Others indicated that their county had the ability to perform the functions of the permit applicant and permittee. One county brought to EPA's attention that the county had laid plans for a storm water utility scheduled to be in operation in 1989. Several of the counties supported the use of watersheds, or flexible regional approaches, as the basis for the definition of municipal separate storm sewer systems. The modified definition should satisfy these concerns.

EPA recognizes that some of the counties addressed by today's rule have, in addition to areas with high unincorporated urbanized populations, areas that are essentially rural or uninhabited and may not be the subject of planned development. While permits issued for these municipal systems will cover municipal system discharges in unincorporated portions of the county, it is the intent of EPA that management plans and other components of the programs focus on the urbanized and developing areas of the county. Undeveloped lands of the county are not expected to have many, if any, municipal separate storm sewers.

Paragraphs (i) and (ii) above will help resolve the problems associated with permittees not having adequate land use controls, the legal authority to implement controls, and the ownership of the conveyances. This factor was mentioned by numerous commenters on the proposed options, especially county governments. Under paragraphs (i) and (ii), all publicly owned separate storm sewers within the appropriate municipal boundaries will be defined as part of the municipal system. In many cases, a number of municipal operators of these storm sewers will be responsible for discharges from these systems. Since a number of co-permittees may be addressed in the permits for these discharges, problems associated with the ability to control pollutants that are contributed from interrelated discharges will be minimized. State highways or flood control districts, which may have no land use authority in incorporated cities, will be co-permittees with the city which does possess land use authority. EPA envisions that permit conditions for these systems will be written to establish duties that are commensurate with the legal authorities of a co-permittee. For example, under a permit, a flood control district may be responsible for the maintenance of drainage channels that they have jurisdiction over, while a city is responsible for implementing a sediment and erosion ordinance for construction sites which relates to discharges to the drainage channel. Confusion over ownership of conveyances or systems, at least for the purposes of determining whether they require a permit, will be minimized since all conveyances will be covered. Similarly, under paragraph (ii), the affected counties are expected to have the necessary legal and land use authority to implement programs and controls in unincorporated, urbanized areas because the county government is the primary political or governing entity in these geographical areas.

Many commenters from all levels of State and local government expressed concern about controlling pollutants from State highways. Paragraphs (i) and (ii) will result in discharges from separate storm sewers serving State highways and other highways through storm sewers that are located within incorporated places with the appropriate population or highways in unincorporated portions of specified counties being included as part of the large or medium municipal separate storm sewer system, since all municipal separate storm sewers within the boundaries of these political entities are included. Paragraph (iv) can facilitate

[5] The Bureau of Census defines urbanized areas to provide a description of high-density development. Urbanized areas are comprised of a central city (or cities) with a surrounding closely settled area. The population of the entire urbanized area must be greater than 50,000 persons, and the closely settled area outside of the city, the urban fringe, must generally have a population density greater than 1,000 persons per square mile (just over 1.5 persons per acre) to be included

the submission of a permit application for storm sewers operated as part of an entire State highway system. Paragraph (iv) would allow an entire system in a geographical region under the purview of a State agency (such as a State Department of Transportation) to be designated, where all the permit application requirements and requirements established under § 122.26(a)(iii)(C) can be met.

Paragraphs (i) and (ii) can effectively deal with many of the major sources of pollutants. One municipality noted that Option 5 (paragraph (i)) would require all systems in the incorporated boundaries to obtain permits and institute control measures, rather than just the few owned or operated by incorporated cities. Another municipality noted that this approach could deal with many of the regional variations in sources of pollution. Many commenters, including environmental groups, believed that proposed Option 3 (systems owned or operated by counties), Option 6 (systems within the boundaries of counties), and Option 7 (system in urbanized areas) were good approaches because more sources of pollution would be addressed. It was also maintained that Options 3, 6 and 7 could incorporate watershed planning which, in the view of some commenters, is the only effective way to address pollutants in storm water.

Commenters noted that addressing counties and urbanized areas would focus attention on developing areas which would otherwise be left out in the initial phases of permitting. One commenter noted that most new development in large urbanized areas occurs outside of core cities (incorporated cities with a population of 100,000 or more). Newly developing areas provide opportunities for installing pollutant controls cost effectively. EPA agrees with these comments and notes that paragraph (ii) addresses a significant number of counties with highly developed or developing areas.

However, EPA is convinced that addressing all counties or urbanized areas in the initial phases of the storm water program is ill-advised. Commenters noted that some counties have inappropriate or nonexistent governmental structures, and that a program that addressed all counties in the country with a population of 100,000 or more would be unmanageable, because too many municipal entities nationwide would be involved in the program initially. Commenters advised that defining municipal storm sewer systems solely in terms of the boundaries of census urbanized areas (Option 7) would result in systems which did not correspond to jurisdictions that are in a position to implement a storm water programs. Thus, EPA has modified Option 7 and combined it with Option 6 to create paragraph (ii) above.

Paragraph (iii) incorporates a designation authority such that municipalities that own or operate discharges from separate storm sewers systems other than those described in paragraph (i) or (ii) may be designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the other discharges of the designated storm sewer and the discharges from the large or medium municipal separate storm sewers. In making this determination the physical interconnections between the municipal separate storm sewers, the location of discharges from the designated municipal separate storm sewer relative to discharges from large or medium municipal separate storm sewers, the quantity and nature of pollutants discharged to waters of the United States, the nature of the receiving waters, or other relevant factors may be considered.

Comments indicated that the designation authority as proposed and described above should be retained. One State noted that this approach gives the most flexibility in making the case-by-case designations, while also delineating in sufficient detail what criteria are used to make the determination. This commenter was concerned about being able to regulate many of the interrelated discharges from counties surrounding incorporated cities.

Paragraph (iv) of the final definition allows the permitting authority, upon petition, to designate as a medium or large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (i), (ii), (iii).

Paragraph (iv) was added to the final definitions to respond to a variety of concerns of commenters. One of the prime concerns of commenters was that the definition of large and medium municipal separate storm sewer systems must be flexible enough to accommodate: Programs on a watershed basis, existing storm water programs and frameworks and regional differences in climate, geography, and political institutions. Some States were particularly expressive regarding this concern. One State maintained that an inflexible program could totally disrupt ongoing State efforts. Other commenters urged that the regulation encourage the establishment of regional storm water authorities or other mechanisms that can deal with storm water quality on a watershed basis. One State proposed defining the municipal separate storm sewer system to include all municipal separate storm sewers within a core incorporated place of 100,000 or more, and all surrounding incorporated places within the State defined watershed. One of the State water districts advised that the regulations should be flexible enough to allow regional water quality boards to apply the regulations geographically. One national association expressed concern that existing institutional arrangements for flood control and drainage would be ignored, while another warned against fostering a proliferation of inconsistent patchwork programs based on arbitrary definitions and jurisdictions which bear no relationship to water quality.

EPA is convinced that the mechanism described in paragraph (iv) provides a means whereby the mechanisms and concepts identified above can be utilized or created in appropriate circumstances. In addition, § 122.26(f)(4) provides a means for State or local government agencies to petition the Director for the designation of regional authorities responsible for a portion of the storm water program. For example, some States or counties may currently or in the near future have regional storm water management authorities that have the ability to apply for permits under today's rule and carry out the terms of the permit. Some of these authorities may encompass within their jurisdiction large or medium municipal separate storm sewer systems as defined in today's rule. EPA wishes to encourage such entities to assume the role as permittee under today's rule. That is the purpose of paragraph (iv). Such authorities may petition the Director to assume such a role.

Many commenters expressed the view that municipal management plans must be coordinated or developed among co-permittees on a regional basis and in the same timeframe. Paragraphs (i), (iii) and (iv) would bring in all appropriate municipal entities with jurisdiction over a specified geographical area in the same timeframe. Several commenters, including one State, noted proposed Option 1 would lead to fragmented, ill-coordinated programs. Paragraphs (i), (iii), and (iv) do not suffer this drawback

to the same extent since all the municipal separate storm sewers are addressed within the incorporated place, instead of only those owned or operated by the incorporated place.

Equal treatment of municipalities within a watershed or other specified area was a major subject of comment. Many commenters urged that a degree of fairness could be achieved by requiring permit applications, and the concomitant expenditure of municipal dollars and resources, from all municipalities within an entire urban area that contributes to storm water pollution, rather than from a discrete system within an arbitrary political boundary. Paragraph (i), especially when coupled with paragraphs (ii), (iii), and (iv), can best accomplish a more equitable approach, because all owners and operators of municipal separate storm sewers within a system have responsibilities. In addition, some of the areas outside the incorporated city limits which are engaged in expansive urban or suburban development will be brought into the program. Paragraph (iv) will provide a means for State or regional authorities to use existing or emerging mechanisms to set up storm water management programs, and would require multiple agencies either to become regional co-permittees or to be subject to a regional permit.

Paragraphs (i), (ii), (iii), and (iv) could also require flood control districts to be co-permittees, which was a major concern of counties and numerous cities. One municipality stated that the inclusion of flood control districts would greatly reduce the administrative burden required to prepare a single inter-city discharge agreement and would establish a common legal authority to implement the program. Numerous county agencies believed it imperative that flood control districts be brought into a system-wide permit strategy.

Paragraphs (i) and (iii) may not accommodate the concern of several commenters that the number of co-permittees be kept to a minimum. The fact that all the municipal separate storm sewers within the boundaries of the appropriate incorporated places will be addressed dictates that some permits will have several co-permittees. This is a major concern since it goes directly to achieving an effective initial storm water program. There is concern about being able to bring all the co-permittees together under intra-municipal agreements or contracts within regulatory deadlines. This problem would be resolved in the short term by selecting Option 1. However, Option 1 may still require inter-municipal agreements because of the designation authority under § 122.26 (b)(4)(ii) and (b)(7)(ii) of the proposal. In addition, such inter-jurisdictional problems will arise after October 1, 1992 when the moratorium on requiring NPDES permits for discharges from other municipal separate storm sewers ends. Under the permitting goals established by the CWA, multi-jurisdictional storm water programs and agreements cannot be avoided. Despite interest in limiting the number of co-permittees, EPA decided not to adopt Option 1 for the reasons already stated.

Section 402(p)(3)(B)(i) of the amended CWA provides that permits for municipal discharges from municipal storm sewers may be issued on a system-wide or jurisdiction-wide basis. This provision is an important mechanism for developing the comprehensive storm water management programs envisioned by the Act.

Under the permit application requirements of today's rule, if the appropriate co-applicants are identified, one permit application may be submitted for a large or medium municipal separate storm sewer system (see section VI.G.4 above). System-wide permit applications can in turn be used to issue system-wide permits which could cover all discharges in the system.

Where several municipal entities are responsible for obtaining a permit for various discharges within a single system, EPA will encourage system-wide permit applications involving the several municipal entities for a number of reasons. The system-wide approach not only provides an appropriate basis for planning activities and coordinating development, but also provides municipal entities participating in a system-wide application the means to spread the resource burden of monitoring, evaluating water quality impacts, and developing and implementing controls.

The system-wide approach provided in today's rule recognizes differences between individual municipalities with responsibilities for discharges from the municipal system. Today's application rule requires information to be submitted that enables the permit issuing authorities to develop tailored programs for each permittee with responsibility for certain components, segments, or portions of the municipal separate storm sewer system. The permit application requirements allow individual municipal entities, participating in system-wide applications, to submit site specific information regarding storm water quality management programs to reduce pollutants in system discharges as a whole, or from specific points within the system.

In some cases, it may be undesirable for all municipal entities with storm water responsibility within a municipal system to be co-permittees under one system-wide permit. The permit application requirements in today's rule allow individual municipal entities within the system to submit permit applications and obtain a permit for that portion of the storm sewer system for which they are responsible. Thus, several permits may be issued to cover various subdivisions of a single municipal system.

In summary, EPA believes that the definition of municipal storm sewer system adopted in today's rule has several distinct advantages that were identified in comments:

- The definition adopts features of several options;
- The definition targets areas that have the necessary police powers and land use authority to implement the program;
- The definition can utilize watersheds or accommodate existing administrative frameworks and storm water programs;
- The definition provides that all systems within a geographical area including highways and flood control districts will be covered, thereby avoiding fragmented and ill-coordinated programs;
- The definition has flexible designation authority; and
- The definition addresses major sources of pollutants without being overly broad.

H. Permit Application Requirements for Large and Medium Municipal Systems

1. Implementing the Permit Program

Given the differing nature of discharges from municipal separate storm sewer systems in different parts of the country and the varying water quality impacts of municipal storm sewer discharges on receiving waters, today's permit application requirements are designed to lead to the development of site-specific storm water management programs. In order to effectively implement this goal, EPA intends to retain the overall structure of the municipal permit application as proposed in the December 7, 1988, proposal.

2. Structure of the Permit Application

EPA proposed a two-part permit application designed to meet the goal of

developing site-specific storm water quality management programs in NPDES permits. In response to a request for comments on this aspect of the proposal, numerous comments were received. After reviewing these comments, EPA has decided to retain the two-part permit application. Many commenters agreed that the approach as proposed is appropriate for phasing in and developing site specific storm water management programs. One large municipality strongly endorsed the two-part application, stating that it would facilitate the identification of water quality problem areas and the development of priorities for control measures, thereby allowing for more cost-effective program development. Two State agencies expressed the same view, and noted that the two-part approach is reasonable and well structured for efficient development of programs. One large municipality noted it would allow the permit authority and the permit applicant the time needed to gain the knowledge and data to develop site-specific permits. A medium municipality expressed similar views.

Numerous commenters submitted endorsements of a proposal offered by one of the national municipal associations. This approach responded to EPA's request for comments on alternatives to a two-part application process. These comments recommended having permit applicants submit information regarding their existing legal authority, prepare source identification information, describe existing management plans, provide discharge characterization information based on existing data, and prepare a monitoring, characterization and illicit discharge and removal plan in a one-part application. The remaining requirements such as: implementing plans to remove illicit connections, obtaining legal authority, monitoring and characterization, plans for structural controls, preparation of control assessments, preparation of fiscal analysis, and management plan implementation would be part of the permit and take place during the compliance period of the permit. It was argued that this would result in a more orderly development of stormwater management programs while allowing for quick implementation of efforts to eliminate illicit discharges and initiate some BMPs.

After careful review and consideration of these comments, EPA is convinced that this approach would not meet the goals and requirements of section 402 of the Clean Water Act. Section 402(p)(3)(B) of the CWA requires that permits effectively prohibit non-storm water discharges into storm sewers and incorporate controls that reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system design and engineering methods. The above comments suggesting an alternative for achieving this goal are not entirely compatible with these requirements. In light of the language in the statute, permit conditions should do more than plan for controls during the term of the permit. A strong effort to have the necessary police powers and controls based on pollutant data should be undertaken before permits are issued. In short, the one-part application described by these comments would result in permits that would focus too much on preparation and not enough on implementing controls for pollutants.

In comparison, EPA's approach requires municipalities to submit a two-part application over a two year period. Part one of the application would require information regarding existing programs and the means available to the municipality to control pollutants in its storm water discharges. In addition, part one would require field screening of major outfalls to detect illicit connections. Part two of the permit application would require a limited amount of representative quantitative data and a description of proposed storm water management plans. The purpose of the two-part application process is to develop information, in a reasonable time frame, that would build successful municipal storm water management programs and allow the permit writer to make informed decisions with regard to developing permit conditions. This will include initiating efforts to effectively prohibit non-storm water discharges into storm sewers, and initially implementing controls that reduce the discharge of pollutants to the maximum extent practicable, including management practices and control techniques during the term of the permit. Such an approach clearly meets the statutory mandate of section 402(p)(3)(B).

a. Part 1 Application. Part 1 of the permit application is intended to provide an adequate basis for identifying sources of pollutants to the municipal storm sewer system, to preliminarily identify discharges of storm water that are appropriate for individual permits, and to formulate a strategy for characterizing the discharges from municipal separate storm sewer systems. Several commenters supported retaining these components of the application process. The components of part 1 of the permit application include:

- General information regarding the permit applicant or co-applicants (§ 122.26(d)(1)(i));
- A description of the existing legal authority of the applicant(s) to control pollutants in storm water discharges and a plan to augment legal authority where necessary (§ 122.26(d)(1)(ii));
- Source identification information including: a topographic map, description of the historic use of ordinances or other controls which limited the discharge of non-storm water discharges to municipal separate storm sewer systems, the location of known municipal separate storm sewer outfalls, projected growth, location of structural controls, and location of waste disposal facilities (§ 122.26(d)(1)(iii));
- Information characterizing the nature of system discharges including existing quantitative data, the results of a field screening analysis to detect illicit discharges and illegal dumping to the municipal system, an identification of receiving waters with known water quality impacts associated with storm water discharges, a proposed plan to characterize discharges from the municipal storm sewer system by estimating pollutant loads and the concentration of representative discharges, and a plan to obtain representative data (§ 122.26(d)(1)(iv)); and
- A description of existing structural and non-structural controls to reduce the discharge of pollutants from the municipal storm sewer (§ 122.26(d)(1)(v)).

One commenter disagreed that source identification should be made part of the permit application process beyond the identification of major municipal storm sewer outfalls. In reply, EPA is convinced that the other elements of the source identification are critical for identifying sources of pollutants and creating a base of knowledge from which informed decisions about permit conditions and further data requirements can be determined. One county stated that it already had engaged in extensive monitoring and modeling of watersheds and that its programs should be substituted for EPA's. In response, EPA anticipates that information collected under various State, county or city programs that matches the information requirements in this rulemaking may be used by the applicants in submissions under this rulemaking where the requirements of the rule are met. However, because of the divergence in data collection techniques and information collected by

these programs, EPA disagrees that it would be appropriate to accept a substitution in its entirety without tailoring such a program to today's specific information requirements. One municipality noted that municipal systems are not well documented and responsibility for them is in question. In response, EPA notes that the source identification procedure is designed, in part, to address such shortcomings.

Several municipalities suggested that legal authority could be demonstrated by providing EPA with copies of appropriate local ordinances to demonstrate their legal authority and a statement from the city attorney. EPA agrees that these methods are appropriate for making this demonstration.

Several commenters noted that there was adequate existing municipal legal authority to carry out the program requirements or such authority could be obtained by the municipality. Other commenters stated that municipalities possess some authority over certain activities but may not have authority over discharges from roads and construction. Numerous commenters, however, claimed that certain municipalities had no existing legal authority to carry out the permit requirements and that obtaining all the necessary legal authority could take several years due to cumbersome legislative and political processes. In response, part 1 of the permit application will establish a schedule for the development of legal authority that will be needed to accomplish the goals of the permit application and permits. Some municipalities will have more advanced storm water programs with appropriate legal authority or the ability to establish necessary ordinances. Providing an appropriate schedule will not present difficulties in these circumstances. EPA also notes that the definitions of large and medium municipal separate storm sewer systems finalized in today's rule will in many cases result in a number of co-applicants participating in a system wide application. It is anticipated that the development of adequate inter-jurisdictional agreements specifying the various responsibilities of the co-permittees may in some cases be very complex, thereby justifying the development of a schedule to complete the task. For example, clarifying the authority over discharges from roads may present difficulties where a number of municipal entities operate different roads in a given jurisdiction. In other limited cases, the MEP standard for municipal permits may translate into permit conditions that extend the schedule for obtaining necessary legal authority into the term of the permit. These situations will be evaluated on a case-by-case basis by permit issuing authorities.

Numerous commenters supported the field screening analysis as proposed. Comments from three municipalities noted that it would be a cost effective means of identifying problem areas. One municipality noted that illicit connections can be reliably detected by the screening method proposed. In view of these comments EPA has decided to retain this portion of the regulation. However many commenters expressed concern over how the proposed approach would work given the particular circumstances under which some municipal storm water systems are arranged. Several commenters questioned the effectiveness of dry weather monitoring for several reasons, including the shallow depth of some cities' water tables. Accordingly, an alternative approach may be utilized by the municipal permittee, and this is discussed later in section VI.H.3.

Some comments suggested that if any field screening is required that it be done during the term of the permit. EPA believes that field screening should not be done during the term of the permit exclusively. Unless a field screening is accomplished during the permit application phase there will be scant knowledge, if any, upon which illicit connection programs can be established for the term of the permits. EPA views field screening during the application process as an appropriate means of beginning to meet the CWA's requirement of effectively prohibiting non-storm water discharges into municipal separate storm sewers.

The submittal of part 1 of the permit application will allow EPA, or approved NPDES States, to adjust part 2 permit application requirements to assure flexibility for submitting information under part 2, given the site specific characteristics of each municipal storm sewer system.

EPA agrees with the concerns of commenters regarding the estimate of the reduction of pollutant loads from existing management programs. EPA agrees that sufficient data may not be available to establish meaningful estimates. Therefore this component of the proposed part 1 is not a requirement of today's rule.

b. Part 2 Application. Part 2 of the proposed permit application is designed to supplement information found in part 1 and to provide municipalities with the opportunity of proposing a comprehensive program of structural and non-structural control measures that will control the discharge of pollutants, to the maximum extent practicable, from municipal storm sewers. The components of the proposed part 2 of the permit application included:

- A demonstration that the legal authority of the permit applicant satisfies regulatory criteria (§ 122.26(d)(2)(i));
- Supplementation of the source identification information submitted in part 1 of the application to assure the identification of all major outfalls and land use activities (§ 122.26(d)(2)(ii);
- Information to characterize discharges from the municipal system;
- A proposed management program to control the discharge of pollutants to the maximum extent practicable, from municipal storm sewers (§ 122.26(d)(2)(iv));
- Assessment of the performance of proposed controls (§ 122.26(d)(2)(v));
- A financial analysis estimating the cost of implementing the proposed management programs along with identifying sources of revenue § 122.26(d)(2)(vi);
- A description of the roles and responsibilities of co-applicants (§ 122.26(d)(2)(vii)).

One municipality agreed that the assessment of the performance of controls was a critical component of establishing a viable program and one that could be accomplished within the time frame of the permit application deadlines. One commenter suggested that the applicant describe what financial resources are currently available. In response, EPA will require applicants to describe the municipality's existing budget for storm water programs in part 1 of the permit application requirements. This information will be useful to evaluate the municipality's ability to prepare and implement management plans. In response to other comments, this information will also include an overview of the municipality's financial resources and a description of the municipality's budget, including overall indebtedness and assets.

EPA has retained the financial analysis in this portion of the rule on the advice of two municipal commenters, who agreed that this was an important component of establishing a viable program and one that could be accomplished within the time frame of the permit application deadlines. Another commenter noted that this requirement is appropriate to justify a municipality's proposed management plan.

3. Major Outfalls

In past rulemakings, a controversial issue has been the appropriate sampling requirements for municipal separate storm sewer systems. Earlier storm water rulemakings have been based primarily on the principle that all discharges to waters of the United States from municipal separate storm sewers located in urban areas must be covered by an individual permit. This approach requires that individual permit applications contain quantitative data to be submitted for all such discharges. This approach was criticized because of a potentially unmanageable number of outfalls in some municipal separate storm sewer systems. Most incorporated cities with a population of 100,000 or more do not know the exact number of outfalls from their municipal systems; but based on the comments, the number ranges from 500 to 8,000 or more.

In light of the increased flexibility provided by the WQA and the development of EPA's system-wide approach for regulating municipal separate storm sewer discharges, today's rule will not require submittal of individual permit applications with quantitative data for each outfall of a municipal system. Rather today's rule will encourage system-wide permit applications to provide information suitable for developing effective storm water management programs. Under this approach, not all outfalls of the municipal system will be sampled, but rather more specific and accurate models for estimating pollutant loads and discharge concentrations will be used. The use of these models will require the identification of sources which are responsible for discharging pollutants into municipal separate storm sewers and will not require as much data to calibrate due to the source-specific nature of the model. A number of standard and localized models have been developed for estimating pollutant loads from storm water discharges.

Several commenters support the use of models for developing management plans and estimating pollutant loadings and concentrations. EPA encourages their use where applicable to particular systems.

By adopting an approach that incorporates source identification measures, the amount of quantitative data required to characterize discharges from the municipal system will be reduced because of the increased accuracy of the site-specific models which can be used. Consistent with a system-wide permit application approach, EPA proposed to focus source identification measures on "major outfalls." The proposed definition of major outfalls includes any municipal separate storm sewer outfall that discharges from a pipe with a diameter of more than 36 inches or its equivalent (discharges from a drainage area of more than 50 acres), or for municipal separate storm sewers that receive storm water from lands zoned for industrial activities, an outfall that discharges from a pipe with a diameter of more than 12 inches or its equivalent (discharges from a drainage area of 2 acres or more).

Numerous entities offered comments on this definition. Several commenters concurred with this proposed definition. One commenter maintained that the data collected at such outfalls would be sufficient to estimate pollutant loads as well as concentrations using well calibrated models. Another municipality stated that 50 acres was an excellent approximation for the average drainage area served by a 36-inch storm sewer. Two States and one county supported the definition as proposed. One large municipal entity supported the definition, stating that screening major outfalls could be accomplished with available staff over a three month period. In light of these comments, EPA has decided to retain, in part, the definition as proposed.

Numerous commenters suggested alternative definitions or otherwise disagreed with the proposed definition. Most of these comments expressed concern about the number of outfalls that would have to be tested or screened if the definition was retained. For this reason EPA has decided to limit the total number of major outfalls or equivalent sampling points that have to be tested to 250 or 500 for medium or large systems respectively. This change is discussed in further detail below.

The following are examples of comments that opposed the definition of a "major outfall" as proposed. Several commenters stated that, in the southwest, 6 to 12 foot outfalls are the norm, and that smaller outfalls should not be addressed unless there is a compelling reason to suspect illicit connections. One commenter suggested a size of 54 inches and 50 acres, while another commenter suggested that 48 inches would be appropriate. One commenter suggested that the diameter for industrial pipes should be 18 inches, while another commenter suggested that 50 acres should be the only criterion.

One commenter noted that pipe size will vary according to rainfall patterns and that a single approach would not work universally. This comment, and other similar points of view as noted herein, convinces that Agency that a more flexible approach is needed to identify field screening and sampling locations. However, EPA is also convinced that a universal standard is necessary for purposes of identifying drainage areas within the municipal system and discrete areas of land use that are drained by certain sized outfalls. This information is critical since these conveyances, and lands they drain, are sources of pollutants to waters of the United States from municipal systems and are properly the subject of appropriate permit conditions.

Many commenters suggested placing a limit on the number of major outfalls addressed during the field screening phase of the permit application. Two municipalities stated that the proposed definition of major outfalls in terms to the pipe diameter was too small and that too many outfalls would be covered. One municipality stated that under the proposed definition, it would have over 4700 "major outfalls," a number viewed as being unacceptably large. Several municipalities argued that they would be penalized for over-design of their storm drain system. One municipality stated field screening of outfalls should be limited to 200 for medium cities and 500 for large cities. Some commenters suggested EPA set a percentage of major outfalls for screening, because all pipes in some municipalities meet the definition of major outfall. One commenter suggested that a sliding scale be used to determine the number of outfalls tested: those with 50 test all, those with 100–200 test 50%, etc. Other commenters suggested a flat percentage of outfalls or flat number such as 100.

4. Field Screening Program

EPA also received several comments in response to the proposed field screening methodology. Among the major concerns were: End of pipe sampling may not be practical and the more appropriate and accessible location is likely to be the nearest upstream manhole; the type of discharge should be the criterion for selecting sampling points as opposed to pipe size; a system wide evaluation is more appropriate than checking each outfall; within some systems, major outfalls or pipe size will not reflect discharges from suspect or old land use areas; efforts should be focused on locations where illicit connections are expected; sites should be determined by looking at sites within drainage basin areas based on land use within those basins; land use and hydrology of the watershed should be the criteria for selecting points;

screening should be performed at locations that will allow for the location of upstream discharges; the focus should be exclusively on drainage areas rather than pipe size, since pipe size will vary with slope; a prescribed percentage of total flow may be more appropriate; state water quality standards should be utilized along with focusing on actual quality in the reaches of a stream.

EPA is convinced by these comments that today's rule should allow applicants to either field screen all major outfalls as proposed (first procedure) or use a second procedure to provide for the strategic location of sampling points to pinpoint illicit connections. EPA agrees with comments that the size of the outfall will not always reflect the chance of uncovering illicit connections or discharges, and that field screening points should be easily accessible.

This second procedure is as follows: field screening points and/or outfalls are randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a major outfall or segment of the storm sewer system. The grid shall be established using the following guidelines and criteria:

(1) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(2) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(3) Field screening points or major outfalls should be located downstream of any sources of suspected illegal or illicit activity;

(4) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(5) The assessment and selection of cells shall use the following criteria: Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; land use types;

(6) For medium municipal separate storm sewer systems, no more than 250 cells need have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points for detecting illicit connections; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible);

(7) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs (1) through (6) above, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen at least 250 or 500 major outfalls respectively using the following method: the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart overlaid on a map of the boundaries of a large or medium municipal entity described at § 122.26(b), thereby creating a series of cells; major outfalls in as many different cells as possible shall be selected until 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

The methodology outlined above is in response to public comments which indicated that the field screening and sampling of major outfalls as proposed would lead to insurmountable logistical problems in some municipal systems. EPA believes that the above is an effective approach to pinpointing suspected problem points along a given trunkline or segment of separate storm sewer system. Jurisdictions with no extensive or previous history of monitoring, or lack of an intensive monitoring program can utilize the methods described in establishing a program. Furthermore, the approach will allow for the prioritization of outfalls, sampling points, or areas within the municipality where there are suspected illicit connections or discharges, or other circumstances creating higher concentrations and loadings of pollutants.

Paragraph (7) enables municipalities to select major outfalls without regard to the municipal sewer system map that is required for using the procedure described in paragraphs (1) through (6). However, the applicant must still select outfalls within the cells created by overlaying a 1/4 mile grid over a map of the boundaries of the large or medium municipal entity defined under § 122.26(b), and select major outfalls within as many of those cells as possible, up to 500 (large municipal systems) or 250 (medium municipal systems). In this manner, as many different areas and land uses within the municipal system will be covered by the field screening component of the municipal application.

In order to keep the costs of the program within the anticipated limits of the proposed regulation, the number of outfalls or sampling locations using the grid system is to be limited to 500 for large municipal separate storm sewer systems and 250 for medium municipal separate storm sewer systems.

In response to several comments, EPA has clarified the definition of major outfalls with regard to the words, "pipe with an inside diameter of 36 inches or more or its equivalent" and "a pipe with an inside diameter of 12 inches or more or its equivalent." This definition has been modified to specify that single pipes or single conveyances with the appropriate diameter or equivalent are covered.

EPA's proposal required municipal permit applicants to submit a fiscal analysis of expenditures that will be required in order to implement the proposed management plans required in part 2 of the application. The description of fiscal resources should include a description of the source of the funds. Some commenters felt that a fiscal analysis should only be required during the term of the permit. In response, EPA believes that during the two years of permit application development, the permit applicant should be in a position to submit information on the ability and means for financing storm water management programs during the term of the permit. EPA views this information as an important means of evaluating the scope of program and whether the permittee will be devoting adequate resources to implementing the program before that program is mapped out in the permit itself.

5. Source Identification

The identification of sources which contribute pollutants to municipal separate storm sewers is a critical step in characterizing the nature and extent of pollutants in discharges and in developing appropriate control measures. Source identification can be useful for providing an analysis of pollutant source contribution and for identifying the relationship between pollutant sources and receiving water quality problems. In cases where end-of-pipe controls alone are not practicable, it is essential to identify the source of pollutants into the municipal storm

sewer systems to support a targeted approach to control pollutant sources.

The relative contribution of pollutants from various sources will be highly site-specific. The first step in developing a targeted approach for controlling pollutants in discharges from municipal storm sewer systems is identifying the various sources in each drainage basin that will contribute pollutants to the municipal storm sewer system.

This rulemaking phases in the source identification requirements of the permit program by establishing minimum objectives in part 1 of the application and by requiring applicants to submit a source identification plan in part 2 of the application to provide additional information during the term of the permit. The minimum source identification requirements of part 1 of the application have been designed to provide sufficient information to provide an initial characterization of pollutants in the discharges from the municipal storm sewer system. EPA realizes that with many large, complex municipal storm sewer systems, it may be difficult to identify all outfalls during the permit application process. Accordingly, EPA is requiring that known outfalls be reported in part 1 of the application. Part 1 of the application will also include: A description of procedures and a proposed program to identify additional major outfalls; the identification of the drainage area associated with known outfalls; a description of major land use classifications in each drainage area, descriptions of soils, the location of industrial facilities, open dumps, landfills or RCRA hazardous waste facilities which discharge storm water to the municipal storm sewer system; and ten year projections of population growth and development activities (population data and development projections will be useful for future predictions of loadings to receiving waters from municipal storm sewer systems, and capacities required for treatment systems). In general, population projections should reflect various scenarios of development (high, medium, low relative to recent trends).

Part 2 of the application will supplement the information reported in part 1 of the application so that, at a minimum, all major outfalls are identified.

Under today's rule, municipal or public entities responsible for applying for and obtaining an NPDES permit will be required to identify the location of an open dump, sanitary landfill, municipal incinerator or hazardous waste treatment, storage, and disposal facility under RCRA which may discharge storm water to the system as well as all facilities which discharge storm water associated with industrial activity into a large or medium municipal separate storm sewer system.

Requiring these source identification measures is supported by the legislative history of section 405 of the WQA, which instructs that "[i]n writing any permit for a municipal separate storm sewer, EPA or the State should pay particular attention to the nature and uses of the drainage area and the location of any industrial facility, open dump, landfill, or hazardous waste treatment, storage, or disposal facility which may contribute pollutants to the discharge." (emphasis added) [Vol 133 Cong. Rec. S752 (daily ed. Jan. 14, 1987].

One municipality questioned the purpose of the topographic map and commented that the scale of the topographic map is too large to indicate any of the required outfall, drainage, industrial or structural control information. In response, the purpose of the topographic map is to identify receiving waters, major storm water sewer lines that contribute discharges to these waters, and potential sources of storm water pollution. EPA disagrees that a USGS 7.5 scale map is inappropriate for identifying these features within a municipal system. The scale afforded by such a map provides sufficient detail to allow specified delineation of outfalls, while not requiring an overly burdensome map in terms of size. Numerous commenters noted the value of source identification information and generally supported submitting this information in the permit application.

Many commenters questioned the value of the source identification information for the purpose of characterizing pollutant loads and concentrations. Conversely, one commenter opined that the requirement would provide sufficient information to estimate pollutant loadings from each outfall using loading models to estimate loadings by watershed. In response, the source identification information serves several purposes. It is the first step for identifying potential sources of pollutants from which more in depth analysis can be accomplished, under the discharge characterization component of the application. Also, where appropriate, it may be used in conjunction with models to estimate loadings and concentrations. EPA has also taken note of the many comments that question or dismiss the concept of determining pollutant loads and concentrations solely from source identification. Accordingly, EPA is convinced that at least some of the sampling requirements as proposed are necessary to facilitate more accurate system specific estimates of pollutant concentrations and loadings. These are discussed below, in the discharge characterization section.

One commenter suggested that aerial photos be submitted in lieu of topographic maps. EPA agrees that an aerial photograph of the appropriate scale that communicates the same information as a topographic map may be substituted. Today's final rule reflects this flexibility.

The source identification component of the municipal application also requires that municipal applicants identify the industrial activity within the drainage area associated with each major outfall. One commenter stated that where multiple storm sewers outfalls discharge to a stream reach, municipalities should be allowed to delineate a single sewer-shed for identifying sources of industrial activity. In response, the rule does not delimit an applicant's ability to identify industries in groups according to a common series of storm sewer outfalls, if that is an easier or more appropriate methodology for that particular applicant. However, EPA would view this as appropriate only where the land use is of one type, such as industrial. Where land use is mixed within the drainage area associated with each major outfall, such differences need to be identified.

In response to comments, to the extent that EPA is requesting that applicants identify the types of industrial facilities operating within the municipality, the municipality is free to use Standard Industrial Classification (SIC) or other systems which identify the principal products or services of the facility. One commenter disagreed with EPA's decision to require a list of water bodies that are listed under CWA sections 304(1), 319(a), 314(a), and 320, because the States already have this information and that requesting it from permittees could result in "omissions, misunderstandings, and mistakes." EPA believes that these waters should be identified in the application so that appropriate permit conditions can be developed that address storm water discharges that are adversely effecting such waters. EPA believes that having this information immediately at the disposal of the municipality and the permit writer will speed the process and alert the municipality of storm water discharges to listed water bodies and potentially polluted storm water discharges to those waters.

6. Characterization of Discharges

The characterization plan and data collection required in today's rule as elements of Part-one and Part-two of the municipal permit application is comprised of several major components:

- A screening analysis to provide information to develop a program for detecting and controlling illicit connections and illegal dumping to the municipal separate storm sewer system;
- Initial quantitative data to allow the development of a representative sampling program to be incorporated as a permit condition;
- System-wide estimates of annual pollutant loadings and the mean concentration of pollutants in storm water discharges, and a schedule to provide estimates during the term of the permit for each major outfall of the seasonal pollutant loadings and the event mean concentration of pollutants in storm water discharges; and
- An identification of receiving waters with known water quality impacts associated with storm water discharges.

Several commenters noted the importance of developing and targeting management programs based on discharge characterization data and monitoring. Numerous other commenters stressed the importance of a program to identify and eliminate illicit connections and improper disposal. EPA agrees that discharge characterization is an important component of developing management programs. Most of the discharge characterization components of the municipal application procedure have been retained as proposed. However some changes and clarifications have been made, and these are noted below.

a. *Screening analysis for illicit discharges (part 1 of application).* Illicit discharges (non-storm water discharges without a NPDES permit), and illegal dumping to municipal separate storm sewer systems occur in a relatively haphazard manner. Due to the unpredictability of such discharges, today's permit applications require a field analysis for the development of priorities for detecting and controlling such discharges. A field screening approach will provide a means of detecting high levels of pollutants in dry weather flows, which is one indicator of illicit connections. Results of a field test of such discharges will provide further information about the nature of the discharge to determine if further investigation is warranted. Visual observation of dry weather flows has been shown to be one the mos' effective means for tracking down illicit connections and improper disposal.

As discussed in greater detail in section VI.H.7.b of today's preamble, EPA is proposing to require that municipal applicants submit a comprehensive plan to develop a program to detect and control illicit connections and illegal dumping. In order to develop appropriate priorities for these programs, applicants shall submit the results of a screening analysis to be performed on major outfalls or "field screening points" in the systems to detect the presence of illicit hookups and illegal dumping. The results of the screening analysis, referred to as the field screen, would be reported in part 1 of the permit application.

Under the requirements for a field screen, the applicant or co-applicants will submit a description of observations of dry weather discharges from major outfalls or "field screening points" identified in part 1 of the application. At a minimum, the field screen would include a description of visual observations made during a dry weather period. If any flow is observed during a dry weather period, two grab samples will be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observation regarding the potential presence of non-storm water discharges or illegal dumping would be provided. In addition, the applicant should provide the results of a field screen which includes on-site estimates of pH, total chlorine, total copper, total phenol, detergents (or surfacants) along with a description of the flow. EPA is not requiring analytical methods approved under 40 CFR part 136 be used exclusively in the field screen. Rather, the use of inexpensive field sampling techniques such as the use of colormetric detection methods is anticipated. Where the field screen does not involve analytical methods approved under 40 CFR part 136, the applicant is required to provide a description of the method used which includes the name of the manufacturer of the test method, including the range and accuracy of the test. Appropriate field techniques for a field screen of dry weather discharges are discussed in EPA guidance for municipal storm water discharge permit applications.

It should be clarified that data from the field screen is generally not appropriate for comprehensive evaluation of water quality impacts, or estimating pollutant loadings. Rather, the information from the field screen in part 1 of the application will be used along with other information, such as the age of development and degree of industrial activity in the drainage basin, to identify areas or outfalls which are appropriate targets for management programs and for investigations directed at identifying and controlling non-storm water discharges to separate storm sewers during the term of the permit.

In the December 7, 1988, proposal, EPA proposed a second phase of the screening analysis requiring that wet-weather and dry-weather samples be collected and analyzed in accordance with analytical methods approved under 40 CFR part 136 from designated major outfalls for a larger set of pollutants identified with illicit connections. Comments essentially viewed this proposal as too ambitious for the permit application. One commenter recommended that this procedure could best be accomplished during the term of the permit. Some comments maintained that the collection of analytical samples as a follow up to an initial field screen analysis was not the most cost-effective, practicable or efficient method for pinpointing illicit connections. EPA recognizes that several municipal programs to detect and control illicit connections and other non-storm water discharges have been successfully developed and implemented without the use of extensive analytical sampling (for example, programs in Fort Worth, TX and Washtenaw County, MI). After identifying and analyzing the comments on this aspect of the proposal EPA has withdrawn this element of the proposal from today's rule. EPA believes that a follow-up phase to the initial field screening is more appropriate during the term of the permit. Thus, EPA has dropped the field screening requirement proposed for Part 2 of the application.

b. *Representative data (Part 2 of application).* The NURP study showed that pollutant concentrations in urban runoff can exhibit significant variation. Pollutant concentrations in such discharges vary during storm events and from storm event to storm event. Given the complex, variable nature of storm water discharges from municipal systems, EPA favors a permit scheme where the collection of representative data is primarily a task that will be accomplished through monitoring programs during the term of the permit. Permit writers have the necessary flexibility to develop monitoring requirements that more accurately reflect the true nature of highly variable and complex discharges.

Today's rule provides for an initial assessment of the quality of discharges from municipal separate storm sewers based primarily on source identification measures and existing information received in the permit application. This information will be used to begin to characterize system discharges. The analysis developed under this approach will not rely soley on sampling data collected during the application process, but will also incorporate existing data bases such as the one developed under the NURP study. Today's rule requires that some quantitative data will be collected to ensure the system discharges can be appropriately represented by the various existing data bases and to provide a basis for developing a monitoring plan to be implemented as a permit condition.

Today's rule requires that quantitative data be submitted for discharges from selected storm events at between 5 and 10 outfalls or field screening points. The municipality will recommend and the Director will then designate the outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system, on the basis of information received in part 1 of the application. The applicant will be required to collect samples of a storm discharge from three storm events occurring one month apart for each designated outfall or field screening point. This is a modification to the December 7, 1988, proposal wherein only one of the 5 to 10 outfalls was to be sampled during three storm events, and the remaining sampled only once. This requirement may be modified by the Director if the type and frequency of storm events require different sampling. The Director may require samples of discharges to be collected during snow melts or during specified seasons. The Director may also require additional testing during a single event if it is unlikely that there will be three storm events suitable for sampling during the year. Furthermore, the Director may allow exemptions to the three storm event requirement when climatic conditions create good cause for such exemptions; for example, arid regions or areas experiencing drought conditions during the period when applications are developed could be exempted.

EPA has added requirements to sample more storm events in response to comments that the sampling procedure proposed would not necessarily yield representative data. Commenters indicated that: rain events of different intensity may yield different levels and types of pollutants; a rain event after a dry spell of several months will not be representative when compared to rain events occurring closer together, due to the build up of constituents; one sample may reflect short term effects such as improper disposal rather than long term effects; and that rain events are generally too variable to rely on the limited sampling as proposed. Clearly the data collected from sampling storm water discharges has a tendency to vary greatly. The more sampling that is accomplished, the greater extent to which this variability may be accounted for and appropriate management programs developed.

In selecting the amount of data to be collected during the permit application process, EPA has attempted to balance the usefulness of this data against the economic and logistical constraints in actually obtaining it. In some cases the data obtained will support initial loading and concentration estimates obtained using various modeling techniques, from which appropriate permit conditions can be developed. Data obtained may be supplemented with further data collection during the term of the permit.

EPA believes that the requirement that selected major municipal outfalls or "field screening points" be sampled for more than one event will provide verification that the characterization of discharge is valid. Where an ongoing sampling program is defined for the term of the permit, samples taken during the first few years of this period can be used to verify the application results. If a municipality or an industry questions the conclusions drawn from the characterization sampling, it may at its discretion choose to perform additional sampling to either confirm or dispel these concerns.

All samples collected will be analyzed for all pollutants listed in Table II, (organic pollutants), and Table III, (toxic metals, cyanide and total phenol) of appendix D of 40 CFR part 122, and for the pollutants listed in Table M–1 below:

Table M–1

Total suspended solids (TSS).	Total dissolved solids.
COD	BOD_5.
Oil and grease	Fecal coliform.
Fecal streptococcus	pH.
Dissolved phosphorus	
Total ammonia plus organic nitrogen.	Total phosphorus.
Total Kjeldahl nitrogen	Nitrate plus nitrite.

A portion of the NURP program involved monitoring 120 priority pollutants in storm water discharges from lands used for residential, commercial and light industrial activities. The NURP program excluded testing for asbestos and dioxin. Results for seven other organic priority pollutants were not considered valid due to changes in, or constraints on test methods. Seventy-seven priority pollutants were detected in samples of storm water discharges from lands used for residential, commercial and light industries taken during the NURP study, including 14 inorganic and 63 organic pollutants. Table M–2 shows the priority pollutants which were detected in at least ten percent of the discharge samples which were sampled for priority pollutants.

TABLE M–2.—PRIORITY POLLUTANTS DETECTED IN AT LEAST 10% OF NURP SAMPLES

[In percent]

Metals and inorganics	Frequency of detection
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	58
Copper	91
Cyanides	23
Lead	94
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated aliphatics:	
Methane, dichloro-	11
Phenols and cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10
Phthalate esters:	
Phthalate, bis(2-ethylhexyl)	22
Polycyclic aromatic hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

The NURP data also showed a significant number of these samples exceeded various freshwater water quality criteria. The exceedence of water quality criteria does not necessarily imply that an actual violation of standards will exist in the receiving water body in question. Rather, the enumeration of exceedences serves as a screening function to identify those constituents whose presence in urban storm water runoff may warrant high priority for further evaluation.

Members of this group represent all of the major organic chemical fractions

found in Table II of appendix D of 40 CFR part 122 (volatiles, acid compounds, base/neutrals, pesticides). Today's rule requires testing for all organic constituents in Table II rather than limiting the sampling requirements to the 24 toxic constituents found in the NURP study because they will provide a better description of the discharge at essentially the same cost. (The cost of analyzing samples for organic chemicals strongly depends on the number of major organic chemical fractions tested). The NURP study focused on characterizing storm water discharges from lands used for residential, commercial and light industrial activities. In general, the NURP study did not focus on other sources of pollutants to municipal separate storm sewer systems and, therefore, does not reflect all potential pollutants that may be present in discharges from municipal separate storm sewer systems.

The sampling requirements for the permit application address a limited number of sampling locations but require analysis for a wide range of pollutants. Sampling for a wide range of pollutants as a permit application requirement should provide permit writers with appropriate data to target more specific pollutants when developing requirements for a monitoring program during the term of the permit.

Numerous commenters stated that monitoring for all priority pollutants seemed excessive. However, EPA is convinced that it is more appropriate for permit conditions to focus on and prioritize particular pollutant problems after data covering a broad spectrum of pollutants are developed. As noted above, NURP identified 77 priority pollutants in urban runoff, but only from residential, commercial, and light industrial (*e.g.* industrial parks) areas. One municipal entity stated that this approach is a reasonable and realistic means of providing some useful baseline data, while others recommended sampling a variety of parameters that are included in Tables M–1 and M–2. Another municipal entity stated that characterization of outfall discharge quality during storm events is necessary as a means of targeting source control activities.

EPA is working with the United States Geological Survey (USGS) to evaluate the availability of USGS technical assistance to municipalities through cooperative funding programs to aid in collecting representative quantitative data of storm water discharges from municipal systems.

USGS data collection programs with municipalities typically include storm water discharge samples obtained at various times during a storm hydrograph event. Various USGS field procedures can be used to obtain discharge data for pipes, culverts, etc., typically found in urban areas. Pollutant models can be calibrated with data and long-term rainfall records to simulate the quality of system discharges and compared to other storm water models.

In addition, EPA recognizes that many municipalities have participated in studies, such as NURP, that involve sampling of urban runoff as well as other components of discharges from municipal separate storm sewer systems. All existing storm water sampling data along with relevant water quality data, sediment data, fish tissue data or biosurvey data taken over the last ten years is considered relevant and, under today's rule, must be submitted with part 1 of the application. Sampling data that is submitted must be accompanied with a narrative description of the drainage area served by the outfall monitored, a description of the sampling and quality control program, and the location of receiving water monitoring.

EPA requested comments on the use of existing data, such as that generated under the NURP study, to satisfy the requirement of providing representative sampling data. Commenters did not agree on the value of NURP results as an indicator of representative data. Several commenters expressed the view that existing data could be used to satisfy in whole or in part the representative sampling requirements of the storm water permit application. However, commenters generally did not offer suggested criteria that could be used to verify the validity of existing data. One commenter believed that intensive sampling over a period of ten years in 12 basins, when combined with NURP data, would be adequate.

One commenter supported the use of data, such as that obtained from the NURP study, to target sampling programs. EPA supports such a methodology and has retained this portion of the proposed discharge characterization component. EPA received strong support from an environmental group for retaining this information requirement in part 1 of the application.

In light of these comments EPA believes it is appropriate to retain the representative sampling requirements without resorting to the use of existing data exclusively. Because of the inherent variability in reliability and applicability of existing data, EPA is convinced that a nationally consistent methodology for collecting data is appropriate. This data can then be used in conjunction with other existing data and models to develop appropriate site specific management programs and more generalized management program strategies. Where existing data and data collected under today's rule varies or does not match, further sampling under the term of the permit will be accomplished to more accurately assess the discharge of pollutants.

c. Loading and Concentration Estimates (part 2 of application). The assessment of the water quality impacts of discharges from municipal separate storm sewer systems on receiving waters requires the analysis of both pollutant loadings and concentrations of pollutants in discharges.

The loading and concentration estimates in today's rule will be used to evaluate two types of water quality impacts: (1) Short-term impacts; and (2) long-term impacts. Specifically, the regulation requires estimates of the annual pollutant load of the cumulative discharges to waters of the United States from municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States municipal outfalls during a storm event for BOD_5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods. Municipalities have options in the use of methodologies, including those presented in NURP for calculating loads.

Short term impacts from discharges from municipal separate storm sewers involve changes in water quality that occur during and shortly after storm events. Examples of short-term impacts that can lead to impairments include periodic dissolved oxygen depression due to the oxidation of contaminants, high bacteria levels, fish kills, acute effects of toxic pollutants, contact recreation impairments and loss of submerged macrophytes. Characterization of instream pollutant concentrations based on estimated pollutant concentrations in system discharges are important for evaluating these types of impacts.

Long-term water quality impacts from discharges from municipal separate storm sewers may be caused by contaminants associated with suspended solids that settle in receiving water sediments and by nutrients which enter receiving water systems with long

retention times. Pollutant loading data are important for evaluation of impairments such as loss of storage capacity in streams, estuaries, reservoirs, lakes and bays, lake eutrophication caused by high nutrient loadings, and destruction of benthic habitat. Other examples of the long-term water quality impacts include depressed dissolved oxygen caused by the oxidation of organics in bottom sediments and biological accumulation of toxics as a result of uptake by organisms in the food chain. An estimate of annual pollutant loading associated with discharges from municipal storm water sewer systems is necessary to evaluate the magnitude and severity of the environmental impacts of such discharges and to evaluate the effectiveness of controls which are imposed at a later time.

Municipal storm water sewer systems generally handle runoff from large drainage areas and the sources of pollution are usually very diffuse. The concentrations of many pollutants in discharges from these systems are often low relative to many industrial process and POTW discharges. The water quality impacts of low concentration pollution discharges tend to be cumulative and need to be evaluated in terms of aggregate loadings as well as pollutant concentrations. A site-specific loading analysis can be used to evaluate the relative contribution of various pollutant sources.

7. Storm Water Quality Management Plans

Today's rule facilitates the development of site-specific permit conditions by requiring large and medium municipal permit applicants to submit, along with other information, a description of existing structural and non-structural prevention and control measures on discharges of pollutants from municipal storm sewers in part I of the permit application. Section 122.26(d)(2)(iv) requires the applicant to identify in part 2 of the application, to the degree necessary to meet the MEP standard, additional prevention or control measures which will be implemented during the life of the permit. Although, in many cases, it will not be possible to identify all prevention and control measures that are appropriate as permit conditions, EPA believes that the process of identifying components of a comprehensive prevention and/or control program should begin early and that applicants should be given the opportunity to identify and propose the components of the program that they believe are appropriate for first preventing or controlling discharges of pollutants.

As noted earlier, EPA recognizes that problems associated with storm water, combined sewer overflows (CSOs) and infiltration and inflow (I&I) are all interrelated even though they are treated somewhat differently under the law. EPA believes that it is important to begin linking these programs and activities and, because of the potential cost to local governments, to investigate the use of innovative, nontraditional approaches to reducing or preventing contamination of storm water. The application process for developing municipal storm water management plans provides an ideal opportunity between steps 1 and 2 for considering the full range of nontraditional, preventive approaches.

The permit application requirements in today's rule require the applicant or co-applicants to develop management programs for four types of pollutant sources which discharge to large and medium municipal storm sewer systems. Discharges from large and medium municipal storm sewer systems are usually expected to be composed primarily of: (1) Runoff from commercial and residential areas; (2) storm water runoff from industrial areas; (3) runoff from construction sites; and (4) non-storm water discharges. Part 2 of the permit application has been designed to allow the applicant the opportunity to propose MEP control measures for each of these components of the discharge. Discharges from some municipal systems may also contain pollutants from other sources, such as runoff from land disposal activities (leaking septic tanks, landfills and land application of sewage sludge). Where other sources, such as land disposal, contribute significant amounts of pollutants to a municipal storm sewer system, appropriate control measures should be included on a site-specific basis. Proposed management programs will then be evaluated in the development of permit conditions.

There is some overlap in the manner in which these pollutant sources are characterized and their sources identified. For instance, improper disposal of oil into storm drains is often associated with do-it-yourself automobile oil changes in residential areas, or improper application or over-use of herbicides and pesticides in residential areas can also occur in industrial areas. Also, some control measures will reduce pollutant loads for multiple components of the municipal storm sewer discharge. These measures should be identified under all appropriate places in the application; as discussed below, however, double counting of pollutant removal must be avoided when the total assessment of control measures is performed.

Although many land use programs have multiple purposes, including the reduction of pollutants in discharges from municipal separate storm sewer systems, the proposed management programs in today's rule are intended to address only those controls which can be implemented by the permit applicant or co-applicants. EPA cannot abrogate its responsibilities under the CWA to implement the NPDES permit program by relying on pollution control programs that are outside the NPDES program. For example, municipal permit management programs may not rely exclusively on erosion or sediment control laws for implementing that portion of management programs that address discharges from construction sites, unless such laws implement NPDES permit program requirements entirely and that such implementation is a part of the permit.

EPA anticipates that storm water management programs will evolve and mature over time. The permits for discharges from municipal separate storm sewer systems will be written to reflect changing conditions that result from program development and implementation and corresponding improvements in water quality. The proposed permit applications will require applicants to provide a description of the range of control measures considered for implementation during the term of the permit. Flexibility in developing permit conditions will be encouraged by providing applicants an opportunity to identify in the permit application priority controls appropriate for the initial implementation of management programs. Many commenters endorsed the flexible site-specific storm water program approach as proposed as a method for addressing regional water quality control programs in a cost effective manner. To this extent, EPA agrees with one municipality that management programs should focus on more serious problems and sources of pollutants identified in the municipal system. However, EPA believes that to implement section 402(p)(3), comprehensive storm water management programs which address a number of major sources of pollutants to a system are necessary. Municipal programs should not be focused solely on a single source of pollution, such as illicit connections.

One commenter maintained that management program development

should be flexible enough to allow for consideration of what is attainable based on the area's climate, vegetation, hydrology, and land uses. EPA agrees with this comment. Some strategies for reducing pollutants in the northeast will not be practical in the southwest, such as management programs for deicing activities. The permit application process will determine what strategies are appropriate in different locations.

Several commenters supported addressing storm water pollutant problems through management practices or programs rather than end of pipe controls or treatment. EPA agrees with this comment to the extent that storm water management practices are a general theme of this rulemaking with regard to municipal permits. However, there will be cases where such discharges are best addressed through technology such as retention, detention or infiltration ponds.

One commenter reacted unfavorably to the flexible site-specific management plan approach stating that there is no hard criteria upon which to judge the adequacy of programs. Another commenter felt that there should be a BAT standard for municipal permits. Another commenter stated that the rule should contain specific BMPs that the permittee must comply with. EPA disagrees with these comments. The Clean Water Act requires municipalities to apply for permits that will reduce pollutants in discharges to the maximum extent practicable and sets out the types of controls that are contemplated to deal with storm water discharges from municipalities. The language of CWA section 402(p)(3) contemplates that, because of the fundamentally different characteristics of many municipalities, municipalities will have permits tailored to meet particular geographical, hydrological, and climatic conditions. Management practices and programs may be incorporated into the terms of the permit where appropriate. Permit conditions, which require that storm water management programs be developed and implemented or require specific practices, are enforceable in accordance with the terms of the permit. EPA disagrees with the notion that this regulation, which addressed permit application requirements, should create mandatory permit requirements which may have no legitimate application to a particular municipality. The whole point of the permit scheme for these discharges is to avoid inflexibility in the types and levels of control. Further, to the degree that such mandatory requirements may be appropriate, these requirements should be established under the authority of section 402(p)(6) of the CWA and not in this rulemaking, which addresses permit application requirements.

Some commenters suggested that management programs should be developed as part of the permit conditions and not as part of the permit application. EPA agrees that management programs and their ongoing development should be part of the permit term. However, EPA is convinced, and many commenters agree, that the permit application should contain information on what the permittee has done to date and what it proposes and plans to do during the permit term based upon its discharge characterization and source identification data. This is a reasonable and logical approach and one that meets the intent and letter of section 402(p)(3) of the CWA. As stated above, this would be an appropriate method for implementing storm water management programs that should mature and evolve over time.

Applicants will propose priorities based on a consideration of appropriate controls including, but not limited to, consideration of controls that address: reducing pollutants to municipal separate storm sewer system discharges that are associated with storm water from commercial and residential areas (§ 122.26(d)(2)(iv)(A)); illicit discharges and illegal disposal (§ 122.26(d)(2)(iv)(B)); storm water from industrial areas (§ 122.26(d)(2)(iv)(C)); and runoff from construction sites (§ 122.26(d)(2)(iv)(D)). Permits for different municipalities will place different emphasis on controlling various components of discharges from municipal storm sewers. For example, the potential for cross-connections (such as municipal sewage or industrial process wastewater discharges to a municipal separate storm sewer) is generally expected to be greater in municipalities with older developed areas. On the other hand, municipalities with larger areas of new development will have a greater opportunity to focus controls to reduce pollutants in storm water generated by the area after it is developed, discharges from construction sites, and other planning activities.

EPA requested comments on the process and methods for developing appropriate priorities in management programs proposed in applications and how the development of these priorities can be coordinated with controls on other discharges to ensure the achievement of water quality standards and the goals of the CWA.

Discharges from diffuse sources in residential areas was recognized by several commenters as a significant source of pollutants. Accordingly, these elements of the management plans have been retained. In conjunction with the importance of developing programs for illicit connections, numerous commenters stated that education programs are a priority. Another commenter emphasized that ordinances prohibiting such discharges and their enforcement is a crucial means of a successful program in this regard. EPA agrees with these comments and consequently will retain those portions of management program development that include a description of a program for educational activities such as public information for the proper disposal of oil and toxic materials and the use of herbicides, pesticides and fertilizers.

Some commenters noted that discharge characterization is necessary for development of appropriate management plans. EPA agrees with these comments and has retained the discharge characterization components in this rulemaking. However, EPA disagrees that the results of all discharge characterization procedures (*i.e.*, part 1 and part 2) are necessary to describe and propose a program as required in part 2 of the application. The application of various models is available to permit applicants, where needed, to develop appropriate management programs. All available site specific discharge characterization data should be available to the permit writer to draft appropriate conditions for the term of the permit.

One commenter noted that an important aspect of developing management plans is establishing the necessary legal authority to improve water quality. EPA agrees with this comment and has retained those aspects of the regulation which call for development and attainment of adequate legal authority in both parts of the municipal application.

One commenter stated that programs should address previously identified water quality problems in other programs that are required by section 304(1) of the CWA. EPA agrees that identified water quality problems need to be addressed by management programs, and the municipal permit application will call for an identification of these waters. However, EPA does not endorse addressing these waters to the exclusion of all others within the boundaries of the municipal separate storm sewer system. Some waters may experience substantial degradation after rain events and still not be listed under

section 304(1). Further, water quality impacts in listed waters may not be related to storm water discharges, while other non-listed waters do have water quality impacts from storm water discharges. Similarly, EPA agrees with one commenter that it may be desirable to focus attention and resources on certain problem watersheds within a municipality, and controls may be imposed and programs prioritized on that basis. However, such a focus should not be to the exclusion of other waters and watersheds that have water quality problems (although less troublesome) traceable to storm water discharges. The CWA requires that permits address discharges to waters of the United States, not just waters previously targeted under special programs.

Some commenters expressed concern that the permit application requires the design of management programs before knowing what will be in the permits. EPA disagrees with the thrust of this comment, that is that the order of requirements is inappropriate. The permit applicant will have two years to develop proposed plans which can be considered by permit writers in the development of the permit. Based upon a consideration of the management program proposed by the municipality and other relevant information, permits can be tailored for individual programs. One commenter stated that the cornerstone of management programs are inspection and enforcement programs. EPA agrees that these two elements are important components. Without inspection and enforcement mechanisms the programs will undoubtedly falter. Accordingly these requirements in the description of management programs in the permit application have been retained. In a similar vein, one commenter emphasized the importance of developing legal authority, financial capability, and administrative infrastructure. EPA agrees with this comment and has retained those aspects of the regulation that call for a description of applicants plans and resources in these areas.

One commenter stressed that control of discharges into the municipal system from industries is an important goal of municipal storm water management programs. EPA agrees with this comment and has retained the proposed description of management programs to address discharges from industrial sources. Other commenters identified industries as the principal contributors of pollutants to municipal separate storm sewer systems.

In addition, EPA will continue to evaluate procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality in the studies required under section 402(p)(5) of the CWA. One purpose of these studies will be to evaluate the costs and water quality benefits associated with implementing these procedures and methods. This evaluation will address a number of factors which impact the implementation costs associated with these programs, such as the extent to which similar municipal ordinances are currently being implemented, the degree to which existing municipal programs (such as flood management programs or construction site inspections) can be expanded to address water quality concerns, the resource intensiveness of the control, and whether the control program will involve public or private expenditures. This information, along with information gained during permit implementation will aid in the dynamic long-term development of municipal storm water management programs.

a. *Measures to reduce pollutants in runoff from commercial and residential areas.* The NURP program evaluated runoff from lands primarily dedicated to residential and commercial activities. The areas evaluated in the study reflect some other activities, such as light industry, which are commonly dispersed among residential and commercial areas. The NURP study selected sampling locations that were thought to be relatively free of illicit discharges and storm water from heavy industrial sites including storm water runoff from heavy construction sites. Of course, in a study such as NURP it was impossible to totally isolate various contributions to the runoff. In developing the permit application requirements in today's rule EPA has, in general, relied on the NURP definition of urban runoff—runoff from lands used for residential, commercial and light industrial activities.

NURP and numerous other studies have shown that runoff from residential and commercial areas washes a number of pollutants into receiving waters. Of equal importance is the volume of storm water runoff leaving urban areas during storm events. Large intermittent volumes of runoff can destroy aquatic habitat. As the percentage of paved surfaces increases, the volume and rate of runoff and the corresponding pollutant loads also increase. Thus, the amount of storm water runoff from commercial and residential areas and the pollutant loadings associated with storm water runoff increases as development progresses; and they remain at an elevated level for the lifetime of the development.

Proposed § 122.26(d)(2)(iv)(A) requires municipal storm sewer system applicants to provide in part 2 of the application a description of a proposed management program that will describe priorities for implementing management programs based on a consideration of appropriate controls including:

- A description of maintenance activities and a maintenance schedule for structural controls;
- A description of planning procedures including a comprehensive master plan to control after construction is completed, the discharge of pollutants from municipal separate storm sewers which receive discharges from new development and significant redevelopment after construction is completed (in response to comment this contemplates an engineering policy and procedure strategy with long term planning);
- A description of practices for operating and maintaining public highways and procedures for reducing the impact on receiving waters of such discharges from municipal storm sewer system;
- A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies; and
- A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

Water quality problems caused by municipal storm sewer discharges will generally be most acute in heavily developed areas. Prevention measures may be desirable and cost effective. However, structural control measures may also be effective, although opportunities for implementing these measures may be limited in previously developed areas. Commonly used structural technologies include a wide variety of treatment techniques, including first flush diversion systems, detention/infiltration basins, retention basins, extended detention basins, infiltration trenches, porous pavement, oil/grit separators, grass swales, and swirl concentrators. A major problem associated with sound storm water management is the need for operating

and maintaining the system for its expected life.

The unavailability of land in highly developed areas often makes the use of structural controls infeasible for modifying many existing systems. Non-structural practices can play a more important role. Non-structural practices can include erosion control, streambank management techniques, street cleaning operations, vegetation/lawn maintenance controls, debris removal, road salt application management and public awareness programs.

As noted above, the first component of the proposed program to reduce pollutants in storm water from commercial and residential areas which discharge to municipal storm sewer systems is to describe maintenance activities and schedule. The second component of the proposed program to reduce pollutants in storm water from commercial and residential areas which discharge to municipal storm sewer systems provides that applicants describe the planning procedures and a comprehensive master plan that will assure that increases of pollutant loading associated with newly developed areas are, to the maximum extent practicable, limited. These measures should address storm water from commercial and residential areas which discharge to the municipal storm sewer that occur after the construction phase of development is completed. Controls for construction activities are addressed later in today's rule. One commenter noted the feasibility of developing management plans for newly developing areas. EPA agrees with this comment and has retained that portion of the regulation that deals with a description of controls for areas of new development. Similarly, one municipality stressed the importance and achievability of addressing storm water discharges from construction sites.

As urban development occurs, the volume of storm water and its rate of discharge increases. These increases are caused when pavement and structures cover soils and destroy vegetation which otherwise would slow and absorb runoff. Development also accelerates erosion through alteration of the land surface. Areas that are in the process of development offer the greatest potential for utilizing the full range of structural and non-structural best management practices. If these measures are to provide controls to reduce pollutant discharges after the area has been developed, comprehensive planning must be used to incorporate these measures as the area is in the process of developing. These measures offer an important opportunity to limit increases in pollutant loads.

The third component of § 122.26(d)(2)(iv)(A) provides a description of practices for operating and maintaining public roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems. General guidelines recommended for managing highway storm water runoff include litter control, pesticide/herbicide use management, reducing direct discharges, reducing runoff velocity, grassed channels, curb elimination, catchbasin maintenance, appropriate streetcleaning, establishing and maintaining vegetation, development of management controls for salt storage facilities, education and calibration practices for deicing application, infiltration practices, and detention/retention practices.

The fourth component of § 122.26(d)(2)(iv)(A) provides that applicants identify procedures that enable flood management agencies to consider the impact of flood management projects on the water quality of receiving streams. A well-developed storm water management program can reduce the amount of pollutants in storm water discharges as well as benefit flood control objectives. As discussed above, increased development can increase both the quantity of runoff from commercial and residential areas and the pollutant load associated with such discharges. Disturbing the land cover, altering natural drainage patterns, and increasing impervious area all increase the quantity and rate of runoff, thereby increasing both erosion and flooding potential. An integrated planning approach helps planners make the best decisions to benefit both flood control and water quality objectives.

The fifth component of § 122.26(d)(2)(iv)(A) would provide that municipal applicants submit a description of a program to reduce, to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer. Such a program may include controls such as educational activities and other measures for commercial applicators and distributors and controls for application in public rights-of-way and at municipal facilities. Discharges of these materials to municipal storm sewer systems can be controlled by proper application of these materials. Some commenters noted that insecticides used in residential areas are a probable source of pollutants in storm water discharges from residential areas, as well as salting and other de-icing activities. In response to this comment, part of a community management plan may include controls or education programs to limit the impacts of these sources of pollutants. One commenter noted that many communities already have household toxic disposal programs. Where appropriate these can be incorporated into municipal management programs.

Some commenters suggested substituting the management program description for residential and commercial areas with a simple identification of applicable management practices. EPA agrees that identification of appropriate management practices is a critical component of a program description for these areas. In essence, this is what the program description is designed to achieve. However, for the reasons discussed in greater detail above, EPA is convinced that an appropriate program must address all of the components of the management program for residential and commercial areas that are outlined in today's rule. Further, for the purposes of writing a permit with enforceable conditions, the application should identify a schedule to implement management practices. The applicant should be able to estimate the reduction in pollutant loads as a result of the development of certain management practices and programs (§ 122.26(d)(2)(v). A program may also include public education programs, which are not necessarily viewed as traditional BMPs.

b. *Measures for illicit discharges and improper disposal.* The CWA requires that NPDES permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." In today's rule, EPA will begin to implement this statutory mandate by focusing on two types of discharges to large and medium municipal separate storm sewer systems. *See* § 122.26(d)(1)(iv)(D) and (d)(2)(iv)(B). One type of non-storm water discharges are illicit discharges which are plumbed into the system or that result from leakage of sanitary sewage system. The other class of non-storm water discharges result from the improper disposal of materials such as used oil and other toxic materials.

Illicit discharges. In some municipalities, illicit connections of sanitary, commercial and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although the

NURP study did not emphasize identifying illicit connections to storm sewers other than to assure that monitoring sites used in the study were free from sanitary sewage contamination, the study concluded that illicit connections can result in high bacterial counts and dangers to public health. The study also noted that removing such discharges presented opportunities for dramatic improvements in the quality of urban storm water discharges.

Other studies have shown that illicit connections to storm sewers can create severe, wide-spread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes and other buildings located in Washtenaw County, Michigan and identified 14% of the buildings as having improper storm drain connections. Illicit discharges were detected at a higher rate of 60% for automobile related businesses, including service stations, automobile dealerships, car washes, body shops and light industrial facilities. While some of the problems discovered in this study were the result of improper plumbing or illegal connections, a majority were approved connections at the time they were built. Many commenters emphasized the identification and elimination of illicit connections as a priority, including leakage from sanitary sewers. EPA agrees with these comments and intends to retain this portion of the program without modification.

A wide variety of technologies exist for detecting illicit discharges. The effectiveness of these measures largely depends upon the site-specific design of the system. Under today's rule, permit applicants would develop a description of a proposed management program, including priorities for implementing the program and a schedule to implement a program to identify illicit discharges to the municipal storm sewer system. This rulemaking will require the initial priorities for analyzing various portions of the system and the appropriate detection techniques to be used.

Improper disposal. The permit application requirements for municipal storm sewer systems include a requirement that the municipal permit applicant describe a program to assist and facilitate in the proper management of used oil and toxic materials. Improper management of used oil can lead to discharges to municipal storm sewers that in turn may have a significant impact on receiving water bodies. EPA estimates that, annually, 267 million gallons of used oil, including 135 million gallons of used oil from do-it-yourself automobile oil changes, are disposed of improperly. An additional 70 million gallons of used oil, most coming from service stations and repair shops, are used for road oiling. Many commenters emphasized the elimination of discharges composed of improperly disposed of oil and toxic material. One commenter identified motor oil as the major source of oil contamination and that EPA needs to encourage proper disposal of used oil. Several other commenters emphasized the importance of recycling programs for oil. EPA agrees with these comments and intends to retain this portion of the program without modification. One commenter identified public awareness and timely reporting of illegal dumping as critical components of this portion of the program. EPA agrees with this comment and intends for management programs to deal with this problem.

c. *Measures to reduce pollutants in storm water discharges through municipal separate storm sewers from municipal landfills, hazardous waste treatment, disposal and recovery facilities that are subject to section 313 of title III of SARA.* As discussed in section VI.C of today's preamble, industrial facilities that discharge storm water through a large or medium municipal separate storm sewer system are required to apply for a permit under § 122.26(c) or seek coverage under a promulgated general permit. Today's rule also requires the municipal storm sewer permittee to describe a program to address industrial dischargers that are covered under the municipal storm sewer permit. Today's rule requires the municipal applicant to identify such discharges (*see* source identification requirements under § 122.26(d)(2)(ii)), provide a description of a program to monitor pollutants in runoff from certain industrial facilities that discharge to the municipal separate storm sewer system, identify priorities and procedures for inspections, and establish and implement control measures for such discharges. Should a municipality suspect that an individual discharger is discharging pollutants in storm water above acceptable limits, and the owner/operator of the system has no authority over the discharge, the municipality should contact the NPDES permitting authority for appropriate action. Two example of possible action are: if the facility already has an individual permit, the permit may be reopened and further controls imposed; or if the facility is covered by a promulgated general permit, then an individual site-specific permit application may be required.

In the December 7, 1988, proposal, EPA requested comments concerning what storm water discharges from industrial facilities through municipal systems should be monitored. One of the proposed approaches was to require data on portions of the municipal system which receive storm water from facilities which are listed in the proposed regulatory definition at § 122.26(b)(14) of "storm water discharge associated with industrial activity" (with the exception of construction activities and uncontaminated storm water from oil and gas operations) which discharge through the municipal system. However, given the large number of facilities meeting this definition that discharge through municipal systems, a monitoring program that requires the submission of quantitative data regarding portions of the municipal systems receiving storm water from such facilities may not be practicable. Such a requirement could, for some systems, potentially become the most resource intensive requirements in the municipal permit. Therefore, EPA proposed various ways to develop appropriate targeting for monitoring programs.

EPA requested comments on a requirement that, at a minimum, monitoring programs address discharges from municipal separate storm sewer outfalls that contain storm water discharges from municipal landfills, hazardous waste treatment, disposal and recovery facilities, and runoff from industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Section 313 of title III requires that operators or certain facilities that manufacture, import, process, or otherwise use certain toxic chemicals report annually their releases of those chemicals to any environmental media. Section 313(b) of title III specifies that a facility is covered for the purposes of reporting if it meets all of the following criteria:

- The facility has ten or more full-time employees;
- The facility is in Standard Industrial Classification (SIC) codes 20 through 39;
- The facility manufactured (including quantities imported), processed, or otherwise used a listed chemical in amounts that exceed certain threshold quantities during the calendar year for which reporting is required.

Listed chemicals include 329 toxic chemicals listed at 40 CFR 372.45. After 1989, the threshold quantities of listed chemicals that the facility must manufacture, import or process (in order to trigger the submission of a release

report) is 25,000 pounds per year. The threshold for a use other than manufacturing, importing or processing of listed toxic chemicals is 10,000 pounds per year. EPA promulgated a final regulation clarifying these reporting requirements on February 16, 1988, (53 FR 4500).

EPA received numerous comments regarding limiting the types of facilities that are initially subject to monitoring and municipal management programs. Numerous municipalities agreed that focusing on the above facilities is an appropriate means for setting priorities for the development of control measures to eliminate or reduce pollutants associated with industrial facilities. Commenters agreed that the potential for toxic materials in discharges is high because of the high volume of such materials at these facilities and that information regarding discharges and material management practices will be available through section 313 of SARA. One commenter noted that building on an established program will contribute to establishing an effective storm water program. Accordingly, EPA has specified at § 122.26(d)(2)(ii)(C) that the municipal applicant must describe a program that identifies priorities and procedures for inspections and establishing and implementing control measures for these facilities.

Several commenters suggested that these facilities should not be singled out because the presence of the threshold amounts of SARA 313 chemicals does not indicate that significant quantities of those chemicals are likely to enter the facility's storm water runoff. Instead it was suggested that municipalities should monitor storm sewers as a whole to determine what chemicals are present and therefore what facilities are responsible. EPA disagrees with these comments. The object of these requirements is initially to set priorities for monitoring requirements. Then, if the situation requires, controls can be developed and instituted. If a facility is a member of this class of facilities and does not discharge excessive quantities of SARA 313 chemicals, then it may not be subjected to further monitoring and controls. As noted above, the selection of facilities is only a means of setting priorities for facilities for the development of municipal plans.

EPA agrees, however, that there will be other facilities that are significant sources of pollutants and should be addressed by municipalities as soon as possible under management programs. Accordingly, those industrial facilities that the municipal permit applicant determines to be contributing a substantial pollutant loading to the municipal storm sewer system shall be addressed in this portion of the municipal management program.

EPA also requested comments on monitoring programs for municipal discharges including the submission of quantitative data on the following constituents;

- Any pollutants limited in an effluent guidelines for the industry subcategories, where applicable;
- Any pollutant listed in a discharging facility's NPDES permits for process wastewater, where applicable;
- Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;
- Any information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv).

These are the same constituents that are to be addressed in individual permit applicants for storm water discharges associated with industrial activity.

Several industries and municipalities submitted comments on this issue. Some commenters agreed that these are appropriate parameters. Some commenters advised that the ability of municipalities to implement this aspect of the program depended on industries submitting this data. Several industries provided comments suggesting that the approach should allow the permittee flexibility in determining which parameters are chosen because of the burdens of monitoring and the complexity of materials and flows in municipal systems.

In light of these comments, EPA has retained § 122.26(d)(2)(iv)(C) as proposed requiring municipalities to describe a monitoring program which utilizes the above parameters. Monitoring for these parameters provides consistency with the individual application requirements for industries, provides uniformity in municipal applications, and will narrow the parameters to conform to the types of industries discharging into the municipal systems. Monitoring programs may consist of programs undertaken by the municipality exclusively or requirements imposed on industry by the municipality, or a combination of approaches. Appropriate procedures are discussed in municipal permit application guidance.

EPA requested comments on appropriate means for municipalities to determine what facilities are contributing pollutants to municipal systems. Many commenters responded with numerous methodologies. Some of these have been addressed in guidance. Municipalities will have options in selecting the most appropriate methodology given their circumstances as described in their permit applications.

EPA initially favors establishing monitoring requirements to be applied to those outfalls that directly discharge to waters of the United States. EPA received one comment from a municipality with regard to this issue which agreed that this was the most logical approach. Monitoring of outfalls close to the point of discharge to waters of the United States is generally preferable when attempting to identify priorities for developing pollutant control programs. However, under certain circumstances, it may be preferable to monitor at the point where the runoff from the industrial facility discharges to the municipal system. For example, if many facilities discharge substantially similar storm water to a municipal system it may be more practicable to monitor discharges from representative facilities in order to characterize pollutants in the discharge.

As noted by numerous industries, if municipal characterization plans reveal problems from certain industrial dischargers, then such facilities may be required to provide further data from their own monitoring. As noted above, EPA envisions that this data could then be used to develop appropriate control practices or techniques and/or require individual permit applications if a general permit covering the facility proves inadequate.

Comments were also solicited as to whether end-of-pipe treatment generally was more appropriate than source controls for storm water from industrial facilities which discharge to municipal systems. Many commenters, including both municipalities and industries, stated that source controls are the only practical and feasible means of controlling pollutants in storm water runoff, and specifically opposed the concept of end-of-pipe treatment or other controls. Some commenters maintained that, from an economic and environmental standpoint, end-of-pipe treatment may be the only effective means. One advised that the prompt cleanup of spills, controlled wash down of process areas, covering of material loading areas, storm water runoff diversion, covered storage areas, detention basins or other such mechanisms would prevent storm water from mixing with pollutants and possibly discharging them into receiving waters. Another noted that in the urban areas, there is little potential for treatment; consequently, it would seem

that controls and/or retrofitting existing facilities would be necessary when violations are found and that citizens will be better served by source controls appropriate to the individual problem.

EPA agrees with these comments to the extent that source controls and management programs are the general thrust of these regulations. However, in some situations end-of-pipe treatment, such as holding ponds, may be the only reasonable alternative. EPA disagrees with one industrial commenter that the municipalities should be almost entirely responsible for treating municipal discharges at the end of-the-pipe without reliance on source controls by industrial dischargers. Municipal programs may require controls on industrial sources with demonstrated storm water discharge problems. One industrial association noted that its member companies already have incentive to properly handle their materials and facilities because of other environmental programs with spill and erosion controls.

Numerous commenters stated that the program addressing industrial dischargers through municipal systems needs to be clearly defined in order to eliminate, as much as possible, potential conflicts between the system operator and dischargers. EPA has provided a framework for development of management plans to control pollutants from these particular sources. However, because of the differences in municipal systems and hydrology nationwide, EPA is not convinced that program specificity is an appropriate approach. The concept of the management program is to provide flexibility to the permit applicants to develop regional site specific control programs.

One commenter suggested that required controls should be limited to a facility's proportional contribution (based on concentration) of pollutants. EPA disagrees. Most facilities discharging through a municipal separate storm sewer will need to be covered by a general or individual permit. These permits will control the introduction of pollutants from that facility through the municipal storm sewer to the waters of the U.S. Any additional controls placed on the facility by the municipality will be at the discretion of the municipality. EPA is not requiring municipalities to adopt a particular level of controls on industrial facilities as suggested by the commenter.

One commenter questioned how dischargers that discharged both into the waters of the United States and through a municipal system will be addressed and whether there is a potential for inconsistent requirements. Industries that discharge storm water associated with industrial activity into the waters of the United States are required to be covered by individual permits or general permits for such discharges. Dischargers of storm water associated with industrial activity through municipal separate storm sewer systems will be subject to municipal management programs that address such discharges as well as to an individual or general NPDES permit for those discharges. EPA does not believe there is a significant risk of inconsistent requirements, since each industrial facility must meet BAT/BCT-level controls in its NPDES permit. EPA doubts that municipalities will impose much more stringent controls.

Many commenters stated that if cities and municipalities are to be responsible for industrial storm water discharges through their system, then municipalities should have authority to make determinations as to what industries should be regulated, how they are regulated, and when enforcement actions are undertaken. In response, EPA notes that the proposal has been changed and that municipalities will not be solely responsible for industries discharging through their system. Nonetheless, municipalities will be required to meet the terms of their permits related to industrial dischargers. Municipalities may undertake programs that go beyond the threshold requirements of the permit. Some municipal entities stated that municipal permittees should be able to require permit applications from industries in the same manner that EPA does and also require permits. In response, if operators of large and medium municipal separate storm sewer systems wish to employ such a program, then this portion of the management program may incorporate such practices.

d. *Measures to reduce pollutants in runoff from construction sites into municipal systems.* Section VI.F.8 of today's rule discusses EPA's proposal to define the term "storm water discharge associated with industrial activity" to include runoff from construction sites, including preconstruction activities except operations that result in the disturbance of less than 5 acres total land area which are not part of a larger common plan of development or sale. Under today's rule, facilities that discharge runoff from construction sites that meet this definition will be required to submit permit applications unless they are to be covered by another individual or general NPDES permit. Permit application requirements for such discharges are at 40 CFR 122.26(c)(1)(ii).

Section 122.26(d)(2)(iv)(D) of today's rule requires applicants for a permit for large or medium municipal separate storm sewer systems to submit a description of a proposed management program to control pollutants in construction site runoff that discharges to municipal systems. Under this provision, municipal applicants will submit a description of a program for implementing and maintaining structural and non-structural best management practices for controlling storm water runoff at construction sites. The program will address procedures for site planning, enforceable requirements for nonstructural and structural best management practices, procedures for inspecting sites and enforcing control measures, and educational and training measures. Generally, construction site ordinances are effective when they are implemented. However, in many areas, even though ordinances exist, they have limited effectiveness because they are not adequately implemented. Maintaining best management practices also presents problems. Retention and infiltration basins fill up and silt fences may break or be overtopped. Weak inspection and enforcement point to the need for more emphasis on training and education to complement regulatory programs. Permits issued to municipalities will address these concerns.

8. Assessment of Controls

EPA proposed that municipal applicants provide an initial assessment of the effectiveness of the control method for structural or non-structural controls which have been proposed in the management program. Some commenters stated that the assessment of controls should be left to the term of the permit because the effectiveness of controls will be hard to establish. EPA believes that an initial estimate or assessment is needed because the performance of appropriate management controls is highly dependent on site-specific factors. The assessment will be used in conjunction with the development of pollutant loading and concentration estimates (*see* VI.H.6.c) and the evaluation of water quality benefits associated with implementing controls. Such assessments do not have to be verified with quantitative data, but can be based on accepted engineering design practices. Further more precise assessments based upon quantitative data can be undertaken during the term of the permit.

I. Annual Reports

As discussed earlier in today's preamble, EPA has provided for proposed flexible permit application requirements to facilitate the development of site-specific programs to control the discharge of pollutants from large and medium municipal separate storm sewer systems. Many municipalities are in the early stages of the complex task of developing a program suitable for controlling pollutants in discharges under a NPDES permit, while other municipalities have relatively sophisticated programs in place. In order to ensure that such site-specific programs are developed in a timely manner, EPA proposed to require permittees of municipal separate storm sewer systems to submit status reports every year which reflect the development of their control programs.

The reports will be used by the permitting authority to aid in evaluating compliance with permit conditions and where necessary, modify permit conditions to address changed conditions. EPA requested comments on the appropriate content of the annual reports. Based on these comments EPA has added the following in these reports: an analysis of data, including monitoring data, that is accumulated throughout the year; new outfalls or discharges; annual expenditures; identification of water quality improvements or degradation on watershed basis; budget for year following each annual report; and administrative information including enforcement activities, inspections, and public education programs. EPA views this information as important for evaluating the municipal program. Annual monitoring data and identified water quality improvements are important for evaluating the success of management programs in reducing pollutants. If new outfalls come into existence during the term of the permit, these may be sources of pollutants and appropriate permit conditions will be developed. Annual reports should reflect the level of enforcement activity and inspections undertaken to ensure that the legal authority developed by the municipality is properly exercised. Many of the management programs depend upon an ongoing high level of public education. Accordingly, the undertaking of these programs on an annual basis should be documented.

J. Application Deadlines

The CWA provided a statutory time frame for implementing the storm water permit application process and issuance and compliance with permits.

The CWA requires EPA to promulgate permit application requirements for storm water discharges associated with industrial activity and for large municipal separate storm sewer systems by "no later than two years" after the date of enactment (*i.e.* no later than February 4, 1989). In conjunction with this requirement, the Act requires that permit applications for these classes of discharges be submitted within one year after the statutory date by which EPA is to promulgate permit application requirements by providing that such applications "shall be filed no later than three years" after the date of enactment of the WQA (*i.e.*, no later than February 4, 1990).

The CWA also requires EPA to promulgate final regulations governing storm water permit application requirements for discharges from municipal separate storm sewer systems serving a population of 100,000 or more but less than 250,000 by "no later than four years" after enactment (*i.e.* no later than February 4, 1991). Permit applications for medium municipal separate storm sewer systems "shall be filed no later than five years" after the date of enactment of the CWA (*i.e.*, no later than February 4, 1992). The CWA did not establish the time period between designation and permit application submittal for case-by-case designations under section 402(p)(2)(E).

Comments on earlier rulemakings involving storm water application deadlines have established that applicants need adequate time to obtain "representative" storm water samples. Many commenters have indicated that at least one full year is needed to obtain such samples. This is because many discharges are located in areas where testing during dry seasons or winter would not be feasible. The intermittent and unpredictable nature of storm water discharges can result in difficult and time-consuming data gathering. Moreover, some operators of municipal separate storm sewer systems have many storm water discharges associated with industrial activity, which can require considerable time to identify, analyze, and submit applications. This creates a tremendous practical problem for the extremely high number of unpermitted storm water discharges. The public's interest in a sound storm water program and the development of a useful storm water data base is best served by establishing an application deadline which will allow sufficient time to gather, analyze, and prepare meaningful applications. Based on a consideration of these factors, EPA proposed that individual permit applications for storm water discharges associated with industrial activity which currently are not covered by a permit and that are required to obtain a permit, be submitted one year after the final rule is promulgated.

EPA received numerous comments from industries on the one year requirement for submitting applications. Several commenters supported the proposed deadline as realistic, while others believed more time was needed to meet the information and quantitative requirement.

EPA rejects the assertion by some commenters that a year is too short a period of time to obtain the required quantitative data. Today's rule generally requires applications for storm water discharges associated with industrial activity to be submitted on or before November 18, 1991. Operators of storm water discharges associated with industrial activity which discharge through a municipal separate storm sewer are subject to the same application deadline as other storm water discharges associated with industrial activity. Since final regulation at § 122.21(g)(7) provides considerable latitude for selecting rain events for quantitative data, EPA is convinced that in most cases data can be obtained during the one year time frame. If data cannot be collected during the one year time frame because of anomalous weather (*e.g.* drought conditions), then permitting authorities may grant additional time for submitting that data on a case-by-case basis. *See* § 122.21(g)(7).

Operators of storm water discharges which are currently covered by a permit will not be required to submit a permit application until their existing permit expires. In recognition of the time required to collect storm water discharge data, EPA will allow facilities which currently have a NPDES permit for a storm water discharge and which must reapply for permit renewal during the first year following promulgation of today's permit application requirements the option of applying in accordance with existing Form 1 and Form 2C requirements (in lieu of applying in accordance with the revised application requirements).

As discussed in section VI.D.4 and section VI.F.6 of today's preamble, EPA has established a two part permit application both for both group applications for sufficiently similar facilities that discharge storm water associated with industrial activity and for operators of large or medium municipal separate storm sewer systems. The deadlines for submitting

permit applications in today's rule provide adequate time for: (1) Applicants to prepare Part 1 of the application; (2) EPA or an approved State to adequately review applications; and (3) applicants to prepare the contents of the part 2 application.

Part 1 of the group application for storm water discharges associated with industrial activity must be submitted within 120 days from the publication of these final permit application regulations. This time is necessary to form groups and for individual members of the group to prepare the non-quantitative information required in part 1 of the application. Part 1 of the group application will be submitted to EPA Headquarters in Washington, DC and reviewed within 60 days after being received. Part 2 of the application would then be submitted within one year after the part 1 application is approved. It should be noted that many facilities located in States in which general permits can be issued, will be eligible for coverage by a storm water general permit to be promulgated in the near future. Such facilities may either seek coverage under such general permits or participate in the group application.

Several comments were received by EPA that indicated that a period of 120 days was too short a period for groups to be formed. EPA disagrees with these comments. The information that EPA is requiring to be submitted by the group or group representative is information that is generally available such as the location of the facility, its industrial activity, and material management practices. EPA believes that 120 days is sufficient to gather and submit this information along with an identification of 10% of the facilities which will submit quantitative data. To ameliorate any difficulties for applicants, EPA has provided a means for late facilities to "add on" where appropriate, on a case-by-case basis, as discussed in section VI.F.4. above.

Several comments were received with regard to the requirement that new dischargers submit an application at least 180 days before the date on which the discharge is to commence. One commenter noted that it will be difficult for a facility to know when a storm water discharge is to commence since precipitation and runoff cannot be predicted to any degree of accuracy. In response, new dischargers must apply for a storm water permit application 180 days before that facility commences manufacturing, processing, or raw material storage operations which may result in the discharge of pollutants from storm water runoff, and 90 days for new construction sites.

For large municipal separate storm sewer systems (systems serving a population of more than 250,000), EPA proposed that part 1 of the permit application be submitted within one year of the date of the final regulations, with approval or disapproval by the permit issuing authority of the provisions of the part 1 permit application within 90 days after receiving part 1 of the application. The Part 2 portion of the application was to be submitted within two years of the date of promulgation.

For medium municipal separate storm sewer systems (systems serving a population of more than 100,000, but less than 250,000), EPA proposed that permit applications would be required nine months after the date of the final rule, with approval or disapproval of the provisions of the part 1 permit application within 90 days after receiving the part 1 application. The part 2 portion of the application would then be submitted no later than one year after the part 1 application has been approved.

Numerous comments were received by EPA from municipalities on these proposed deadlines. Many of these comments reflect the sentiment that the deadlines are too tight and that the required information would not be available for submission within the required time frame. Some commenters suggested deadlines that would add over three years to the permit application process. Other commenters suggested a revamped application process and a shorter deadline of 18 months. Some commenters explained that additional time would be needed to obtain adequate legal authority, while another stated that an inventory of outfalls required more time. One commenter maintained that intergovernmental agreements will require more time to prepare, and others expressed the view that more time was needed for the review of part 1 of the application by permitting authorities. Others felt more time was needed for collecting data, or hiring additional staff to accomplish the work. Most of these commenters did not provide specific details regarding what would be an appropriate amount of time and why.

After reviewing these comments EPA has decided to modify some of the deadlines as proposed. EPA is convinced that to properly achieve the goals of the CWA, the permit application requirements as discussed in previous sections are appropriate; but that the deadlines for medium municipal separate storm sewer systems should be adjusted so that the program's goals can be properly accomplished. After reviewing comments, EPA believes that medium municipalities will have fewer resources and existing institutional arrangements than large cities and therefore more time should be granted to these cities for submitting parts 1 and 2 of the application.

Accordingly EPA will require large municipal systems to submit part 1 of the permit application no later than November 18, 1991. Part 1 will be reviewed and approved or disapproved by the Director within 90 days. Part 2 of the application will then be submitted November 16, 1992. Medium municipal systems will submit part 1 of the application on May 18, 1992. Approval or disapproval by the Director will be accomplished within 90 days. Part 2 of the application will be submitted by May 17, 1993. These deadlines will give large systems two years to complete the application process, and medium systems 2 years and 6 months to submit applications. EPA is convinced that the permit application schedule is warranted and should provide adequate time to prepare the application.

In establishing these regulatory deadlines EPA is fully aware that they are not synchronized with the statutory deadlines as established by Congress. One commenter argued that the deadlines as proposed were contrary to the deadlines established by Congress and that EPA had no authority to extend these deadlines. (For large municipal separate storm sewer systems and storm water discharges associated with industrial activity, Congress established a deadline of February 4, 1990, for submission of permit applications; for medium municipal separate storm sewer systems, the deadline is February 4, 1992.) In response, this regulation provides certain deadlines for meeting the substantive requirements of this rulemaking—requirements which EPA is convinced are necessary for the development of enforceable and sound storm water permits. EPA believes it is important to give applicants sufficient time to reasonably comply with the permit application requirements set out today. EPA will therefore accept applications for storm water discharge permits up to the dates specified in today's rule. By establishing these regulatory deadlines, however, EPA is not attempting to waive or revoke the statutory deadlines established in Section 402(p) of the CWA and does not assert the authority to do so. The statutory permit application deadlines

continue to be enforceable requirements.

EPA was not able to promulgate the final application regulations for storm water discharges before the February 4, 1990, deadline for industrial and large municipal dischargers despite its best efforts. Further, as noted above, EPA is not able to waive the statutory deadline. Dischargers concerned with complying with the statutory deadline should submit a permit application as required under this rulemaking as expeditiously as possible.

Operators of storm water discharges that are not specifically required to file a permit application under today's rule may be required to obtain a permit for their discharge on the basis of a case-by-case designation by the Administrator or the NPDES State.

The Administrator or NPDES State may also designate storm water discharges (except agricultural storm water discharges), that contribute to a violation of a water quality standard or that are significant contributors of pollutants to waters of the United States for a permit. Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Administrator or NPDES State may require the operator of the discharge to submit a permit application. 40 CFR 124.52(c) requires the operator of designated storm water discharges to submit a permit application within 60 days of notice, unless permission for a later date is granted. The 60-day deadline is consistent with the procedures for designating other discharges for a NPDES permit on a case-by-case basis found at 40 CFR 124.52. The 60-day deadline recognizes that case-by-case designations often require an expedited response, however, flexibility exists to allow for case-by-case extensions.

The December 7, 1988, proposal also proposed Part 504 State Storm Water Management Programs. The Agency has not included this component in today's rule. The Agency believes this program element is appropriate for addressing in regulations promulgated under section 402(p)(6) of the CWA.

VII. Economic Impact

EPA has prepared an Information Collection Request for the purpose of estimating the information collection burden imposed on Federal, State and local governments and industry for revisions to NPDES permit application requirements for storm water discharges codified in 40 CFR part 122. EPA is promulgating these revisions in response to Section 402(p)(4) of the Clean Water Act, as amended by the Water Quality Act of 1987 (WQA). The revisions would apply to: Storm water discharges associated with industrial activity; discharges from municipal separate storm sewer systems serving a population of 250,000 or more and discharges from municipal separate storm sewer systems serving a population of 100,000 or more, but less than 250,000.

The estimated annual cost of applying for NPDES permits for discharges from municipal separate storm sewer systems is $4.2 million. EPA estimates that an average permit application for a large municipality will cost $76,681 and require 4,534 hours to prepare. The average application for a medium municipality will cost $49,249 (2,912 hours) to prepare. The annual respondent cost for NPDES permit applications, notices of intent, and notifications for facilities with discharges associated with industrial activity is estimated to be $9.5 million (271,248 hours). EPA estimates that the average preparation cost of an individual industrial permit application would be $1,007 (28.6 hours). Average Group application will cost $74.00 per facility (2.1 hours). The average cost of the notification and notice of intent to be covered by general permit is $17.00 (0.5 hours).

The annual cost to the Federal Government and approved States for administration of the program is estimated to be $588,603. The total cost for municipalities, industry, and State and Federal authorities is estimated to be $14.5 million annually.

In general, the cost estimates provided in the ICR focus primarily on the costs associated with developing, submitting and reviewing the permit applications associated with today's rule. EPA will continue to evaluate procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality in the studies required under section 402(p)(5) of the CWA. Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. Today's proposed amendments would generally make the NPDES permit application regulations more flexible and less burdensome for the regulated community. These regulations do not, satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, do not constitute a major rule. This regulation was submitted to the Office of Management and Budget (OMB) for review.

VIII. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under provision of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2040–0086.

Public reporting burden for permit applications for storm water discharges associated with industrial activity (other than from construction facilities) is estimated to average 28.6 hours per individual permit application, 0.5 hours per notice of intent to be covered by general permit, and 2.1 hours per group applicant. The public reporting burden for permit applications for storm water discharges associated with industrial activity from construction activities submitting individual applications is estimated to average 4.5 hours per response. The public reporting burden for facilities which discharge storm water associated with industrial activity to municipal separate storm sewers serving a population over 100,000 to notify the operator of the municipal separate storm sewer system is estimated to average 0.5 hours per response.

The reporting burden for system-wide permit applications for discharges from municipal separate storm sewer systems serving a population of 250,000 or more is estimated to average 4,534 hours per response. The reporting burden for system-wide permit applications for discharges from municipal separate storm sewer systems serving a population of 100,000 or more, but less than 250,000 is estimated to average 2,912 hours per response. Estimates of reporting burden include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's amendments to the regulations would generally make the NPDES permit applications regulations more flexible and less burdensome for permittees. Accordingly, I hereby

certify, pursuant to 5 U.S.C. 605(b), that these amendments do not, have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 122, 123, and 124

Administrative practice and procedure, Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: October 31, 1990.

William K. Reilly,

Administrator.

For the reasons stated in the preamble, parts 122, 123, and 124 of title 40 of the Code of Federal Regulations are amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart B—Permit Application and Special NPDES Program Requirements

1. The authority citation for part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.1 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 122.1 Purpose and scope.

* * * * *

(b) * * *

(2) * * *

(iv) Discharges of storm water as set forth in § 122.26; and

* * * * *

3. Section 122.21 is amended by revising paragraph (c)(1), by removing the last sentence of paragraph (f)(7), by removing paragraph (f)(9), by adding two sentences at the end of paragraph (g)(3), by revising paragraph (g)(7) introductory text, by removing and reserving paragraph (g)(10) and by revising the introductory text of paragraph (k) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(c) *Time to apply.* (1) Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under § 122.26(b)(14)(x) shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. See also paragraph (k) of this section and § 122.26 (c)(1)(i)(G) and (c)(1)(ii).

* * * * *

(g) * * *

(3) * * * The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

* * * * *

(7) *Effluent characteristics.* Information on the discharge of pollutants specified in this paragraph (except information on storm water discharges which is to be provided as specified in § 122.26). When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (g)(7) (iii) and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under § 122.26(d) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Director). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in § 122.26(c)(1). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in § 122.26 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Director may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR part 136, and additional time for submitting data on a

case-by-case basis. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

* * * * *

(k) *Application requirements for new sources and new discharges.* New manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits (except for new discharges of facilities subject to the requirements of paragraph (h) of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of § 122.26(c)(1) and this section (except as provided by § 122.26(c)(1)(ii)) shall provide the following information to the Director, using the application forms provided by the Director:

* * * * *

4. Section 122.22(b) introductory text is revised to read as follows:

§ 122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).

* * * * *

(b) All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

* * * * *

5. Section 122.26 is revised to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* (1) Prior to October 1, 1992, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

(i) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(ii) A discharge associated with industrial activity (see § 122.26(a)(4));

(iii) A discharge from a large municipal separate storm sewer system;

(iv) A discharge from a medium municipal separate storm sewer system;

(v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at § 122.2. The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

(A) The location of the discharge with respect to waters of the United States as defined at 40 CFR 122.2.

(B) The size of the discharge;

(C) The quantity and nature of the pollutants discharged to waters of the United States; and

(D) Other relevant factors.

(2) The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

(3) *Large and medium municipal separate storm sewer systems.* (i) Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

(ii) The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

(iii) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

(A) Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(B) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(C) A regional authority may be responsible for submitting a permit application under the following guidelines:

(*1*) The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due;

(*2*) The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

(*3*) Each of the operators of municipal separate storm sewers within the systems described in paragraphs (b)(4)(i), (ii), and (iii) or (b)(7)(i), (ii), and (iii) of this section, that are under the purview of the designated regional authority, shall comply with the application requirements of paragraph (d) of this section.

(iv) One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Director may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

(v) Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

(vi) Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(4) *Discharges through large and medium municipal separate storm sewer systems.* In addition to meeting the requirements of paragraph (c) of this section, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing NPDES permit number.

(5) *Other municipal separate storm sewers.* The Director may issue permits for municipal separate storm sewers that are designated under paragraph (a)(1)(v) of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(6) *Non-municipal separate storm sewers.* For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Director, in his discretion, may issue: a single NPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the United States; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

(i) All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the United States, with each discharger to the non-municipal conveyance a co-permittee to that permit.

(ii) Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

(iii) Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(7) *Combined sewer systems.* Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits in accordance with the procedures of § 122.21 and are not subject to the provisions of this section.

(8) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under title II, title III or title VI of the Clean Water Act. *See* 40 CFR part 35, subpart I, appendix A(b)H.2.j.

(b) *Definitions.* (1) *Co-permittee* means a permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) *Illicit discharge* means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) *Incorporated place* means the District of Columbia, or a city, town, township, or village that is incorporated under the laws of the State in which it is located.

(4) *Large municipal separate storm sewer system* means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 250,000 or more as determined by the latest Decennial Census by the Bureau of Census (appendix F); or

(ii) Located in the counties listed in appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) Owned or operated by a municipality other than those described in paragraph (b)(4) (i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4) (i) or (ii) of this section. In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(4)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; and

(E) Other relevant factors; or

(iv) The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraph (b)(4) (i), (ii), (iii) of this section.

(5) *Major municipal separate storm sewer outfall* (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) *Major outfall* means a major municipal separate storm sewer outfall.

(7) *Medium municipal separate storm sewer system* means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest Decennial Census by the Bureau of Census (appendix G); or

(ii) Located in the counties listed in appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) Owned or operated by a municipality other than those described in paragraph (b)(4) (i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4) (i) or (ii) of this section. In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(7)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; or

(E) Other relevant factors; or

(iv) The Director may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (b)(7) (i), (ii), (iii) of this section.

(8) *Municipal separate storm sewer* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

(9) *Outfall* means a *point source* as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

(10) *Overburden* means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(11) *Runoff coefficient* means the fraction of total rainfall that will appear at a conveyance as runoff.

(12) *Significant materials* includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(13) *Storm water* means storm water runoff, snow melt runoff, and surface runoff and drainage.

(14) *Storm water discharge associated with industrial activity* means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR part 122. For the categories of industries identified in paragraphs (b)(14) (i) through (x) of this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (b)(14)(xi) of this section, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in this paragraph (b)(14)(i)–(xi) of this section) include those facilities designated under the provisions of paragraph (a)(1)(v) of this section. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) in paragraph (b)(14) of this section);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined

materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)–(vii) or (ix)–(xi) of this section are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (ii)–(x));

(c) *Application requirements for storm water discharges associated with industrial activity*—(1) *Individual application.* Dischargers of storm water associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Director is evaluating for designation (*see* 40 CFR 124.52(c)) under paragraph (a)(1)(v) of this section and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph (c)(2) of this section, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form 2F. Applicants for discharges composed of storm water and non-storm water shall submit Form 1, Form 2C, and Form 2F. Applicants for new sources or new discharges (as defined in § 122.2 of this part) composed of storm water and non-storm water shall submit Form 1, Form 2D, and Form 2F.

(i) Except as provided in § 122.26(c)(1)(ii)–(iv), the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(A) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(B) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(C) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a NPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

(D) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(E) Quantitative data based on samples collected during storm events and collected in accordance with § 122.21 of this part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(*1*) Any pollutant limited in an effluent guideline to which the facility is subject;

(*2*) Any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit);

(*3*) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(*4*) Any information on the discharge required under paragraph § 122.21(g)(7)(iii) and (iv) of this part;

(5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of § 122.21 (g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(i), (g)(7)(ii), and (g)(7)(v); and

(G) Operators of new sources or new discharges (as defined in § 122.2 of this part) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph (c)(1)(i)(E) of this section instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph (c)(1)(i)(E) of this section within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the NPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of § 122.21 (k)(3)(ii), (k)(3)(iii), and (k)(5).

(ii) The operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(14)(x) of this section, is exempt from the requirements of § 122.21(g) and paragraph (c)(1)(i) of this section. Such operator shall provide a narrative description of:

(A) The location (including a map) and the nature of the construction activity;

(B) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

(C) Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

(D) Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

(E) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(F) The name of the receiving water.

(iii) The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless the facility:

(A) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or

(B) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

(C) Contributes to a violation of a water quality standard.

(iv) The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

(v) Applicants shall provide such other information the Director may reasonably require under § 122.21(g)(13) of this part to determine whether to issue a permit and may require any facility subject to paragraph (c)(1)(ii) of this section to comply with paragraph (c)(1)(i) of this section.

(2) *Group application for discharges associated with industrial activity.* In lieu of individual applications or notice of intent to be covered by a general permit for storm water discharges associated with industrial activity, a group application may be filed by an entity representing a group of applicants (except facilities that have existing individual NPDES permits for storm water) that are part of the same subcategory (*see* 40 CFR subchapter N, part 405 to 471) or, where such grouping is inapplicable, are sufficiently similar as to be appropriate for general permit coverage under § 122.28 of this part. The part 1 application shall be submitted to the Office of Water Enforcement and Permits, U.S. EPA, 401 M Street, SW., Washington, DC 20460 (EN-336) for approval. Once a part 1 application is approved, group applicants are to submit Part 2 of the group application to the Office of Water Enforcement and Permits. A group application shall consist of:

(i) *Part 1.* Part 1 of a group application shall:

(A) Identify the participants in the group application by name and location. Facilities participating in the group application shall be listed in nine subdivisions, based on the facility location relative to the nine precipitation zones indicated in appendix E to this part.

(B) Include a narrative description summarizing the industrial activities of participants of the group application and explaining why the participants, as a whole, are sufficiently similar to be a covered by a general permit;

(C) Include a list of significant materials stored exposed to precipitation by participants in the group application and materials management practices employed to diminish contact by these materials with precipitation and storm water runoff;

(D) Identify ten percent of the dischargers participating in the group application (with a minimum of 10 dischargers, and either a minimum of two dischargers from each precipitation zone indicated in appendix E of this part in which ten or more members of the group are located, or one discharger from each precipitation zone indicated in appendix E of this part in which nine or fewer members of the group are located) from which quantitative data will be submitted in part 2. If more than 1,000 facilities are identified in a group application, no more than 100 dischargers must submit quantitative data in Part 2. Groups of between four and ten dischargers may be formed. However, in groups of between four and ten, at least half the facilities must submit quantitative data, and at least one facility in each precipitation zone in which members of the group are located must submit data. A description of why the facilities selected to perform sampling and analysis are representative of the group as a whole in terms of the information provided in paragraph (c)(1) (i)(B) and (i)(C) of this section, shall accompany this section. Different factors impacting the nature of the storm water discharges, such as processes used and material management, shall be represented, to the extent feasible, in a manner roughly equivalent to their proportion in the group.

(ii) *Part 2.* Part 2 of a group application shall contain quantitative

data (NPDES Form 2F), as modified by paragraph (c)(1) of this section, so that when part 1 and part 2 of the group application are taken together, a complete NPDES application (Form 1, Form 2C, and Form 2F) can be evaluated for each discharger identified in paragraph (c)(2)(i)(D) of this section.

(d) *Application requirements for large and medium municipal separate storm sewer discharges.* The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include:

(1) *Part 1.* Part 1 of the application shall consist of:

(i) *General information.* The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

(ii) *Legal authority.* A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in paragraph (d)(2)(i) of this section, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

(iii) *Source identification.* (A) A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

(B) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(*1*) The location of known municipal storm sewer system outfalls discharging to waters of the United States;

(*2*) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(*3*) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(*4*) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES permit;

(*5*) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(*6*) The identification of publicly owned parks, recreational areas, and other open lands.

(iv) *Discharge characterization.* (A) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(B) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(C) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(*1*) Assessed and reported in section 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(*2*) Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(*3*) Listed in State Nonpoint Source Assessments required by section 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(*4*) Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(*5*) Areas of concern of the Great Lakes identified by the International Joint Commission;

(*6*) Designated estuaries under the National Estuary Program under section 320 of the CWA;

(*7*) Recognized by the applicant as highly valued or sensitive waters;

(*8*) Defined by the State or U.S. Fish and Wildlife Services's National Wetlands Inventory as wetlands; and

(*9*) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(D) *Field screening.* Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or

any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(*1*) A grid system consisting of perpendicular north-south and east-west lines spaced ¼ mile apart shall be overlayed on a map of the municipal storm sewer system, creating a series of cells;

(*2*) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(*3*) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(*4*) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(*5*) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(*6*) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(*7*) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs (d)(1)(iv)(D) (*1*) through (*6*) of this section, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced ¼ mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(E) *Characterization plan.* Information and a proposed program to meet the requirements of paragraph (d)(2)(iii) of this section. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph (d)(2)(iii)(A) of this section, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (*see* paragraph (d)(1)(iv)(C) of this section) to the extent practicable.

(v) *Management programs.* (A) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

(B) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

(vi) *Fiscal resources.* (A) A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(2) *Part 2.* Part 2 of the application shall consist of:

(i) *Adequate legal authority.* A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

(A) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

(B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

(D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(E) Require compliance with conditions in ordinances, permits, contracts or orders; and

(F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

(ii) *Source identification.* The location of any major outfall that discharges to waters of the United States that was not reported under paragraph (d)(1)(iii)(B)(*1*) of this section. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

(iii) *Characterization data.* When "quantitative data" for a pollutant are required under paragraph (d)(a)(iii)(A)(*3*) of this paragraph, the applicant must collect a sample of effluent in accordance with 40 CFR 122.21(g)(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(A) Quantitative data from representative outfalls designated by the Director (based on information received

in part 1 of the application, the Director shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Director shall designate all outfalls) developed as follows:

(*1*) For each outfall or field screening point designated under this subparagraph, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with the requirements at § 122.21(g)(7) (the Director may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(*2*) A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(*3*) For samples collected and described under paragraphs (d)(2)(iii)(A)(*1*) and (A)(*2*) of this section, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of appendix D of 40 CFR part 122, and for the following pollutants:

Total suspended solids (TSS)
Total dissolved solids (TDS)
COD
BOD_5
Oil and grease
Fecal coliform
Fecal streptococcus
pH
Total Kjeldahl nitrogen
Nitrate plus nitrite
Dissolved phosphorus
Total ammonia plus organic nitrogen
Total phosphorus

(*4*) Additional limited quantitative data required by the Director for determining permit conditions (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

(B) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event (as described under § 122.21(c)(7)) for BOD_5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

(C) A proposed schedule to provide estimates for each major outfall identified in either paragraph (d)(2)(ii) or (d)(1)(iii)(B)(*1*) of this section of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under paragraph (d)(2)(iii)(A) of this section; and

(D) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

(iv) *Proposed management program.* A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(A) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(*1*) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(*2*) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in paragraph (d)(2)(iv)(D) of this section;

(*3*) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(*4*) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

(*5*) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under paragraph (d)(2)(iv)(C) of this section); and

(*6*) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

(B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(*1*) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers, uncomtaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States);

(*2*) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

(*3*) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(*4*) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(*5*) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(*6*) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(*7*) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(C) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(*1*) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(*2*) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C) of this section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for a facility; oil and grease, COD, pH, BOD_5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 40 CFR 122.21(g)(7) (iii) and (iv).

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

(*1*) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

(*2*) A description of requirements for nonstructural and structural best management practices;

(*3*) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(*4*) A description of appropriate educational and training measures for construction site operators.

(v) *Assessment of controls.* Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

(vi) *Fiscal analysis.* For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2) (iii) and (iv) of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

(vii) Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

(viii) Where requirements under paragraph (d)(1)(iv)(E), (d)(2)(ii), (d)(2)(iii)(B) and (d)(2)(iv) of this section are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph (a)(1)(v), (b)(4)(ii) or (b)(7)(ii) of this section from such requirements. The Director shall not exclude the operator of a discharge from a municipal separate storm sewer identified in appendix F, G, H or I of part 122, from any of the permit application requirements under this paragraph except where authorized under this section.

(e) *Application deadlines.* Any operator of a point source required to obtain a permit under paragraph (a)(1) of this section that does not have an effective NPDES permit covering its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) For any storm water discharge associated with industrial activity identified in paragraph (b)(14) (i)–(xi) of this section, that is not part of a group application as described in paragraph (c)(2) of this section or which is not covered under a promulgated storm water general permit, a permit application made pursuant to paragraph (c) of this section shall be submitted to the Director by November 18, 1991;

(2) For any group application submitted in accordance with paragraph (c)(2) of this section:

(i) Part 1 of the application shall be submitted to the Director, Office of Water Enforcement and Permits by March 18, 1991;

(ii) Based on information in the part 1 application, the Director will approve or deny the members in the group application within 60 days after receiving part 1 of the group application.

(iii) Part 2 of the application shall be submitted to the Director, Office of Water Enforcement and Permits no later than 12 months after the date of approval of the part 1 application.

(iv) Facilities that are rejected as members of a group by the permitting authority shall have 12 months to file an individual permit application from the date they receive notification of their rejection.

(v) A facility listed under paragraph (b)(14) (i)–(xi) of this section may add on to a group application submitted in accordance with paragraph (e)(2)(i) of this section at the discretion of the Office of Water Enforcement and Permits, and only upon a showing of good cause by the facility and the group applicant; the request for the addition of the facility shall be made no later than February 18,1992; the addition of the facility shall not cause the percentage of the facilities that are required to submit quantitative data to be less than 10%, unless there are over 100 facilities in the group that are submitting quantitative data; approval to become part of group application must be obtained from the group or the trade association representing the individual facilities.

(3) For any discharge from a large municipal separate storm sewer system;

(i) Part 1 of the application shall be submitted to the Director by November 18, 1991;

(ii) Based on information received in the part 1 application the Director will approve or deny a sampling plan under paragraph (d)(1)(iv)(E) of this section within 90 days after receiving the part 1 application;

(iii) Part 2 of the application shall be submitted to the Director by November 16, 1992.

(4) For any discharge from a medium municipal separate storm sewer system;

(i) Part 1 of the application shall be submitted to the Director by May 18, 1992.

(ii) Based on information received in the part 1 application the Director will approve or deny a sampling plan under paragraph (d)(1)(iv)(E) of this section within 90 days after receiving the part 1 application.

(iii) Part 2 of the application shall be submitted to the Director by May 17, 1993.

(5) A permit application shall be submitted to the Director within 60 days of notice, unless permission for a later date is granted by the Director (*see* 40 CFR 124.52(c)), for:

(i) A storm water discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (see paragraph (a)(1)(v) of this section);

(ii) A storm water discharge subject to paragraph (c)(1)(v) of this section.

(6) Facilities with existing NPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted in accordance with the requirements of 40 CFR 122.21 and 40 CFR 122.26(c) 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth under paragraph (e)(1) of this section.

(f) *Petitions.* (1) Any operator of a municipal separate storm sewer system may petition the Director to require a separate NPDES permit (or a permit issued under an approved NPDES State program) for any discharge into the municipal separate storm sewer system.

(2) Any person may petition the Director to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the NPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(4) Any person may petition the Director for the designation of a large or medium municipal separate storm sewer system as defined by paragraphs (b)(4)(iv) or (b)(7)(iv) of this section.

(5) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition.

6. Section 122.28(b)(2)(i) is revised to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) *Requiring an individual permit.* (i) The Director may require any discharger authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph. Cases where an individual NPDES permit may be required include the following:

(A) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general NPDES permit;

(B) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(C) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

(D) A Water Quality Management plan containing requirements applicable to such point sources is approved;

(E) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(F) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit; or

(G) The discharge(s) is a significant contributor of pollutants. In making this determination, the Director may consider the following factors:

(*1*) The location of the discharge with respect to waters of the United States;

(*2*) The size of the discharge;

(*3*) The quantity and nature of the pollutants discharged to waters of the United States; and

(*4*) Other relevant factors;

* * * * *

7. Section 122.42 is amended by adding paragraph (c) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) *Municipal separate storm sewer systems.* The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under § 122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

(1) The status of implementing the components of the storm water management program that are established as permit conditions;

(2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with § 122.26(d)(2)(iii) of this part; and

(3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under § 122.26(d)(2)(iv) and (d)(2)(v) of this part;

(4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;

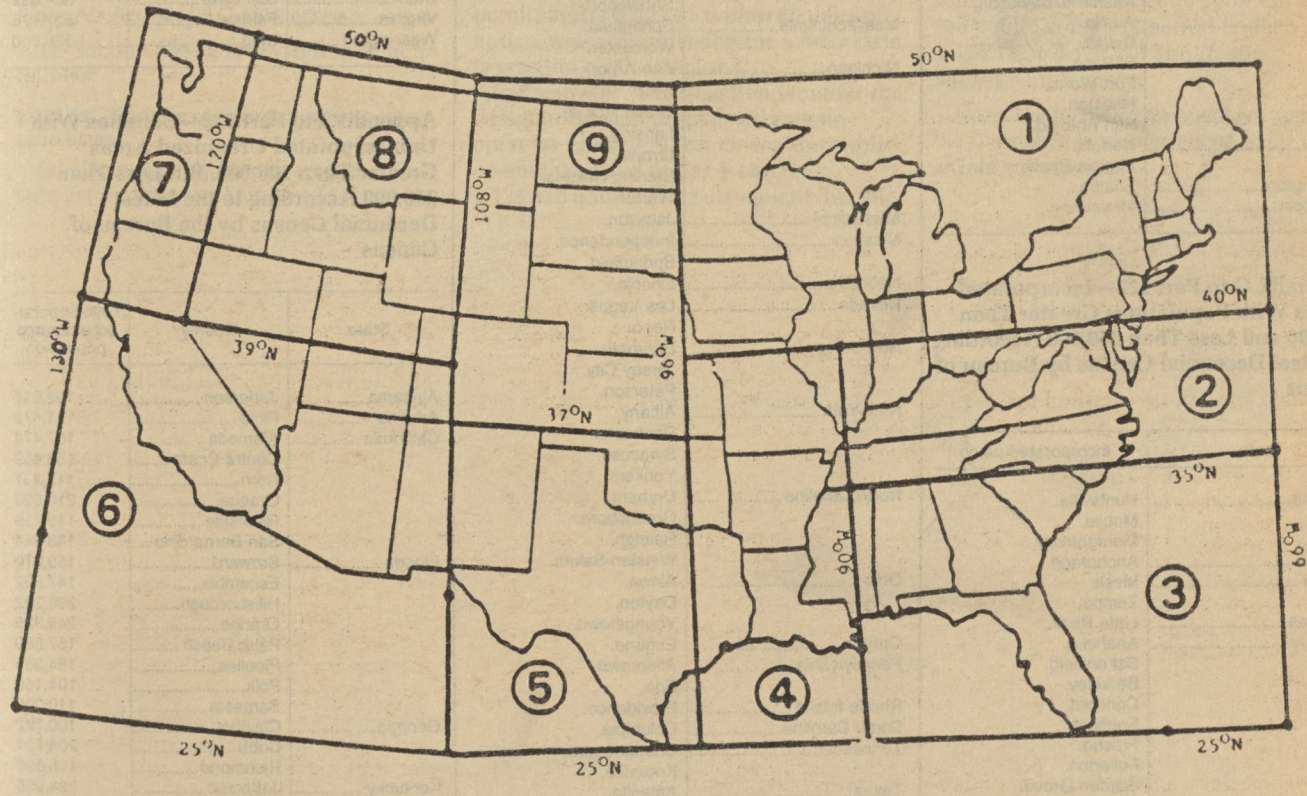
(5) Annual expenditures and budget for year following each annual report;

(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs;

(7) Identification of water quality improvements or degradation;

7a. Part 122 is amended by adding appendices E through I as follows:

Appendix E to Part 122—Rainfall Zones of the United States



Not Shown: Alaska (Zone 7); Hawaii (Zone 7); Northern Mariana Islands (Zone 7); Guam (Zone 7); American Samoa (Zone 7); Trust Territory of the Pacific Islands (Zone 7); Puerto Rico (Zone 3) Virgin Islands (Zone 3).

Source: Methodology for Analysis of Detention Basins for Control of Urban Runoff Quality, prepared for U.S. Environmental Protection Agency, Office of Water, Nonpoint Source Division, Washington, DC, 1986.

Appendix F to Part 122—Incorporated Places With Populations Greater Than 250,000 According to Latest Decennial Census by Bureau of Census.

State	Incorporated place
Alabama	Birmingham.
Arizona	Phoenix.
	Tucson.
California	Long Beach.
	Los Angeles.
	Oakland.
	Sacramento.
	San Diego.
	San Francisco.
	San Jose.
Colorado	Denver.
District of Columbia	
Florida	Jacksonville.
	Miami.
	Tampa.
Georgia	Atlanta.
Illinois	Chicago.
Indiana	Indianapolis.
Kansas	Wichita.
Kentucky	Louisville.
Louisiana	New Orleans.
Maryland	Baltimore.
Massachusetts	Boston.
Michigan	Detroit.
Minnesota	Minneapolis
	St. Paul.

State	Incorporated place
Missouri	Kansas City.
	St. Louis.
Nebraska	Omaha.
New Jersey	Newark.
New Mexico	Albuquerque.
New York	Buffalo.
	Bronx Borough.
	Brooklyn Borough.
	Manhattan Borough.
	Queens Borough.
	Staten Island Borough.
North Carolina	Charlotte.
Ohio	Cincinnati.
	Cleveland.
	Columbus.
	Toledo.
Oklahoma	Oklahoma City.
	Tulsa.
Oregon	Portland.
Pennsylvania	Philadelphia.
	Pittsburgh.
Tennessee	Memphis.
	Nashville/Davidson.
Texas	Austin.
	Dallas.
	El Paso.
	Fort Worth.
	Houston.
	San Antonio.
Virginia	Norfolk.
	Virginia Beach.
Washington	Seattle.
Wisconsin	Milwaukee.

Appendix G to Part 122—Incorporated Places With Populations Greater Than 100,000 and Less Than 250,000 According to Latest Decennial Census by Bureau of Census

State	Incorporated place
Alabama	Huntsville.
	Mobile.
	Montgomery.
Alaska	Anchorage.
Arizona	Mesa.
	Tempe.
Arkansas	Little Rock.
California	Anaheim.
	Bakersfield.
	Berkeley.
	Concord.
	Fremont.
	Fresno.
	Fullerton.
	Garden Grove.
	Glendale.
	Huntington Beach.
	Modesto.
	Oxnard.
	Pasadena.
	Riverside.
	San Bernadino.
	Santa Ana.
	Stockton.
	Sunnyvale.
	Torrance.
Colorado	Aurora.
	Colorado Springs.
	Lakewood.
	Pueblo.
Connecticut	Bridgeport.
	Hartford.
	New Haven.
	Stamford.
	Waterbury.
Florida	Fort Lauderdale.
	Hialeah.
	Hollywood.
	Orlando.
	St. Petersburg.
Georgia	Columbus.
	Macon.
	Savannah.
Idaho	Boise City.
Illinois	Peoria.
	Rockford.
Indiana	Evansville.
	Fort Wayne.
	Gary.
	South Bend.
Iowa	Cedar Rapids.
	Davenport.
	Des Moines.
Kansas	Kansas City.
	Topeka.
Kentucky	Lexington-Fayette.
Louisiana	Baton Rouge.
	Shreveport.
Massachusetts	Springfield.
	Worcester.
Michigan	Ann Arbor.
	Flint.
	Grand Rapids.
	Lansing.
	Livonia.
	Sterling Heights.
	Warren.
Mississippi	Jackson.
Missouri	Independence.
	Springfield.
Nebraska	Lincoln.
Nevada	Las Vegas.
	Reno.
New Jersey	Elizabeth.
	Jersey City.
	Paterson.
New York	Albany.
	Rochester.
	Syracuse.
	Yonkers.
North Carolina	Durham.
	Greensboro.
	Raleigh.
	Winston-Salem.
Ohio	Akron.
	Dayton.
	Youngstown
Oregon	Eugene.
Pennsylvania	Allentown.
	Erie.
Rhode Island	Providence.
South Carolina	Columbia.
Tennessee	Chattanooga.
	Knoxville.
Texas	Amarillo.
	Arlington.
	Beaumont.
	Corpus Christi.
	Garland.
	Irving.
	Lubbock.
	Pasadena.
	Waco.
Utah	Salt Lake City.
Virginia	Alexandria.
	Chesapeake.
	Hampton.
	Newport News.
	Portsmouth.
	Richmond.
	Roanoke.
Washington	Spokane.
	Tacoma.
Wisconsin	Madison.

Appendix H to Part 122— Counties with Unincorporated Urbanized Areas With a Population of 250,000 or More According to the Latest Decennial Census by the Bureau of Census

State	County	Unincorporated urbanized population
California	Los Angeles	912,664
	Sacramento	449,056
	San Diego	304,758
Delaware	New Castle	257,184
Florida	Dade	781,949
Georgia	DeKalb	386,379
Hawaii	Honolulu	688,178
Maryland	Anne Arundel	271,458
	Baltimore	601,308
	Montgomery	447,993
	Prince George's	450,188
Texas	Harris	409,601
Utah	Salt Lake	304,632
Virginia	Fairfax	527,178
Washington	King	336,800

Appendix I to Part 122—Counties With Unincorporated Urbanized Areas Greater Than 100,000, But Less Than 250,000 According to the Latest Decennial Census by the Bureau of Census

State	County	Unincorporated urbanized population
Alabama	Jefferson	102,917
Arizona	Pima	111,479
California	Alameda	187,474
	Contra Costa	158,452
	Kern	117,231
	Orange	210,693
	Riverside	115,719
	San Bernardino	148,644
Florida	Broward	159,370
	Escambia	147,892
	Hillsborough	238,292
	Orange	245,325
	Palm Beach	167,089
	Pinellas	194,389
	Polk	104,150
	Sarasota	110,009
Georgia	Clayton	100,742
	Cobb	204,121
	Richmond	118,529
Kentucky	Jefferson	224,958
Louisiana	Jefferson	140,836
North Carolina	Cumberland	142,727
Nevada	Clark	201,775
Oregon	Multnomah	141,100
	Washington	109,348
South Carolina	Greenville	135,398
	Richland	124,684
Virginia	Arlington	152,599
	Henrico	161,204
	Chesterfield	108,348
Washington	Snohomish	103,493
	Pierce	196,113

PART 123—STATE PROGRAM REQUIREMENTS

8. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

9. Section 123.25 is amended by revising paragraph (a)(9) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(9) § 122.26—(Storm water discharges);

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

10. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

11. Section 124.52 is revised to read as follows:

§ 124.52 Permits required on a case-by-case basis.

(a) Various sections of part 122, subpart B allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations (§ 122.23), concentrated aquatic animal production facilities (§ 122.24), storm water discharges (§ 122.26), and certain other facilities covered by general permits (§ 122.28) that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Regional Administrator decides that an individual permit is required under this section, except as provided in paragraph (c) of this section, the Regional Administrator shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit under § 122.21 within 60 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (*see* 40 CFR 122.26 (a)(1)(v) and (c)(1)(v)), the Regional Administrator may require the discharger to submit a permit application or other information regarding the discharge under section 308 of the CWA. In requiring such information, the Regional Administrator shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under § 122.26 within 60 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 6560-50-M

Please print or type in the unshaded areas only

EPA ID Number *(copy from Item I of Form 1)*

Form Approved. OMB No. 2040-0086
Approval expires 5/31/92

Form 2F NPDES

EPA

United States Environmental Protection Agency
Washington, DC 20460

Application for Permit To Discharge Stormwater Discharges Associated with Industrial Activity

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 28.6 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of this collection of information, or suggestions for improving this form, including suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Outfall Location

For each outfall, list the latitude and longitude of its location to the nearest 15 seconds and the name of the receiving water.

A. Outfall Number *(list)*	B. Latitude			C. Longitude			D. Receiving Water *(name)*

II. Improvements

A. Are you now required by any Federal, State, or local authority to meet any implementation schedule for the construction, upgrading or operation of wastewater treatment equipment or practices or any other environmental programs which may affect the discharges described in this application? This includes, but is not limited to, permit conditions, administrative or enforcement orders, enforcement compliance schedule letters, stipulations, court orders, and grant or loan conditions.

1. Identification of Conditions, Agreements, Etc.	2. Affected Outfalls		3. Brief Description of Project	4. Final Compliance Date	
	number	source of discharge		a. req.	b. proj.

B. You may attach additional sheets describing any additional water pollution (or other environmental projects which may affect your discharges) you now have under way or which you plan. Indicate whether each program is now under way or planned, and indicate your actual or planned schedules for construction.

III. Site Drainage Map

Attach a site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) depicting the facility including: each of its intake and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each known past or present areas used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal units (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility.

 Continue on Page 2

Continued from the Front

IV. Narrative Description of Pollutant Sources

A. For each outfall, provide an estimate of the area (include units) of impervious surfaces (including paved areas and building roofs) drained to the outfall, and an estimate of the total surface area drained by the outfall.

Outfall Number	Area of Impervious Surface *(provide units)*	Total Area Drained *(provide units)*	Outfall Number	Area of Impervious Surface *(provide units)*	Total Area Drained *(provide units)*

B. Provide a narrative description of significant materials that are currently or in the past three years have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage, or disposal; past and present materials management practices employed, in the last three years, to minimize contact by these materials with storm water runoff; materials loading and access areas; and the location, manner, and frequency in which pesticides, herbicides, soil conditioners, and fertilizers are applied.

C. For each outfall, provide the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the schedule and type of maintenance for control and treatment measures and the ultimate disposal of any solid or fluid wastes other than by discharge.

Outfall Number	Treatment	List Codes from Table 2F-1

V. Nonstormwater Discharges

A. I certify under penalty of law that the outfall(s) covered by this application have been tested or evaluated for the presence of nonstormwater discharges, and that all nonstormwater discharges from these outfall(s) are identified in either an accompanying Form 2C or Form 2E application for the outfall.

Name and Official Title *(type or print)*	Signature	Date Signed

B. Provide a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test.

VI. Significant Leaks or Spills

Provide existing information regarding the history of significant leaks or spills of toxic or hazardous pollutants at the facility in the last three years, including the approximate date and location of the spill or leak, and the type and amount of material released.

 Continue on Page 3

EPA ID Number *(copy from Item 1 of Form 1)*

Continued from Page 2

VII. Discharge Information

A,B,C, & D: See instructions before proceeding. Complete one set of tables for each outfall. Annotate the outfall number in the space provided. Tables VII-A, VII-B, and VII-C are included on separate sheets numbered VII-1 and VII-2.

E: Potential discharges not covered by analysis - Is any pollutant listed in Table 2F-2 a substance or a component of a substance which you currently use or manufacture as an intermediate or final product or byproduct?

☐ Yes *(list all such pollutants below)* ☐ No *(go to Section VIII)*

VIII. Biological Toxicity Testing Data

☐ Yes *(list results below)* ☐ No *(go to Section IX)*

IX. Contract Analysis Information

☐ Yes ☐ No *(go to Section X)*

A. Name	B. Address	C. Area Code & Phone No.	D. Pollutants Analyzed

X. Certification

A. Name & Official Title *(type or print)*	B. Area Code and Phone No.
C. Signature	D. Date Signed

EPA ID Number *(copy from item I of Form 1)*

Form Approved. OMB No. 2040-0086
Approval expires 5/31/92

VII. Discharge Information *(Continued from page 3 of Form 2F)*

Part A - You must provide the results of at least one analysis for every pollutant in this table. Complete one table for each outfall. See instructions for additional details.

Pollutant and CAS Number *(if available)*	Maximum Values *(include units)*		Average Values *(include units)*		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite		
Oil and Grease						
Biological Oxygen Demand (BOD5)						
Chemical Oxygen Demand (COD)						
Total Suspended Solids (TSS)						
Total Kjeldahl Nitrogen						
Nitrate plus Nitrite Nitrogen						
Total Phosphorus						
pH	Minimum	Maximum	Minimum	Maximum		

Part B - List each pollutant that is limited in an effluent guideline which the facility is subject to or any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit). Complete one table for each outfall. See the instructions for additional details and requirements.

Pollutant and CAS Number *(if available)*	Maximum Values *(include units)*		Average Values *(include units)*		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite		

Continued from the Front

Part C - List each pollutant shown in Tables 2F-2, 2F-3, and 2F-4 that you know or have reason to believe is present. See the instructions for additional details and requirements. Complete one table for each outfall.

Pollutant and CAS Number *(if available)*	Maximum Values *(include units)*		Average Values *(include units)*		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite		

Instructions - Form 2F
Application for Permit to Discharge Storm Water Associated with Industrial Activity

Who Must File Form 2F

Form 2F must be completed by operators of facilities which discharge storm water associated with industrial activity or by operators of storm water discharges that EPA is evaluating for designation as a significant contributor of pollutants to waters of the United States, or as contributing to a violation of a water quality standard.

Operators of discharges which are composed entirely of storm water must complete Form 2F (EPA Form 3510-2F) in conjunction with Form 1 (EPA Form 3510-1).

Operators of discharges of storm water which are combined with process wastewater (process wastewater is water that comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, waste product, or wastewater) must complete and submit Form 2F, Form 1, and Form 2C (EPA Form 3510-2C).

Operators of discharges of storm water which are combined with nonprocess wastewater (nonprocess wastewater includes noncontact cooling water and sanitary wastes which are not regulated by effluent guidelines or a new source performance standard, except discharges by educational, medical, or commercial chemical laboratories) must complete Form 1, Form 2F, and Form 2E (EPA Form 3510-2E).

Operators of new sources or new discharges of storm water associated with industrial activity which will be combined with other nonstormwater new sources or new discharges must submit Form 1, Form 2F, and Form 2D (EPA Form 3510-2D).

Where to File Applications

The application forms should be sent to the EPA Regional Office which covers the State in which the facility is located. Form 2F must be used only when applying for permits in States where the NPDES permits program is administered by EPA. For facilities located in States which are approved to administer the NPDES permits program, the State environmental agency should be contacted for proper permit application forms and instructions.

Information on whether a particular program is administered by EPA or by a State agency can be obtained from your EPA Regional Office. Form 1, Table 1 of the "General Instructions" lists the addresses of EPA Regional Offices and the States within the jurisdiction of each Office.

Completeness

Your application will not be considered complete unless you answer every question on this form and on Form 1. If an item does not apply to you, enter "NA" (for not applicable) to show that you considered the question.

Public Availability of Submitted Information

You may not claim as confidential any information required by this form or Form 1, whether the information is reported on the forms or in an attachment. Section 402(j) of the Clean Water Act requires that all permit applications will be available to the public. This information will be made available to the public upon request.

Any information you submit to EPA which goes beyond that required by this form, Form 1, or Form 2C you may claim as confidential, but claims for information which are effluent data will be denied.

If you do not assert a claim of confidentiality at the time of submitting the information, EPA may make the information public without further notice to you. Claims of confidentiality will be handled in accordance with EPA's business confidentiality regulations at 40 CFR Part 2.

Definitions

All significant terms used in these instructions and in the form are defined in the glossary found in the General Instructions which accompany Form 1.

EPA ID Number

Fill in your EPA Identification Number at the top of each odd-numbered page of Form 2F. You may copy this number directly from item I of Form 1.

Item I

You may use the map you provided for item XI of Form 1 to determine the latitude and longitude of each of your outfalls and the name of the receiving water.

Item II-A

If you check "yes" to this question, complete all parts of the chart, or attach a copy of any previous submission you have made to EPA containing the same information.

Item II-B

You are not required to submit a description of future pollution control projects if you do not wish to or if none is planned.

Item III

Attach a site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) depicting the facility including:

each of its drainage and discharge structures;

the drainage area of each storm water outfall;

paved areas and building within the drainage area of each storm water outfall, each known past or present areas used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied;

each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste for less than 90 days under 40 CFR 262.34);

each well where fluids from the facility are injected underground; and

springs, and other surface water bodies which receive storm water discharges from the facility;

Item IV-A

For each outfall, provide an estimate of the area drained by the outfall which is covered by impervious surfaces. For the purpose of this application, impervious surfaces are surfaces where storm water runs off at rates that are significantly higher than background rates (e.g., predevelopment levels) and include paved areas, building roofs, parking lots, and roadways. Include an estimate of the total area (including all impervious and pervious areas) drained by each outfall. The site map required under item III can be used to estimate the total area drained by each outfall.

Item IV-B

Provide a narrative description of significant materials that are currently or in the past three years have been treated, stored, or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of these materials; past and present materials management practices employed, in the last three years, to minimize contact by these materials with storm water runoff; materials loading and access areas; and the location, manner, and frequency in which pesticides, herbicides, soil conditioners, and fertilizers are applied. Significant materials should be identified by chemical name, form (e.g., powder, liquid, etc.), and type of container or treatment unit. Indicate any materials treated, stored, or disposed of together. "Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Item IV-C

For each outfall, structural controls include structures which enclose material handling or storage areas, covering materials, berms, dikes, or diversion ditches around manufacturing, production, storage or treatment units, retention ponds, etc. Nonstructural controls include practices such as spill prevention plans, employee training, visual inspections, preventive maintenance, and housekeeping measures that are used to prevent or minimize the potential for releases of pollutants.

Item V

Provide a certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by an NPDES permit. Tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. Part B must include a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test. All non-storm water discharges must be identified in a Form 2C or Form 2E which must accompany this application (see beginning of instructions under section titled "Who Must File Form 2F" for a description of when Form 2C and Form 2E must be submitted).

Item VI

Provide a description of existing information regarding the history of significant leaks or spills of toxic or hazardous pollutants at the facility in the last three years.

Item VII-A, B, and C

These items require you to collect and report data on the pollutants discharged for each of your outfalls. Each part of this item addresses a different set of pollutants and must be completed in accordance with the specific instructions for that part. The following general instructions apply to the entire item.

General Instructions

Part A requires you to report at least one analysis for each pollutant listed. Parts B and C require you to report analytical data in two ways. For some pollutants addressed in Parts B and C, if you know or have reason to know that the pollutant is present in your discharge, you may be required to list the pollutant and test (sample and analyze) and report the levels of the pollutants in your discharge. For all other pollutants addressed in Parts B and C, you must list the pollutant if you know or have reason to know that the pollutant is present in the discharge, and either report quantitative data for the pollutant or briefly describe the reasons the pollutant is expected to be discharged. (See specific instructions on the form and below for Parts A through C.) Base your determination that a pollutant is present in or absent from your discharge on your knowledge of your raw materials, material management practices, maintenance chemicals, history of spills and releases, intermediate and final products and byproducts, and any previous analyses known to you of your effluent or similar effluent.

A. **Sampling:** The collection of the samples for the reported analyses should be supervised by a person experienced in performing sampling of industrial wastewater or storm water discharges. You may contact EPA or your State permitting authority for detailed guidance on sampling techniques and for answers to specific questions. Any specific requirements contained in the applicable analytical methods should be followed for sample containers, sample preservation, holding times, the collection of duplicate samples, etc. The time when you sample should be representative, to the extent feasible, of your treatment system operating properly with no system upsets. Samples should be collected from the center of the flow channel, where turbulence is at a maximum, at a site specified in your present permit, or at any site adequate for the collection of a representative sample.

   For pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform, grab samples taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge must be used (you are not required to analyze a flow-weighted composite for these parameters). For all other pollutants both a grab sample collected during the first 30 minutes (or as soon thereafter as practicable) of the discharge and a flow-weighted composite sample must be analyzed. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period of greater than 24 hours.

   All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area.

   A grab sample shall be taken during the first thirty minutes of the discharge (or as soon thereafter as practicable), and a flow-weighted composite shall be taken for the entire event or for the first three hours of the event.

   Grab and composite samples are defined as follows:

Grab sample: An individual sample of at least 100 milliliters collected during the first thirty minutes (or as soon thereafter as practicable) of the discharge. This sample is to be analyzed separately from the composite sample.

Flow-Weighted Composite sample: A flow-weighted composite sample may be taken with a continuous sampler that proportions the amount of sample collected with the flow rate or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire event or for the first three hours of the event, with each aliquot being at least 100 milliliters and collected with a minimum period of fifteen minutes between aliquot collections. The composite must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically. Where GC/MS Volatile Organic Analysis (VOA) is required, aliquots must be combined in the laboratory immediately before analysis. Only one analysis for the composite sample is required.

Data from samples taken in the past may be used, provided that:

All data requirements are met;

Sampling was done no more than three years before submission; and

All data are representative of the present discharge.

Among the factors which would cause the data to be unrepresentative are significant changes in production level, changes in raw materials, processes, or final products, and changes in storm water treatment. When the Agency promulgates new analytical methods in 40 CFR Part 136, EPA will provide information as to when you should use the new methods to generate data on your discharges. Of course, the Director may request additional information, including current quantitative data, if they determine it to be necessary to assess your discharges. The Director may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rainfall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis.

B. **Reporting:** All levels must be reported as concentration and as total mass. You may report some or all of the required data by attaching separate sheets of paper instead of filling out pages VII-1 and VII-2 if the separate sheets contain all the required information in a format which is consistent with pages VII-1 and VII-2 in spacing and in identification of pollutants and columns. Use the following abbreviations in the columns headed "Units."

Concentration		Mass	
ppm	parts per million	lbs	pounds
mg/1	milligrams per liter	ton	tons (English tons)
ppb	parts per billion	mg	milligrams
ug/1	micrograms per liter	g	grams
kg	kilograms	T	tonnes (metric tons)

All reporting of values for metals must be in terms of "total recoverable metal," unless:

(1) An applicable, promulgated effluent limitation or standard specifies the limitation for the metal in dissolved, valent, or total form; or

(2) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium); or

(3) The permitting authority has determined that in establishing case-by-case limitations it is necessary to express the limitations on the metal in dissolved, valent, or total form to carry out the provisions of the CWA. If you measure only one grab sample and one flow-weighted composite sample for a given outfall, complete only the "Maximum Values" columns and insert "1" into the "Number of Storm Events Sampled" column. The permitting authority may require you to conduct additional analyses to further characterize your discharges.

If you measure more than one value for a grab sample or a flow-weighted composite sample for a given outfall and those values are representative of your discharge, you must report them. You must describe your method of testing and data analysis. You also must determine the average of all values within the last year and report the concentration mass under the "Average Values" columns, and the total number of storm events sampled under the "Number of Storm Events Sampled" columns.

C. **Analysis:** You must use test methods promulgated in 40 CFR Part 136; however, if none has been promulgated for a particular pollutant, you may use any suitable method for measuring the level of the pollutant in your discharge provided that you submit a description of the method or a reference to a published method. Your description should include the sample holding time, preservation techniques, and the quality control measures which you used. If you have two or more substantially identical outfalls, you may request permission from your permitting authority to sample and analyze only one outfall and submit the results of the analysis for other substantially identical outfalls. If your request is granted by the permitting authority, on a separate sheet attached to the application form, identify which outfall you did test, and describe why the outfalls which you did not test are substantially identical to the outfall which you did test.

Part VII-A

Part VII-A must be completed by all applicants for all outfalls who must complete Form 2F.

Analyze a grab sample collected during the first thirty minutes (or as soon thereafter as practicable) of the discharge and flow-weighted composite samples for all pollutants in this Part, and report the results except use only grab samples for pH and oil and grease. See discussion in General Instructions to Item VII for definitions of grab sample collected during the first thirty minutes of discharge and flow-weighted composite sample. The "Average Values" column is not compulsory but should be filled out if data are available.

Part VII-B

List all pollutants that are limited in an effluent guideline which the facility is subject to (see 40 CFR Subchapter N to determine which pollutants are limited in effluent guidelines) or any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit). Complete one table for each outfall. See discussion in General instructions to item VII for definitions of grab sample collected during the first thirty minutes (or as soon thereafter as practicable) of discharge and flow-weighted composite sample. The "Average Values" column is not compulsory but should be filled out if data are available.

Analyze a grab sample collected during the first thirty minutes of the discharge and flow-weighted composite samples for all pollutants in this Part, and report the results, except as provided in the General Instructions.

Part VII-C

Part VII-C must be completed by all applicants for all outfalls which discharge storm water associated with industrial activity, or that EPA is evaluating for designation as a significant contributor of pollutants to waters of the United States, or as contributing to a violation of a water quality standard. Use both a grab sample and a composite sample for all pollutants you analyze for in this part except use grab samples for residual chlorine and fecal coliform. The "Average Values" column is not compulsory but should be filled out if data are available. Part C requires you to address the pollutants in Table 2F-2, 2F-3, and 2F-4 for each outfall. Pollutants in each of these Tables are addressed differently.

Table 2F-2: For each outfall, list all pollutants in Table 2F-2 that you know or have reason to believe are discharged (except pollutants previously listed in Part VII-B). If a pollutant is limited in an effluent guideline limitation which the facility is subject to (e.g., use of TSS as an indicator to control the discharge of iron and aluminum), the pollutant should be listed in Part VII-B. If a pollutant in table 2F-2 is indirectly limited by an effluent guideline limitation through an indicator, you must analyze for it and report data in Part VII-C. For other pollutants listed in Table 2F-2 (those not limited directly or indirectly by an effluent limitation guideline), that you know or have reason to believe are discharges, you must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

Table 2F-3: For each outfall, list all pollutants in Table 2F-3 that you know or have reason to believe are discharged. For every pollutant in Table 2F-3 expected to be discharged in concentrations of 10 ppb or greater, you must submit quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, you must submit quantitative data if any of these four pollutants is expected to be discharged

in concentrations of 100 ppb or greater. For every pollutant expected to be discharged in concentrations less than 10 ppb (or 100 ppb for the four pollutants listed above), then you must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

Small Business Exemption - If you are a "small business," you are exempt from the reporting requirements for the organic toxic pollutants listed in Table 2F-3. There are two ways in which you can qualify as a "small business". If your facility is a coal mine, and if your probable total annual production is less than 100,000 tons per year, you may submit past production data or estimated future production (such as a schedule of estimated total production under 30 CFR 795.14(c)) instead of conducting analyses for the organic toxic pollutants. If your facility is not a coal mine, and if your gross total annual sales for the most recent three years average less than $100,000 per year (in second quarter 1980 dollars), you may submit sales data for those years instead of conducting analyses for the organic toxic pollutants. The production or sales data must be for the facility which is the source of the discharge. The data should not be limited to production or sales for the process or processes which contribute to the discharge, unless those are the only processes at your facility. For sales data, in situations involving intracorporate transfer of goods and services, the transfer price per unit should approximate market prices for those goods and services as closely as possible. Sales figures for years after 1980 should be indexed to the second quarter of 1980 by using the gross national product price deflator (second quarter of 1980=100). This index is available in National Income and Product Accounts of the United States (Department of Commerce, Bureau of Economic Analysis).

Table 2F-4: For each outfall, list any pollutant in Table 2F-4 that you know or believe to be present in the discharge and explain why you believe it to be present. No analysis is required, but if you have analytical data, you must report them. **Note:** Under 40 CFR 117.12(a)(2), certain discharges of hazardous substances (listed at 40 CFR 177.21 or 40 CFR 302.4) may be exempted from the requirements of section 311 of CWA, which establishes reporting requirements, civil penalties, and liability for cleanup costs for spills of oil and hazardous substances. A discharge of a particular substance may be exempted if the origin, source, and amount of the discharged substances are identified in the NPDES permit application or in the permit, if the permit contains a requirement for treatment of the discharge, and if the treatment is in place. To apply for an exclusion of the discharge of any hazardous substance from the requirements of section 311, attach additional sheets of paper to your form, setting forth the following information:

1. The substance and the amount of each substance which may be discharged.
2. The origin and source of the discharge of the substance.
3. The treatment which is to be provided for the discharge by:
    a. An onsite treatment system separate from any treatment system treating your normal discharge;
    b. A treatment system designed to treat your normal discharge and which is additionally capable of treating the amount of the substance identified under paragraph 1 above; or
    c. Any combination of the above.

See 40 CFR 117.12(a)(2) and (c), published on August 29, 1979, in 44 FR 50766, or contact your Regional Office (Table 1 on Form 1, Instructions), for further information on exclusions from section 311.

Part VII-D

If sampling is conducted during more than one storm event, you only need to report the information requested in Part VII-D for the storm event(s) which resulted in any maximum pollutant concentration reported in Part VII-A, VII-B, or VII-C.

Provide flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, the method of flow measurement, or estimation. Provide the data and duration of the storm event(s) sampled, rainfall measurements, or estimates of the storm event which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

Part VII-E

List any toxic pollutant listed in Tables 2F-2, 2F-3, or 2F-4 which you currently use or manufacture as an intermediate or final product or byproduct. In addition, if you know or have reason to believe that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) is discharged or if you use or manufacture 2,4,5-trichlorophenoxy acetic

acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorphenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); then list TCDD. The Director may waive or modify the requirement if you demonstrate that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue your permit. You may not claim this information as confidential; however, you do not have to distinguish between use or production of the pollutants or list the amounts.

Item VIII

Self explanatory. The permitting authority may ask you to provide additional details after your application is received.

Item X

The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(c)(4) of the Clean Water Act provides that "Any person who knowingly makes any false material statement, representation, or certification in any application, . . . shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction of such person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both." 40 CFR Part 122.22 requires the certification to be signed as follows:

(A) For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegation of authority to responsible corporate officers identified in 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate position under 122.22(a)(1)(ii) rather than to specific individuals.

(B) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(C) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

Table 2F-1
Codes for Treatment Units

Physical Treatment Processes

1-A	Ammonia Stripping	1-M	Grit Removal
1-B	Dialysis	1-N	Microstraining
1-C	Diatomaceous Earth Filtration	1-O	Mixing
1-D	Distillation	1-P	Moving Bed Filters
1-E	Electrodialysis	1-Q	Multimedia Filtration
1-F	Evaporation	1-R	Rapid Sand Filtration
1-G	Flocculation	1-S	Reverse Osmosis (Hyperfiltration)
1-H	Flotation	1-T	Screening
1-I	Foam Fractionation	1-U	Sedimentation (Setting)
1-J	Freezing	1-V	Slow Sand Filtration
1-K	Gas-Phase Separation	1-W	Solvent Extraction
1-L	Grinding (Comminutors)	1-X	Sorption

Chemical Treatment Processes

2-A	Carbon Adsorption	2-G	Disinfection (Ozone)
2-B	Chemical Oxidation	2-H	Disinfection (Other)
2-C	Chemical Precipitation	2-I	Electrochemical Treatment
2-D	Coagulation	2-J	Ion Exchange
2-E	Dechlorination	2-K	Neutralization
2-F	Disinfection (Chlorine)	2-L	Reduction

Biological Treatment Processes

3-A	Activated Sludge	3-E	Pre-Aeration
3-B	Aerated Lagoons	3-F	Spray Irrigation/Land Application
3-C	Anaerobic Treatment	3-G	Stabilization Ponds
3-D	Nitrification-Denitrification	3-H	Trickling Filtration

Other Processes

4-A	Discharge to Surface Water	4-C	Reuse/Recycle of Treated Effluent
4-B	Ocean Discharge Through Outfall	4-D	Underground Injection

Sludge Treatment and Disposal Processes

5-A	Aerobic Digestion	5-M	Heat Drying
5-B	Anaerobic Digestion	5-N	Heat Treatment
5-C	Belt Filtration	5-O	Incineration
5-D	Centrifugation	5-P	Land Application
5-E	Chemical Conditioning	5-Q	Landfill
5-F	Chlorine Treatment	5-R	Pressure Filtration
5-G	Composting	5-S	Pyrolysis
5-H	Drying Beds	5-T	Sludge Lagoons
5-I	Elutriation	5-U	Vacuum Filtration
5-J	Flotation Thickening	5-V	Vibration
5-K	Freezing	5-W	Wet Oxidation
5-L	Gravity Thickening		

Table 2F-2

Conventional and Nonconventional Pollutants Required To Be Tested by Existing Discharger if Expected To Be Present

Bromide
Chlorine, Total Residual
Color
Fecal Coliform
Fluoride
Nitrate-Nitrite
Nitrogen, Total Kjedahl
Oil and Grease
Phosphorus, Total Radioactivity
Sulfate
Sulfide
Sulfite
Surfactants
Aluminum, Total
Barium, Total
Boron, Total
Cobalt, Total
Iron, Total
Magnesium, Total
Molybdenum, Total
Magnesium, Total
Tin, Total
Titanium, Total

Table 2F-3

Toxic pollutants required to be identified by applicant if expected to be present

Toxic Pollutants and Total Phenol

Antimony, Total	Copper, Total	Silver, Total
Arsenic, Total	Lead, Total	Thallium, Total
Beryllium, Total	Mercury, Total	Zinc, Total
Cadmium, Total	Nickel, Total	Cyanide, Total
Chromium, Total	Selenium, Total	Phenols, Total

GC/MS Fraction Volatiles Compounds

Acrolein	Dichlorobromomethane	1,1,2,2,-Tetrachloroethane
Acrylonitrile	1,1-Dichloroethane	Tetrachloroethylene
Benzene	1,2-Dichloroethane	Toluene
Bromoform	1,1-Dichloroethylene	1,2-Trans-Dichloroethylene
Carbon Tetrachloride	1,2-Dichloropropane	1,1,1-Trichloroethane
Chlorobenzene	1,3-Dichloropropylene	1,1,2-Trichloroethane
Chlorodibromomethane	Ethylbenzene	Trichloroethylene
Chloroethane	Methyl Bromide	Vinyl Chloride
2-Chloroethylvinyl Ether	Methyl Chloride	
Chloroform	Methylene Chloride	

Acid Compounds

2-Chlorophenol	2,4-Dinitrophenol	Pentachlorophenol
2,4-Dichlorophenol	2-Nitrophenol	Phenol
2,4-Dimethylphenol	4-Nitrophenol	2,4,6-Trichlorophenol
4,6-Dinitro-O-Cresol	p-Chloro-M-Cresol	

Base/Neutral

Acenaphthene	2-Chloronaphthalene	Fluroranthene
Acenaphthylene	4-Chlorophenyl Phenyl Ether	Fluorene
Anthracene	Chrysene	Hexachlorobenzene
Benzidine	Dibenzo(a,h)anthracene	Hexachlorobutadiene
Benzo(a)anthracene	1,2-Dichlorobenzene	Hexachloroethane
Benzo(a)pyrene	1,3-Dichlorobenzene	Indeno(1,2,3-cd)pyrene
3,4-Benzofluoranthene	1,4-Dichlorobenzene	Isophorone
Benzo(ghi)perylene	3,3'-Dichlorobenzidine	Napthalene
Benzo(k)fluoranthene	Diethyl Phthalate	Nitrobenzene
Bis(2-chloroethoxy)methane	Dimethyl Phthalate	N-Nitrosodimethylamine
Bis(2-chloroethyl)ether	Di-N-Butyl Phthalate	N-Nitrosodi-N-Propylamine
Bis(2-chloroisopropyl)ether	2,4-Dinitrotoluene	N-Nitrosodiphenylamine
Bis(2-ethylyhexyl)phthalate	2,6-Dinitrotoluene	Phenanthrene
4-Bromophenyl Phenyl Ether	Di-N-Octylphthalate	Pyrene
Butylbenzyl Phthalate	1,2-Diphenylhydrazine (as Azobenzene)	1,2,4-Trichlorobenzene

Pesticides

Aldrin	Dieldrin	PCB-1254
Alpha-BHC	Alpha-Endosulfan	PCB-1221
Beta-BHC	Beta-Endosulfan	PCB-1232
Gamma-BHC	Endosulfan Sulfate	PCB-1248
Delta-BHC	Endrin	PCB-1260
Chlordane	Endrin Aldehyde	PCB-1016
4,4'-DDT	Heptachlor	Toxaphene
4,4'-DDE	Heptachlor Epoxide	
4,4'-DDD	PCB-1242	

Table 2F-4

Hazardous substances required to be identified by applicant if expected to be present

Toxic Pollutant

Asbestos

Hazardous Substances

Acetaldehyde	Dinitrobenzene	Napthenic acid
Allyl alcohol	Diquat	Nitrotoluene
Allyl chloride	Disulfoton	Parathion
Amyl acetate	Diuron	Phenolsulfonate
Aniline	Epichlorohydrin	Phosgene
Benzonitrile	Ethion	Propargite
Benzyl chloride	Ethylene diamine	Propylene oxide
Butyl acetate	Ethylene dibromide	Pyrethrins
Butylamine	Formaldehyde	Quinoline
Carbaryl	Furfural	Resorcinol
Carbofuran	Guthion	Stronthium
Carbon disulfide	Isoprene	Strychnine
Chlorpyrifos	Isopropanolamine	Styrene
Coumaphos	Kelthane	2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)
Cresol	Kepone	TDE (Tetrachlorodiphenyl ethane)
Crotonaldehyde	Malathion	2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Cyclohexane	Mercaptodimethur	Trichlorofan
2,4-D (2,4-Dichlorophenoxyacetic acid)	Methoxychlor	Triethylamine
Diazinon	Methyl mercaptan	Trimethylamine
Dicamba	Methyl methacrylate	Uranium
Dichlobenil	Methyl parathion	Vanadium
Dichlone	Mevinphos	Vinyl acetate
2,2-Dichloropropionic acid	Mexacarbate	Xylene
Dichlorvos	Monoethyl amine	Xylenol
Diethyl amine	Monomethyl amine	Zirconium
Dimethyl amine	Naled	

[FR Doc. 90–26315 Filed 11–9–90; 12:17 pm]
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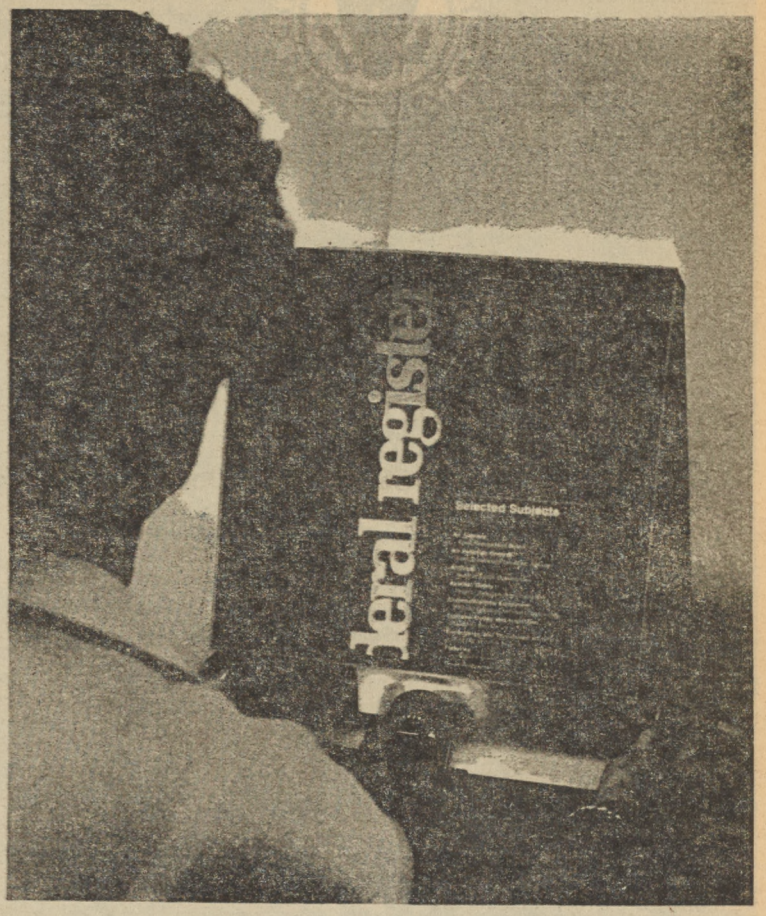
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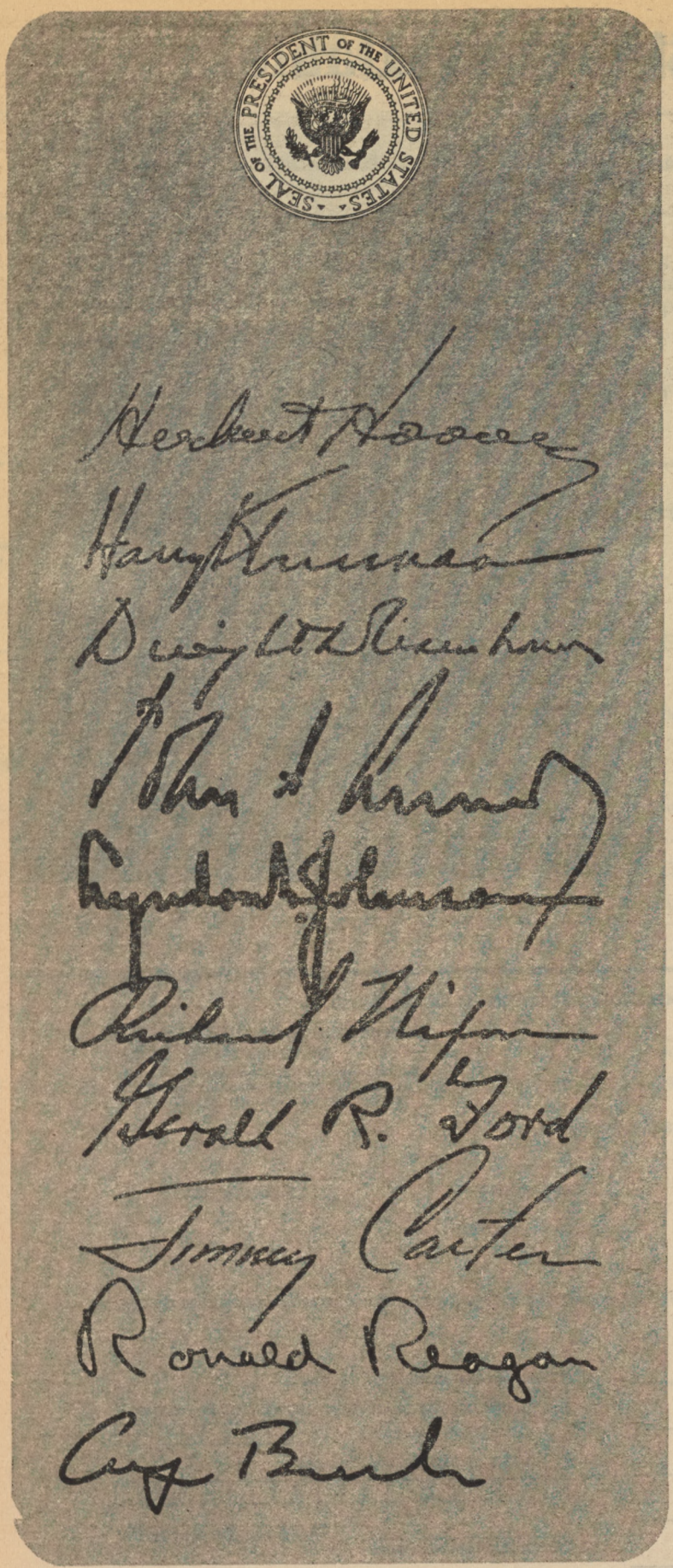
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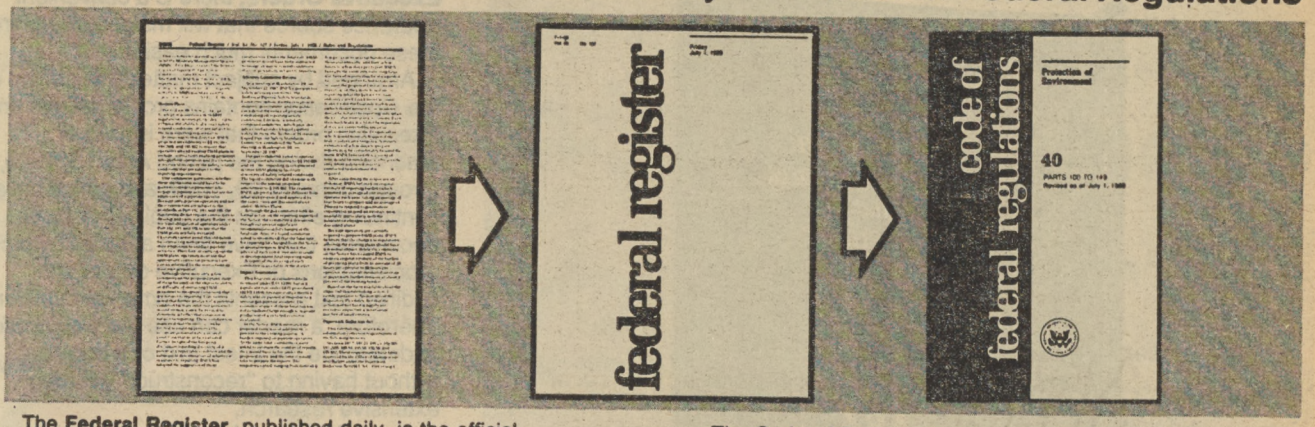
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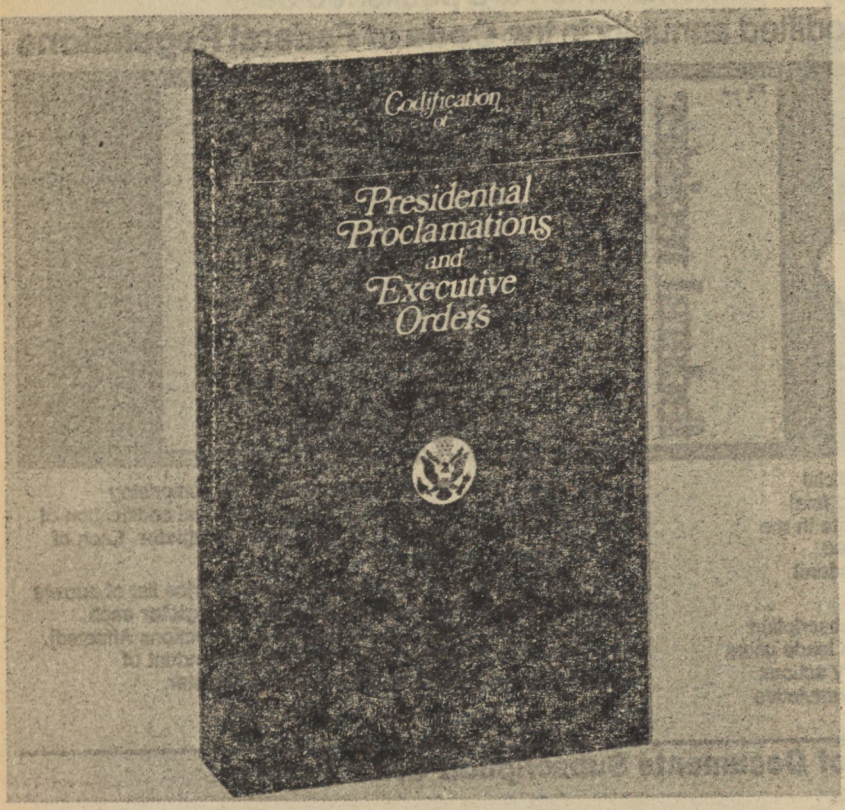
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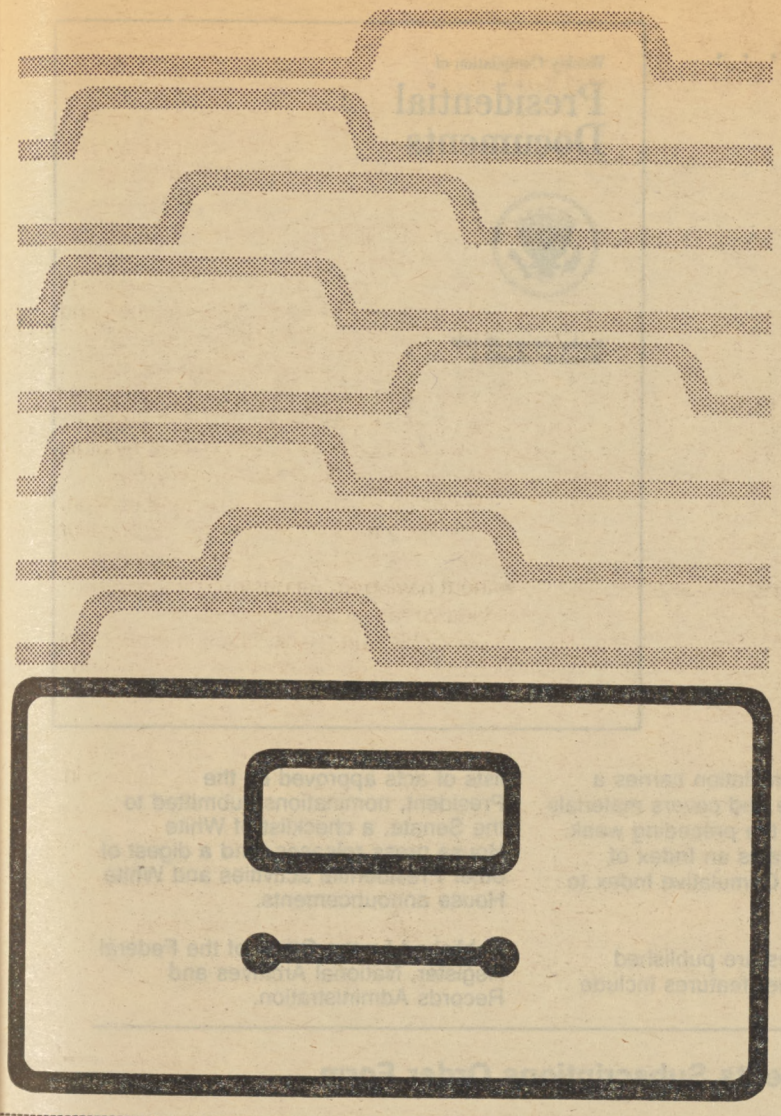
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in the Code of Federal Regulations (CFR)

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SUPPLEMENT: Revised January 1, 1990

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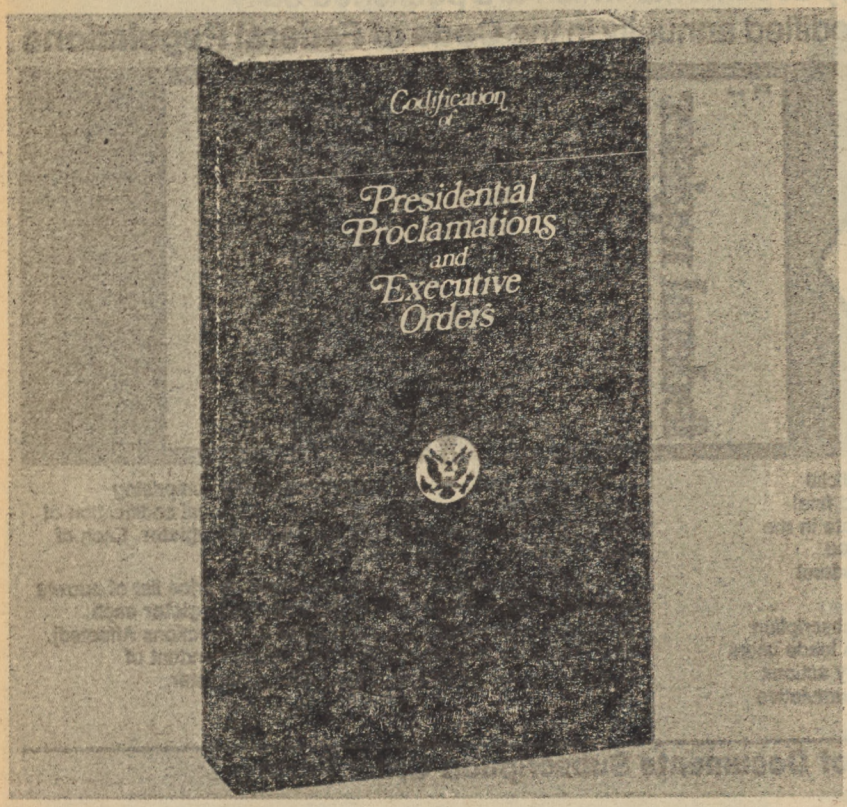
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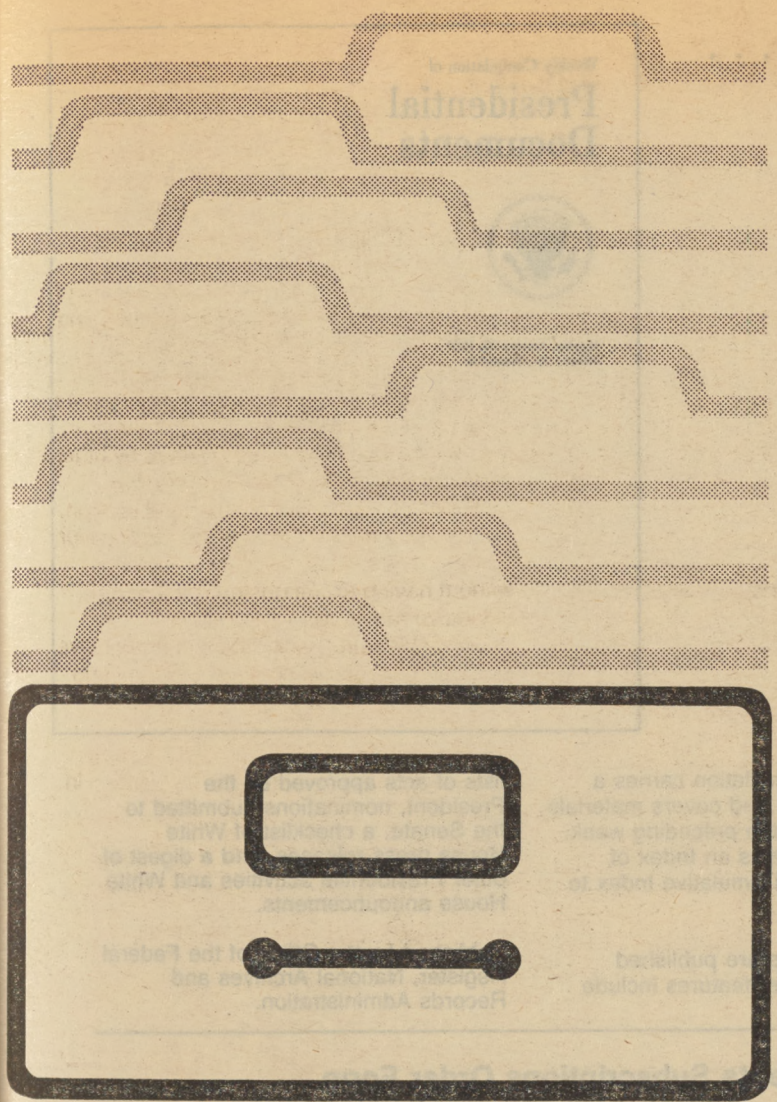
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Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

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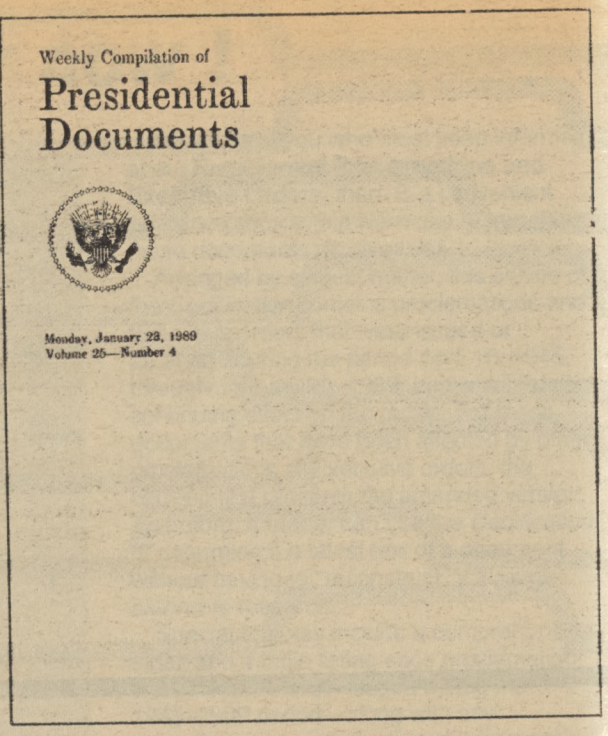
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