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Rules and Regulations

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

GENERAL ACCOUNTING OFFICE

4 CFR Part 21

Bid Protest Regulations

AGENCY: General Accounting Office.
ACTION: Final rule.

SUMMARY: These rules reflect adoption of and amendments to the General Accounting Office's proposed regulation amendments published April 6, 1990 (55 FR 12834) and respond to comments submitted. The General Accounting Office's Regulations implement sections 3551–3556 of title 31, United States Code. These rules are intended to improve the effectiveness of the bid protest process especially in the areas of document production, hearings and remedies.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: John Brosnan, Assistant General Counsel, General Accounting Office, by telephone (202) 275–9714 or write to the U.S. General Accounting Office, Office of the General Counsel, 441 G Street, NW., Washington, DC 20548.

SUPPLEMENTARY INFORMATION: On April 11, 1989, the General Accounting Office (GAO) published an advance notice of proposed rulemaking soliciting comments on how its bid protest regulations could be amended to improve the effectiveness of the protest process (54 FR 14361, April 11, 1989). That Notice specified that GAO was particularly interested in comments concerning the release of agency documents during a protest and regarding formal fact finding hearings. GAO received 25 comments in response to the Notice. After carefully considering the comments received in response to the Notice, GAO published proposed regulation amendments along with an explanation of the reasons why the amendments were proposed on April 6, 1990 (55 FR 12874). These amendments were the subject of public comment. In light of all the comments received, several changes are made.

The Comments

GAO received comments on the proposed regulation amendments from 37 respondents. The following is a discussion of the principal issues raised in the comments and GAO's response as well as some additional related clarifications to the regulations.

In response to several general comments from agencies that protests which suffer from procedural deficiencies should be dismissed as soon as practicable § 21.2, which sets for the timeliness rules for filing protests is clarified by adding a new § 21.2(b) stating that initial protest submissions must show that the protest is timely or it may be dismissed. Under this rule, which has been previously set forth in Norfolk Dredging Company—Second Request for Recon., B–236259.3, Dec. 7, 1989, 89–2 CPD ¶ 525, protesters will not be permitted to introduce for the first time on reconsideration the information upon which the timeliness of the protest relies. In order to accommodate the new section current § 21.2(b) is redesignated § 21.2(c).

Section 21.3(d)(1) established that GAO may issue a protective order where appropriate to limit the release of privileged information and information that would confer a competitive advantage on the protester or interested parties. Several contracting agencies suggested that requiring the disclosure of privileged information pursuant to a protective order would place agency personnel at risk of violating the prohibition in the Trade Secrets Act, 18 U.S.C. 1905 (1988), against the disclosure of trade secrets unless authorized by law and would impede the government's ability to obtain such information from offerors in the future.

The Competition in Contracting Act of 1984 (CICA) requires that within such deadlines as the Comptroller General prescribes, federal agencies shall provide to an interested party any document relevant to a protested procurement action that would not give that party a competitive advantage and that the party is otherwise authorized by law to receive. 31 U.S.C. 3553(f). CICA also provides GAO authority to prescribe such procedures as may be necessary to the expeditious decision of protests. 31 U.S.C. 3555(a). The bid protest process operates most efficiently when GAO has before it a complete record upon which to base its decision. In order to develop such a record the protester to the extent possible should be given access to all information considered by the procuring agency in making the determination which forms the basis of the protest. The availability of this information provides the protester with a full opportunity to present its side of the case and thus assures that GAO will have before it a complete record of the protested procurement as developed by the interplay between the protester and the agency. GAO's document disclosure procedures, including the issuance of protective orders, issued pursuant to 31 U.S.C. 3555(a) and 3553(f), are intended to meet this need for a full record. Modified § 21.3(d)(1) provides that any party or the contracting agency may request that GAO issue a protective order limiting the release of particular documents that contain information that is privileged or the release of which would result in a competitive advantage. Since under the new § 21.3(d)(3) only individuals not involved in competitive decisionmaking will be authorized access to such documents, the release of documents under the protective order will not confer a competitive advantage on the recipient and thus should not deter offerors from furnishing information to the government.

A number of commenters have requested guidance concerning the type of information that will be placed under a protective order. GAO believes that in the usual case the information to be protected will consist of trade secrets and commercial or financial information and privileged or confidential data; that is, information coming within the scope of exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552(b)(4) (1988). Such proprietary information will usually be found in the proposals submitted by offerors and the agency's evaluations of those proposals.

GAO has changed § 21.3(d)(1) to permit any party to a protest, not just the contracting agency as previously provided, to request that a protective order be issued. This change reflects the fact that parties may have interests distinct from the agency's in limiting disclosure of certain documents. For example, an interested party generally

will have the greatest interest in assuring only limited disclosure of proprietary information in its proposal.

GAO also has extended from 15 to 20 days the period allowed by § 21.3(d)(1) for a party or the contracting agency to request that a protective order be issued. This extension is in response to the concern expressed by many agencies that in most cases the 15-day requirement would not allow sufficient time for contracting officials to assemble and review the record so as to determine whether and to what extent information may require protection. It is GAO's view that a request for a protective order must be filed as soon as possible before the report due date, and in any case no more than 20 days after the protest filing date, to permit finalization of the terms of the protective order in sufficient time so that the agency can furnish the relevant documents with the copies of the report provided to the protester and interested parties. Assuring that copies of the report include all relevant documents to be furnished to a party will facilitate the timely submission of comments on the report and adequate preparation for any hearing.

In addition, § 21.3(d)(1) has been revised to clarify that copies of the request for a protective order filed with GAO shall be furnished simultaneously to all parties. GAO believes that emphasizing the necessity for the simultaneous furnishing of copies will facilitate the expeditious consideration of requests for changes to the proposed order and its finalization.

The provision found in § 21.3(d)(1) that the terms of the protective order shall be "determined" by conference, telephone conference or other appropriate means prior to the due date for the agency report, has been included in new § 21.3(d)(2). The new section establishes timeframes for requesting that specific information or individuals be included in or excluded from the order, provides for responses to such requests by opposing parties, and now states that the terms of the protective order shall be "established" prior to the due date for the report. This new provision was added to set forth an orderly procedure for establishing the parties and documents to be covered by a protective order. GAO intends by substituting "established" for "determined" and relocating the sentence to § 21.3(c)(2) to emphasize that the terms of the order should be set in a single process which should be completed prior to the due date for the report.

Several commenters have questioned whether limiting access to protected materials to attorneys who are not employees of the protester and for other appropriate interested parties would unnecessarily deprive parties represented by in-house counsel of the opportunity to fully participate in and contribute to the protest process. GAO agrees that the appropriate criterion for authorizing access to protected materials should be not whether counsel is an employee or an independent contractor, but, as set forth in the new § 21.3(d)(3), whether applicants for access participate in competitive decisionmaking in federal procurements; GAO expects that authorizing access to privileged information pursuant to a protective order for attorneys not involved in competitive decisionmaking, whether in-house or outside counsel, or in appropriate cases, independent experts or consultants, should avoid conferring a competitive advantage on the recipient of such information. In this regard, new § 21.3(d)(3) requires not only that any individual seeking access submit an application certifying that they are not involved in competitive decisionmaking, but also that they furnish a detailed written statement supporting the certification.

New § 21.3(d)(4) has been added to provide a means by which additional documents, the existence or relevance of which first become evident after a protective order has been issued, may be included under the protective order, or additional individuals not already covered may be included.

A number of commenters expressed concern that the protective orders available under § 21.3(d) will be violated.

Although GAO at one time expressed concern about enforcement of such orders (52 FR 46,445, 46,446, Dec. 8, 1987), sufficient sanctions to deter violations of protective orders are available. Consequently, GAO has added new § 21.3(d)(5), which provides that GAO may refer possible violations of a protective order's terms to the appropriate bar association or other disciplinary bodies. Also, the violation of a protective order may result in restriction of practice before the GAO. Further, new § 21.3(d)(5) provides that a party whose protected information is improperly disclosed shall be entitled to all remedies under law or equity, including breach of contract.

Proposed § 21.3(d)(2) has been renumbered as § 21.3(d)(6). It has been clarified to indicate that the agency may withhold relevant documents from a party only where a protective order has not been issued. If the agency or other party fails to request a protective order, and an order is not issued, then the agency must include all relevant documents in the copies of the report provided to GAO. The agency must include in the report a list of all the documents not provided to the protester and interested parties and the reasons for withholding them.

Some contracting agencies have complained that the document production procedures in § 21.3(d) are unfair because they do not provide for agency access to protester documents. GAO has no evidence of specific problems with obtaining relevant protester documents (52 FR 46,446, Dec. 8, 1987). Where GAO has concluded that specific protester documents not already in the possession of the agency are relevant and should be included in the administrative record, such documents have been furnished by protesters at GAO's request. Commenters have not established the necessity for a more formal procedure and GAO will not at this time implement one.

Section 21.3(f) is amended to add that where there is a subsequent request for documents, the existence or relevance of which first becomes evident from the agency report, a request by any party or the agency that release of any additional documents be covered by a protective order shall be made in accordance with the § 21.3(d)(4) procedures for the addition of documents to an existing protective order.

Section 21.3(g) which concerns the release of disputed documents by GAO is amended to make clear that GAO may determine that any release of documents withheld from the protester or other interested parties should be pursuant to a protective order under § 21.3(d)(2).

Several commenters have generally questioned § 21.5, which provides for hearings in appropriate cases to develop the bid protest record through oral argument and/or oral testimony. These commenters assert that this may inject unnecessary formality into the GAO bid protest process, while others have supported the hearing procedures as adding a necessary element of due process and have suggested additional procedures. GAO believes that the new hearing procedures strike a balance of keeping the bid protest process as uncomplicated and informal as possible, while giving all of the parties in appropriate cases an opportunity to orally present their cases and hear the positions of, and direct questions on the protest issues to, representatives of other parties. GAO thinks that this will make the hearings more useful than the current informal and fact-finding conferences, particularly since the

hearings will be part of the protest record. Also, § 21.5 permits various degrees of procedural formality to provide as quick, simple and inexpensive a forum as the particular case permits.

Several commenters took issue with § 21.5(a), which gives GAO the discretion to decide whether to hold hearings. They are concerned that this section lacks specific criteria. Other commenters favored this approach, recognizing that GAO must use its experience and judgment to determine whether a hearing is required to ensure the accuracy and completeness of the record. One agency proposed that specific procedures be established to allow parties to comment on hearing requests.

GAO will, of course, permit comments on all hearing or other procedural requests. However, GAO believes it needs to retain the discretion to make the determination as to whether a hearing will serve to clarify the legal and factual issues of the protest on a case-by-case basis and does not believe that any useful purpose would be served by delineating more specific criteria.

Several agencies have questioned why hearings should be granted in response to requests by interested parties. GAO's experience under its current regulations has been that conferences have rarely been warranted in cases in which only an interested party requested one. GAO believes that considerations of fundamental fairness require that it entertain hearing requests by interested parties which, for purposes of participating in hearings, are limited by § 21.0(b) to awardees and those with a substantial prospect of receiving an award if the protest is denied. Regardless of the identity of the requesting party, GAO will consider whether a hearing is warranted, taking into consideration the views of the other parties.

One commenter observed that pre-hearing conferences under § 21.5(b) should not necessarily or even ordinarily be held prior to receipt of the agency report. GAO thinks that observation has merit, particularly in view of the changes in § 21.5(d)(1) permitting a request for a protective order to be made up to 20 days after the protest filing date. Thus, the sentence in this section which states that ordinarily such conferences shall be scheduled prior to receipt of the agency report is deleted.

Some commenters have stated that the pre-hearing conference should be used to resolve all procedural matters relating to the conduct of the hearing. GAO agrees that this is a primary purpose of the pre-hearing conference and includes appropriate language in § 21.5(b) to make this clear.

Some commenters asserted that there may be instances where more than one pre-hearing conference should be held. GAO agrees there may be unusual circumstances in complex cases where this may be appropriate and § 21.5(b) is modified to allow this possibility.

Several commenters have questioned who will be the cognizant hearing officials under § 21.5(c), with one commenter suggesting that it should be the attorney responsible for drafting the decision, and other commenters suggesting that it should be an Assistant General Counsel or Deputy Assistant General Counsel. GAO sees no purpose in prescribing precisely who will act as hearing officials because special circumstances may require that different GAO staff serve as hearing officials. All hearing officials will have the requisite knowledge and skills to conduct the proceedings.

Several commenters have indicated that hearings at locations other than the GAO office, as allowed by § 21.5(c), should be permitted only with the consent of all parties. GAO agrees that it is important to consider the views of all parties in deciding the appropriate location for a hearing, including the use of teleconference facilities where available. GAO must, however, make the final decision as to hearing location.

Two agencies commented that GAO should not designate individuals to attend the hearing as provided under § 21.5(e), but that the parties should agree on the appropriate participants. The first sentence of this section, which states that all parties shall be represented by individuals who are knowledgeable about the protest, contemplates that agencies and other parties will designate their representatives at hearings, since the parties should ordinarily be in the best position to know who is knowledgeable. GAO will ordinarily permit those representatives to attend the hearing, subject to space limitations. As indicated in the second sentence of § 21.5(e), GAO may require specific additional representatives to attend the hearing, although GAO will consider the views of the parties as to whether specific additional representatives should attend the hearing and whether they should be prepared to testify and be cross-examined. GAO will retain authority to designate hearing attendees in order to avoid burdensome or unreasonable demands on the parties and to maximize the value of the hearings for the decision-making process.

Section 21.5(e) also provides that a hearing will be conducted pursuant to such procedures as GAO may establish. Several commenters have suggested that GAO adopt formal procedures under this section. One agency questioned whether § 21.5(e) contemplated that hearing officials would establish procedures on a case-by-case basis or whether GAO intended to adopt uniform procedures. As was indicated in the GAO commentary on the proposed regulations (55 FR 12835, Apr. 6, 1990), hearings may be more or less formal as the particular protest requires, and this approach is a new one for GAO bid protests. Hearings will be conducted for protests spanning a wide degree of complexity and, while some procedures will be uniform, GAO wishes hearing officials to have the discretion to tailor procedures to fit the circumstances of a particular case. GAO believes that use of these relatively inflexible regulations to promulgate those procedures for the conduct of hearings that will be uniform might delay or inhibit any desired modifications.

Some commenters have suggested that a transcript should routinely be made available pursuant to § 21.5(f), which provides that hearings will be recorded and/or transcribed. A record will be made of all hearings, which may be in the form of a written transcript, video transcription or other medium. Whether reducing a video record, for example, to a written transcript in a particular case is warranted would depend upon the nature of the hearing and whether delay and cost associated with making a transcript would outweigh the possible convenience of that format.

Some commenters have questioned whether the 7 working days provided under § 21.5(h) is sufficient for preparation of hearing comments. While GAO believes this time should normally be sufficient, this section provides that GAO may adjust the time for submission of comments in appropriate circumstances. One such circumstance may be where there is undue delay in the parties obtaining transcripts or recordings of the hearings. In any case, the submission date for hearing comments will be same for all parties.

Section 21.6(e), provided that GAO may declare a protester entitled to recover the reasonable costs of filing and pursuing a protest, including attorney's fees, where the contracting agency decides to take corrective action in response to a protest, but does not notify GAO of its decision to do so until after the date for submission of the agency report. Many contracting agencies opposed this provision, arguing

that it will not encourage corrective action since agencies already strive to resolve meritorious protests quickly in order to conserve their resources; that not all corrective action is taken in response to protest allegations; and that a determination as to whether corrective action is warranted often cannot be made until after the agency report on the protest is compiled and the legal analysis is completed.

Most of the non-agency commenters expressed the opposing view and urged that consideration be given to awarding costs no matter at what point in the protest process the agency decides to take corrective action. These commenters recommended against establishing a firm rule for awarding costs depending on whether the agency decides to take corrective action before or after the report due date, and instead favored use of a flexible test which would consider when the corrective action decision was made as a factor in determining whether to award costs.

GAO has always been of the view that the award of costs in all cases where corrective action is taken may not be appropriate. There may be circumstances where the award of costs, even after submission of the report, is not justified; similarly, there may be cases where the award of costs is proper even where the decision to take corrective action is made before submission of the agency report on the protest. For that reason, § 21.6(e) states that GAO "may" award costs when corrective action is taken. This determination will be made taking into account all the circumstances of each case, including the nature of the protester's allegations, when in the protest process the decision to take corrective action was made and communicated to GAO and the protester, and type of corrective action planned. To clarify that the agency report due date is not a dispositive factor, § 21.6(e) is revised to delete the reference to the due date.

Some commenters stated that the award of costs where corrective action is taken is inconsistent with CICA, which authorizes GAO to award costs only where it makes a determination sustaining a protest. GAO agrees that mere corrective action would not warrant an award of costs. GAO will award costs under 31 U.S.C. 3554(c)(1) (1988) only where it concludes that corrective action is being taken because of a violation of a procurement statute or regulation.

Some commenters suggested that the regulation establish a procedure for the parties to comment on whether costs should be awarded. In response, § 21.6(e) has been revised to specify that the protester has 10 days from the time it is advised that corrective action will be taken to file comments as to why protest costs should be awarded and that the contracting agency has 10 days after receipt of the protester's comments to respond to the protester's argument. Section 21.6(e) also has been revised to state that GAO will issue a declaration of entitlement to costs in each case where costs are awarded after corrective action is taken.

Under § 21.6(f), a protester is now required to submit its claim for costs, detailing and certifying the time expended and costs incurred, to the contracting agency within 60 days after receipt of the GAO decision on the protest or the declaration of entitlement to costs. If the protester fails to file its claim within that period, it may forfeit its right to recover such costs.

The commenters generally supported the establishment of a 60-day deadline for filing a claim for costs. One contracting agency suggested that the regulation be revised to specify that a protester "shall" forfeit its right to recover such costs if it fails to file within the time specified. In response, GAO has revised § 21.6(f) to state that the protester's failure to file the claim "shall" result in forfeiture of its right to recover unless it can show that the untimeliness is for good cause.

One contracting agency questioned who will determine whether a claim is forfeited; how the protester will be notified of the forfeiture; and whether the protester can appeal such a determination. GAO comtemplates that the issue of forfeiture will be determined when the claim is presented for resolution to GAO, as provided in the penultimate sentence of § 21.6(f).

Some commenters suggested that a time limit should be imposed on contracting agencies to decide claims for costs submitted to them. In response, § 21.6(f) has been revised to specify that agencies shall act on claims for costs as soon as practicable. GAO believes that establishing a more specific deadline for action by the agencies is not appropriate since the ability to decide a claim may not be entirely within the agency's control, for example, where the protester's submission in support of its claim is not adequately detailed or supported to allow the agency to consider the claim.

One commenter suggested that the award of costs should include the costs of pursuing the claim before the contracting agency and GAO. In response, § 21.6(f) has been revised to state that a protester may be entitled to recover the costs of pursuing its claim before GAO. Such an award would not include costs incurred in pursuing the claim before the contracting agency, since GAO believes that such costs do not come within the definition of protests costs authorized to be recovered under CICA.

In response to several general comments that GAO procedures foster the expeditious decision of protests GAO has added a sentence to § 21.8(d)(4) concerning express option protests providing that if the protester and the contracting agency agree, summary decisions may be issued under the express option provision. This will permit the consideration of more complex cases under the express option as it will eliminate the time-consuming task of drafting a full opinion. A summary decision will have the same effect on the protest as a full opinion but will not serve as precedent for future cases.

List of Subjects in 4 CFR Part 21

Administrative practice and procedures; Government contracts.

The bid protest regulations are amended as follows:

PART 21—[AMENDED]

1. The authority citation for 4 CFR part 21 continues to read as follows:

Authority: 31 U.S.C. 3551–3556.

§ 21.0 [Amended]

2. In § 21.0, paragraph (e) is amended by adding between the words "where" and "the" in the first sentence "in large part."

§ 21.2 [Amended]

3a. In § 21.2, paragraph (a)(1), the first sentence is amended by removing the words "or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals" and adding "or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals."

b. Paragraph (b) is redesignated as paragraph (c) and a new paragraph (b) is added to read as follows:

* * * * *

(b) Protests which are untimely on their face may be dismissed. It is the protesters' obligation to include in its protest all the information needed to demonstrate its timeliness and protesters will not be permitted to introduce for the first time in a request for reconsideration filed pursuant to

§ 21.12 the information upon which the timeliness of the protest relies.

* * * * *

§ 21.3 [Amended]

4a. In § 21.3, paragraph (h) is removed and paragraphs (c), (e), (f), (g), (i), (j) and (k) are redesignated paragraphs (e), (f), (g), (h), (c), (k), and (j), respectively.

b. In § 21.3, newly redesignated paragraph (c) is amended by adding "all evaluation documents," in the second sentence, after the word "protested."

c. The paragraph is further amended by removing the fifth and sixth sentences in their entirety, beginning with the word "Copies" and ending with "withheld documents."

d. The paragraph is further amended by removing "(Supp. III 1985)" from the fourth sentence and substituting "1988."

e. In § 21.3, paragraph (d) is revised as follows:

* * * * *

(d) Copies of the report on the protest provided to the General Accounting Office, the protester and interested parties entitled to receive them under paragraph (c) of this section shall include all relevant documents, subject to the following:

(1) Any party may request that the General Accounting Office issue a protective order limiting the release of particular documents to counsel for the protester and the interested parties entitled to receive the documents, where the documents are claimed to contain information that is privileged, or the release of which would result in a competitive advantage. The request shall be filed with the General Accounting Office, with copies furnished simultaneously to all parties as soon as practicable after the protest is filed, but in no case more than 20 days after the protest filing date.

(2) Requests by any party that particular documents be excluded from coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order, shall be filed with the General Accounting Office, with copies furnished simultaneously to all parties, within 2 days after receipt of a copy of the protective order request. Any rebuttal to such a request shall be filed with the General Accounting Office, with copies furnished simultaneously to all parties, within 1 day after receipt of a copy of the request. The terms of the protective order shall be established prior to the due date for the agency report under § 21.3(c).

(3) All individuals seeking access to documents covered by a protective order issued under § 21.3(d)(2) must represent a party and shall submit an application to the General Accounting Office, with copies furnished simultaneously to all parties, certifying that the individual is not involved in competitive decisionmaking in connection with federal procurements. Each application shall include a detailed written statement supporting the certification. The certification need not be furnished by employees of the contracting agency.

(4) Where the existence or relevance of additional documents first becomes evident after a protective order has been issued under § 21.3(d)(2), any party may request that the documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests as to additional documents or individuals shall be filed with the General Accounting Office, with copies furnished simultaneously to all parties. Any rebuttal to such a request must be filed within 1 day after receipt of a copy of the request.

(5) Any violation of the terms of a protective order may result in the imposition of such sanctions as the General Accounting Office deems appropriate, including but not limited to referral of a possible violation to appropriate bar associations or other disciplinary bodies, and restricting the practice of counsel before the General Accounting Office. A party whose protected information is improperly disclosed shall be entitled to all remedies under law or equity, including breach of contract.

(6) Where a protective order is not issued, and the agency withholds relevant documents from a party for any reason, the agency shall include in the report filed with the General Accounting Office and in the copies of the report provided to all parties a list of the documents withheld and the reasons for withholding them. All relevant documents and any documents specifically requested by the protester shall be furnished to the General Accounting Office.

f. In § 21.3, newly redesignated paragraph (e) is amended by removing "(i)" and adding "(c)."

g. In § 21.3, newly redesignated paragraph (f) is amended by removing the end of the last sentence following the words "General Accounting Office" and adding "and the other parties, the requested documents in accordance with § 21.3(d). A request by any party that release of any additional documents be covered by protective order shall be made in accordance with § 21.3(d)(4) within this 5-day period."

h. In § 21.3, newly redesignated paragraph (g) is amended by adding after the word "party" at the end of the first sentence, "and whether that release should be pursuant to a protective order under § 21.3(d)(2)."

i. The first sentence of this paragraph is further amended by removing (d) and adding (c) and by removing (e) and adding (f).

j. The paragraph is further amended by adding after the word "them" and before the word "or" in the second sentence, "subject to the terms of the protective order, if any,"

k. In § 21.3, newly redesignated paragraph (h) is amended by removing "(k)" and adding "(j)."

l. In § 21.3, new paragraph (i) is added as follows:

* * * * *

(i) When the contracting agency fails to provide documents in accordance with § 21.3(d), the General Accounting Office may take any or all of the following actions:

(1) Provide documents to the party or parties entitled to receive them;

(2) Use any authority available under chapter 7 of title 31, United States Code, to obtain the documents;

(3) Draw an inference unfavorable to the agency;

(4) Not allow responses to designated arguments or bases of protest by the agency; or

(5) Impose such other sanctions as may be appropriate.

* * * * *

m. In § 21.3, paragraph (m)(1) is amended by adding "1988" after "41 U.S.C. 601–13."

n. In § 21.3, paragraph (m)(2) is amended by adding "(1988)" after "15 U.S.C. 637(b)(6)."

o. In § 21.3, paragraph (m)(4) is amended by removing "and the award of an 8(a) subcontract" and substituting "is" for "are" after the removed phrase.

p. The paragraph is further amended by adding "(1988)" after "15 U.S.C. 637(a)."

q. In § 21.3, paragraph (m)(6) is amended by removing "(Supp. III 1985)" after "40 U.S.C. 759(h)" and adding "(1988)."

r. In § 21.3, paragraph (m)(8) is amended by removing "(Supp. III 1985)"; after "31 U.S.C. 3551–3556" and adding "(1988)."

s. In § 21.3, paragraph (m)(9) is amended by adding "(1988)" after "41 U.S.C. 35–45."

§ 21.5 [Amended]

5. In § 21.5, the section heading is revised. As revised, § 21.5, reads as follows:

§ 21.5 Hearings.

(a) A request for a hearing may be made by the protester, an interested party who has responded to the notice given under § 21.3(a) or the contracting agency. The request shall set forth the reasons why a hearing is needed for the particular protest and should be made at the earliest possible time in the protest proceeding. The request should also identify any specific factual disputes essential to the resolution of the protest which the requester believes cannot be resolved without oral testimony. The determination to hold a hearing will be at the discretion of the General Accounting Office.

(b) Prior to the hearing, the General Accounting Office may hold pre-hearing conferences to discuss and resolve procedural matters related to the protest, which may include such matters as whether a protective order should be issued under § 21.3(d)(2), whether other restrictions on the release of documents may be imposed, which representatives of the parties should attend the hearing and what procedures should be used at the hearings.

(c) Hearings will be conducted by a General Accounting Office hearing official on a date set by the General Accounting Office as soon as practicable after receipt by the protester and participating interested parties of the agency report and relevant documents. Although hearings ordinarily will be conducted at the General Accounting Office in Washington, DC, hearings may, at the discretion of the General Accounting Office, be conducted at other appropriate locations. Ordinarily, only one hearing will be held on a protest.

(d) All interested parties as defined in § 21.0(b) shall be invited to attend the hearing. Other participants in the procurement who are not interested parties may be permitted to attend as observers and may participate in the hearing only to the extent allowed by the General Accounting Office hearing official. If privileged information or information, the release of which would result in a competitive advantage, is to be disclosed at the hearing, the General Accounting Office hearing official, in his or her discretion, may restrict attendance for all or part of the proceeding.

(e) All parties shall be represented by individuals who are knowledgeable about the subject mater of the protest. The General Accounting Office may designate representatives of the parties to attend the hearing. Such representatives may be questioned by the attending parties and the hearing official under such procedures as the General Accounting Office may establish.

(f) Hearings shall normally be recorded and/or transcribed. If a recording or transcript is made, any party may obtain copies at its own expense.

(g) If the representative of any party, whose attendance has been requested by the General Accounting Office, refuses to attend such hearing or fails to answer a relevant question, the General Accounting Office may draw a inference unfavorable to the party refusing to cooperate.

(h) If a hearing is held, no separate comments under § 21.3(j) should be submitted unless specifically requested by the General Accounting Office. All parties may file comments on the hearing and report as appropriate with the General Accounting Office, with copies furnished to the other parties within 7 days of the date on which the hearing was held. The General Accounting Office may adjust the time for submission of comments in appropriate circumstances. Failure of the protester to file comments, or to file a written statement requesting that the case by decided on the existing record by the date due may result in dismissal of the protest.

(i) In the post-hearing comments, parties should reference all testimony, admissions, or comments made during the hearing that they consider relevant to the disposition of the protest. Where appropriate, relevant findings of fact by the General Accounting Office hearing official shall be part of the bid protest decision.

§ 21.6 [Amended]

6a. In § 21.6 paragraph (e) is redesignated as paragraph (f) and revised to read as follows:

* * * * *

(f)(1) If the General Accounting Office decides that the protester is entitled to the recovery of such costs, the protester and the contracting agency shall attempt to reach agreement on the amount of the costs. The protester shall file its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days after receipt of the decision on the protest or the declaration of entitlement to costs. Failure to file the claim within such time shall result in forfeiture of the protester's right to recover its costs. The General Accounting Office may consider an untimely claim for good cause shown.

(2) The contracting agency shall issue a decision on the claim for costs as soon as practicable after the claim is filed. If the protester and the contracting agency cannot reach agreement within a reasonable time, the General Accounting Office will determine the amount. In such cases, the General Accounting Office may declare the protester to be entitled to the costs of pursuing the claim for costs before the General Accounting Office.

b. A new paragraph (e) is added to read as follows:

* * * * *

(e) If the contracting agency decides to take corrective action in response to a protest, the General Accounting Office may declare the protester to be entitled to recover reasonable costs of filing and pursuing the protest, including attorneys' fees. The protester may file comments with the General Accounting Office regarding whether costs should be awarded within 10 days after being advised that the contracting agency has decided to take corrective action. The protester shall furnish a copy of any such comments to the contracting agency, which may file a response within 10 days after receipt of the protester's comments, with a copy furnished to the protester. The General Accounting Office will issue a declaration of entitlement to costs for each case where costs are awarded after corrective action is taken.

* * * * *

§ 21.8 [Amended]

7. In § 21.8, paragraph (d)(4) is amended by adding at the end of the paragraph "Decisions on protests decided under the express option may at the discretion of the General Accounting Office and with the consent of the protester and the contracting agency be summary in form."

Charles A. Bowsher,

Comptroller General of the United States.

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 435

[Docket No. CAS-RM-79-112-B]

Energy Conservation Mandatory Performance Standards for New Federal Residential Buildings; Amendments to Interim Standards

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy today amends the regulatory requirements for setting interim energy performance standards applicable to the designs of new Federal buildings and for methods to determine compliance with those standards pursuant to the Energy Conservation Standards for New Buildings Act, as amended, 42 U.S.C. 6831, *et seq.* The amendments fall into three categories.

First, today's amendments substitute a modified version (Version 3.0) of the computer program (COSTSAFR) required for use in establishing the applicable performance standard for each design and determining compliance with that standard. There are two modifications to COSTSAFR which are: (i) The addition of a credit for three different massive wall configurations—mass on the inside of the insulation, mass integral with the insulation, and mass on the outside of the insulation; and (ii) the addition of new energy data on the window glass options, including low-emissivity (low-E) glazings. Second, today's amendments provide an alternative compliance procedure that allows a Federal agency on Federal residential projects to utilize innovative designs and energy conservation measures not presently found in the computer program. Third, today's amendments establish requirements for selection of designs which comply with the performance standards for new Federal building designs under 10 CFR part 435 and describe the relationship between those standards and the life cycle cost analysis requirements for such a design under 10 CFR part 436.

EFFECTIVE DATE: July 30, 1991.

FOR FURTHER INFORMATION CONTACT:

Stephen P. Walder, Office of Codes and Standards, CE–43, U.S. Department of Energy, room 5E–098, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9209

Neal J. Strauss, Office of General Counsel, GC–12, U.S. Department of Energy, room 6A–141, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Legislative Requirements and History

The Energy Conservation Standards for New Buildings Act of 1976, as amended (Act), 42 U.S.C. 6831 *et seq.* requires the Department of Energy (Department or DOE) to issue "voluntary performance standards" for the design of new commercial and residential buildings. Federal agencies are required to comply with the standards for the design of new Federal Buildings. 42 U.S.C. 6835. For non-Federal buildings, compliance is voluntary, and the standards serve only as voluntary guidelines. A "Federal building is" any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements. 42 U.S.C. 6832(6).

As originally enacted, the Act required the Department of Housing and Urban Development (HUD) to develop, promulgate, implement and enforce compliance with the performance standards. On August 4, 1977, the Act was amended by section 304(a) of the Department of Energy Organization Act, Public Law 95–91, which transferred from HUD to DOE the responsibility to develop and promulgate the standards; HUD retained its implementation and enforcement responsibilities.

Less than a year after DOE published the proposed standards, the Act was again amended by section 326 of the Housing and Community Development Act of 1980, Public Law 96–399. This amendment requires that DOE promulgate interim standards and then final standards. Additionally, the statute requires DOE to conduct demonstration projects in at least two geographical areas of the country. The demonstration projects are for the purpose of evaluating the interim standards, and are to be completed prior to preparation and adoption of the final standards.

In August 1981, Congress again amended the Act. subtitle D of title 10 of the Omnibus Reconciliation Act of 1981, Public Law 97–35, amended the Act to create the term "voluntary performance standards"; eliminate the provision for a possible statutory sanction for non-compliance; and add a provision that, except for Federal buildings, "voluntary standards will be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings". 42 U.S.C. 6833(a)(4). The term "voluntary performance standards" was defined to mean "an energy consumption goal or goals to be met without specification of the methods, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary." 42 U.S.C. 6832(9).

At the end of 1988, in the middle of this rulemaking, the President signed the Federal Energy Management Improvement Act (Pub. L. 100–615) into law. That Act amended the National Energy Conservation Policy Act to authorize DOE to issue life cycle cost analysis regulations and to require that "* * *. The design of new Federal buildings * * * shall be made using life cycle cost methods and procedures * * *." 42 U.S.C. 8254.

B. Background

On August 20, 1986, the Department published in the **Federal Register** (51 FR 29754) proposed interim performance standards for new Federal residential buildings. The interim performance standards require establishment of an energy consumption goal for the design of a new Federal residential building using the computerized calculation procedure provided in a designated Federal micro-computer program. In response to public comment and with the availability of additional technical information, DOE promulgated interim standards and the revised micro-computer program on August 25, 1988 (53 FR 32536). The revised micro-computer program was designated COSTSAFR (*C*onservation *O*ptimization *St*andard for *Sa*vings in *F*ederal *R*esidences) (Version 2.0). The COSTSAFR computer program determines a set of options, selected from among the energy conservation measures included within the program, that will produce an estimate of the optimum discounted energy cost for a specific type of residential building in the geographic location where it will be constructed. The program uses the optimum set of energy conservation measures to calculate a total point score which, in turn, serves as the energy consumption goal for the design of the Federal residential building.

On the same day that the interim standard was published, August 25, 1988, the Department published a companion notice which proposed adopting thermal mass credits for walls

and new credits for glazing options to be contained in a further modified version of COSTSAFR (Version 3.0) and adding an alternative compliance procedure for innovative designs (53 FR 32547). That proposal is the principal basis for today's amendments to the interim standards.

DOE proposed modifications to COSTSAFR resulting mainly from evolving DOE research regarding thermal mass and windows. First, DOE proposed adding to the COSTSAFR program credits for certain thermal mass wall configurations in site-built homes. Second, DOE proposed incorporating new energy data into COSTSAFR for several window glazing options, including clear, heat absorbing, low-emissivity, and reflective glazings.

The alternative compliance procedure proposed by DOE was devised to accommodate innovative building designs containing energy conservation measures not covered by COSTSAFR. The proposed procedure was based on a comparison of the estimated energy cost performance of the innovative design to that of the closest prototype design in COSTSAFR.

Details regarding additions of thermal mass and glazing credits (which are reflected in the modifications to the COSTSAFR computer program) and of the alternative compliance procedure may be found in Section II of the Supplementary Information portion of this Notice and DOE responses to public comment on the proposed modifications may be found in Section III. Before today's amendments take effect, DOE will distribute the modified version of the COSTSAFR computer program and supporting documentation to Federal agencies and other interested individuals and groups, and also make it available through the Department of Commerce's National Technical Information Service.

The interim standards will remain in effect until DOE promulgates final standards. The Act requires DOE to conduct a demonstration of the interim standards, and report its findings to the Congress, prior to the development and promulgation of final standards.

Federal agencies have 180 days from the publication of today's modifications to incorporate them into their residential building standards. This is to allow Federal agencies to make a smooth transition to the use of COSTSAFR Version 3.0.

II. Description of the Modifications to the Interim Standards

A. Thermal Mass Walls

A new thermal mass wall section has been added to the COSTSAFR computer program (Version 3.0). In the point system COSTSAFR Version 3.0 produces, the format of the thermal mass section is similar to the format of the window section. The designers (i.e., architect, engineer, etc.) will have a choice between a wood frame wall and a thermal mass wall. For the mass wall, the designers will choose values for the following parameters: the heat capacity of the mass, the total wall R-value, and the location of the insulation relative to mass (outside, integral, or inside). The heat capacity ranges from 4 to 20 (Btu/ft^{2*} °F). The heat capacity is only for the massive material and does not include other materials in the wall.

To assist the designers, a section has been added to the U.S. Department of Energy, 1988 *COSTSAFR 3.0—User's Manual (Conservation Optimization Standard for Savings in Federal Residences), In Support of Proposed Modifications to Interim Energy Conservation Standards for New Federal Residential Buildings* (*COSTSAFR 3.0—User's Manual*), Washington, DC, DOE/CE–0222, Volume 1 of 2, page A.20 with tabular data for the heat capacities and R-values of materials commonly used in heavy-weight walls. This information was obtained from American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., *ASHRAE, 1985 Fundamentals,* Inch-Pound Edition (*ASHRAE Handbook*), Atlanta, Ga. The designers will use the appropriate numbers for their selected construction materials from the *ASHRAE Handbook* tabular data and a worksheet in the *COSTSAFR 3.0—User's Manual* to calculate the wall thermal resistance (R-value) and the heat capacity. The Federal agency will supply designers with a copy of the tabulated data and the *COSTSAFR 3.0—User's Manual* worksheet.

Thermal mass data have been added to the COSTSAFR computer program energy data files and compliance forms for all seven site-built prototypes. No mass construction data has been developed or added for manufactured homes (mobile homes) due to the fact that mobile homes are fabricated using light construction technology to facilitate transportation. The added data consist of the regression coefficients for each location and for the heating and cooling seasons. These location-specific coefficients, which have been documented in Lawrence Berkeley Laboratory, 1987 *Affordable Housing Through Energy Conservation, A Guide to Designing and Constructing Energy Efficient Homes; Technical Support Document* (1987 *Affordable Housing Technical Support Document*) LBL–16342, pages 84 and 85, (DRAFT),[1] are used by COSTSAFR as shown in equations 1; 2, and 3 later to determine the energy loads for a range of heat capacities and wall R-values. The energy loads are then converted into points as discussed in Chapter 5 of the Interim Federal Residential Standards, U.S. Department of Energy, 1988 *Technical Support Document, In Support of Interim Energy Conservation for New Federal Residential Buildings* (1988 *Technical Support Document*), Washington, DC, DOE/CE–0223, Volume 2 of 4.

Three different massive wall configurations have been modeled for the COSTSAFR computer program (Version 3.0): mass on the inside of the insulation, mass integral with the insulation, and mass on the outside of the insulation. A ranch-style prototype was used for the DOE 2.1 computer simulations of thermal mass, with all components except the walls of the house held constant. The components held constant were a 4-inch, carpet-covered slab foundation, R–30 ceiling insulation, and double glazing with an area equivalent to 15% of the floor area.

For thermal mass in walls, heat capacity and steady-state thermal resistance typically can be varied independently. A wall can be constructed to have high levels of heat storage, or thermal resistance, or both. In the analyses that were conducted to generate the thermal mass wall data, the thickness of the mass was varied to give a large range of total heat capacities. Two different R-values were modeled in each of the three massive wall configurations. Table 1 (see *Affordable Housing Technical Support Document,* page 73) presents the wall characteristics that were modeled.

[1] This publication was subsequently reprinted and published by DOE. The citation for that document is U.S. Department of Energy, 1989, Affordable Housing Through Energy Conservation, A Guide to Designing and Constructing Energy Efficient Homes; Technical Support Document, Washington, DC, Volume 2 of 3, DOE/SF/00098–H3.

TABLE 1.—MASS WALL CHARACTERISTICS

Insulation location	Mass thermal conductivity (Btu/hr*ft* °F)	Mass thickness (inches)	Heat capacity (Btu/ft²*°F)	Total wall R-value (hr*ft²*°F/Btu)
Outside	0.5	4–8	3.3–13.3	5,20
Inside	0.5	4–8	3.3–13.3	5,20
Integral	0.03–0.13	4–8	3.3–13.3	5,10

Simulations were run for 45 cities for three wall configurations: a base wall, the base wall with added mass, and the base wall with added mass and added insulation. From the results of the initial runs, each of the cities was grouped into one of 12 zones where the energy savings with the extra mass divided by the savings with both extra mass and resistance were comparable.

Each of the 12 zones was represented by a base city for which 51 DOE 2.1 computer simulations were run, covering the range of wall properties listed in Table 1. From these results, regression coefficients were calculated for each of the three mass locations—outside, integral, and inside—and each of the 12 zones, for both heating and cooling. These regression coefficients were incorporated in the following equations to give the change in the load due to the addition of mass:

$$\text{Mass wall incremental load} = C_1 + {}_2{}^*\text{EXP}(C_o{}^*\text{HC}) + C_3{}^*U_t + C_4{}^*\text{EXP}(C_o{}^*\text{HC})^*U_t$$

Equation 1

where:
C_o....C_4 = regression coefficients
HC = the heat capacity (Btu/ft²*°F)
U_t = the total wall U-value (Btu/hr*ft²*°F)
EXP = the exponential function

Using the existing COSTSAFR (Version 2.0) data base for wood frame walls, Equation 2 was developed to estimate the heating and cooling loads for the basic wood frame walls with U-values corresponding to the specific set of R-values given in the point system for thermal mass walls.

$$\text{Frame wall load} = C_5{}^*U_t{}^2 + C_6{}^*U_t + C_7$$

Equation 2

where: C_5....C_7 = regression coefficients.

The incremental load for the mass wall is added to the load for a wood frame with the same total U-value to obtain the total energy load for the mass wall:

Total mass wall load = frame wall load + mass wall incremental load

Equation 3

For a more detailed discussion of the development and insertion of thermal mass data files in COSTSAFR, see 1987 *Affordable Housing Technical Support Document*, pages 73–85. For a more detailed discussion on converting the total mass wall load into a point score, see 1988 *Technical Support Document*, Section 5.0, pages 5.1–5.6.

B. New Window Data

New window data have been incorporated in the COSTSAFR program (Version 3.0) for all site-built prototypes. The new window data did not address mobile homes due to the fact that building orientation relative to mobile homes is not a controllable factor because they are usually built without a specific site in mind. The sun-tempered (formerly passive solar) section compliance format has been changed by adding a new low-emissivity (low-E) section. The main window section (E) in the compliance forms is unchanged. This section contains the points for clear glass with equal areas in the four cardinal directions (North, East, South, West) with conductive and solar loads combined. The heat absorbing and reflective window sections also remain unchanged. The section for low-E glazing has the same format as the heat absorbing and reflective window sections (i.e., it modifies the points for clear glass).

The new sun-tempered section modifies the window points for different glazing area percentages in the cardinal directions. The points from this section are in addition to the points from the clear glass section. Due to the nature of the solar load equations, point system users, if they want to receive credit for window orientation, have to complete a set of three equations for both heating and cooling in the sun-tempered section. First, they enter the desired window areas (as a fraction of the total window area) in the four cardinal directions (see equations (4) and (7) below). Second, (see equations (5) and (8)), the preliminary numbers are modified by the shading coefficient and the window area as a fraction of the floor area. A table with shading coefficients for the different glass types is provided in the updated *COSTSAFR-3.0 User's Manual* (see page A.11). This table must be provided to designers by the Federal agency. The third set of calculations (Equations (6) and (9)) determine the points for the sun-tempered design. All these calculations will now be found as part of the COSTSAFR compliance form. For a more detailed description of the terms of Equations (4–9), refer to the U.S. Department of Energy, 1988 *Supplementary Technical Support Document, In Support of Proposed Modifications to Interim Energy Conservation Standards for New Federal Residential Buildings, (Supplementary Technical Support Document)*, Washington, DC DOE/CE–0222, Vol. 2 of 2, Section 2.2, pages 4–9.

Heating Points

$$\text{A.}\left(C_1{}^*\frac{}{n} + C_2{}^*\frac{}{e} + C_3{}^*\frac{}{s} + C_4{}^*\frac{}{w}\right)$$

$$-\{C_1 + C_2 + C_3 + C_4\}^*0.25 = \frac{}{X}$$

Equation 4

$$B.\ \frac{\ }{X} * \frac{\ }{SC} * \frac{\ }{\%AREA} * \frac{\text{Prototype Floor Area}}{1000} = \frac{\ }{Z}$$

Equation 5

$$C.\ \frac{\ }{Z} * (C_5 + \frac{\ }{Z} * C_6) = \frac{\ }{H}$$

Equation 6

where:
C_1....C_6 = constants
SC = Shading coefficient (depends on layers)
n,e,s,w = fraction of glazing with north, east, south, and west orientation, respectively
X and Z = intermediate values used in the calculations
H = number of heating points

Cooling Points

$$A.\ (G7\ C_1 * \frac{\ }{n} + C_2 * \frac{\ }{e} + C_3 * \frac{\ }{s} + C_4 * \frac{\ }{w}\ )$$

$$-(C_1 + C_2 + C_3 + C_4) * 0.25 = \frac{\ }{X}$$

Equation 7

$$B.\ \frac{\ }{X} * \frac{\ }{SC} * \frac{\ }{\%AREA} * \frac{\text{Prototype Floor Area}}{1000} = \frac{\ }{Z}$$

Equation 8

$$C.\ \frac{\ }{Z} * (C_5 + \frac{\ }{Z} * C_6) = \frac{\ }{C}$$

Equation 9

where:
C_1....C_6 = constants
SC = Shading coefficient (depends on layers)
n,e,s,w = fraction of glazing with north, east, south, and west orientation, respectively
X and Z = intermediate values used in the calculations
C = number of heating points

The new window energy data were generated for each of 45 base locations (see 1987 *Affordable Housing Technical Support Document, pages 88–111*) and for both heating and cooling seasons. The window energy loads were determined separately for the loads due to conduction and the loads due to solar gains. For the conductive load, DOE–2.1 simulations were done for all site-built prototypes and locations, with equally distributed windows having a shading coefficient of 1.00 and an area 12% of the total floor area. Window U-values of 1.10, 0.49, and 0.10 were simulated. The thermal integrity of other components of the building was held at levels consistent with the window levels. Parameters such as the thermostat set points and internal gains were identical to the conditions in the simulations for the original residential housing data base (see 1987 *Affordable Housing Technical Support Document,* see page 32 for thermostat set points, pages 33–35 for internal gain levels).

The conductive loads are a function of the window U-value with the window area as a multiplier. The regression equation used to determine the conductive load is:

Conductive load = area * ($U * C_1 * 24 + U^2 * C_2 * 576$)

Equation 10

where:
C_1 and C_2 = the regression coefficients
U = U-value
Area = total window area

The solar component of the window load was determined by a set of 52 parametric simulations for the ranch prototype in each of the 45 base locations. The shading coefficient was varied from 1.00 to 0.00 and the total window area ranged from 8% to 20% of the total floor area. Window areas in the four cardinal orientations were varied from 1% to 14% of the floor area. A quadratic multi-variant regression equation was developed as a result of the simulations:

Solar load = ZETA * (1 + C_7 * ZETA)

Equation 11

with Zeta = (C_3 * n + C_4 * e + C_5 * s + C_6 * w) * area * SC

Equation 12

where:
C_3.....C_7 = regression coefficients
Area = the total window area
SC = Shading coefficient (depends on layers)
n,e,s,w = fraction of glazing with north, east, south, and west orientation, respectively

The total window energy load is simply a combination of the conductive and solar loads:
Window load = conductive load + solar load

Equation 13

Data were produced for all the COSTSAFR window options from the window regression equations (see 1987 *Affordable Housing Technical Support Document,* pages 109 and 111). WINDOW–2, a one-dimensional heat transfer computer program that determines the shading coefficient and the thermal transmittance (U-value) of the glass based on weather conditions, the number of layers, the thickness of the air space, and the glass properties, was used to generate the U-values and shading coefficients for the various types of glass. Glazing thermal and optical properties were obtained from manufacturer product information and the *ASHRAE Handbook*. Weather conditions for the heating season data consisted of 30 °F outside temperature, 70 °F inside temperature, 10 mph outside air speed, and no solar load (night-time conditions). Cooling season weather conditions were taken from the *ASHRAE Handbook*. The U-values and shading coefficients generated by the WINDOW–2 program were used in equations 10 through 13 to determine the window-related energy loads used by COSTSAFR.

C. Alternative Compliance Procedure

The standard method of compliance for the interim standards is for Federal agency use of the COSTSAFR computer program and the compliance forms it produces. The COSTSAFR program uses energy data calculated by the DOE 2.1 computer program in simulations of the

energy performance of nine prototype house designs built with specific material and by specific construction practices. While the COSTSAFR program covers a wide range of energy conservation measures, including varied insulation levels, window options, five types of heating equipment and two types of water heating, it does not have the ability to consider building designs with unusual or innovative energy conservation measures. For example, it does not include designs with such unusual or innovative technologies as zoned heating (a number of rooms or spaces whose temperature can be individually controlled).

Today DOE issues amendments to the interim standard which provide for an alternative compliance procedure for use in determining whether an unusual or innovative building (i.e., includes an energy conservation measure not in COSTSAFR) meets or exceeds the interim standard (i.e., the energy consumption goal) for the building design project in question. In general, the amendment requires a three-step procedure. First, the Federal agency sets the applicable energy consumption goal by (A) Selecting the COSTSAFR prototype design which most closely resembles the unusual or innovative design, and (B) calculating the discounted energy cost for the COSTSAFR prototype design using the optimum levels of the various energy conservation measures included on the COSTSAFR compliance forms. Second, the Federal agency estimates the discounted energy cost for the proposed unusual or innovative design, using (A) The DOE 2.1C computer program to determine estimated heating and cooling loads; (B) the COSTSAFR compliance forms used in the first step or DOE test procedure results for hot water heaters and refrigerator/freezers; and (C) uniform present worth factors from the COSTSAFR compliance forms used in the first step. Third, the Federal agency compares the two discounted energy cost figures calculated under the first two steps. If the discounted energy cost of the unusual or innovative building design is equal to or is less than the discounted energy cost of the selected COSTSAFR prototype, then that ususual or innovative design is in compliance with the applicable energy consumption goal under subpart C of 10 CFR part 435.

DOE has reserved one paragraph under § 435.305(c)(3) for solar domestic hot water heaters. During the demonstration period, DOE will be evaluating the suitability for incorporation by reference into the rule of privately developed test procedures for such devices. Reliable test procedures for rating energy consumption are essential before a new energy conservation measure could be covered by the alternative compliance procedure. Part of the process of evaluating privately developed test procedures would be proposal for public comment and review under section 32 of the Federal Energy Administration Act, as amended, 15 U.S.C. 788.

The alternative compliance procedure is more complicated than using COSTSAFR because it requires use of DOE–2.1C and several additional calculations and comparisons whereas most of the analysis has already been done for the broad range of energy conservation measures in COSTSAFR. (By the time the alternative compliance procedure becomes effective, some changes will have been made to Point System to make it easier to locate inputs; for example, the compliance forms will have been edited to state the optimum window area percentage and optimum label values for appliances in current year dollars will have been added.) In developing the final standard, DOE intends to work toward simplification, and given the heavy reliance on computer programs, greater user friendliness and flexibility.

Some Federal agencies may design new residential buildings with their own employees, while others may use the procurement process to obtain building designs. Under paragraph (c) of 10 CFR 435.303(c), the head of each Federal agency is required to adopt appropriate procedures to ensure that the design of a new Federal residential building is not less energy conserving than the "energy consumption goal" established for such a building. Part of the task of adopting implementing agency procedures will be the development of appropriate procedures for the procurement process if that process is used. If an agency's procurement requirements for a building design would allow for proposal of a design with an unusual or innovative energy conservation measure, then the agency may also have to provide to an offeror, or advise an offeror how to acquire, necessary materials such as the COSTSAFR and DOE–2.1C computer programs from the National Technical Information Service. If an agency wanted proposals of designs with unusual or innovative energy conservation measures, it might perform the alternative compliance procedure itself rather than impose the obligation to perform the procedure on offerors.

III. Summary of Public Comment on August 25, 1988, Notice of Proposed Modification and DOE Responses

The following is a summary of the public comments received by DOE on the proposed modifications to the COSTSAFR computer program, published in the August 25, 1988, **Federal Register**. Comments were received from August 25, 1988, through November 23, 1988. DOE held a public hearing in Washington, D.C., and a total of 16 comments were received from the five sources who provided written and oral testimony. Their comments were relevant to thermal mass and the alternative compliance procedure and are discussed below. No comments were received regarding the proposed window data. Comments on subjects other than thermal mass or the alternative compliance procedure were deemed out-of-scope and accordingly are not discussed below.

A. Thermal Mass

1. One of the commenters disputed the allowance of lower R-values for masonry walls citing page 3 of Draft 1984 *Affordable Housing Through Energy Conservation Technical Support Document* (copy attached to comment 200). The commenter claimed that variables affecting mass credits have been "ignored". The person who commented also quoted from a study (copy attached to comment 200) performed by the National Institute of Standards and Technology (NIST, formerly the National Bureau of Standards (NBS)). This study used a simulation model on several test building cells to produce data which indicated that in certain circumstances wall mass has a small effect on space heating and cooling loads with the presence of interior mass.

DOE Response: The draft technical support document to which the commenter referred is an early version of the technical support documents which support today's thermal mass data addition to COSTSAFR. None of the variables mentioned on the page that the commenter cited have been "ignored". See §§ 4.1, 6.2.1, 6.3, 1987 *Affordable Housing Technical Support Document*. Moreover, no evidence, other than the NIST study, was cited to support the claim that excessive credit is given to wall mass or that the points associated with wall mass are inaccurate. Although R-values down to R–4 are allowed for thermal mass walls, the effect of lower thermal resistance is accounted for in the energy data base utilized by COSTSAFR. For three

reasons DOE does not believe that the NIST study on the effect of lower thermal resistance warrants eliminating or altering thermal mass data that DOE is adding to COSTSAFR. First, the commenter quoted from the abstract of the study which overlooked statements in the text of the study acknowledging the measurable effects of wall mass on space heating loads. See comment 200, Enclosure 2, page 2. Second, the commenter overlooked the caveats and cautions at pages 30–31 of the study which state that the effect of thermal mass is dependent on variety of interacting factors which differ from house to house. The NIST simulated buildings differed from the COSTSAFR prototypes in ways which involved some of these critical factors, and the NIST study acknowledged at page 31 that its conclusions are limited to the houses simulated. The NIST houses differ from the COSTSAFR prototypes because they were assumed: (1) To be one-story house with smaller floor area; (2) to have less interior furnishings; (3) to have a lower R-value level of ceiling insulation; and (4) to have an unusually high air change rate per hour (see Comment 200, Enclosure 2, page 13, footnote). Third, the computer simulation model for the NIST study, unlike the model used for COSTSAFR (DOE–2.1), is based on a different computer program called BLAST. DOE is considering further research in this area as it begins development of the final standards. Members of the public are encouraged to continue sending DOE relevant information.

2. Another comment criticized the proposed thermal mass modification to the COSTSAFR computer program on the ground that lower point benefits are assigned for wall thermal mass in constructions using crawl spaces or basements rather than slab on grade construction. The commenter requests clarification or an appropriate change in a future version of COSTSAFR.

DOE Response: The comment is in error because points associated with wall thermal mass levels are entirely independent of the selected foundation type. In developing the final standards, DOE intends to address the interaction between thermal mass and alternative foundation types.

3. Also singled out for criticism was the fact that point credits for thermal mass were lower in multi-family units than in single-family units. It was argued that the effects of thermal mass are generally understood to increase as internal gains increase and multi-family units generally have higher heat gains per square foot of floor area.

DOE Response: The analysis documented in the 1987 *Affordable Housing Technical Support Document* (see pages 73–85) showed that differences in thermal mass wall points for different prototypes are dominated by differences in wall area, not internal gains. The points are based on changes in energy losses, and the energy lost through a wall is a function of the total opaque wall area. Multi-family prototypes used by COSTSAFR have smaller mass wall point totals because they typically have smaller exterior wall surface areas per housing unit than the single-family prototypes.

4. Finally, one of the commenters suggested that today's construction methods employ materials other than wood as home building framing material and that appropriate corrections should be made to COSTSAFR to reflect the use of materials such as metal studs.

DOE Response: The addition of framing factors and point system adjustment factors will be considered during the development of the final Federal residential standards. The research necessary to include them had not been conducted at the time of development of the interim standards.

B. Alternative Compliance Procedure

1. There were three concerns expressed in the comments about the proposed alternative compliance procedure. Those concerns were:

a. The alternative compliance procedure is inconsistent with 10 CFR part 436, which requires Federal agencies to use a Federally-established life cycle costing methodology, and which includes the analysis of non-energy operating and maintenance costs, in assessing the cost effectiveness of a building design.

b. The alternative compliance procedure should be expanded to allow use of BLAST and possibly other computer models that are more commonly used by the military services.

c. The alternative compliance procedure is too complicated for Department of Defense (DOD) agencies to use.

DOE Response: a. The comment that the alternative compliance procedure was inconsistent with 10 CFR part 436 caused DOE to review the interim standards in subpart C of 10 CFR part 435 in light of the provisions of 10 CFR part 436, subpart A. As a technical amendment, today's rule adds a new § 435.306 that establishes requirements for selection of designs which comply with the interim standards and describe the relationship between the requirements of subpart C of 10 CFR part 435 and the requirements of 10 CFR part 436. That new section states that, in selecting a building design or among alternative building designs, it is essential to perform a life cycle cost analysis to identify whether the design in question has higher Net Savings or lower total life cycle costs, calculated in compliance with 10 CFR part 436, than the COSTSAFR prototype and any other alternative building design which is considered. See 10 CFR 436.18 (d), (f), 436.20. In performing a life cycle cost analysis, the Federal agency will have to consider non-energy cash flows such as replacement costs and operations and maintenance which are not part of the COSTSAFR or the alternative compliance procedure. As a result, the Federal agency will choose the design alternative which it estimates is the economically optimal alternative among the design alternatives which are in compliance with the applicable interim standard under subpart C of 10 CFR part 435.[2]

b. The comment that DOE should expand the alternative compliance procedure to allow the use of BLAST and possibly other computer models that are more commonly used in the military services will in part be satisfied by DOE's exploration of the feasibility of permitting the use of BLAST for the alternative compliance procedure in the final standard.

c. With regard to the comment that the alternative compliance path is too complicated, DOE is exploring a method by which data input to DOE–2 might be greatly simplified and if such a method is developed then it will be included in the final standard. Unless a more stringent standard is in effect pursuant to 10 CFR 435.303(b), DOD and other agencies will have to provide training to their own employees or sufficient information and materials (e.g. DOE–2.1) to enable potential contractors to perform the alternative compliance procedure.

2. Another who commented expressed concern that the alternative compliance procedure could not be completed in the typical 60–90 day response period allowed through most military requests for proposals (RFP).

DOE Response: While not underestimating the complexity of the task, DOE thinks that the analysis required could be completed in the typical 60–90 day response period. If not,

[2] Consistent with 10 CFR part 436, the COSTSAFR computer program will be modified by the effective date of today's amendments to include current life cycle cost input data and to allow for annual updating of that data.

then that response period should be lengthened where appropriate.

C. General Comments

1. Finally, one comment argued that a 90 day comment period was not sufficient for those who wanted to comment to study the proposed modifications and make informed statements.

DOE Response: DOE considered all comments that were received in a reasonable period of time following the close of comments. The individual making this comment provided comments that were considered by DOE.

IV. PROCEDURAL REQUIREMENTS

A. National Environmental Policy Act

DOE prepared and issued an environmental assessment (EA), (DOE/EA–0300), for the proposed interim standards under the Implementing Regulations of the Council of Environmental Quality for the National Environmental Policy Act of 1969, as amended. The EA addresses the possible incremental environmental effects attributable to the application of the proposed interim standards to the design of Federal residential buildings. A Finding of No Significant Impact (FONSI) was issued on April 17, 1986. DOE has determined that today's modifications to the interim standards do not affect the assumptions or results of the EA, and that the original FONSI is still valid.

B. Executive Order No. 12291

Section 3 of Executive Order No. 12291, 46 FR 13193, February 19, 1981, requires that DOE determine whether a proposed rule is a "major rule" as defined by section 1(b) of that Order, and prepare a preliminary regulatory impact analysis for rules which fall within that definition.

DOE reviewed the Final Interim Rule, completed an "Economic Analysis," 51 FR 29770, August 20, 1986, and concluded that the Final Interim Rule was not a "major rule" under this Executive Order. DOE has determined that the modifications to the interim standards do not constitute a "major rule" either, because the modifications will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets. The modifications to the interim standards will allow alternative credit for three massive wall configurations, new window glass options, and alternative compliance procedures that will allow utilization of innovative designs and energy conservation options not presently found in the computer program.

Given the relatively small number of residential buildings affected by the interim standards, as well as the optional nature of the modifications, DOE has determined that the modifications will not have sufficient effects such as to constitute a "major rule" within the meaning of Executive Order No. 12291.

The modifications to the interim standards were submitted to the Director of the Office of Management and Budget for review as required by section 3(c)(3) of Executive Order No. 12291. The Director has concluded his review under that Executive Order.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 603, 604) requires DOE to consider the effect its rulemaking will have on small businesses in the nation. DOE has considered the modifications in light of DOE's analysis of the small business impacts of the Final Interim Rule (51 FR 29700, August 20, 1986), including its impacts upon manufacturers of building and construction materials and equipment, architects, builders, construction companies. These modifications are minimal, and by creating new options allowing for credit for certain configurations for massive walls, new window glazing materials, and alternative compliance procedures for utilization of innovative designs and energy conservation, will not increase the effects of the interim standards to such a degree as to activate the provisions of the Regulatory Flexibility Act. Consequently, pursuant to section 605(b) of that Act, DOE certifies that this rulemaking will not have a significant impact on a substantial number of small entities.

D. Paperwork Reduction Act

No information collection or record keeping requirements are imposed on the public by these modifications to the interim standards. Accordingly, authorizations are not required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as amended, or its implementing regulations, 5 CFR part 132.

E. Federalism Effects

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient "substantial direct effects," then Executive Order 12612 requires preparation of a Federalism Assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule. Sections 2 through 5 of Executive Order 12612 set forth the principles, criteria, and requirements to be used in preparing a Federalism Assessment.

The principal impacts of today's modification to the interim standards will be on residential buildings constructed by the Federal government. These modifications are being promulgated pursuant to legislation that states "except in the case of Federal buildings, voluntary performance standards shall be developed solely as guidelines for the purpose of providing technical assistance for the design and construction of energy efficient buildings." 42 U.S.C. 6833(a)(4). Therefore, the modifications will not have a substantial direct effect on the States, the relationship between the States and Federal government, or distribution of the power and responsibilities among the various levels of government.

List of Subjects in 10 CFR Part 435

Architects, Building Code Officials, Buildings, Energy Conservation, Energy Conservation Building Performance Standards, Engineers, Federal Buildings and Facilities, Housing, Insulation, and Voluntary Performance Standards.

Issued in Washington, DC, November 26, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

In consideration of the foregoing, chapter II of title 10, Code of Federal Regulations, part 435, subpart C is amended as follows:

PART 435—ENERGY CONSERVATION VOLUNTARY PERFORMANCE STANDARDS FOR NEW BUILDINGS; MANDATORY FOR FEDERAL BUILDINGS

1. The authority citation for part 435 is revised to read as follows:

Authority: 42 U.S.C. 6831–6870; 42 U.S.C. 8254; 42 U.S.C. 7101, *et seq.*

§ 435.302 Definitions.

2–3. Section 435.302 is revised to read as follows:

(a) *ANSI* means American National Standards Institute.

(b) *ASHRAE Handbook* means American Society of Heating, Refrigerating and Air-Conditioning Engineeers, Inc., ASHRAE Handbook, 1985 Fundamentals. Volume, 1–P Edition.

(c) *ASTM* means American Society of Testing and Measurement.

(d) *British thermal unit (Btu)* means approximately the amount of heat required to raise the temperature of one pound of water from 59°F to 60°F.

(e) *Building* means any new residential structure:

(1) that includes or will include a heating or cooling system, or both, or a domestic hot water system, and

(2) for which a building design is created after the effective date of this rule.

(f) *Building design* means the development of plans and specifications for human living space.

(g) *Conservation Optimization Standard for Savings in Federal Residences* means the computerized calculation procedure that is used to establish an energy consumption goal for the design of Federal residential buildings.

(h) *COSTSAFR* means the Conservation Optimization Standard for Savings in Federal Residences.

(i) *DOE* means U.S. Department of Energy.

(j) *Domestic hot water (DHW)* means the supply of hot water for purposes other than space conditioning.

(k) *Energy conservation measure (ECM)* means a building material or component whose use will affect the energy consumed for space heating, space cooling, domestic hot water or refrigeration.

(l) *Energy performance standard* means an energy consumption goal or goals to be met without specification of the method, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria evaluation methods to be used, and any necessary commentary.

(m) *Federal agency* means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(n) *Federal residential building* means any residential building to be constructed by or for the use of any Federal agency in the Continental U.S., Alaska, or Hawaii that is not legally subject to state or local building codes or similar requirements.

(o) *Life cycle cost* means the minimum life cycle cost calculated by using a methodology specified in subpart A of 10 CFR part 436.

(p) *Point system* means the tables that display the effect of the set of energy conservation measures on the design energy consumption and energy costs of a residential building for a particular location, building type and fuel type.

(q) *Practicable optimum life cycle energy cost* means the energy costs of the set of conservation measures that has the minimum life cycle cost to the Federal government incurred during a 25 year period and including the costs of construction, maintenance, operation, and replacement.

(r) *Project* means the group of one or more Federal residential buildings to be built at a specific geographic location that are included by a Federal agency in specifications issued or used by a Federal agency for design or construction of the buildings.

(s) *Prototype* means a fundamental house design based on typical construction assumptions. The nine prototypes in COSTSAFR are: single-section manufactured house, double-section manufactured house, ranch-style house, two-story house, split-level house, mid-unit apartment, end-unit apartment, mid-unit townhouse, end-unit townhouse.

(t) *Residential building* means a new building that is designed to be constructed and developed for residential occupancy.

(u) *Set of conservation options* means the combination of envelope design and equipment measures that influences the long term energy use in a building designed to maintain a minimum of ventilation level of 0.7 air changes per hour, including the heating and cooling equipment, domestic hot water equipment, glazing, insulation, refrigerators and air infiltration control measures.

(v) *Shading coefficient* means the ratio of the heat gains through windows, with or without integral shading devices, to that occurring through unshaded, ⅛-inch clear glass.

(w) *Total annual coil load* means the energy for space heating and/or cooling with no adjustment for HVAC equipment efficiency.

§ 425.304 [Amended]

4. Section 435.304 is amended by substituting the phrase "Version 3.0" for the phrase "Version 2.0" the four times it occurs in this section.

5. Section 435.305 is added to read as follows:

§ 435.305 Alternative compliance procedure.

(a) If a proposed building design includes unusual or innovative energy conservation measures which are not covered by the COSTSAFR program, the Federal agency shall determine whether that design meets or exceeds the applicable energy consumption goal in compliance with the procedures set forth in this section.

(b) The Federal agency shall determine the estimated discounted energy cost for the COSTSAFR prototype building design, which is the most similar of the COSTSAFR prototypes to the proposed building design, by—

(1) Printing out the COSTSAFR compliance forms for the prototype showing the points attributable to levels of various energy conservation measures;

(2) Calculating the estimated unit energy cost on the compliance forms, on the basis of selecting the optimum levels on the compliance forms or otherwise in the User's Manual for each energy conservation measure; and

(3) Multiplying the estimated unit energy cost by 100.

(c) The Federal agency shall determine the estimated discounted energy cost for the proposed building design by—

(1) Estimating the heating and cooling total annual coil loads of the proposed building design with the DOE 2.1C computer program on the basis of input assumptions including—

(i) Shading coefficients of 0.6 for summer and 0.8 for winter;

(ii) Thermostat setpoints of 78 degrees Fahrenheit for cooling, 70 degrees Fahrenheit for heating (6am to 12 midnight), and 60 degrees Fahrenheit for Night Setback (12 midnight to 6 am, except for houses with heat pumps);

(iii) The infiltration rate measured in air changes per hour as calculated using appendix B of the COSTSAFR User's Manual;

(iv) Natural venting with a constant air change rate of 10 air changes per hour—

(A) When the outdoor temperature is lower than the indoor temperature, but not above 78 degrees Fahrenheit; and

(B) When the enthalpy of the outdoor air is lower than the indoor air.

(v) Internal gains in accordance with the following table for a house with 1540 square feet of floor area, adjusted by

0.35 Btu/ft ^{2}/hr to account for changes in lighting as the floor area varies from 1540 square feet—

TABLE 1.—INTERNAL GAIN SCHEDULE (BTU)

Hour of day	Sensible	Latent
1	1139	247
2	1139	247
3	1139	247
4	1139	247
5	1139	247
6	1903	412
7	2391	518
8	4782	1036
9	2790	604
10	1707	370
11	1707	370
12	2277	493
13	1707	370
14	1424	308
15	1480	321
16	1480	321
17	2164	469
18	2334	506
19	2505	543
20	3928	851
21	3928	851
22	4101	888
23	4101	888
24	3701	802

(vi) Thermal transmittances for building envelope materials measured in accordance with applicable ASTM procedures or from the ASHRAE Handbook;

(vii) Proposed heating and cooling equipment types included in COSTSAFR or having a certified seasonal efficiency rating;

(viii) Weather Year for Energy Calculations (WYEC) weather year data (WYEC data are on tapes available from ASHRAE, 1791 Tullie Circle, N.E., Atlanta, Georgia 30329), or if unavailable, Test Reference Year (TRY) weather data (obtainable from National Climatic Data Center, 1983 *Test Reference Year*, Tape Reference Manual, TD–9706, Asheville, North Carolina) relevant to project location.

(2) Estimating the discounted energy cost for the heating and cooling energy loads, respectively, according to the following equation—

$$\text{Discounted Energy Cost} = \frac{\text{Total Annual Coil Load} \times \text{Fuel Cost} \times \text{UPW}^*}{\text{Equipment Efficiency}}$$

Where:

Total Annual Coil Load = the total heating or cooling annual coil load calculated under paragraph (c)(1);

Fuel Cost = the heating or cooling fuel cost calculated in accordance with sections 3.3.D and 3.3.E of the User's Manual;

UPW* = the uniform present worth discount factor; selected from the last page of the compliance forms.

Equipment Efficiency = the test seasonal efficiency rating of the heating and cooling equipment only (i.e., not including duct or distribution system losses).

(3) Estimating the discounted energy cost for water heating and refrigerator/freezer energy consumption—

(i) For equipment types covered by the COSTSAFR compliance forms, by multiplying the estimated unit energy cost by 100; or

(ii)For equipment types not covered by COSTSAFR—

$$\text{Discounted Energy Cost} = \frac{\text{Annual Energy Consumption} \times \text{Fuel Cost} \times \text{UPW}^*}{\text{Energy Factor}}$$

Where:

Fuel Cost and UPW* are as defined in paragraph (c)(2) of this section; Annual Energy Consumption is as calculated in 10 CFR 430.22; and Energy Factor is the measure of energy efficiency as calculated under 10 CFR 430.22

(iii) [Reserved]

(4) Adding together the discounted energy costs calculated under paragraphs (c)(2) and (c)(3) of this section;

(d) If the discounted energy cost of the proposed building design calculated under paragraph (c)(4) of this section is equal to or less than the discounted energy cost of the COSTSAFR prototype building design calculated under paragraph (b) of this section, then the proposed building design is in compliance with the applicable energy consumption goal under this part.

6. Section 435.306 is added as follows:

§ 435.306 Selecting a life cycle effective proposed building design.

In selecting between or among proposed building designs which comply with the applicable energy consumption goal under this part, each Federal agency shall select the design which, in comparison to the applicable COSTSAFR prototype, has the highest Net Savings or lowest total life cycle costs calculated in compliance with subpart A of 10 CFR part 436.

[FR Doc. 91–2083 Filed 1–30–91; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is comprised of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) represents all foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to or deletions from the previous OTC List. There are no additions to or deletions from the previous Foreign List. Both Lists were published on November 1, 1990 (55 FR 46040) and effective on November 13, 1990.

EFFECTIVE DATE: February 11, 1991.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to or deletions from the OTC List. This supersedes the last OTC List which was effective November 13, 1990. Additions and deletions to the OTC List were last published on November 1, 1990 (55 FR 46040). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC

List also includes any OJC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

There are no additions to or deletions from the last Foreign List, which was published November 1, 1990 (55 FR 46040) and effective November 13, 1990. This notice serves as republication of that List with a new effective date of February 11, 1991. Stocks on the Foreign List are eligible for margin treatment at broker-dealers pursuant to a 1990 amendment to Regulation T (12 CFR part 220). These foreign equity securities have met the Board's requirements pursuant to Regulation T and are eligible for margin at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.8 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(u) and 220.17(e) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed For Failing Continued Listing Requirements

1st American Bancorp Inc.
$.01 par common
Abraham Lincoln Federal Savings, Bank (Pennsylvania)
$1.00 par common
Action Savings Bank, S.L.A.
$1.00 par common
Arizona Instrument Corporation
No par common
Cellular Information Systems, Inc.
Class A, $.01 par common
Ceramics Process Systems Corp.
$.01 par common
Charter Federal Savings Bank, (Virginia)
$.01 par common
Corporate Data Sciences, Inc.
No par common
Critical Industries, Inc.
$.001 par common
Decom Systems, Inc.
No par common
Duratek Corporation
$.01 par common
Empire Financial Corp.
$.01 par common
Environmental Power Corporation
$.01 par common
Financial News Network, Inc.
No par common
First Charter Corporation
$5.00 par common
First Continental Real Estate Investment Trust
$1.00 par shares of beneficial interest
Genex Corporation
$.05 par common, Series B, $.60 par convertible preferred
HEI, Inc.
$.05 par common
Home Federal Savings Bank (South Carolina)
$1.00 par common
Ingres Corporation
$.001 par common
Intech Incorporated
No par common
International Consumer Brands, Inc.
$.01 par common
Ironstone Group, Inc.
$.01 par common
JRM Holdings, Inc.
$.01 par common
KWIK Products International Corporation
No par common
Landmark/Community Bancorp, Inc.
$.01 par common
Lexington Precision Corporation
$.25 par common
Meret, Inc.
No par common
Merrimack Bancorp, Inc.
$.10 par common
Nevada Goldfields Corporation
No par common
New Hampshire Savings Bank Corp.
$1.00 par common
One Bancorp, The
$1.00 par common
Overmyer Corporation
No par common
P.C. Quote, Inc.
$.001 par common
Pioneer American Holding Corporation
$10.00 par common
Prab Robots, Inc.
$.10 par common
Ronson Corporation
$1.00 par common
Samna Corporation
$.01 par common
Software Services of America, Inc.
$.01 par common
Southmark Corporation
$.01 par common
Sunresorts Ltd., N.V.
$.01 par common
Traditional Industries, Inc.
$.01 par common
Transnational Industries, Inc.
$.01 par common
Washington Savings Bank, F.S.B. (Maryland)
$1.00 par common
Westerbeke Corporation
$.01 par common
Westwood One, Inc.

Warrants (expire 09–04–97)
Xscribe Corporation
No par common

Stocks Removed For Listing On a National Securities Exchange Or Being Involved In An Acquisition

American Reliance Group, Inc.
$.01 par common
Barden Corporation, The
$1.00 par common
Cambrex Corporation
$.10 par common
Cheshire Financial Corporation
$1.00 par common
Conner Peripherals, Inc.
No par common
Continental Gold Corporation
No par common
Doctors Rehabilitation Corporation of America
$.001 par common
Environmental Tectonics Corporation
$.10 par common
Exploration Company of Louisiana Inc., The
$.01 par common
First Federal of Western Pennsylvania,
$1.00 par common
Frontier Insurance Group, Inc.
$.01 par common
Home Savings Bank, The (New York)
$1.00 par common
Laidlaw Inc.
Class A, no par common
Class B, no par common
Mayflower Financial Corporation
$.01 par common
Micron Technology, Inc.
$.10 par common
Mid Maine Savings Bank, F.S.B.
$.01 par common
National Lampoon, Inc.
$.10 par common
Nike, Inc.
Class B, no par common
North Hills Electronics, Inc.
$.01 par common
NWNL Companies, Inc., The
$1.25 par common
OSHAP Technologies LTD
Warrants (expire 11–25–90)
Phoenix American Incorporated
No par common
Planters Corporation, The
$5.00 par common
Pop Radio Corporation
$.01 par common
Sellersville Savings and Loan Association (Pennsylvania)
$1.00 par common
Telecredit, Inc.
$.01 par common
Tolland Bank (Connecticut)
$1.00 par common
Tony Lama Company, Inc.
$1.00 par common
U.S. Intec, Inc.
$.02 par common
Urcarco, Inc.
$.01 par common
Valley Federal Savings Bank (Indiana)
$.01 par common
VISX, Incorporated
No par common

Additions To the List of Marginable OTC Stocks

A. L. Williams Corporation
7.25% convertible subordinated debentures
ATC Environmental Inc.
$.01 par common
Bank of San Pedro
No par common
Cardinal Distribution, Inc.
7¼% convertible subordinated debentures
Care Group, Inc., The
$.001 par common, Warrants (expire 04–24–91)
Cathay Bancorp, Inc.
No par common
Chiron Corporation,
7¼% convertible subordinated debentures
Clearly Canadian Beverage Corporation
No par common
Coca-Cola Enterprises, Inc.
Warrants (expire 07–10–91)
Crop Genetics International
$.95 convertible exchangeable preferred
First Bancorp Indiana, Inc.
No par common
First Seismic Corporation,
$.01 par common
Great Lakes Bancorp, A Federal Savings Bank
Warrants (expire 07–01–95)
Health Risk Management, Inc.
$.01 par common
Hector Commincations Corporation
$01 par common
In Focus Systems, Inc.
No par common
Isreal Land Development Company Limited
American Depository Receipts
Kaiser Steel Resources, Inc.
$.03 par common
Lufkin Industries, Inc.
$1.00 par common
Millfeld Trading Co., Inc.
Class A, warrants (expire 07–22–92)
Warrants (expire 01–22–94)
N.S. Bancorp, Inc.,
$.01 par common
Neozyme Corporation
Units (expire 12–31–94)
Palmer Tube Mills Limited
American Depository Receipts
Rada Electronics Industries Limited
$.001 par common
Regional Federal Bankcorp, Inc. (Indiana)
No par common
SSMC, Inc.
Series B, 15% cumulative preferred
Tandy Brands Accessories, Inc.
$1.00 par common
Universal Holding Corporation
Warrants (expire 06–29–93)
Ventura Motion Picture Group
$.001 par common
Videocart, Inc.
$.01 par common
Wisconsin Pharmacal Company, Inc.
$.01 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)). January 25, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–2247 Filed 1–30–91; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312 and 314

Investigational and New Drug Applications; Editorial Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain of its investigational and new drug application regulations to reflect a reorganization in the Center for Drug Evaluation and Research (CDER). This action will improve the accuracy of the regulations.

EFFECTIVE DATE: January 31, 1991.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8038.

SUPPLEMENTARY INFORMATION: FDA is amending certain of its investigational and new drug application regulations to reflect a reorganization in CDER. The name of the former Legislative, Professional, and Consumer Affairs Branch (HFD–365) has been changed to the CDER Executive Secretariat Staff (HFD–8). This document makes that change in 21 CFR 312.145(b) and 314.445(b).

The amendments are wholly editorial in nature. For this reason, FDA finds

that notice and public procedure and delayed effective date are unnecessary (5 U.S.C. 553 (b)(B) and (d)).

List of Subjects

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 312 and 314 are amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

§ 312.145 [Amended]

2. Section 312.145 *Guidelines* is amended in paragraph (b) by removing "Legislative, Professional, and Consumer Affairs Branch (HFD–365)" and replacing it with "CDER Executive Secretariat Staff (HFD–8)".

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

3. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 376).

§ 314.445 [Amended]

4. Section 314.445 *Guidelines* is amended in paragraph (b) by removing "Legislative, Professional, and Consumer Affairs Branch (HFD–365)" and replacing it with "CDER Executive Secretariat Staff (HFD–8)".

Dated: January 25, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–2310 Filed 1–30–91; 8:45 am]

BILLING CODE 4160–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

RIN 3095–AA33

NARA Fee Schedule

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule revises fees charged by the National Archives and Records Administration (NARA) for reproduction of records created by other Federal agencies and transferred to the custody of the Archivist of the United States, donated historical materials, and records filed with the Office of the Federal Register. The fees are changed to reflect the current costs of providing the reproduction services.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at 202–501–5110.

SUPPLEMENTARY INFORMATION: NARA has not published a notice of proposed rulemaking on the revision of the fee schedule, as allowed by 5 U.S.C. 553 (b)(B) when the agency determines, for good cause, that it is unnecessary to publish a proposed rule and obtain comments from interested persons.

NARA has determined that publication of a proposed rule is unnecessary for the following reasons. The fees for reproduction of archival records promulgated in 36 CFR 1258 are set in accordance with 44 U.S.C. 2116(c), which requires that, to the extent possible, NARA recover the actual cost of making copies of records and other materials transferred to the custody of the Archivist of the United States. The revised fees are based on an indepth cost study conducted for NARA by a management consulting firm. Because only actual expenses may be considered in setting the reproduction fee schedule and because the costs were reviewed by the independent cost study, NARA has determined that there is good cause for promulgating this final rule without a prior notice of proposed rulemaking.

The revised fee schedule reduces the fee for paper-to-paper electrostatic copies from 35 cents per copy to 25 cents per copy. Other fees are also revised to reflect their current costs.

In § 1258.2(c)(6), fees for fixed-fee orders of military service files, passenger arrival lists, and Eastern Cherokee applications to the Court of Claims are being raised to $10. The fee for fixed-fee orders of Federal population census records is being raised to $6. These fees have not been changed since 1981, when they were set at $5 per order.

In § 1258.11(a), we have not listed a fee for microfilm to paper electrostatic copies of archival records made in response to Freedom of Information Act (FOIA) requests because few FOIA requests for accessioned records involve microfilm records. The service remains available, however, and fees will be quoted upon request as indicated in § 1258.11(b).

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

List of Subjects in 36 CFR Part 1258

Archives and records.

For the reasons set forth in the preamble, part 1258 of chapter XII of title 36 of the Code of Federal Regulations is amended to read as follows:

PART 1258—FEES

1. The authority citation for part 1258 continues to read as follows:

Authority: 44 U.S.C. 2116(c).

2. Section 1258.2 is amended by revising paragraphs (c)(1) through (c)(6) to read as follows:

§ 1258.2 Applicability.

* * * * *

(c) * * *

(1) National Archives publications, including microfilm publications. Prices are available from Publication Services (NEPS), National Archives, Washington, DC 20408.

(2) Audiovisual materials sold by the National Audiovisual Center. Prices for these materials are available from the National Audiovisual Center (NEA), 8700 Edgeworth Drive, Capitol Heights, MD 20743–3701.

(3) Motion picture, sound recording, and video recording materials among the holdings of the National Archives. Prices for reproduction of these materials are available from the Motion Picture, Sound and Video Branch (NNSM), National Archives, Washington, DC 20408.

(4) Machine-readable records. Prices for duplication are available from the Center for Electronic Records (NNX), National Archives, Washington, DC 20408.

(5) Still photography processes not listed in § 1258.12(b). Information on availability and prices for black and

white and color reproductions not shown in § 1258.12(b) may be obtained from the Still Pictures Branch (NNSP), National Archives, Washington, DC 20408, or from the regional archives or Presidential library which has the original records.

(6) Reproduction of the following types of records using the specified order form:

(i) Military service files and pension files more than 75 years old (order form NATF Form 80). Reproduction of a military service file (or selected documents from the file if voluminous)—$10.

(ii) Passenger arrival lists more than 75 years old (order form NATF Form 81)—$10.

(iii) Federal Census requests (order form NATF Form 82)—$6.

(iv) Eastern Cherokee applications to the Court of Claims (order form NATF Form 83)—$10.

* * * * *

3. Section 1258.11 is revised to read as follows:

§ 1258.11 Fees for reproduction of archival records in response to FOIA requests.

(a) *Electrostatic copies.*

(1) Paper to paper copies (up to 11 in. by 17 in.):

NARA makes the copy	$0.25
Customer makes the copy on a NARA self-service copier	$0.10

(2) Oversized electrostatic copies (per foot): $1.80 (plus $0.20 per foot for vellum paper)

(b) *Other processes.* Fees for other reproduction processes not listed in § 1258.11 are computed upon request.

4. In section 1258.10, paragraph (a) is revised to read as follows:

§ 1258.10 Mail orders.

(a) There is a minimum fee of $6.00 per order for reproductions which are sent by mail to the customer.

* * * * *

5. Section 1258.12 is revised to read as follows:

§ 1258.12 Fee schedule.

(a) *Certification:* $2.00

(b) *Still photography:*

(1) Copy negatives (black & white):

4 in. by 5 in.	$5.00
8 in. by 10 in.	$10.00
10 in. by 10 in. direct duplicate negative	7.75
10 in. by 10 in. contact print	5.00
14 in. by 14 in.	9.50
18 in. by 18 in.	10.00
20 in. by 24 in.	10.00
24 in. by 30 in.	13.00
40 in. by 41 in.	21.50

(c) *Electrostatic copying:*

(1) Paper to paper (up to 11 in. by 17 in.):

Customer makes the copy at a NARA self-service copier	$.10
NARA makes the copy	.25

(2) Oversized electrostatic copies (per foot): $1.80. Add per foot for vellum paper: .20

(3) Electrostatic copies (22 in. by 34 in.): $1.50

(4) Red-line copies: $1.30

(5) Microfilm or microfiche to paper copies (up to 11 in. by 17 in.):

Customer makes the copy at a NARA self-service copier	$.25
NARA makes the copy	1.00

(6) Microfilm to paper copies (18 in. by 24 in.):

Customer makes the copy at a NARA self-service copier	$.90
NARA makes the copy	1.55

(d) *Microfilm:*

	16mm	35mm
(1) Camera negative (per frame)	$0.32	$0.33
(2) Positive (per foot)	.30	.30
(3) Direct duplicate negative (per foot)	.30	.30

(e) *Diazo microfiche duplication (per fiche):* $1.25

(f) *Technical services:*

	Regular	Overtime
Photographer (per hour)	$15.00	$22.50
Microfilm preparation (per hour)	12.25	18.50
Sound & video recordings (per hour)	16.50	24.75

(g) *Preservation of records.* In order to preserve certain records which are in poor physical condition, NARA may restrict customers to a choice of photostatic or microfilm copies instead of electrostatic copies.

(h) *Unlisted processes.* Fees for reproduction processes not listed in § 1258.12 are computed upon request.

6. Section 1258.16 is revised to read as follows:

§ 1258.16 Effective date.

The fees in §§ 1258.11 and 1258.12 are effective on March 1, 1991.

Dated: January 16, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91–2291 Filed 1–30–91; 8:45 am]

BILLING CODE 7515–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FRL–3858–1]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Oklahoma; Tulsa County Ozone Plan and Redesignation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 5, 1990, at 55 FR 36290, EPA proposed to approve Oklahoma's post 1982 State Implementation Plan (SIP) revision for attainment of the ozone National Ambient Air Quality Standard (NAAQS) in Tulsa County. In that notice EPA also proposed to approve an updated redesignation request for Tulsa County. This notice will discuss EPA's response to the comments received on the September 5, 1990, notice and EPA's final approval action.

EFFECTIVE DATE: This rulemaking is effective as of October 31, 1990. The amendments to the incorporated by reference material become effective on January 31, 1991.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, Dallas, Texas 75202.

Oklahoma State Department of Health, Air Quality Service, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73152.

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gregg Guthrie, telephone (214) 655–7214 or (FTS) 255–7214.

SUPPLEMENTARY INFORMATION:

A. Background

EPA described the facts and regulatory history from which this SIP revision arose in its proposed approval at 55 FR 36290. The agency will not repeat that description here, but will briefly summarize the major issues and respond to comments it received on the notice of proposed rulemaking. EPA recommends that interested readers examine that notice for a complete understanding of today's action.

On February 20, 1985, the Governor of Oklahoma, submitted a SIP revision designed to achieve the ozone standard in Tulsa County. Supplemental information was submitted on August 23, 1985, January 21, June 2, September 2, and December 22, 1986. The anti-tampering regulation was submitted to EPA by the Governor on October 8, 1985.

On March 31, 1986, the Governor of Oklahoma submitted Oklahoma Air Pollution Control Regulation (OAPCR) 3.7.5–4(b)(2), "Storage of Volatile Organic Compounds 400–40,000 gallons (9.5–953 bbls)" (i.e., stage 1 vapor recovery regulation).

On May 8, 1989, the Governor of Oklahoma submitted a revised OAPCR 3.7.5–4(i)(3) "Transport/Delivery Vessel Requirements" to control leaking gasoline tank trucks in Tulsa County.

On March 9, 1990, the Governor of Oklahoma submitted four new regulations and several miscellaneous changes to the existing EPA approved regulations in Tulsa County.

B. Plan Summary

The control strategy for attainment and maintenance of the ozone NAAQS in Tulsa County was prepared by the OSDH. EPA reviewed the submittals and developed a Technical Support Document (TSD).[1] This document is available for inspection by interested parties during normal business hours at the locations listed in the ADDRESSES section of this notice. The ozone SIP submittals for Tulsa County were reviewed by EPA in accordance with the requirements of the CAA and the January 27, 1984, Guidance Document for Correction of Part D SIPS in Nonattainment Areas. The results of that review are contained in EPA's proposed approval published on September 5, 1990, at 55 FR 36290 and the TSD cited previously in this notice.

A modeling analysis to determine the percent reduction needed was performed by the State and verified by EPA. The city-specific Level III modeling approach used to determine VOC reductions needed was the Empirical Kinetic Modeling Approach (EKMA/OZIPM–2). A 12 percent reduction estimate resulted from modeling a design day value of 0.128 ppm for July 13, 1984, and the use of a NMHC/NO_x ratio of 17.6. The OSDH developed control measures to surpass the 12 percent reduction requirements. The EPA agrees with the State's demonstration of a VOC reduction requirement of 12 percent.

The State plan projected a 19.7 percent total VOC reduction by December 31, 1987, through control of stationary sources, the Federal Motor Vehicle Control Program (FMVCP), and maintenance requirements of the emission control equipment on most motor vehicles in the County. The plan revision demonstrated that the implementation of the anti-tampering inspection program along with the continuation of the FMVCP would reduce the total VOC emissions by 16.4 percent. Stationary source controls result in the additional 3.3 percent VOC reduction for the area.

The Reasonable Further Progress (RFP) curve in the State's submittal indicated the ozone NAAQS would be achieved and maintained through 1995. The State's continued implementation of the VOC control measures and permitting program will ensure that future deterioration of air quality will not occur.

EPA is therefore approving the control strategy and modeling analysis.

C. Stationary Source Control

EPA is today approving six new stationary source regulations and several amendments to the existing regulations for Tulsa County. One new regulation in the February 20, 1985 submittal, the one new regulation contained in the May 8, 1989, submittal, and four of the five new regulations in the March 9, 1990, submittal are being approved in this notice. The February 20, 1985, submittal contained two additional regulations that have since been superseded by the May 8, 1989, and March 9, 1990, submittals. The one remaining new regulation in the March 9, 1990, submittal (OAPCR 3.7.5–4(h) and its corresponding Oklahoma Commissioner of Health Orders) was approved in a separate notice on June 12, 1990, at 55 FR 23730.

The State has also committed, in an October 17, 1989, letter, to develop and incorporate test methods into OAPCR 3.7 for determining the capture efficiency of control devices associated with coating operations. EPA issued final guidance for development of these test methods on April 16, 1990, (see "Guidelines for Developing Capture Efficiency Protocols"). During the FY 91 grant year the State will study the guidance and begin its rulemaking process.

In the proposed approval EPA identified specific items in two of the State's regulations that require amendments. EPA informed the State that changes are necessary for four provisions dealing with Commissioner's equivalent determinations in OAPCR 3.7.5–4(g) and OAPCR 3.7.5–(i)(3). The State has entered into a memorandum of understanding (MOU) with EPA. The MOU includes a commitment to amend the regulations as expeditiously as possible, but no later than one year from execution of the MOU, and that any equivalent methods approved by the Commissioner, prior to regulation amendment, will be forwarded to EPA as SIP revisions. This MOU was finalized on September 28, 1990, and is being approved as part of the SIP in today's action.

The OSDH has made numerous miscellaneous changes to OAPCR 3.7 "Control of Emissions of Organic Materials." These changes were submitted by the Governor on March 9, 1990. The majority of the amendments are found in OAPCR 3.7.5 "Non-Attainment Areas: Additional Controls Required." EPA reviewed OAPCR 3.7.5 against the requirements of appendix D titled "Discrepancies and Inconsistencies Found in Current SIP's" of the November 24, 1987, **Federal Register** notice, at 52 FR 45105, and the EPA document titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to appendix D of November 24, 1987 **Federal Register**" dated May 25, 1988.

All of the six new regulations and the miscellaneous changes to existing SIP regulations are being approved as RACT, except for OAPCR 3.7.5–4(f). This dry cleaning rule, OAPCR 3.7.5–4(f), is being approved pursuant to part A of section 110 of the Act and it is not being approved as RACT pursuant to part D of section 172 of the Act. The State submitted a September 2, 1986, negative declaration demonstrating that the petroleum solvent dry cleaners in Tulsa County are smaller than those recommended for control in the CTG document. However, because OAPCR

[1] Technical Support Document for EPA's Review of the Oklahoma Ozone SIP revision for Tulsa County. August 1990.

3.7.5–4(f) will lead to added reductions in Tulsa County, EPA is approving OAPCR 3.7.5–4(f) under part A section 110 of the CAA.

D. Transportation Control Measures

The February 20, 1985, submittal included a transportation control plan (TCP) designed to reduce VOC mobile source emissions. The TCP included a commitment to implement or continue operation of the following transportation control measures (TCMs):

- Improved Transit
- Park and Ride
- Ridesharing
- Traffic Flow Improvements

The TCMs in the plan were selected based on an analysis of the 18 measures listed in section 108(f) of the 1977 CAA. EPA is today approving the TCP and its commitments.

E. Vehicle Inspection and Maintenance (I/M)

The State of Oklahoma implemented an anti-tampering program in Tulsa County on January 1, 1986, which is conducted in conjunction with the annual vehicle safety inspection program administered by the Department of Public Safety (DPS). The City of Tulsa has also adopted the State's anti-tampering regulation. The program is enforced by the State, County, and City Police Departments.

The program includes an annual vehicle inspection for tampering and misfueling, a mechanic training program, a public awareness program, and enforcement of State regulations against tampering and misfueling. It also includes a visual check of the components of the vehicle emission control systems and a tailpipe test to detect lead in vehicles requiring unleaded gasoline.

EPA's Mobile 3 model indicated that the mobile source program would reduce automobile hydrocarbon emissions by 26.2 percent, meeting the minimum emissions reduction requirement for a 25 percent reduction in light duty vehicle emissions. Therefore, EPA is approving the anti-tampering program for Tulsa County.

As discussed in EPA's proposed approval, the original I/M plan did not contain recordkeeping or record submittal commitments. The State has since committed in an October 12, 1990, letter to report semiannually to EPA, information relating to the effectiveness and enforcement of the I/M program. Items to be reported include: (1) The approximate number of vehicles to be inspected based on vehicle type, age, fuel type, (2) the number of vehicles receiving and passing initial inspections, (3) the number of vehicles failing the initial inspection, (4) the number passing after repair, (5) the number failing for each emission control device, and (6) the number of inspection stickers issued. The state also committed to report data concerning inspection facilities. Data that will be reported include: (1) The number of facilities licensed to perform inspections, and (2) the number of facility licensees and inspector certificates suspended and revoked. The commitment letter of October 12, 1990, is being approved as part of the SIP in today's action.

G. Redesignation

On March 3, 1978, at 43 FR 8962 EPA identified Tulsa County, Oklahoma as nonattainment for the Ozone NAAQS in accordance with section 107 of the Clean Air Act. These area designations may be revised whenever sufficient data become available to justify a redesignation.

Specific policy criteria for ozone redesignation reviews are given in the following memoranda: A December 7, 1979, memorandum from Richard G. Rhoads, former Director of EPA's Control Programs Development Division; an April 21, 1983, memorandum from Sheldon Meyers, former Director of EPA's Office of Air Quality Planning and Standards (OAQPS); and an April 6, 1987, memorandum from Gerald A. Emison, Director of OAQPS.

In summary, those memoranda indicate that the calculated average number of expected annual exceedances should be less than or equal to 1.0 and determined from the most recent three years of quality assured monitoring data. Also, the observed improvements in air quality must be due to implementation of permanent and enforceable emission control measures. Those memoranda also specify that the State Implementation Plan for the area be fully approved by EPA and finally implemented by the State.

On August 9, 1988, the OSDH submitted a request to redesignate Tulsa County to an attainment status for the ozone NAAQS. This request was based on the most recent, complete, quality assured three years of monitoring data covering calendar years 1985–1987.

EPA proposed to disapprove the State's August 9, 1988, request on September 9, 1989, at 54 FR 37132. That disapproval was based on the lack of an EPA approved ozone SIP for Tulsa County and monitoring data (1985–1987) that did not demonstrate attainment of the ozone NAAQS.

On March 23, 1990, the OSDH submitted a revised request to redesignate Tulsa County to an attainment status for the ozone NAAQS. This request was based on the most recent, complete, quality assured three years of monitoring data covering calendar years 1987–1989. On September 5, 1990, at 55 FR 36290, EPA proposed to approve the updated redesignation request for Tulsa County.

These most recent data were collected at three sites within Tulsa County; Site 127 located at 1326 East Mohawk Boulevard, Tulsa, Oklahoma; site 137 located at 900 South Osage Drive, Skiatook, Oklahoma; and Site 174 located at 502 East 144th Place South, Glenpool, Oklahoma. These sites are located in a north-south line across the county and all sites have experienced no more than one exceedance of the ozone standard during the 1987–1989 time frame. The ozone concentrations showing exceedances are summarized below:

TABLE 1.—OZONE CONCENTRATION EXCEEDANCES PER YEAR (PPM)

Site number	1987	1988	1989
127	none	0.15	none
137	none	0.13	none
174	none	none	0.13

EPA examined the 1987–1989 air quality data and found that they were collected in accordance with EPA requirements. Sites 127, 137 and 174 each have a maximum calculated annual average expected number of exceedances of 0.37 based on the above data. The data collected indicate that the area has reached attainment since EPA requires a 1.0 or lower value for an annual average expected exceedance to demonstrate attainment.

H. Response to Comments

Several citizens of Tulsa submitted comments on EPA's notice of proposed approval. Because many of the comments were similar, EPA consolidated the comments for response below. All comments were directed at EPA's proposed redesignation

Comment: All comments opposed EPA's proposed redesignation because they felt Tulsa's air quality continues to be dirty due to odors from industries located near downtown Tulsa.

Response: EPA's proposed redesignation concerns only the pollutant ozone. Ozone is both colorless and odorless. As discussed in EPA's proposed rulemaking notice, the ambient air quality data submitted by the State meet EPA's requirements for demonstrating that Tulsa County has attained the NAAQS for ozone. Generally, odor problems are caused by pollutants other than ozone. EPA has contacted the OSDH and requested they investigate the possible source of odor.

Comment: A temporary "spat" of clean air does not indicate that Tulsa has done all it can do to improve air quality. Tulsa has not had a "good track record" in reducing ozone levels.

Response: EPA disagrees. A review of the ambient ozone data for Tulsa County indicates that the ozone levels have steadily and continuously declined over the years since 1979, both in the severity of the exceedances and the number of exceedances per year. Upon collection of 1989 ozone air monitoring data and subjecting these data to quality assurance procedures, the area met EPA's requirements for monitored attainment of the ozone NAAQS.

Comment: The ozone monitoring data are too distant from the downtown area north of two petroleum refineries. Ozone monitors are 20 miles away from the location and this distance would cause the pollutants to dissipate to the point they are undetectable.

Response: Again, EPA's proposed redesignation concerns the pollutant ozone. The State's ambient monitoring network meets EPA requirements for adequate coverage and siting. For additional information concerning monitor location in the Tulsa area, please refer to the three volume EPA document "Study of the Nature of Ozone, Oxides of Nitrogen, and Nonmethane Hydrocarbons in Tulsa Oklahoma" (EPA–450/4–79–008) April 1979. Ozone monitoring occurs at three locations in the Tulsa area. Site 127 located at 1326 East Mohawk Boulevard, in Tulsa, is approximately five miles from the two refineries. The other two monitors are located approximately 10.5 miles to the north and 17 miles to the south.

In addition, ozone pollution does not occur in an isolated location of a metropolitan area.VOCs and nitrogen oxides form ozone in the presence of sunlight, but the reaction takes several hours. Prevailing winds can transport ozone far from the original source of emissions. For example, under certain conditions VOC emitted from the downtown area would take approximately three hours to form ozone. If the wind speed were five miles per hour, maximum ozone concentrations would be found approximately 15 miles downwind.

Comment: Concern was raised about new industry entering the Tulsa area and causing a deterioration of air quality such that the area would return to a nonattainment condition.

Response: EPA has required the State of Oklahoma to develop a new source permitting program that will ensure new sources of pollution will not contribute to a new violation of the NAAQS. These programs are implemented through OAPCR 1.4 "Permits." The specific requirements of section 1.4.4 will ensure that the emissions from new sources will not cause deterioration of the present air quality. OAPCR 1.4 will require an air quality analysis to ensure no emission increases before new major sources or modifications could be approved for construction.

I. Effective Date

This rulemaking is effective as of October 31, 1990. The Administrative Procedure Act (APA), 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after publication of the rule if the rule "relieves a restriction". Since redesignation of Tulsa County from nonattainment to attainment is a substantive rule that relieves the restrictions associated with nonattainment designation, such as the need to maintain a plan that meets the requirements of part D of the Act or face imposition of a ban on construction of major stationary sources, the redesignation may be made effective upon signature by the USEPA Administrator.

Beyond that, the APA, 5 U.S.C. 553(d)(3), permits an agency to make a rule effective immediately "for good cause found and published with the rule." EPA finds that there is good cause to make this rule effective immediately in light of the imminent enactment of major amendments to the Clean Air Act. The amendments as passed by the Congress will impose significant new requirements on all areas currently designated nonattainment. See S. 1630, 101st Cong., 2nd Sess., as passed by both Houses of the Congress, October 27, 1990. In light of the fact that EPA has determined that Tulsa County should be redesignated to attainment status, has proposed and taken public comment on that proposal, and responded to all public comments received, it would be inappropriate to have Tulsa County subjected to new requirements reserved for nonattainment areas merely because the effective date of the redesignation fell after the date of enactment of the amended act. USEPA is therefore making this rulemaking effective immediately upon signature by the Administrator.

J. Final Action

Today, EPA is approving the SIP revision submittals of February 20, 1985, October 8, 1985, March 31, 1986, May 8, 1989, and March 9, 1990, which include: (1) Amendments to the stationary source regulations (i.e., Regulation 3.7.5 "Nonattainment Areas—Additional Controls Required"); (2) Transportation Control Measures; (3) the I/M plan with an anti-tampering regulation; and (4) the ozone plan control strategy and modeling analysis.

Also, based on three or more years of monitoring data that demonstrate attainment of the ozone NAAQS and, based on today's approval of the Tulsa ozone control strategy and plan, EPA is approving the State's request to redesignate Tulsa County to attainment for the ozone NAAQS.

Today's redesignation action is contingent upon the State and County maintaining an adequate ozone ambient air quality monitoring network and continuing full implementation of the nonattainment plan. Under the reasoning of *Bethlehem Steel Corp.* vs. *EPA*, 723 F.2d 1304 (7th Cir. 1983), EPA believes that it may not have the authority to redesignate an area to nonattainment without first receiving a request to do so from the affected State. Therefore EPA anticipates that should violations of the ozone NAAQS occur in the future, the State will request that EPA redesignate the area nonattainment. Also, this redesignation does not in any way relieve sources from their obligation to meet all applicable requirements of the approved ozone nonattainment plans (SIPs), nor does it authorize the State or County to delete or relax RACT emission limiting regulations. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA-approved plan cannot be made unless a revised plan for attainment and

maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [section 173(4) of the CAA] and in a SIP deficiency call made pursuant to section 110 (a)(2)(H) of the CAA.

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

Under 5 U.S.C. 605(b), I certify that redesignations do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 1991. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

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

Dated: October 31, 1990.

William K. Reilly,

Administrator.

40 CFR part 52, subpart LL, is amended as follows:

Subpart LL—Oklahoma

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1920 is amended by adding paragraph (c)(39) to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(39) On February 20, 1985, the Governor of Oklahoma, submitted a SIP revision designed to achieve the ozone standard in Tulsa County. Supplemental information was submitted on August 23, 1985, January 21, June 2, September 2, and December 22, 1986. The anti-tampering regulation was submitted to EPA by the Governor on October 8, 1985. On March 31, 1986, the Governor of Oklahoma submitted one new regulation. On May 8, 1989, the Governor of Oklahoma submitted one revised regulation. On March 9, 1990, the Governor of Oklahoma submitted four new regulations and several miscellaneous changes to the existing SIP approved regulations in Tulsa County. EPA is approving one regulation (OAPCR 3.7.5–4(f) "Petroleum (Solvent) Dry Cleaning") under part A, section 110 of the Clean Air Act. This regulation does not represent RACT under part D, section 172 of the Clean Air Act.

(i) *Incorporation by reference.*

(A) Oklahoma Air Pollution Control Regulation (OAPCR) 3.7 "Control of Emissions of Organic Materials" § 3.7.5–4(f) as adopted by the Oklahoma State Board of Health on February 7, 1985, and effective July 1, 1986.

(B) Oklahoma Air Pollution Control Regulation (OAPCR) 3.7 "Control of Emissions of Organic Materials" § 3.7.5–4(f), § 3.7.5–4(f)(1)(A), § 3.7.5–4(f)(1)(B)(vi), §3.7.5–4(f)(1)(B)(vii), § 3.7.5–4(f)(2)(B), § 3.7.5–4(f)(3)(A)(iv), § 3.7.5–4(f)(3)(B), § 3.7.5–4(f)(4), § 3.7.5–4(f)(4)(A), § 3.7.5–4(f)(4)(A)(i), § 3.7.5–4(f)(4)(A)(ii), § 3.7.5–4(f)(4)(A)(iii), § 3.7.5–4(f)(5), and § 3.7.5–4(f)(5)(A) as amended by the Oklahoma State Board of Health on January 29, 1987, and effective January 29, 1987.

(C) Amendments to Oklahoma Air Pollution Control Regulation (OAPCR) 3.7 "Control of Emissions of Organic Materials" § 3.7.5–1(a), § 3.7.5–2(a)(2)(A), § 3.7.5–4(b), § 3.7.5–4(e)(2)(A), § 3.7.5–4(f)(1)(A), § 3.7.5–4(f)(2)(A), § 3.7.5–4(f)(2)(B), and § 3.7.5–4(i) as amended by the Oklahoma State Board of Health on March 23, 1989, and effective June 11, 1990.

(D) Amendments to Oklahoma Air Pollution Control Regulation (OAPCR) 3.7 "Control of Emissions of Organic Materials" § 3.7.1(b)(10), § 3.7.1(b)(11), § 3.7.1(b)(12), § 3.7.1(b)(13), § 3.7.1(b)(14), § 3.7.5–2(a)(1)(B)(i), § 3.7.5–2(a)(2), § 3.7.5–2(a)(3)(A)(iv), § 3.7.5–2(a)(3)(A)(v), § 3.7.5–2(a)(4)(A)(ii), § 3.7.5–2(a)(5)(A), § 3.7.5–2(a)(6)(A)(i), § 3.7.5–2(a)(6)(A)(iii), § 3.7.5–2(a)(6)(B), § 3.7.5–2(a)(8)(A)(i), § 3.7.5–2(a)(9), § 3.7.5–2(b)(1), § 3.7.5–2(b)(2), § 3.7.5–2(b)(2)(A)(i), § 3.7.5–2(c)(1), § 3.7.5–2(c)(1)(A), § 3.7.5–2(c)(1)(B), § 3.7.5–2(c)(2), § 3.7.5–2(c)(3), § 3.7.5–2(c)(4), § 3.7.5–3(a)(2)(B), § 3.7.5–3(a)(3)(B)(i), § 3.7.5–4(b)(1)(A)(i), § 3.7.5–4(b)(1)(A)(ii), § 3.7.5–4(b)(1)(A)(iii), § 3.7.5–4(b)(3)(F), § 3.7.5–4(c)(1)(A), § 3.7.5–4(c)(1)(A)(ii), § 3.7.5–4(c)(1)(D), § 3.7.5–4(c)(1)(E), § 3.7.5–4(c)(2)(A)(i), § 3.7.5–4(c)(2)(A)(ii), § 3.7.5–4(c)(2)(A)(iii), § 3.7.5–4(c)(2)(A)(iii)(a), § 3.7.5–4(c)(2)(A)(iii)(d), § 3.7.5–4(c)(2)(C), § 3.7.5–4(c)(3), § 3.7.5–4(c)(3)(A), § 3.7.5–4(c)(3)(A)(i), § 3.7.5–4(c)(3) (B) through (C) added, § 3.7.5–4(c)(4), § 3.7.5–4(d)(5)(A), § 3.7.5–4(f)(1)(A), new § 3.7.5–4(g), § 3.7.5–4(i)(1)(B), § 3.7.5–4(i)(1)(B)(iii), § 3.7.5–4(i)(1)(B)(iv), § 3.7.5–4(i)(1)(D), § 3.7.5–4(i)(1)(E), and § 3.7.5–4(i)(2)(G), as amended/adopted by the Oklahoma State Board of Health on October 11, 1989, and effective May 25, 1990.

(E) Amendments to Oklahoma Air Pollution Control Regulation (OAPCR) 3.7 "Control of Emissions of Organic Materials" § 3.7.5–2(a)(1)(A), § 3.7.5–2(a)(1)(B), § 3.7.5–2(a)(1)(B)(i), § 3.7.5–2(a)(1)(B)(vii), § 3.7.5–2(a)(6)(A)(i), § 3.7.5–2(c)(3)(B), § 3.7.5–2(c)(4), § 3.7.5–4(g)(6), § 3.7.5–4(g)(11), § 3.7.5–4(i)(1)(D), § 3.7.5–4(i)(1)(E), § 3.7.5–4(i)(1)(F), § 3.7.5–4(i)(1)(G), and new § 3.7.5–4(j) as amended/ adopted by the Oklahoma State Board of Health on February 8, 1990, and effective May 25, 1990.

(F) Oklahoma Official Motor Vehicle Inspection Rules and Regulations Manual adopted December 5, 1985, and effective January 1, 1986.

(G) 47 O.S. SUPP. 856.1 et seq. adopted May 24, 1984, and effective May 24, 1984.

(H) OP. Oklahoma Attorney General number 84–174 (December 12, 1984).

(I) February 20, 1985, plan commitments for Tulsa County, including transportation control measures, page 8, and Reasonable Further Progress schedules and reporting commitments, pages 10 and 11, dated June 3, 1986.

(J) Title 37, chapter 4, section 167, Tulsa City Ordinance number 16466 as approved and effective October 15, 1985, by the City of Tulsa.

(K) An October 17, 1989, commitment letter, to develop and incorporate test methods into OAPCR 3.7 for determining the capture efficiency of control devices associated with coating operations.

(L) A January 16, 1990, commitment letter stating that the DPS will annually conduct unannounced visits to 10 percent of the Tulsa inspection stations.

(M) A September 28, 1990, Memorandum of Understanding.

(N) An October 12, 1990, letter to report semiannually to EPA, information relating to the effectiveness and enforcement of the I/M program.

(ii) *Additional material.*

(A) February 20, 1985, narrative plan revision designed to achieve the ozone standard in Tulsa County, including control strategy, modeling analysis, transportation control plan and measures, I/M program description, and negative declarations.

(B) A written interpretation by the DPS dated June 26, 1987, of the term "proper replacement" in § 856.1(C) of the Oklahoma statutes to mean "original equipment manufacturer (OEM) or equivalent".

40 CFR part 81, is amended as follows:

PART 81—[AMENDED]

1. The Authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.337 is amended by revising the Ozone (O_3) table to read as follows:

§ 81.337 Oklahoma.

* * * * *

OKLAHOMA—OZONE (O_3)

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
AQCR 017		X
AQCR 164:		
Oklahoma Co		X
Cleveland Co		X
Remainder of AQCR		X
AQCR 165		X
AQCR 186:		
Tulsa County		X
Remainder of AQCR		X
AQCR 187		X
AQCR 188		X
AQCR 189		X

* * * * *

[FR Doc. 91–2086 Filed 1–30–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2 and 80

[GEN Docket No. 88–372; FCC 91–16]

Automated Maritime Telecommunications Systems (AMTS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document changes rules applicable to Automated Maritime Telecommunications Systems (AMTS), an automated, integrated communications system for vessels to use as they move along an entire river system. The changes are to expand the geographic area of the service to make it available nationwide, and to license AMTS operators as systems including the users and to eliminate individual licenses for ship users. These changes are intended to make AMTS available in more areas.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: James Shaffer, Private Radio Bureau, (202) 632–7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, Gen. Docket No. 88–372, adopted January 10, 1991, and released January 25, 1991. 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, Downtown Copy Center, (202) 452–1422, 1919 M Street, NW., room 246, Washington, DC 20037.

Summary of Report and Order

An AMTS provides automated voice and data communications for tugs and barges along an entire river system. The FCC established the AMTS in 1981 to serve the Mississippi River System. The FCC expanded it to the Gulf Intracoastal Waterway in 1982 and the Gulf of Mexico in 1984, but said then it was prudent to evaluate an operating system before extending AMTS nationwide. The AMTS band (216–220 MHz) is adjacent to TV channel 13 (210–216 MHz) and the FCC has rules to forestall the possibility of interference to TV reception. Of the four AMTS channel Groups, A, B, C and D, the rules presently prohibit the use of Groups C and D, which are closer to channel 13 than Groups A and B, within 105 miles of a channel 13 station.

The FCC noted that an AMTS system had been operating for over 4 years on the Mississippi River and Gulf Intracoastal waterways. No cases of interference have occurred. The Report and Order permits nationwide expansion of the A and B channels but delays the full use of the C and D channels pending the outcome of RM–6196 a proposal to use part of this spectrum for a new interactive video and data service.

Currently the FCC licenses the AMTS operator and the ship users individually. The Report and Order provides to license only the operator, as a system, and eliminate licensing the ship users individually. Thus a ship could begin service as soon as it has a service agreement with the AMTS licensee, without having to obtain an FCC license itself.

Ordering Clauses

Accordingly, *it is ordered* that pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), parts 2 and 80 of the Commission's Rules *are amended* as set forth below effective March 11, 1991.

It is further ordered that a copy of this Report and Order will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 80

Communications equipment, Vessels, Automated maritime telecommunications system.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Final Rules

Parts 2 and 80 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 2: FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 2.106 [Amended]

2. Section 2.106, the Table of Frequency Allocations, is amended by removing footnote NG 121 from column 5 of the 216–220 MHz band and by removing the text of the footnote at the end of the table, § 2.106 Table of Frequency Allocations.

PART 80—STATIONS IN THE MARITIME SERVICES

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377, unless otherwise noted.

2. Section 80.5 is amended by revising the definition of automated maritime

telecommunications system to read as follows:

§ 80.5 Definitions.

* * * * *

Automated maritime telecommunications system (AMTS). An automatic, integrated and interconnected maritime communications system.

* * * * *

3. Section 80.29(a) is amended by adding one additional entry at the end of the table, to read as follows:

§ 80.29 Changes during license term.

(a) * * *

Type of change	Required action
* * * * *	
Increased number of mobiles (AMTS).	Written notice to the Commission.

* * * * *

4. A new § 80.54 is added to read as follows:

§ 80.54 Automated Maritime Telecommunications System (AMTS)—System Licensing.

AMTS licensees will be issued blanket authority for a system of coast stations and mobile units (subscribers). AMTS applicants will specify the maximum number of mobile units to be placed in operation during the license period.

5. Section 80.215 is amended by revising paragraph (h)(3) introductory text, by removing paragraph (h)(5) and redesignating paragraph (h)(6) as (h)(5) to read as follows:

§ 80.215 Transmitter power.

* * * * *

(h) * * *

(3) When located as described in paragraph (h)(2) of this section, the coast station (or stations affecting the same TV Grade B contour) will be authorized if the applicant's plan has limited the interference contour(s) to fewer than 100 residences or if the applicant:

* * * * *

6. Section 80.385 is amended by revising paragraph (a)(1) to read as follows:

§ 80.385 Frequencies for automated systems.

* * * * *

(a) * * *

(1) The Automated Maritime Telecommunications System (AMTS) is an integrated and interconnected maritime communications system.

* * * * *

7. Section 80.475 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (a) and (b); and by revising new paragraph (a) introductory text to read as follows:

§ 80.475 Scope of Service of the Automated Maritime Telecommunications System (AMTS).

(a) AMTS applicants proposing to serve inland waterways must show how the proposed system will provide continuity of service along more than 60% of each of one or more navigable inland waterways. Inland waterways less than 240 kilometers (150 miles) long must be served in their entirety. AMTS applicants proposing to serve portions of the Atlantic, Pacific or Gulf of Mexico coastline must define a substantial navigational area and show how the proposed system will provide continuity of service for it. A separate Form 503 is not required for each coast station in a system. However, the applicant must provide the technical characteristics for each proposed coast station, including transmitter type, operating frequencies, emissions, transmitter output power, antenna arrangement and location.

* * * * *

§ 80.1169 [Removed and Reserved]

8. Section 80.1169 and the heading "Automated Systems" immediately preceding it are removed and reserved.

[FR Doc. 91-2268 Filed 1-30-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 15 and 68

[Gen. Docket No. 89-605; FCC 91-12]

Cordless Telephones

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The Commission is adopting rules requiring cordless telephones to be equipped with security provisions that protect the public switched telephone network from unintentional line seizure and telephone dialing. This action is intended to reduce the harm being caused by cordless telephones to the "911" Emergency Services Telephone System and to the telephone network in general.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: George Harenberg, Technical Standards Branch, Office of Engineering and Technology, (202) 653-7314.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in Gen. Docket No. 89-605, FCC 91-12, adopted on January 8, 1991 and released on January 25, 1991.

The full text of this R&O, including the final regulatory flexibility analysis, 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, Downtown Copy Center, (202) 452-1422, 1114 21 Street, NW., Washington, DC 20036.

Summary of Notice

1. On September 1, 1988, the Personal Communications Section of the Telecommunications Industry Association (TIA) filed a petition requesting that the Commission consider rules requiring that cordless telephones provide increased protection to the telephone network from unintentional line seizure and dialing, and to the user from unintentional ringing. TIA recommended that this be achieved by requiring the transmission and use of a digital security code, or an equivalent method, so that a cordless telephone would not inadvertently respond to either electronic noise or another cordless telephone with a different security code. TIA expressed concern that, based on its studies, cordless telephones not equipped with security coding were causing significant interference to many telephone company services, to customers with low digit telephone numbers, and to the "911" Emergency Services Telephone System. In response to the TIA petition, the Commission, on December 11, 1989, adopted a Notice of Proposed Rule Making (NPRM) 55 FR 879, January 10, 1990, to consider adoption of rules requiring that cordless telephones be equipped with security features to prevent unintentional line seizure and false ringing.

2. From the evidence presented in this proceeding, it appears that interference to the public switched telephone network from cordless telephones, as well as the unintentional ringing of cordless telephones, is a growing problem. Furthermore, there is evidence that the Emergency Services Telephone System is being adversely affected by unintentional dialing by cordless telephones. It also appears that security coding is not being included in cordless telephones voluntarily by manufacturers at a rate satisfactory to resolve this problem. Thus, it appears that regulation is needed to protect the public switched telephone network from unintentional line seizure and dialing and to ensure that cordless telephones do not ring

unintentionally when in the presence of signals from other cordless telephones or other interfering electrical or electromagnetic emissions. The commenting parties were unanimous in supporting a requirement for cordless telephones to use digital security codes. Based on the record, the Commission believes that digital security coding offers a satisfactory means for achieving the Commissions objectives in this matter. Accordingly, the Commission is adopting regulations requiring digital security coding requirements.

3. The Commission is adopting regulations requiring digital security coding with a minimum of 256 code combinations and requiring manufacturers to continuously vary the security code of each telephone as it is manufactured, or to vary the security codes either randomly, sequentially, or by using any other systematic method. In addition, manufacturers of cordless telephones that utilize user-selectable security coding will be required either to continuously vary the initial security code or to provide cordless telephones that are incapable of transmitting until the user selects a security code. The Commission is also allowing combination of fixed, automatic, and user-selectable coding provided the coding schemes are consistent with these policies. To expedite the waiver process, the Commission authorizes the Chief Engineer to grant waivers allowing alternative methods of equivalent security coding, on a case-by-case basis.

4. In view of estimates submitted in the comments, that 10 million cordless telephones will be sold in the next year and that about half of these telephones could cause harmful interference to the telephone network, it appears that swift action is necessary. Based on the record, the Commission believes that it is economically feasible for manufacturers and importers to comply with these requirements within six months. Therefore, the Commission will require that, within six months of the effective date of this action, all cordless telephones manufactured or imported employ security coding. In addition, applications for a grant of equipment authorization of cordless telephones without digital coding, as specified above, will not be accepted by the Commission 60 days after the effective date of these rules. Cordless telephones that have already received equipment authorization and, without modification, already comply with the requirements of the rules that the Commission is adopting herein, need not be reauthorized.

5. Although not discussed in the NPRM, the Commission is also consolidating the general requirements for cordless telephones currently contained in 47 CFR 15.233 (h), (i), and (j), under the new 47 CFR 15.214. This change constitutes a minor amendment to the Commission's rules. It imposes no new requirement but, rather, eliminates possible confusion in the existing rules. Therefore, the Commission finds for good cause that, for this change, compliance with the notice and comment procedure of the Administrative Procedure Act is unnecessary. See 5 U.S.C. 553(b)(B).

6. *Regulatory Flexibility Final Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, the following final flexibility analysis has been prepared:

I. Need for and Objective of the Rules

Cordless telephones without digital coding appear to be causing significant interference to many telephone company services. In some cases, telephone line seizures have nearly closed down central offices and are causing significant unnecessary interference to many telephone company services, particularly to customers with low telephone numbers and to the "911" Emergency Services Telephone System. The objective of the rules being adopted is to reduce the amount of harm that is being caused by cordless telephones to the public switched telephone network and the "911" Emergency Services Telephone System.

II. Summary of Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment of Such Comments, and Changes Made as a Result

No commenting parties raised issues specifically in response to the initial regulatory flexibility analysis. The regulations being adopted in this Report and Order require cordless telephones to incorporate circuitry which makes use of a security code to provide protection against unintentional access to the public switched telephone network by the base unit of a cordless telephone and unintentional ringing by the handset of a cordless telephone. These functions will be required to operate such that each access of the telephone network or ringing of the handset is preceded by the transmission of a code word. Access to the telephone network will occur only if the code transmitted by the handset matches the code set in the base unit. Similarly, ringing of the handset is to occur only if the code transmitted by the base unit matches the code set in the handset. The proposed regulations are technically and economically achievable without undue burden on any entity. Manufacturers are being given substantial flexibility on how to implement security coding. Because these changes to the regulations will have an impact on a number of manufacturers, requiring redesign of their equipment, transition periods are being adopted. These transition periods will lessen the impact to manufactures, allowing manufacturers sufficient time to implement any needed design changes before compliance with the regulations adopted by this Report and Order is required.

III. Significant Alternatives Considered

The Commission has considered all of the alternatives presented in this proceeding and has adopted standards that can be achieved by industry while still providing adequate protection to the public switched telephone network. Alternatives that were considered include deleting all standards and restrictions on the marketing of non-complying equipment, retaining the present regulations, adopting the regulations proposed in the NPRM, or adopting tighter standards than proposed.

7. The Office of Management and Budget has approved the collection of information requirement contained in this rule. The OMB control number for this collection of information requirement is 3060–0436.

8. In accordance with the above discussion, *It is ordered,* That under the authority contained in sections 4(i), 301, 302, 303(e), 303(f), 303(r), 303(s), 304, and 307 of the Communications Act of 1934, as amended, parts 15 and 68 of the Commission's Rules and Regulations are amended as set forth below. These rules and regulations are effective March 11, 1991.

It is also ordered, That authority is delegated to the Chief Engineer to grant waivers to manufacturers employing alternative security coding methods, provided there is basis for finding that the coding employed will provide at least the same level of protection as that provided in the rules adopted herein. *It is further ordered,* That this proceeding is terminated.

List of Subjects

47 CFR Part 15

Radio, Communications equipment.

47 CFR Part 68

Terminal equipment, Telephone, Communications equipment.

Rule Changes

A. Title 47 of the Code of Federal Regulations, part 15 is amended as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 continues to read as follows:

Authority: Sections 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154, 302, 303, 304, and 307.

2. Section 15.37 is amended by adding a new paragraph (e) to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(e) For cordless telephones: The manufacture and importation of cordless telephones not complying with § 15.214(d) of this part shall cease on or before September 11, 1991. These provisions will not apply to cordless telephones which are repaired or refurbished, or re-imported after repair or refurbishment. Applications for a grant of equipment authorization of cordless telephones not complying with § 15.214(d) of this part will not be accepted by the Commission after May 10, 1991. Cordless telephones that have previously received equipment authorization and that, without modification, already comply with the requirements of § 15.214(d) of this part, need not be reauthorized.

3. A new § 15.214 is added, prior to the heading "Radiated Emission Limits, Additional Provisions", to read as follows:

§ 15.214 Cordless telephones.

(a) For equipment authorization, a single application form, FCC Form 731, may be filed for a cordless telephone system, provided the application clearly identifies and provides data for all parts of the system to show compliance with the applicable technical requirements. When a single application form is submitted, both the base station and the portable handset must carry the same FCC identifier. The application shall include a fee for certification of each type of transmitter and notification or certification, if appropriate, for each type of receiver included in the system.

(b) A cordless telephone which is intended to be connected to the public switched telephone network shall also comply with the applicable regulations in part 68 of this chapter. A separate application for registration under part 68 of this chapter is required.

(c) The label required under subpart A of this part shall also contain the following statement: "Privacy of communications may not be ensured when using this phone."

(d) Cordless telephones shall incorporate circuitry which makes use of a digital security code to provide protection against unintentional access to the public switched telephone network by the base unit and unintentional ringing by the handset. These functions shall operate such that each access of the telephone network or ringing of the handset is preceded by the transmission of a code word. Access to the telephone network shall occur only if the code transmitted by the handset matches code set in the base unit. Similarly, ringing of the handset shall occur only if the code transmitted by the base unit matches the code set in the handset. The security code required by this section may also be employed to perform other communications functions, such as providing telephone billing information. This security code system is to operate in accordance with the following provisions.

(1) There must be provision for at least 256 possible discrete digital codes. Factory-set codes must be continuously varied over at least 256 possible codes as each telephone is manufactured. The codes may be varied either randomly, sequentially, or using another systematic procedure.

(2) Manufacturers must use one of the following approaches for facilitating variation in the geographic distribution of individual security codes:

(i) Provide a means for the user to readily select from among at least 256 possible discrete digital codes. The cordless telephone shall be either in a non-operable mode after manufacture until the user selects a security code or the manufacturer must continuously vary the initial security code as each telephone is produced.

(ii) Provide a fixed code that is continuously varied among at least 256 discrete digital codes as each telephone is manufactured.

(iii) Provide a means for the cordless telephone to automatically select a different code from among at least 256 possible discrete digital codes each time it is activated.

(iv) It is permissible to provide combinations of fixed, automatic, and user-selectable coding provided the above criteria are met.

(3) A statement of the means and procedures used to achieve the required protection shall be provided in any application for equipment authorization of a cordless telephone.

4. Section 15.233 is amended by removing paragraphs (h), (i), (j), and (k), and adding new paragraph (h) to read as follows:

§ 15.233 Operation within the bands 46.60–46.98 MHz and 49.66–50.0 MHz.

* * * * *

(h) For cordless telephones that do not comply with § 15.214(d) of this part, the box or other package in which the individual cordless telephone is to be marketed shall carry a statement in a prominent location, visible to the buyer before purchase, which reads as follows:

Notice: The base units of some cordless telephones may respond to other nearby units or to radio noise resulting in telephone calls being dialed through this unit without your knowledge and possibly calls being misbilled. In order to protect against such occurrences, this cordless telephone is provided with the following features: (to be completed by the responsible party).

An application for certification of a cordless telephone shall specify the complete text of the statement that will be carried on the package and indicate where, specifically, it will be located on the carton.

B. Title 47 of the Code of Federal Regulations, part 68 is amended as follows:

PART 68—[AMENDED]

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, 48 Stat. as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 154, 201, 202, 203, 204, 205, 208, 215, 218, 313, 403, 404, 410, 602, unless otherwise noted.

2. Section 68.200 is amended by adding a new paragraph (k) to read as follows:

§ 68.200 Application for equipment registration.

* * * * *

(k) Any application for registration of a cordless telephone operating under the provisions of part 15 of this chapter shall be accompanied by a statement indicating that the device contains appropriate provision for protection of the public switched telephone network, pursuant to the requirements in § 15.214 of this chapter.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–2265 Filed 1–30–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90-460; RM-7377]

Radio Broadcasting Services; Van Buren, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 274C2 for Channel 272A at Van Buren, Arkansas, and modifies the license of LKR Communications, Inc., for Station KLSZ-FM, as requested, to specify operation on the higher powered channel. See 55 FR 45621, October 30, 1990. Coordinates used for Channel 274C2 at Van Buren are 35-17-55 and 94-25-26. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 11, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-460, adopted January 14, 1991, and released January 25, 1991. 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 auhtority 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 for Arkansas, is amended by removing Channel 272A and adding Channel 274C2 at Van Buren.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-2266 Filed 1-30-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 80

[PR Docket No. 90-26; FCC 91-1]

VHF Ship Station Transmitter Requirement To Automatically Cease Operation After a Predetermined Period of Uninterrupted Operation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: These rules require marine VHF radios type-accepted after the effective date to incorporate time-out circuitry. The circuitry will cause VHF station transmitters to automatically cease operation after a five minute period of uninterrupted operation. The circuitry will also incorporate a warning device to alert the operator immediately that the transmitter has been deactivated. This action was taken in response to a petition submitted by the Southern California Marine Radio Council (SCMRC) which proposed the incorporation of time-out circuitry to help eliminate "stuck carriers", that is, a continuous radio signal radiated by the inadvertent operation of a transmitter. The effect of the rule change will be enhanced safety resulting from the reduction of interference on VHF channels.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: J. Joy Alford, Aviation & Marine Branch, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted January 2, 1991, and released January 16, 1991. 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 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20037.

Summary of Order

1. This Report and Order amends part 80 of the Commission's Rules 47 CFR part 80, governing the maritime radio services, to require marine radios type-accepted after the effective date to incorporate time out circuitry. Channels in the VHF maritime mobile service 156-162 MHz, are used for ship-to-ship and ship-to-shore communications. Channels are allotted for safety and operation communications as well as public correspondence. Channel 16 (156.800 MHz) is the international maritime VHF distress, safety and calling frequency. A continuous listening watch on channel 16 is maintained by the U.S. Coast Guard. Ships required by treaty or statute to carry VHF stations and any ship voluntarily equipped with an operating VHF station must maintain a listening watch on channel 16 when the station is not being used for other communications. In its petition, the SCMRC requested that all newly manufactured or imported VHF ship station transmitters be required to turn off automatically when transmitting for more than a specific period of time. The object of the proposal is to help eliminate "stuck carriers," thereby preventing harmful interference on channel 16 and other VHF channels. The Report and Order discusses the comments filed regarding the proposed rules in the Notice of Proposed Rulemaking/55 FR 4886, February 12, 1990 and provides for equipment phase out periods designed to minimize any adverse impact upon manufacturers, dealers and consumers.

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

3. The Report and Order contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

4. Authority for this action is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

5. *It is ordered* that part 80 of the Commission's Rules is amended as shown at the end of this document, effective March 4, 1991.

Lists of Subjects in 47 CFR Part 80

Communications equipment, Marine safety, Radio, Stuck carriers, VHF ship stations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 80 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.203, the first sentence in paragraph (a) is revised, paragraphs (c) through (k) are redesignated as paragraphs (d) through (l), and a new paragraph (c) is added to read as follows:

§ 80.203 Authorization of transmitters for licensing.

(a) Each transmitter authorized in a station in the maritime services after September 30, 1986, except as indicated in paragraphs (g), (h) and (i) of this section, must be type accepted by the Commission for part 80 operations.

* * *

* * * * * *

(c) All VHF ship station transmitters capable of operation on frequencies contained in § 80.373(f) of this part that are either manufactured in or imported into the United States, on or after August 1, 1993, or are initially installed on or after August 1, 1994, must be equipped with an automatic timing device that deactivates the transmitter and reverts the transmitter to the receive mode after an uninterrupted transmission period of five minutes, plus or minus 10 per cent. Additionally, such transmitters must have a device that indicates when the automatic timer has deactivated the transmitter. VHF ship station transmitters initially installed before August 1, 1994, are authorized for use indefinitely at the same maritime station.

(1) Hand-held transmitters are not required to comply with the requirements in paragraph (c) of this section.

* * * * *

[FR Doc. 91-2287 Filed 1-30-91; 8:45 am]
BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 21
Thursday, January 31, 1991

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

DEPARTMENT OF AGRICULTURE

Food And Nutrition Service

7 CFR Parts 271, 275, and 277

[Amdt. No. 328]

RIN 0584-AA76

Food Stamp Program: Miscellaneous Quality Control Provisions of the Hunger Prevention Act of 1988

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes changes to Food Stamp Program regulations based on section 320, section 602, and parts of section 604 of the Hunger Prevention Act of 1988 (Pub. L. 100–435, enacted September 19, 1988). Section 320 requires minor changes in the corrective action planning State agencies must complete because of quality control errors. Section 602 requires State agencies to pay interest on unpaid quality control related claims assessed against State agencies with payment error rates which exceed an established tolerance level. The portions of section 604 which are addressed in this rule involve the Food Stamp Act provisions relating to enhanced funding (an increased Federal share of program administrative costs), and quality control liabilities (the sharing of costs of payment error by State agencies with error rates which exceed a national error tolerance level).

This proposal also addresses the issue of Federal sample sizes in quality control. Currently, it is possible for the Federal QC sample to be affected if a State agency does not complete the number of case reviews specified in its sampling plan. This proposed rule would allow the Food and Nutrition Service to select less than the required sample size in instances where a State agency does not complete its required number of case reviews.

DATES: Comments must be received by April 1, 1991 to be assured of consideration.

ADDRESSES: Send comments to Quality Control Policy Section, Quality Control Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Part Center Drive, Room 907, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Lynn Jordan, Supervisor, Quality Control Policy Section, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 905, Alexandria, Virginia 22302, (703) 756–3472.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291/Secretary's Memorandum 1512–1

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has classified this rule as non-major. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

One of the provisions of this proposed rule modifies the required contents for quality control sampling plans. 7 CFR 272.2 requires each State agency to submit a quality control sampling plan as part of the annual update of its State Plan of Operations (OMB authorization number 0584–0083). The reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The proposed modifications eliminate some superfluous sampling plan requirements for State agencies that do not employ alternative sample designs. For State agencies that do employ alternative sample designs, the proposed modifications simply clarify current requirements. The proposed modifications will not change the average reporting burden of 10 hours per response for a State agency to prepare annual updates to its State Plan of Operations as approved under 0584–0083. It is requested that comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, be sent to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0584–0083), Washington, DC 20503.

No other provision of this proposed rulemaking contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Section 604 of Public Law 100–435 revises Section 16(c) of the Food Stamp Act of 1977, as amended. Section 16 of the Food Stamp Act is entitled "Administrative Cost-Sharing and Quality Control". Subsection (c) of this Section concerns payment accuracy and provides for liabilities against State agencies with payment error rates that exceed established tolerance levels, and

provides for enhanced funding for State agencies with the lowest error rates. The Hunger Prevention Act of 1988, Public Law 100–435, enacted September 19, 1988, includes a number of provisions, under title VI, which replace key features of the existing quality control ("QC") system to create a new system for improving payment accuracy. The emphasis of Public Law 100–435 is to reduce the number of quality control claims against State agencies by comparing the State error rates to the national average error rate instead of a fixed error rate goal of 5 percent as in the current system. In addition, State agencies will be assessed interest on claims unpaid after a given deadline.

As part of the implementation of the new payment accuracy system, this action proposes regulations to implement amendments made by section 602, Interest on Claims Against State Agencies, and portions of section 604, Payment Accuracy Improvement System of Public Law 100–435. Other sections of Public Law 100–435 concerned with payment accuracy such as State agency investment in the Food Stamp Program, variance exclusions, good cause determinations, and the use of administrative law judges in the appeal process have been, or will be published separately.

This action also proposes regulations to implement amendments made by portions of section 320, Correcting Improper Denials and Underissuances, and proposes regulatory changes in regard to required Federal sample sizes. Inasmuch as these proposed changes are concerned with the accuracy of payments to eligible Food Stamp households and the accurate calculation of the regressed payment error rate, the Department has decided to include these proposed changes in this rule relating to payment accuracy.

Definitions—§ 271.2

Among the changes made by section 604 of Public Law 100–435 is a revised definition of "payment error rate". The current definition of payment error rate is the sum of overissuances to eligible households and issuances to ineligible households, expressed as a percentage of all food stamp allotments. The new definition of the payment error rate includes underissuances to eligible households. More specifically, section 604 states that the payment error rate is the sum of the point estimates of the overpayment and the underissuance error rates determined by the Secretary from data collected in a probability sample of participating households. The legislative history (Cong. Record, August 11, 1988, pages 6843–6844) stresses that both overissuances and underissuances are important to determine the accuracy of a State agency's administration of the Food Stamp Program. Further, the legislative history indicates that the new definition of payment error rate is designed to increase the emphasis on overall payment accuracy for which State agencies are to be held accountable (H.R. Rep. No. *100–828*, 100th Cong. 2d Sess. 34–35 (1988)). Therefore, the Department is proposing to revise the definition of "payment error rate" found in 7 CFR 271.2 to incorporate underissuances.

In redefining "payment error rate", section 604 uses the terms "overpayment error rate" and "underpayment error rate". "Overpayment error rate" is defined in section 604 as the percentage of the value of all allotments issued in a fiscal year that are either (1) issued to households that fail to meet basic program eligibility requirements or (2) overissued to eligible households. "Underpayment error rate" is defined as the ratio of the value of allotments issued in a fiscal year by a State agency. The Department proposes to codify these definitions into the Food Stamp program regulations. It should be noted that with the addition of "underpayment error rate" the regulations will contain defintions for both "under*issuance* error rate" and "under*payment* error rate". It is the Department's intention to leave both definitions in the regulations since some sections of the regulations will refer to underissuance error rate (i.e., the regulations pertaining to enhanced funding prior to FY 1986), and some sections of the regulations will refer to underpayment error rate (i.e., the regulations pertaining to the payment error rate beginning in FY 1986). However, the Department proposes to change the current definiton of "underissuance error rate" in order to make it clear that these are equivalent terms.

Federal Sample Size—§ 275.3

In the context of revising the QC regulations to implement the Hunger Prevention Act of 1988, the Department is proposing certain technical changes to current provisions establishing minimum Federal subsample sizes. These changes provide for a decrease in Federal subsample size when a State agency does not complete the number of case reviews specified in its sampling plan and/or when a State agency does not report a change in its required sample size to the appropriate FNS Regional Office within 10 days of effecting the change. Current rules base Federal sample sizes on the State agency's required sample. For example, current rules at 7 CFR 275.3 require a minimum of 400 active Federal reviews for State agencies with a required active sample size of 1200. It has been argued that the current rules require the Federal government to select a minimum of 400 reviews even if the State completed substantially less than the 1200 cases. The Department is proposing to amend 7 CFR 275.3(c) to clarify that it need not select the prescribed sample size if a State agency (1) does not complete the number of case reviews specified in its sampling plan and/or (2) does not report a change in sampling procedures associated with a revision in its required sample size to the appropriate Regional Office within 10 days of making the change. This would be applied to both active and negative reviews. The formulas for calculating the minimum federal sample sizes when neither of the above conditions (1) or (2) occur would remain unchanged.

State Agency Sampling—§ 275.11

Under the current regulations, a State agency may use an alternative sample design as long as its alternate design provides population estimates with equivalent or better precision than a systematic or simple random design (the "equal-or-better precision requirement"). Becase Public Law 100–435 redefines "payment error rate", the Department is proposing to amend 7 CFR 2765.11(b)(4) to update the language in the equal-or-better-precision requirement for alternative sample designs to specify that this precision requirement applies to the redefined payment error rate. The Department is also proposing two other minor revisions in the language of the equal-or-better-precision requirement for alternative sample designs. On of these revisions clarifies that the equal-or-better-precision requirement applies to any type of alternative design, regardless of whether its sample size is larger or smaller than the corresponding simple-random-sample design. The second minor revision clarifies that the equal-or-better precision requirement involves predicted precisions and not end-of-year calculated precisions.

The Department is also proposing a technical correction that relocates regulatory language from 7 CFR 275.11(a)(2) (criteria for sampling plans) to 7 CFR 275.11(b)(4) (alternative designs). Four of the criteria currently listed for all sampling plans were originally proposed by the Department to apply only to alternative sampling designs (44 FR 21533), published April 10, 1979). These four criteria are: (1) Documentation of estimation methods,

(2) demonstration of the equal-or-better-precision requirement, (3) description of weighting procedures, and (4) provisions for maintenance of current effort in other phases of the quality control process. The technical correction proposes to revert the Department's original approach to this matter. In particular, the Department is proposing to eliminate these four criteria from being required for *all* sampling plans and to require them to be included only under certain circumstances in sampling plans containing alternative designs.

Corrective Action Plans (CAPs)—§275.16

Introduction

Food Stamp Program regulations regarding CAPs are incorporated at 7 CFR 275.16 through 275.19. CAPs describe intended actaions to correct a variety of deficiencies in State agency operations, including those which result in errors detected through the QC review process. Sections 320 and 604 of Public Law 100–435, specify two new sets of circumstances that would requires a State agency to develop a CAP. The two categories are as follows:

1. *State agencies not entitled to enhanced funding.* Section 604 of Public Law 100–435 amends section 16(c)(1)(B)) of the Food Stamp Act to require State agencies which are not entitled to enhanced funding (as discussed later in this rule under the paragraph labeled *Enhanced Funding*) to develop and follow corrective action plans to reduce payment error rates. State agencies are currently required to develop CAPs to reduce QC errors if a State agency's combined overpayment and underpayment error rate equals five percent or more. These changes would be incorporated through the proposed revisions in 7 CFR 275.16(b)(2).

2. Systemic problems resulting in underissuances, or improper denials and terminations. Section 320 of Public Law 100–435 added a further provision to the Food Stamp Act (section 11(p)) which requires State agencies to take steps to prevent the recurrence of errors which result in underissuances, improper denials, or terminations of benefits to a household, when such errors are caused by State agency practices, rules or procedures which are inconsistent with the Food Stamp Act or regulations or policies of the Secretary. In instances where incorrectly applied policy is the root cause of underissuances, the State agency would have to take corrective action, for example, by revising its manual materials. Similarly, procedures and practices that result in underissuances, or improper denials or terminations would be required to be corrected. Section 320 makes clear that errors of these types are subjects for corrective action regardless of whether or not the State agency is entitled to enhance funding. State agencies would not be required to take corrective action beyond what is necessary on an individual case if the error was particular to the individual case and did not reflect a systemic problem. These changes would be incorporated through a new paragraph at 7 CFR 275.16(b)(6).

All other categories of circumstances that require the development of corrective action plans, as currently set out in Food Stamp program regulations at 7 CFR 275.16(b), will remain unchanged.

Payment-error Tolerance Levels—§ 275.23

Introduction

The current rules at 7 CFR 275.23, published February 17, 1984 (49 FR 6292), specify a payment error rate goal of five percent (overissuance cases only) for a fiscal year. The payment error rate goal means that a State agency's payment error rate must be five percent or less to avoid liability for excessive errors and, if other criteria are also met, to receive enhanced funding. Section 604 of Public Law 100–435 sets up a new three-tier system of payment error rate (now redefined as including both overissuances and underissuances) goals and consequences:

1. State agencies with payment error rates in excess of the new national payment-error tolerance level, will face claims for excessive error rates.

2. State agencies with payment error rates at least a full one tenth percentage point below 6% will receive, under certain circumstances, enhanced funding.

3. State agencies with payment error rates such that they fall into neither of the first two categories will be subject to neither quality control claims nor entitled to enhanced funding.

The legislative history stresses the importance of these changes in goals as ways to provide a better balance between "rewards" (enhanced funding) and "penalties" (liabilities) for State performance. The legislative history goes on to say that the new method for calculating tolerance levels recognizes both: (1) Differences among States as to administration and participation and (2) statistical variations in individual State error rates as a result of sampling procedures and other causes. (See H.R. Rep. No. *100–828,* 100th Cong. 2d Sess. 34–36 (1988)).

National Payment-Error Tolerance Level

Under the method for establishing tolerance levels specified by section 604 of Public Law 100–435, the Department is to announce a national performance measure within nine months following the end of each fiscal year. This national performance measure is the sum of the products of each State agency's payment error rate times its proportion of the total value of allotments issued nationwide for the fiscal year. Once announced, the national performance measure for a given fiscal year will not be subject to change. The legislative history states that even though individual State error rates and related claims could change as a result of subsequent arbitration or correction of computational problems the national payment error rate used to set tolerances would not change. (See H.R. Rep. No. *100–828,* 100th Cong. 2d Sess. 36 (1988)). The payment-error tolerance level for any fiscal year is determined by adding one percentage point to the lowest national performance measure ever announced up to and including that fiscal year. For example, if the national performance measure for fiscal 1986 is 10 percent, the tolerance level for that year is 11 percent. Should the national performance measure for fiscal 1987 go up to 10.5 percent, the tolerance level remains at 11 percent since 10 percent was the lowest national performance measure achieved up to and including FY 1987.

State Agencies Subject to Liabilities

The payment-error tolerance level is used to determine the State agency's share of the cost of the payment error rate. In other words, an individual State agency's payment error rate would be measured against the lowest national performance measure achieved plus one percentage point. FNS would establish a claim against any State agency with a payment error rate that exceeded this level. The first national performance measure for determining the tolerance level and State agency liabilities will be that calculated for FY 1986.

Under current regulations at 7 CFR 275.23(e) State agency liabilities for failure to meet payment error rate goals are based on a percentage of a State's Federally funded share of administrative costs for the Food Stamp Program. Section 604 of Public Law 100–435 specifies that beginning with Fiscal Year 1986, State agency liabilities for failure to meet the payment-error tolerance level shall be equal to the difference between a State's payment error rate (PER) and the payment-error tolerance

level as a quantity, multiplied by the total value of the allotments issued in the fiscal year by that State agency [(PER—Tolerance level) × total allotment].

State Agencies Entitled to Enhanced Funding

A State agency with a payment error rate less than or equal to 5.90 percent and with a negative case error rate less than the national weighted mean negative case rate for the prior fiscal year will have its Federally funded share of administrative costs provided under section 16(a) of the Food Stamp Act, other than costs already shared in excess of 50 percent, increased by one percentage point to a maximum of 60 percent for each full one-tenth of a percentage point by which the payment error rate is less than six percent. It should be noted that section 604 of Public Law 100–435 specifically states that in order to qualify for enhanced funding, a State agency's payment error rate must be at least one full tenth of a percentage point under the six percent level. It is therefore possible for a State agency to achieve a payment error rate below the six percent level (for example, 5.95%) and still not qualify for enhanced funding. It is for this reason that the Department has referred to payment error rates of less than or equal to 5.90 percent in the proposed regulations at 7 CFR 275.23(e) regarding enhanced funding.

State Agencies Not Subject to Liabilities or Enhanced Funding

State agencies with payment error rates below the level at which the Department establishes a claim but which are not entitled to enhanced funding are not subject to any financial consequences from the new system. However, State agencies which fall into this category are required to develop and implement corrective action to reduce overissuance and underissuance errors as long as their error rates remain above the level for enhanced funding.

Proposed Changes for § 275.23

Current rules at 7 CFR 275.23(e) discuss the liabilities for payment error rates including the establishment of payment error rate goals. Because the new tolerance levels are to be implemented for QC review periods that begin October 1, 1985, the Department proposes to amend 7 CFR 275.23(e)(2) by deleting references to a five percent error rate goal for Fiscal Years 1986 and beyond by revising 7 CFR 275.23(e)(2)(ii) and (iii) respectively, to address the payment error rate for Fiscal Years 1986 and beyond. 7 CFR 275.23(e)(3) would be renamed "State Agencies Failing to Achieve Payment Error Rate Goals FY 1983 Through FY 1985." 7 CFR 275.23(e)(4) though (e)(7) would be redesignated as (e)(5) through (e)(8) and a new paragraph (e)(4) would be added to address the failure to meet payment error rate goals for Fiscal Years 1986 and beyond.

The Department proposes that newly designated paragraph 275.23(e)(7) be revised to address the changes in error-rate estimation necessitated by the redefinition of the payment error rate by section 604 of Public Law 100–435. The procedures currently in this redesignated section that apply to fiscal years prior to and including 1985 will remain unchanged except to indicate that these procedures are only applicable for the period preceding FY 1986.

For Fiscal Year 1986 and subsequent fiscal years, section 604 of Public Law 100–435 defines the payment error rate to be the sum of two component error rates—an overpayment error rate and an underpayment error rate. For 1986 and after, the Department proposed to use its current procedures to separately estimate the component error rates and then add together the two results to estimate the payment error rate. The Department's reasons for proposing this approach are: (1) It corresponds to the section 604 language redefining the payment error rate and (2) recent research demonstrates that the Department's current error-rate estimation procedures are statistically sound (Morris Hansen and Benjamin Tepping, *A Statistical Evaluation of Food Stamp Quality Control* (1987)).

This proposed rulemaking contains other changes from the current regulations which are only technical changes. One of these changes is in the terminology used to describe the estimation of component error rates. The proposed language of newly designated paragraph 275.23(e)(7)(i) replaces the phrase "State agency's estimated erorr rate[s] shall be adjusted' currently found at 275.23(d)(7)(i), with the equivalent phrase "FNS shall calculate regressed error rates". The latter phrase is consistent with statistical terminology in widely available sampling textbooks, such as William G. Cochran's *Sampling Techniques* (1977) and avoids confusion between the results from regression estimation and the adjustment due to non-completion described in newly designated paragraph 275.23(e)(7)(iii).

A second technical change is that in the revised language in newly designated paragraph 275.23(e)(7)(iii) the narrative description of the non-completion adjustment is replaced with the equivalent calculation formulas. These calculation formulas are equivalent to both the description in the current regulations and to the detailed preamble discussion presented by the Department when the current non-completion adjustment was first proposed (at 48 FR 34661 published July 29, 1983). The Department is proposing this technical change because section 604 of Public Law 100–435 redefines the payment error rate. Consequently the Department wishes that the associated non-completion adjustment be described in a manner that is not easily accomplished by extending the current narrative description but is easily achieved by specifying the calculation formulas.

The Department encourages comments regarding the technical changes described above.

Interest Charges

A new paragraph, (e)(9), is proposed to be added to 7 CFR 275.23 which would require the Department to assess and collect interest on quality control related claims against State agencies in accordance with section 602 of Public Law 100–435. Section 602 specifies that to the extent a State agency does not pay a claim established under section 16(c)(1)(C) of the Act within 30 days of receipt of the bill, it becomes liable for interest on the unpaid portion of the claim accruing from the date the bill for collection is received by the State agency. If the State agency has agreed to pay a claim through reduction of its Federal administrative funding and that reduction does not occur by the 30th day, no interest would be charged because the reduction has been agreed to and the delay is not the fault of the State agency. Further, section 602 of Public Law 100–435 discusses handling of interest payments when the State agency pursues an administrative appeal of the claim. Under this circumstance, the interest accrues from the date of the decision of the administrative appeal or from a date that is two years after the date the bill is received, whichever is earlier, until the unpaid portion of the claim is received. In other words, any claim involved in an appeal that is not decided within two years after the original billing will be subject to interest payments accruing from the two year point forward. If the State agency pays a claim at that point (or earlier) and the claim is subsequently overturned through administrative or judicial appeal, any amount paid would be promptly returned with interest accruing from the

date of the payment, to the date it is returned.

The rate of interest for either an unpaid State claim or a Federal repayment of a claim, is to be computed at a rate based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during the period the interest is accruing. The weekly 90-day Treasury bill auction rates are routinely established on Monday of each week, and announced by the U.S. Treasury Department's Office of Domestic Finance in a press release every Monday afternoon. These rates are routinely reprinted in major daily newspapers across the country. The bond equivalent is the discount rate (i.e., the price the bond is actually sold for as opposed to its face value) determined by the weekly auction (i.e., the difference between the discount rate and face value) converted to an annualized figure. The current rates are averaging around 9.0–9.1 percentum based on 365 days. The Department is proposing to use the investment rate (i.e., the rate for 365 days) compounded in simple interest for the period for which the claim is not paid. Interest billings would be made quarterly with the initial billing accruing from the date the interest is first due. Because the discount rate for Treasury bills is issued weekly, the interest rate for State agency claims would be averaged for the appropriate weeks.

The legislative history emphasizes that the interest provisions would only apply to QC liabilities for FY 1986 and beyond, as newly determined based on the new tolerance level and that the purpose of the provision is to provide an incentive for the Federal and State governments to move toward more rapid resolution of claims. H.R. Rep. No. 100–828, 100th Cong., 2d Sess. 30–31 (1988).

Claims Collection

Prior to Public Law 100–435, section 16 (c) and (d) of the Food Stamp Act addressed payments of liabilities owed by State agencies in terms of reduction of the Federal share of a State agency's administrative funding and payment of enhanced funding by increasing the Federal share of administrative funding. While the method of payment for enhanced funding has not changed, section 604 of Public Law 100–435 did delete the specific reference to withholding claims from administrative funds. The Department proposes that claims may be collected in whatever manner the Department and the affected State agency may agree. However, in the absence of a mutually agreed upon alternative method of payment, the Department retains the authority under section 13(a)(1) of the Food Stamp Act to reduce administrative funding in order to collect unpaid claims assessed against the State agency. Furthermore, should a State agency fail to carry out the terms of a settlement agreement, the Department will reduce administrative funding in order to collect unpaid claims in accordance with section 13(a)(1) of the Food Stamp Act.

Arbitration for Underissuance Cases

On January 21, 1988, (53 FR 1603), the Department published a final rule that set a time limit of 28 days for State agencies: (1) To request regional arbitration of cases in which the State agency disagreed with the Regional Office QC findings, and (2) to request national arbitration of cases in which the State agency disagreed with the findings of the Regional Arbitrator. This provision was effective for cases in which the State agency received the Federal findings on or after February 22, 1988. Because underissuances were not part of the determination of liability for State agencies prior to the rule the Department is currently proposing, it is possible that State agencies did not request arbitration on cases involving underissuances. The Department proposes to allow State agencies 60 days from the publication, in final form, of the regulations proposed in this rule to request arbitration for any Federally subsampled underissuance cases for which the State agency received Regional Office QC findings or Regional Arbitrator findings on or after February 22, 1988. This proposal would apply to any subsampled case in which the State agency, FNS Regional Office QC unit, or Regional Arbitrator had concluded that an underissuance existed.

Following submission and consideration of public comments, a rule to this effect will be printed in the final rulemaking at 7 CFR 272.1(g).

Arbitration of underissuance cases for FY 1986 through February 22, 1988 is allowed under a final rule published January 18, 1990 (55 FR 1670). Under this rule, State agencies were allowed until June 18, 1990 to request arbitration for cases in which Federal findings were received by the State agency prior to February 22, 1988. It should be noted that this rule regarding cases in which Federal findings are received prior to February 22, 1988 applies only to cases in which the Federal findings disagree with the findings of the State agency. Interested parties are encouraged to comment on this proposal.

Implementation

Section 701 of Public Law 100–435 sets implementation dates for the various provisions of Public Law 100–435 addressed in this proposed rule. The provisions of section 604 that amended section 16(c) of the Act are effective on October 1, 1985 with respect to claims for QC review periods after that date, as are the provisions in section 602 providing for interest on claims and regarding Federal sample size. The provision on enhanced funding is effective October 1, 1988 for review periods after that date. The corrective action provision of section 320 is effective October 1, 1988.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-Social programs.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting, and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procedure, Grant programs—Social programs, Investigations, Records, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, parts 271, 275 and 277 of chapter II of title 7 Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation appearing after the table of contents for parts 271, 275, and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definition of "payment error rate" and "underissuance error rate" are revised and two new definitions "overpayment error rate" and "underpayment error rate" are added in alphabetical order.

The revision and additions read as follows:

§ 271.2 Definitions.

* * * * *

Overpayment error rate means the percentage of the value of all allotments issued in a fiscal year that are either:

(1) Issued to households that fail to meet basic program eligibility requirements, or

(2) Overissued to eligible households.

Payment error rate means the sum of the point estimates of two component error rates: An overpayment error rate and an underpayment error rate. Each component error rate is the value of

allotments either overissued or underissued expressed as a percentage of all allotments issued to completed active sample cases, excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FNS.

* * * * *

Underissuance error rate. (See "Underpayment error rate".)

Underpayment error rate means the ratio of the value of allotments underissued to recipient households to the total value of allotments issued in a fiscal year by a State agency.

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

3. In § 275.1, paragraph (b) is revised to read as follows:

§ 275.1 General scope and purpose.

* * * * *

(b)(1) The Food Stamp Act authorizes the Secretary to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the program. The Act further authorizes the Secretary to increase the percentage share if:

(i) The State agency's payment error rate is less than or equal to 5.90 percent, and

(ii) The State agency's negative case error rate is less than the national weighted mean negative case error rate for the prior fiscal year.

(2) If a State agency qualifies for an increased percentage share, the amount of increase will be an additional percentage point for each full tenth of a percentage point by which the payment error rate is less than six percent, up to a maximum of 60 percent of administrative costs. Those State agencies not receiving the increased share of funding shall develop and implement corrective action plans to reduce payment errors. Corrective action shall be completed as required in Subpart E of this section.

4. In § 275.3, paragraphs (c)(1)(i)(A) and (c)(3)(i)(A) are revised to read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* * * *

(1) *Payment error rate.* * * *

(i) * * *

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review, except that FNS may select a lower number of sample cases if:

(*1*) The State agency does not report a change in sampling procedures associated with a revision in its required sample size within 10 days of effecting the change; and/or

(*2*) The State agency does not complete the number of case reviews specified in its sampling plan.

* * * * *

(3) *Negative case error rate.* * * *

(i) * * *

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review, except that FNS may select a lower number of sample cases if:

(*1*) The State agency does not report a change in sampling procedures associated with a revision in its required sample size within 10 days of effecting the change; and/or

(*2*) The State agency does not complete the number of case reviews specified in its sampling plan.

* * * * *

§ 275.10 [Amended]

5. In § 275.10, the last sentence of paragraph (a) is amended by removing the words "with combined payment error and underissuance error rates of 5 percent or more" and adding the words "that is not entitled to enhanced funding" in their place.

6. In § 275.11:

a. The introductory text of paragraph (a)(2) is amended by adding a new sentence between the heading and the first sentence;

b. Paragraphs (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), and (a)(2)(v) are removed, and paragraphs (a)(2)(vi), (a)(2)(vii), and (a)(2)(viii) are redesignated as paragraphs (a)(2)(ii), (a)(2)(iii), and (a)(2)(iv) respectively;

c. The last sentence of paragraph (b)(4) is revised;

d. New paragraphs (b)(4)(i), (b)(4)(ii), and (b)(4)(iii) are added.

The revision and additions read as follows:

§ 275.11 Sampling.

(a) *Sampling plan.* * * *

(2) *Criteria.* Sampling plans proposing integrated sampling or other alternative designs shall document compliance with the approval criteria in paragraph (b)(4) of this section. * * *

* * * * *

(b) *Sample size.* * * *

(4) *Alternative designs.* * * * To receive FNS approval, proposals for any type of alternative design must:

(i) Demonstrate that the alternative design provides payment error rate estimates with equal-or-better predicted precision than would be obtained had the State agency reviewed simple random samples of the sizes specified in paragraphs (b)(1) and (b)(2) of this section.

(ii) Describe all weighting procedures if the sample design is non-self-weighted and uses a sampling technique other than stratified, systematic sampling.

(iii) Demonstrate that self-weighting is actually achieved in sample designs claimed to be self-weighting.

* * * * *

7. In § 275.16:

a. Paragraph (b)(2) is revised;

b. A new paragraph (b)(6) is added.

The revision and addition read as follows:

§ 275.16 Corrective action planning.

* * * * *

(b) * * *

(2) Are the cause for non-entitlement to enhanced funding for any reporting period (actions to correct errors in individual cases however, shall not be submitted as part of the State agency's corrective action plan);

* * * * *

(6) Result in underissuances, improper denials or improper terminations of benefits to eligible households where such errors are caused by State agency rules, practices or procedures.

* * * * *

8. In § 275.23:

a. Paragraph (c)(2) is revised;

b. Paragraph (c)(3) is amended by adding the words "Prior to FY 1986," at the beginning of the text of that paragraph;

c. Paragraph (d)(2) is revised;

d. The heading of paragraph (e)(2) is revised;

e. Paragraph (e)(2)(i) is revised;

f. The heading of paragraph (e)(3) is revised;

g. Paragraphs (e)(4), (e)(5), (e)(6) and (e)(7) are redesignated as (e)(5), (e)(6), (e)(7) and (e)(8), respectively and a new paragraph (e)(4) is added;

h. Newly redesignated paragraph (e)(7)(i) is revised;

i. Newly redesignated paragraph (e)(7)(iii) is revised;

j. A new paragraph (e)(9) is added.

The revisions and additions read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(c) *State agency error rates.* * * *

(2) *Payment error rate.*

(i) For fiscal years prior to FY 1986, the payment error rate shall include the value of the allotments overissued, including overissuances to ineligible

cases, for those cases included in the active error rate.

(ii) For FY 1986 and subsequent fiscal years, the payment error rate shall include the value of the allotments overissued, including those to ineligible cases, and the value of allotments underissued for those cases included in the active error rate.

* * * * *

(d) *Federal enhanced funding.* * * *

(2) After validation and any necessary adjustment of estimated error rates:

(i) A State agency with a combined payment error rate and underissuance error rate of less than five percent for an annual review period for FY 1983 through FY 1985, or a payment error rate of less than five percent for an annual review period for FY 1986 through FY 1988, shall be eligible for a 60 percent Federally funded share of administrative costs, provided that the State agency's negative case error rate for that period is less than the national weighted mean negative case error rate for the prior fiscal year;

(ii) Beginning with FY 1989, a State agency with a payment error rate less than or equal to 5.90 percent and with an negative case error rate less than the national weighted mean negative case rate for the prior fiscal year will have its Federally funded share of administrative costs increased by one percentage point to a maximum of 60 percent for each full one-tenth of a percentage point by which the payment error rate is less than six percent.

* * * * *

(e) *State agencies' liabilities for payment error rates.* * * *

(2) *Establishment of payment error rate goals—FY 1983 through FY 1985.* (i) Each State agency's payment error rate goal for FY 1983 shall be nine percent. Each State agency's payment error rate goal for FY 1984 shall be seven percent. Each State agency's payment error rate goal for FY 1985 shall be five percent. State agencies' payment error rates for any fiscal year shall be derived from the review period corresponding to the fiscal year.

* * * * *

(3) *State agencies failing to achieve payment error rate goals—FY 1983 through FY 1985.* * * *

(4) *State agencies' liabilities for payment error—FY 1986 and Beyond.* Each State agency that fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the following paragraphs.

(i) For FY 1986 and subsequent years, FNS shall announce a national performance measure within nine months following the end of each fiscal year that is the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to change. This national performance measure is used to establish a payment-error tolerance level. The payment-error tolerance level for any fiscal year shall be one percentage point added to the lowest national performance measure ever announced up to and including such fiscal year.

(ii) For any fiscal year in which a State agency's payment error rate exceeds the payment-error tolerance level, the State agency shall pay or have its share of administrative costs reduced by an amount equal to the difference between its payment error rate less such tolerance level as a quantity, multiplied by the total value of the allotments issued in the fiscal year by that State agency.

* * * * *

(7) *Determination of payment error rates.* * * *

(i) Once the Federal case reviews have been completed and all differences with the State agency have been identified, FNS shall calculate regressed error rates using the following linear regression equations.

(A) $y_1' = y_1 + b_1(X_1 - x_1)$, where y_1' is the average value of allotments overissued to eligible and ineligible households; y_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to the Federal finding, b_1 is the estimate of the regression coefficient regressing the Federal findings of allotments overissued to eligible and ineligible households on the corresponding State agency findings, x_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to State agency findings, and X_1 is the average value of allotments overissued to eligible and ineligible households in the full quality control sample according to State agency's findings. In stratified sample designs y_1, X_1, and x_1 are weighted averages and b_1 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(B) $y_2' = y_2 + b_2(X_2 - x_2)$, where y_2' is the average value of allotments underissued to households included in the active error rate, y_2 is the average value of allotments underissued to participating households in the rereview sample according to the Federal finding, b_2 is the estimate of the regression coefficient regressing the Federal findings of allotments underissued to participating households on the corresponding State agency findings, x_2 is the average value of allotments underissued to participating households in the rereview sample according to State agency findings; and X_2 is the average value of allotments underissued to participating households in the full quality control sample according to the State agency's findings. In stratified sample designs y_2, X_2, and x_2 are weighted averages and b_1 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(C) The regressed error rates are given by $r_1' = y_1'/u$, yielding the regressed overpayment error rate, and $r_2' = y_2'/u$, yielding the regressed underpayment error rate, where u is the average value of allotments issued to participating households.

(D) After application of the adjustment provisions of paragraph (e)(7)(iii) of this section, the adjusted regressed payment error rate shall be calculated to yield the State agency's payment error rate for use in the reduced and enhanced funding determinations described in paragraphs (d) and (e) of this section. Prior to FY 1986, the adjusted regressed payment error rate is given by r_1''. For FY 1986 and after, the adjusted regressed payment error rate is given by $r_1'' + r_2''$.

* * * * *

(iii) Should a State agency fail to complete all of its required sample size, FNS shall adjust the State agency's regressed error rates using the following equations:

(a) $r_1'' = r_1' + 2(1-C)S_1$, where r_1'' is the adjusted regressed overpayment error rate, r_1' is the regressed overpayment error rate computed from the formula in paragraph (e)(7)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_1 is the standard error of the review-sample overpayment error rate. If a State agency completes all of its required sample size, then $r_1'' = r_1'$.

(B) $r_2'' = r_2' + 2(1-C)S_1$, where r_2'' is the adjusted regressed underpayment error rate, r_2' is the regressed underpayment error rate computed from the formula in paragraph (e)(7)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_2 is the standard

error of the review-sample underpayment error rate. If a State agency completes all of its required sample size, then $r_2'' = r_2'$.

* * * * *

(9) *Interest charges.* (i) To the extent that a State agency does not pay a claim established under § 275.23(e)(4) within 30 days from the date on which the bill for collection (after a determination on any request for a waiver for good cause) is received by the State agency, the State agency shall be liable for interest on any unpaid portion of such claim accruing from the date on which the bill for collection was received by the State agency. This situation applies unless the State agency appeals the claim under § 276.7 of the regulations. If the State agency agrees to pay the claim through reduction in Federal financial participation for administrative costs, this agreement shall be considered to be paying the claim. If the State agency appeals such claim (in whole or in part), the interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from a date that is 2 years after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received.

(ii) If the State agency pays such claim (in whole or in part) and the claim is subsequently overturned through administrative or judicial appeal, any amounts paid by the State agency above what is actually due shall be promptly returned with interest, accuring from the date the payment was received until the date the payment is returned.

(iii) Any interest assessed under this paragraph shall be computed at a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during the period such interest accrues.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

9. In § 277.4:

a. Paragraph (b)(2) is revised;

b. Paragraph (b)(8), is amended by changing the regulatory reference to "§ 275.25" to read "§ 275.23".

The revision reads as follows:

§ 277.4 Funding.

* * * * *

(b) *Federal Reimbursement Rate.*

* * *

(2) A State agency's federally funded share of Food Stamp Program administrative costs shall be increased when its error rate, as determined through the quality control process described in § 275, meets certain standards.

(i) For the period beginning October 1, 1982, through September 30, 1988, a State agency with a payment error rate of five percent or less in the corresponding fiscal year shall have its federally funded share of Program administrative costs increased to sixty percent, provided that the State agency's negative case error rate is less than the national weighted mean negative case rate for the fiscal year prior to the period of enhanced funding.

(ii) For the period beginning October 1, 1988, a State agency with a payment error rate less than or equal to 5.90 percent and with a negative case error rate less than the national weighted mean negative case error rate for the prior fiscal year shall have its Federally funded share of Food Stamp Program administrative costs increased by one percentage point to a maximum of 60 percent for each full one-tenth of a percentage point by which the payment error rate is less than six percent.

* * * * *

Dated: January 24, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-2237 Filed 1-30-91; 8:45 am]

BILLING CODE 3410-30-M

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 90-027P]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees would primarily reflect the increased costs of providing these services due to the increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970.

DATE: Comments must be received on or before: February 15, 1991.

ADDRESS: Send written comments to the Policy Office, Attention: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700. Oral comments as provided under the Poultry Products Inspection Act should be directed to Mr. William L. West, (202) 447-3367. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700, (202) 447-3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." It will not result in an annual effect on the economy of $100 million or more; in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The fee increases only reflect an increase in costs to establishments that elect to utilize certain inspection services.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action 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) because the fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to the docket number that appears in the heading of this document. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. West so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be available for public inspection in the Policy Office

between 9 a.m. and 4 p.m., Monday through Friday.

Background

Each year the fees for certain services rendered by FSIS to operators of official meat and poultry establishments, importers, or exporters are reviewed, and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services.[1] The analysis relates to fees charged in connection with overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services. The fees to be charged for these services have been determined by an analysis of data on the current cost of these services, by anticipated costs associated with changes in operations of the program, by increases in those costs due to an increase in the salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970, and by other increases affecting Federal employees, such as costs for travel and benefits.

Based on the Agency's analysis of the increased costs in providing these services to be incurred as a result of the pay raise of 4.1 percent for Federal employees effective January 1991, of increased costs of the Federal Employees Retirement System in 1991, and of increased health insurance and travel costs, FSIS proposes to increase the fees relating to such services.

Mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under 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.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products. The ordinary costs of providing that inspection are borne by the U.S. Government. However, costs for these inspection services performed on holidays or on an overtime basis may be incurred to accommodate the business needs of particular establishments. Any or all of these costs which are not a part of the mandatory inspection service are recoverable by the Government.

Section 307.5 (9 CFR 307.5) of the meat inspection regulations provides that FSIS shall be reimbursed for the cost of meat inspection on holidays or on an overtime basis at the rate specified in § 391.3, currently $27.24 per inspector hour. Similarly, § 381.38 (9 CFR 381.38) of the poultry products inspection regulations provides that FSIS shall be reimbursed for the cost of poultry inspection on holidays or on an overtime basis at the rate specified in § 391.3, currently $27.24 per inspector hour. These fees would be increased to $28.32 per inspector hour.

FSIS also provides a range of voluntary inspection services (9 CFR 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5); the costs of which are totally recoverable by the Government. These services, provided under Subchapter B—Voluntary Inspection and Certification Service, are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

The basic hourly rate for providing such certification and inspection service is currently $26.68 per inspector hour as specified in § 391.2. The overtime and holiday hourly rate is currently $27.24 as specified in § 391.3. The rate for laboratory services is currently $46.60 per hour as specified in § 391.4. The hourly rates for these services would be increased to $27.72, $28.32, and $47.96, respectively.

List of Subjects in 9 CFR Part 391

Meat inspection; Poultry products inspection; Fees and charges.

Accordingly, the Federal meat and poultry products inspection regulations would be amended as follows:

1. The authority citation for part 391 would continue to read as follows:

Authority: 21 U.S.C. 601 *et seq.*, 460 *et seq.*; 7 CFR 2.17 (g) and (i), 2.55; 7 U.S.C. 394, 1622, and 1624.

2. Sections 391.2, 391.3, and 391.4 would be revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $27.72 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $28.32 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $47.96 per hour, per program employee.

Done at Washington, DC, on:

Catherine E. Adams,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 91-2287 Filed 1-30-91; 8:45 am]

BILLING CODE 3410-DM

[1] The cost analysis is on file with the FSIS Hearing Clerk. Copies may be requested free of charge from the FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AD05

Codes and Standards for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its regulations to incorporate by reference the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of section III, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), and the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of section XI, Division 1, of the ASME Code, with a specified modification. The proposed amendment would impose augmented examination of reactor vessel shell welds, and would separate in the regulations the requirements for inservice testing from those for inservice inspection by placing the requirements for inservice testing in a separate paragraph. The ASME Code addenda and edition being incorporated by reference provide updated rules for the construction of light-water-cooled nuclear power plant components, and for the inservice inspection and inservice testing of those components. Adoption of this proposed amendment would permit the use of improved methods for construction, inservice inspection, and inservice testing of nuclear power plant components; would require expedited implementation of the expanded reactor vessel shell weld examinations specified in the 1989 Edition of section XI; and would more clearly distinguish in the regulations the requirements for inservice testing from those for inservice inspection.

DATES: Comment period expires April 16, 1991. Comments received after this date will be considered if it is practical to do so, but assurance of consideration

cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Monday through Friday. Examine comments received at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. G.C. Millman, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3848.

SUPPLEMENTARY INFORMATION: On May 5, 1988, the Nuclear Regulatory Commission published in the **Federal Register** (53 FR 16051) an amendment to 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," which incorporated by reference new addenda and a new edition to the ASME Code. This amendment revised § 50.55a to incorporate by reference the Winter 1984 Addenda, Summer 1985 Addenda, Winter 1985 Addenda, and 1986 Edition for Division I rules of section III, "Rules for the Construction of Nuclear Power Plant Components," and the Winter 1983 Addenda, Summer 1984 Addenda, Winter 1984 Addenda, Summer 1985 Addenda, Winter 1985 Addenda, and 1986 Edition for Division 1 rules of section XI, "Rules for the Inservice Inspection of Nuclear Power Plant Components," of the ASME Code.

The Commission proposed to amend § 50.55a to incorporate by reference the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of section III, Division 1, of the ASME Code, and the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition of section XI, Division 1, of the ASME Code, with a specified modification. (In 1986, the ASME Code initiated a once-a-year addenda system and dropped the Summer/Winter designator). Also, the proposed amendment would impose augmented examination of reactor vessel shell welds, and would separate in the regulations the requirements for inservice testing from those for inservice inspection by placing the requirements for inservice testing in a separate paragraph.

Subsection IWP, "Inservice Testing of Pumps," and Subsection IWV, "Inservice Testing of Valves," as contained in the 1988 Addenda and 1989 Edition of section XI, incorporate by reference, respectively, part 6, "Inservice Testing of Pumps in Light-Water Reactor Power Plants," and part 10, "Inservice Testing of Valves in Light-Water Reactor Power Plants," of ASME/ANSI OMa–1988 Addenda to ASME/ANSI OM–1987, "Operation and Maintenance of Nuclear Power Plants." The contents of subsections IWP and IWV in the 1988 Addenda and 1989 Edition are replaced in their entirety by the referenced rules of part 6 and part 10, respectively. The NRC believes that certain requirements in part 10 represent unacceptable changes from present requirements in subsection IWV of section XI editions and addenda that have been incorporated by reference into § 50.55a. Therefore, the proposed amendment would incorporate by reference the 1988 Addenda and 1989 Edition of section XI, Division 1, with a specified modification to subsection IWV.

The NRC is particularly interested in receiving comments on the following discussed basis for and content of the proposed modification to subsection IWV of the 1988 Addenda and 1989 Edition of Section XI, Division 1. Paragraph IWV–3420 of Subsection IWV of Section XI editions and addenda presently incorporated by reference in § 50.55a require all Category A valves, except those that function in the course of plant operation in a manner that demonstrates functionally adequate leak tightness, to undergo a valve leakage rate test. Subsection IWV paragraphs IWV–3426 and IWV–3427, respectively, require analysis of leakage rates and implementation of corrective actions dependent upon results of the leakage rate analysis. Subsection IWV in the 1988 Addenda and 1989 Edition of Section XI, which reference part 10 for the inservice testing of valves, provide rules for testing containment isolation valves (CIVs) (i.e., paragraph 4.2.2.2. of part 10 of the ASME/ANSI OMa–1988 Addenda). These rules specify that Category A CIVs be tested in accordance with 10 CFR part 50, appendix J, and that CIVs which also provide a reactor coolant system pressure isolation function additionally be tested in accordance with part 10, paragraph 4.2.2.3, "Leakage Rate for Other Than Containment Isolation Valves." Paragraph 4.2.2.3(e) of part 10 requires analysis of leakage rates and paragraph 4.2.2.3(f) of part 10 specifies requirements for corrective action for Category A CIVs that also provide a reactor coolant system pressure isolation function.

Subsection IWV in the 1988 Addenda and 1989 Edition eliminate the present requirement to analyze leakage rates and to take corrective action in the event of abnormally high leakage rates for those CIVs that do not provide a reactor coolant system pressure isolation function. The NRC is concerned that this could significantly reduce the ability to detect degraded valves and, thereby, could permit an unacceptable reduction in the safety margin associated with the leak tight integrity of those CIVs that do not provide a reactor coolant system pressure isolation function. The NRC's concern regarding the revision stems from the findings of two independent reviews of containment leakage rate failure experiences. Both reviews conclude from analysis of appendix J leak test results, which included analysis of valve leakage, that containment leakage during operation would exceed plant technical specification limits approximately 30 percent of the time. This indicates a need to improve, rather than relax, the present requirements concerning containment test, leak monitoring, and maintenance programs, including the ASME section XI requirement for valve leak rate analysis. It has yet to be demonstrated by analysis of more recent and comprehensive containment leakage test experiences that containment leakage integrity can be improved to an acceptable level without implementation of a rigorous valve leak rate test program in conjunction with the present section XI requirement for leak rate analysis.

In proposing the following modification, the NRC specifically requests comments that would provide insight and justification, based upon plant experiences, relative to the need for revising or possibly eliminating the proposed modification. The NRC proposes to incorporate by reference the 1988 Addenda and 1989 Edition of section XI with a modification that would be specified in a new § 50.55a(b)(2)(vii). The proposed modification would substantially preserve the existing requirements for analysis of leakage rates and corrective actions that exist in subsection IWV prior to the 1988 Addenda. Specifically, the modification would require licensees to implement the requirements of paragraph 4.2.2.3(e), "Analysis of Leakage Rates," of part 10 and paragraph 4.2.2.3(f), "Corrective Action," of part 10, in addition to the requirements of paragraph 4.2.2.2 of part 10, for all Category A valves that are CIVs, regardless of whether or not they provide a reactor coolant system pressure isolation function.

Section XI subsection IWP and subsection IWV editions and addenda, published up through the 1987 addenda,

address Class 1, Class 2, and Class 3 pumps and valves, respectively, that perform specific safety functions. The reference to part 6 in subsection IWP and to part 10 in subsection IWV in the 1988 Addenda and 1989 Edition expands the scope of these subsections to potentially include certain pumps and valves that are not classified as Class 1, Class 2, or Class 3. Because § 50.55a, at this time, only specifies requirements for pumps and valves that are designated Class 1, Class 2, or Class 3, this proposed amendment does not impose requirements on those pumps and valves that are not Class 1, Class 2, or Class 3, but would be included in the expanded scope of subsection IWP and subsection IWV in the 1988 Addenda and 1989 Edition. However, Generic Letter 89–04, "Guidance on Developing Acceptable Inservice Testing Program," addresses this issue and notes in Position 11 that—

> The intent of 10 CFR part 50 appendix A, GDC–1, and appendix B, Criterion XI, is that all components, such as pumps and valves, necessary for safe operation are to be tested to demonstrate that they will perform satisfactorily in service. Therefore, while 10 CFR 50.55a delineates the testing requirements for ASME Code Class 1, 2, and 3 pumps and valves, the testing of pumps and valves is not to be limited to only those covered by 10 CFR 50.55a.

The 1988 Addenda to section XI modifies the 1986 Edition to require in the 2nd, 3rd, and 4th inspection intervals examination of essentially 100 percent of the length of all reactor vessel shell welds (i.e., Item B1.10, "Shell Welds," of Examination Category B–A, "Pressure Retaining Welds in Reactor Vessel," in Table IWB–2500–1 of subsection IWB, "Requirements for Class 1 components of Light-Water Cooled Power Plants"). Since the 1989 Edition is identical to the 1986 Edition as modified by the 1986 Addenda, 1987 Addenda, and 1988 Addenda, this revision also appears in the 1989 Edition of section XI. The 1986 Edition of section XI (the most current section XI rules presently incorporated by reference into § 50.55a) requires examination of only one longitudinal weld and one circumferential weld from the beltline region during the 2nd, 3rd, and 4th inspection intervals. The requirement to examine essentially 100 percent of the length of all reactor vessel shell welds during the 1st inspection interval has been in section XI since the 1975 Winter Addenda to the 1974 Edition.

Recent information from reactor vessel material surveillance programs, and observed flaws in certain operating reactor and steam generator vessels, reveal the potential susceptibility of reactor vessel materials to degradation. Because of these experiences and the limited examinations performed to date on some reactor vessels, the NRC is concerned with the length of time that might elapse before a licensee would be required to implement the reactor vessel shell weld examinations specified in the 1988 Addenda and the 1989 Edition of section XI through routine updating of its inservice inspection program. Section 50.55a(g)(4)(ii) requries that inservice inspection programs be updated to reflect the latest edition and addenda of section XI identified in § 50.55a(b)(2) 12 months prior to the start of the next 120-month inspection interval. Routine updating in accordance with this requirement could result in the 1989 Edition not being implemented for as long as 240 months (20 years). For example, a plant just entering the first period in the 2nd, 3rd, or 4th inspection interval when this rule becomes effective would not have to implement the reactor vessel examinations specified in the 1989 Edition for 20 years, because that inspection interval would be covered by a previous section XI edition/addenda and because under existing section XI rules, the reactor vessel examinations in the succeeding interval, which would implement the 1989 Edition or later, could be deferred another 10 years until the end of that interval. Similarly, a plant just entering the second or third period in the 2nd, 3rd, or 4th inspection interval would not be required to implement the 1989 Edition, or subsequent addenda, for 200 months (16 years, 8 months) or 160 months (13 years, 4 months), respectively.

Consistent with the existing updating requirements of § 50.55a(g)(4)(ii) and the changing requirements of section XI, some inservice inspection programs based on certain editions and addenda of section XI may have resulted in very limited reactor vessel examinations. For example, if examinations of the beltline welds during the 1st inspection interval were performed to comply with the 1974 edition of section XI, 5 percent of the circumferential welds and 10 percent of the longitudinal welds would have been examined. If, for the same plant, examinations during the 2nd inspection interval were performed to comply with the 1980 Edition, including subsequent addenda, one circumferential weld and one longitudinal weld would have been required to be examined. (The 1974 Edition of section XI (with addenda through the 1975 Winter Addenda) through the 1986 Edition (with addenda through the 1987 Addenda) require that all reactor vessel shell welds be examined volumetrically during the 1st inspection interval, and that one circumferential and one longitudinal beltline weld be examined volumetrically in succeeding inspection intervals; whereas the 1971 Edition through the 1974 Edition (with addenda through the 1975 Summer Addenda) require that 10 percent of the length of each longitudinal weld and 5 percent of the length of each circumferential weld be examined volumetrically each inspection interval.)

Degradation of reactor vessel materials has become more of a concern recently, because (1) results from irradiation surveillance material tests show that certain reactor vessel materials undergo greater radiation damage than previously expected, (2) indications from operational data show that stress corrosion cracking of BWR reactor vessels is more probable than was thought several years ago, and (3) significant service induced cracking has occurred in large vessels (i.e., pressurizer, steam generators) designed and fabricated to the ASME Code.

The NRC is concerned that the inherent delay in implementing the expanded reactor vessel examinations is inconsistent with the importance of the reactor vessel, with recent new information regarding degradation of reactor vessel materials, with the limited examination of shell welds previously performed on many reactor vessels, and with the need to ensure that the failure probability of the reactor vessel remains extremely low. It is the judgment of the NRC that, because of new information and limited previous reactor vessel examinations, there may exist a substantially greater potential for reactor vessel degradation than previously considered and that maintenance of the level of protection presumed by the regulations requires more than compliance to existing regulatory requirements.

The NRC has determined that the proposed augmented reactor vessel examination would result in a substantial increase in the overall protection of the public health and safety, and that the costs of implementation would be justified in veiw of the increased protection. The backfit analysis required by § 50.109, "Backfitting," is provided as part of the regulatory analysis that supports this proposed rule.

Section 50.55a(g)(6)(ii) addresses augmented inservice inspection programs for those systems and components for which the Commission deems that added assurance of structural reliability is necessary. For that purpose, and consistent with the

above discussion, it is proposed that § 50.55a(g)(6)(ii)(A) be added to require expedited implementation of the reactor vessel shell weld examinations specified in the 1989 Edition of section XI, Division 1, in Item B1.10, "Shell Welds," of Examination Category B–A, "Pressure Retaining Welds in Reactor Vessel," in Table 2500–1 of Subsection IWB, "Requirements for Class 1 Components of Light-Water Cooled Power Plants." Proposed § 50.55a(g)(6)(ii)(A) was developed with two primary considerations in mind. First, the proposed rule must require implementation of the provisions for reactor vessel shell weld examinations provided in the 1989 Edition as quickly as practicable. Second, to minimize unnecessary impact on licensees, the implementation requirements for the augmented examination should be integrated as closely as possible with existing examiantion requirements and practices.

In order to ensure the applicability of the proposed augmented examination to all licensees, § 50.55a(g)(6)(ii)(A)*(1)* would revoke all previously granted reliefs to licensees for reactor vessel shell weld examinations for the inservice inspection interval that would be in effect when the rule becomes effective. This is consistent with the ongoing development schedule for equipment and techniques that would permit those licensees with limited accessibility to implement the proposed augmented examination. The NRC has structured the proposed requirement for augmented examination of reactor vessel shell welds recognizing that plants will be on different schedules for their 120-month inservice inspection interval. Section 50.55a(g)(6)(ii)(A)*(2)* would require all licensees to implement the specific augmented reactor vessel examination during the inspection interval in force when this proposed rule becomes effective, subject to conditions specified in proposed § 50.55a(g)(6)(ii)(A) *(3)* and *(4)*. Section 50.55a(g)(6)(ii)(A)*(2)* would specifically permit the use of the augmented examination as a substitute for the reactor vessel shell weld examinations scheduled for the inspection interval in effect when this proposed rule becomes effective.

The NRC recognizes that plants with fewer than 40 months remaining in the inspection interval when this proposed rule becomes effective may find it impractical to implement the augmented reactor vessel examination during that inspection interval. Therefore, proposed § 50.55a(g)(6)(ii)(A)*(3)* would permit plants with fewer than 40 months remaining in the inspection interval when this rule becomes effective to defer the augmented examination until the first period of the next inspection interval. However, this same paragraph would specifically prohibit the use of the deferred augmented examination as a substitute for reactor vessel shell weld examinations scheduled for the inspection interval in effect when the rule becomes effective. The intent is to ensure that the examinations are deferred only when necessary and not to have the proposed rule encourage a 40-month delay in reactor vessel shell weld examinations.

Section 50.55a(g)(6)(ii)(A)*(3)* would permit using the deferred examination, with a condition, as a substitute for reactor vessel shell weld examinations scheduled for the inspection interval in which the deferred examinations are performed. The condition is that subsequent reactor vessel shell weld examinations for successive inspection intervals be performed in the first period of the inspection interval. This condition is necessary to prevent a potential 160-month gap between reactor vessel shell weld examinations. This gap would occur if a plant used the deferred examination performed in the first period as a substitute for the scheduled examination and then deferred the examination for the next inspection interval to the end of that interval as permitted by section XI.

Proposed § 50.55a(g)(6)(ii)(A)*(4)* specifies that a licensee that has either completed or has scheduled an inspection of essentially 100 percent of the length of all Examination Category B–A shell welds during the inservice inspection interval in effect when the proposed rule becomes effective does not have to implement the proposed requirement for augmented examination of the reactor vessel shell welds. Primarily, this proposed paragraph is intended to permit licensees who would be in the 1st inspection interval to use the essentially 100 percent reactor vessel shell weld examination required for that interval by section XI to satisfy the requirement for the proposed augmented reactor vessel examination. The technical objective of the augmented examination would have been accomplished under such conditions. These licensees would continue to apply the current requirements of § 50.55a(g)(4) until the next inspection interval when future examinations would be performed based on ASME Section XI, 1989 Edition, or later Code edition and addenda specified in § 50.55a(b).

The proposed amendment to § 50.55a would separate the requirements for inservice testing from those for inservice inspection by moving the requirements for inservice testing to a separate paragraph. Presently, § 50.55a(g), "Inservice inspection requirements," specifies the requirements for (1) preservice and inservice examinations for Class 1, Class 2, and Class 3 components and their supports, (2) system pressure tests for Class 1, Class 2, and Class 3 components, and (3) inservice testing of Class 1, Class 2, and Class 3 pumps and valves. In order to emphasize the importance of inservice testing and to more clearly distinguish its requirements from those of inservice inspection, the proposed rule would move the present requirement for inservice testing from existing § 50.55a(g), "Inservice inspection requirements," to a separate (presently reserved) § 50.55a(f), which would be titled "Inservice testing requirements." All existing requirements for inservice examination and system pressure testing would be retained in § 50.55a(g).

Two editorial revisions, relative to existing § 50.55a(g), are included in the proposed new § 50.55a(f). These editorial revisions (1) reserve § 50.55a(f)(3) (i) and (ii) so that the structure of § 50.55a(f) would parallel that of § 50.55a(g) for the purpose of promoting easier cross-referencing between the two paragraphs, (2) modify reference to 120-month inspection interval in § 50.55a(g) to 120-month interval in proposed § 50.55a(f), because inspection interval, as used in section XI, is used only in the context of inservice inspection. (The term "test interval" was not used because, unlike inspection interval, the 120-month time frame does not designate a period of required actions for the testing program. The 120-month interval used in § 50.55a(f) and the 120-month inspection interval used in § 50.55a(g) are considered by the staff to be coincident for the purpose of 120-month updating requirements.)

In addition, two administrative changes have been made in the development of proposed § 50.55a(f) relative to existing § 50.55a(g). First, § 50.55a(f)(6)(ii) has been added to indicate intent by the Commission to impose an augmented inservice testing program if added assurance of operational readiness is deemed necessary. This proposed paragraph only indicates intent and does not impose a specific requirement. It does parallel the existing § 50.55a(g)(6)(ii) which specifies that the Commission may require an augmented inservice

inspection program for systems and components for which it deems that added assurance of structural reliability is necessary.

Second, the proposed amendment includes the addition of introductory text to § 50.55a(g) which states that the requirements for inservice testing of Class 1, Class 2, and Class 3 pumps and valves are located in § 50.55a(f). This change is necessary because the proposed placement of inservice testing requirements into a separate § 50.55a(f) would cause administrative inconsistencies with regard to existing references to § 50.55a(g) for inservice testing in documents such as technical specifications, safety analysis reports, procedures, and records. With the proposed change, existing references to § 50.55a(g) for inservice testing would refer the user to § 50.55a(f) where the specific requirements for inservice testing would be located. The NRC recommends that as the governing documents are updated, the direct reference to § 50.55a(f) be incorporated, as appropriate.

Section 50.55a(g) provides requirements for selecting the ASME Code edition and addenda of section XI to be complied with during the preservice inspection (§ 50.55a(g)(3), for plants whose construction permit was issued on or after July 1, 1974); the initial 10-year inspection interval (§ 50.55a(g)(4)(i)); and successive 10-year inspection intervals (§ 50.55a(g)(4)(ii)). As noted in the Supplementary Information to the final rule of the most recent amendment to § 50.55a (May 5, 1988; 53 FR 16051), paragraph IWA–2400 of section XI (as revised by the Winter 1983 Addenda) incorporated rules for selecting the applicable edition and addenda of section XI during the preservice inspection (IWA–2411), the initial 10-year inspection interval (IWA–2412), and successive 10-year inspection intervals (IWA–2413). The criteria provided in the regulations and section XI are effectively the same for the preservice inspection and the successive 10-year inspection intervals, but differ for the initial 10-year inspection interval. In general, use of the Commission requirements will result in the selection of a more recent edition and addenda than will use of the section XI rules. Satisfying the requirements of § 50.55a(g)(4)(i) for the initial 10-year inspection interval will, in general, also satisfy the rules of section XI. Although the section XI requirements for selecting editions and addenda remain unchanged in the 1986 Addenda, 1987 Addenda, 1988 Addenda, and 1989 Edition, the Commission is reaffirming its intent that in all cases the existing requirements in § 50.55a(g) be the basis for selecting the edition and addenda of section XI to be complied with during the preservice inspection, the initial 10-year inspection interval, and the successive 10-year inspection intervals.

The proposed amendment would make a number of editorial changes to § 50.55a for the purpose of adopting a standard convention for imposing an obligation or expressing a prohibition. In this convention "shall" is used to impose an obligation on an individual or legal entity capable of performing the required action, "must" is used as the mandatory form when the subject of the sentence is an inanimate object, and "may not" is used to impose a prohibition. The following paragraphs were amended solely to be consistent with this convention: The introductory paragraph to the section; paragraphs (a)(1), (a)(3), (b)(2)(iii), (b)(2)(iv), (g)(1), (g)(3)(ii), (g)(3)(iii), (g)(3)(iv), introductory paragraph to (g)(4), (g)(4)(i), (g)(4)(ii), (g)(5)(i), (g)(5)(iv), (g)(6)(i), (h), and footnote 8. Other paragraphs were revised for the same editorial reason, but they also contain technical revisions relevant to other parts of this proposed amendment. Section 50.55a(f) has been developed consistent with the noted convention.

Subsection IWE, "Requirements for Class MC Components of Light-Water-Cooled Power Plants," was added to Section XI, Division 1, in the Winter 1981 Addenda. However, 10 CFR 50.55a presently incorporates Section XI inservice inspection requirements for only Class 1, Class 2, and Class 3 components and their supports. The regulation does not currently address the inservice inspection of containments. Because this amendment is only intended to update current regulatory requirements to include the latest ASME Code edition and addenda, the requirements of Subsection IWE would not be imposed upon Commission licensees by this amendment. The incorporation by reference of Subsection IWE into § 50.55a is presently the subject of a separate rulemaking action. Section 50.55a(b)(2)(vi) is reserved for that action.

The NRC previously alerted all holders of operating licenses or construction permits for nuclear power reactors, through NRC Information Notice No. 88–95 (IN 88–95), "Inadequate Procurement Requirements Imposed by Licensees on Vendors," to the potential that inadequate licensee procurement requirements or implementation by vendors in supplying components under the ASME Code could result in failure by these vendors to fully implement 10 CFR part 50, appendix B (Quality Assurance Criteria). The problem which was revealed during routine NRC inspections of vendors, resulted from the belief by some vendors that if an item was exempted by the ASME Code from Code requirements, the item was exempt from all other regulatory requirements. The apparent belief of some vendors was that since NRC endorses the ASME Code in its regulations and has accepted the various exemptions, there are, therefore, no other applicable regulatory requirements. This belief is not consistent with the NRC position. The NRC reaffirms its position which, as previously put forth in IN 88–95, states that all safety-related items, even those exempted from ASME Code requirements, are required to be manfactured under a quality assurance program that meets 10 CFR part 50, appendix B requirements.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

The proposed rule is one part of a regulatory framework directed to ensuring pressure vessel integrity, and the operational readiness of pumps and valves. Therefore, in the general sense, the proposed rule would have a positive impact on the environment. The proposed rule would incorporate by reference into the NRC regulations improved rules contained in the ASME Code for the construction, inservice inspection and inservice testing of components used in nuclear power plants. In addition, the proposed rule would require an augmented examination of reactor vessel shell welds to further ensure the structural integrity of the reactor vessel. Actions required of applicants and licensees to implement the proposed rule are of a routine nature that should not increase the potential for a negative environmental impact.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental

assessment and the finding of no significant impact are available from Gilbert C. Millman, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3848.

Paperwork Reduction Act Statement

This proposed rule would amend information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Public reporting burden for this collection of information is estimated to average 135 hours per response, including the 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 this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150–0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this proposed amendment to the regulations. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mr. G. C. Millman, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3848.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operating of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. Since these companies are dominant in their service areas, this proposed rule does not fall within the purview of the Act.

Backfit Analysis

The NRC has concluded, based on the analysis required by § 50.109(a)(3) which is provided in the regulatory analysis, that the backfit that would be imposed by the proposed augmented reactor vessel examination would result in a substantial increase in the overall protection of the public health and safety, and that the direct and indirect costs of implementation would be justified in view of the increased protection.

The incorporation by reference into the regulations of later editions and addenda of section III and section XI of the ASME Code is not a backfit because section III requirements apply only to new construction, except as voluntarily implemented by licenses, and because updated section XI requirements are an integral part of the longstanding § 50.55(g)(4)(ii) requirement to update inservice inspection and inservice testing programs to the requirements of the latest edition and addenda of section XI incorporated by reference in § 50.55a(b) 12 months prior to the start of the 120-month inspection interval, subject to specified limitations and modifications. The proposed modification to part 10 of ASME/ANSI OMa–1988 Addenda to ASME/ANSI OM–1987 is not a backfit because it simply retains a requirement that licensees now are required to implement in accordance with § 50.55(g).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 124, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under Sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued udner sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.46 (a) and (b), and 50.54(c) are issued under sec. 161b, 161i, and 161o, 68 Stat. 948 as amended (42 U.S.C. 2201(b); §§ 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54 (a), (i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a, (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.55a, the introductory text, paragraphs (a), (b)(1), the introductory text of (b)(2), (b)(2)(iii), (b)(2)(iv), (g)(1), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4), (g)(5)(i), (g)(5)(iv), (h), and footnote 8 are revised; paragraphs (g)(3)(ii) and (g)(3)(iv) are removed and reserved; paragraph (b)(2)(vi) is added and reserved; and paragraphs (b)(2)(vii), (f), introductory text to (g), and (g)(6)(ii)(A) are added to read as follows:

§ 50.55a Codes and standards.

Each operating license for a boiling or pressurized water-cooled nuclear power facility must be subject to the conditions in paragraphs (f) and (g) of this section and each construction permit for a utilization facility must be subject to the following conditions in addition to those specified in § 50.55.

(a)(1) Structures, systems, and components must be designed, fabricated, erected, constructed, tested, and inspected to quality standards commensurate with the importance of the safety function to be performed.

(2) Systems and components of boiling and pressurized water-cooled nuclear

power reactors must meet the requirements of the ASME Boiler and Pressure Vessel Code specified in paragraphs (b), (c), (d), (e), (f), and (g) of this section. Protection systems of nuclear power reactors of all types must meet the requirements specified in paragraph (h) of this section.

(3) Proposed alternatives to the requirements of paragraphs (c), (d), (e), (f), (g), and (h) of this section or portions thereof may be used when authorized by the Director of the Office of Nuclear Reactor Regulation. The applicant shall demonstrate that (i) the proposed alternatives would provide an acceptable level of quality and safety, or (ii) compliance with the specified requirements of this section would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

(b) * * *

(1) As used in this section, references to section III of the ASME Boiler and Pressure Vessel Code refer to section III, division 1, and include addenda through the 1988 Addenda and editions through the 1989 Edition.

(2) As used in this section, references to section XI of the ASME Boiler and Pressure Vessel Code refer to section XI, division 1, and include addenda through the 1988 Addenda and editions through the 1989 Edition, subject to the following limitations and modifications:

* * * * *

(iii) *Steam generator tubing (modifies Article IWB–2000).* If the technical specifications of a nuclear power plant include surveillance requirements for steam generators different than those in Article IWB–2000, the inservice inspection program for steam generator tubing must be governed by the requirements in the technical specifications.

(iv) *Pressure-retaining welds in ASME Code Class 2 piping (applies to Tables IWC–2520 or IWC–2520–1, Category C–F.* (A) Appropriate Code Class 2 pipe welds in Residual Heat Removal Systems, Emergency Core Cooling Systems, and Containment Heat Removal Systems, must be examined. When applying editions and addenda up to the 1983 Edition through the Summer 1983 Addenda of section XI of the ASME Code, the extent of examination for these systems must be determined by the requirements of paragraph IWC–1220, Table IWC–2520 Category C–F and C–G, and paragraph IWC–2411 in the 1974 Edition and Addenda through the Summer 1975 Addenda.

* * * * *

(vi) [Reserved]

(vii) *Inservice testing of containment isolation valves.* When using Subsection IWV in the 1988 Addenda or the 1989 Edition of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, leakage rates for Category A containment isolation valves that do not provide a reactor coolant system pressure isolation function must be analyzed in accordance with paragraph 4.2.2.3(e) of part 10, and corrective actions for these valves must be made in accordance with paragraph 4.2.2.3(f) of Part 10 of ASME/ANSI OMa–1988 Addenda to ASME/ANSI OM–1987.

* * * * *

(f) *Inservice testing requirements.* (1) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued prior to January 1, 1971, pumps and valves must meet the test requirement of paragraphs (f)(4) and (5) of this section to the extent practical. Pumps and valves which are part of the reactor coolant pressure boundary must meet the requirements applicable to components which are classified as ASME Code Class 1. Other safety-related pumps and valves must meet the requirements applicable to components which are classified as ASME Code Class 2 or Class 3.

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda [6] in effect 6 months prior to the date of issuance of the construction permit. The pumps and valves may meet the inserve test requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed therein.

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after July 1, 1974:

(i) [Reserved]

(ii) [Reserved]

(iii) Pumps and valves which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(iv) Pumps and valves which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

(v) All pumps and valves may meet the test requirements set forth in subsequent editions of codes and addenda or portions thereof which are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed therein.

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, pumps and valves which are classified as ASME Code Class 1, Class 2, and Class 3 must meet the inservice test requirements, except design and access provisions, set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda that become effective subsequent to editions specified in paragraphs (f)(2) and (f)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of such components.

(i) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during the initial 120-month interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months prior to the date of issuance of the operating license, subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months prior to the start of the 120-month interval, subject to the limitations and modifications listed in paragraph (b) of this section.

(iii) [Reserved]

(iv) Inservice tests of pumps and valves may meet the requirements set forth in subsequent editions and addenda that are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section, and subject to Commission approval. Portions of editions or addenda may be used provided that all related requirements of the respective editions or addenda are met.

(5)(i) The inservice test program for a boiling or pressurized water-cooled nuclear power facility must be revised by the licensee, as necessary, to meet the requirements of paragraph (f)(4) of this section.

(ii) If a revised inservice test program for a facility conflicts with the technical specification for the facility, the licensee shall apply to the Commission for amendment of the technical specifications to conform the technical specification to the revised program. The licensee shall submit this application, as specified in § 50.4, at least 6 months before the start of the period during which the provisions become applicable, as determined by paragraph (f)(4) of this section.

(iii) If the licensee has determined that conformance with certain code requirements is impractical for its facility, the licensee shall notify the Commission and submit, as specified in § 50.4, information to support the determination.

(iv) Where a pump or valve test requirement by the code or addenda is determined to be impractical by the licensee and is not included in the revised inservice test program as permitted by paragraph (f)(4) of this section, the basis for this determination must be demonstrated to the satisfaction of the Commission not later than 12 months after the expiration of the initial 120-month period of operation from start of facility commercial operation and each subsequent 120-month period of operation during which the test is determined to be impractical.

(6)(i) The Commission will evaluate determinations under paragraph (f)(5) of this section that code requirements are impractical. The Commission may grant relief and may impose such alternative requirements as it determines is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest giving due consideration to the burden upon the licensee that could result if the requirements were imposed on the facility.

(ii) The Commission may require the licensee to follow an augmented inservice test program for pumps and valves for which the Commission deems that added assurance of operational readiness is necessary.

(g) *Inservice inspection requirements.* Requirements for inservice testing of Class 1, Class 2, and Class 3 pumps and valves are located in § 50.55a(f).

(1) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued prior to January 1, 1971, components (including supports) must meet the requirements of paragraphs (g)(4) and (5) of this section to the extent practical. Components which are part of the reactor coolant pressure boundary and their supports must meet the requirements applicable to components which are classified as ASME Code Class 1. Other safety-related pressure vessels, piping, pumps and valves must meet the requirements applicable to components which are classified as ASME Code Class 2 or Class 3.

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda [6] in effect six months prior to the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section, subject to the limitation and modifications listed therein.

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after July 1, 1974:

(i) Components which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda [6] applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Code and Addenda [6] applied to the construction of the particular component.

(iii) [Reserved]

(iv) [Reserved]

* * * * *

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, components (including supports) which are classified as ASME Code Class 1, Class 2 and Class 3 must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda that become effective subsequent to editions specified in paragraphs (g)(2) and (g)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components.

(i) Inservice examinations of components and system pressure tests conducted the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months prior to the date of issuance of the operating license, subject to the limitations and modifications listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure test conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months prior to the start of the 120-month inspection interval, subject to the limitations and modifications listed in paragraph (b) of this section.

(iii) [Reserved]

(iv) Inservice examination of components and system pressure tests may meet the requirements set forth in

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[6] ASME Code cases that have been determined suitable for use by the Commission staff are listed in NRC Regulatory Guide 1.84, "Design and Code Case Acceptability—ASME Section III Division 1," NRC Regulatory Guide 1.85, "Materials Code Case Acceptability—ASME Section III Division 1," and NRC Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability—ASME Section XI Division 1." The use of other Code cases may be authorized by the Director of the Office of Nuclear Reactor Regulation upon request pursuant to § 50.55a(a)(3).

subsequent editions and addenda that are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications listed in paragraph (b) of this section, and subject to Commission approval. Portions of editions or addenda may be used provided that all related requirements of the respective editions or addenda are met.

(5)(1) The inservice inspection program for a boiling or pressurized water-cooled nuclear power facility must be revised by the licensee, as necessary, to meet the requirements of paragraph (g)(4) of this section.

* * * * *

(iv) Where an examination requirement by the code or addenda is determined to be impractical by the licensee and is not included in the revised inservice inspection program as permitted by paragraph (g)(4) of this section, the basis for this determination must be demonstrated to the satisfaction of the Commission not later than 12 months after the expiration of the initial 120-month period of operation from start of facility commercial operation and each subsequent 120-month period of operation during which the examination is determined to be impractical.

(6) * * *

(ii) * * *

(A) Augmented examination of reactor vessel

(*1*) All previously granted reliefs under § 50.55a to licensees for the examination of reactor vessel shell welds specified in Item B1.10 of Examination Category B–A, "Pressure Retaining Welds in Reactor Vessel," in Table IWB–2500–1 of Subsection IWB in applicable edition and addenda of section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, during the inservice inspection interval in effect on _____ (effective date of rule will be inserted) are hereby revoked.

(*2*) All licensees shall augment their reactor vessel examination by implementing once, as part of the inservice inspection interval in effect on _____ (effective date of rule will be inserted), the examination requirements for reactor vessel shell welds specified in Item B1.10 of Examination Category B–A, "Pressure Retaining Welds in Reactor Vessel," in Table IWB–2500–1 of Subsection IWB of the 1989 Edition of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, subject to the conditions specified in § 50.55a(g)(6)(ii)(A) (*3*) and (*4*). The augmented examination may be used as a substitute for the reactor vessel shell weld examination scheduled for implementation during the inservice inspection interval in effect on _____ (effective date of rule will be inserted).

(*3*) Licensees with fewer than 40 months remaining in the inservice inspection interval in effect on _____ (effective date of rule will be inserted) may defer the augmented reactor vessel examination specified in § 50.55a(g)(6)(ii)(A)(*2*) to the first period of the next inspection interval. The deferred augmented examination may not be used as a substitute for the reactor vessel shell weld examination scheduled for implementation during the inservice inspection interval in effect on _____ (effective date of rule will be inserted). The deferred augmented examination may be used as a substitute for the reactor vessel shell weld examination normally scheduled for the inspection interval in which the deferred examination is performed. If the deferred augmented examination is used as a substitute for the normally scheduled reactor vessel shell weld examination, subsequent reactor vessel shell weld examinations must be performed during the first period of successive inspection intervals.

(*4*) The requirement for augmented examination of the reactor vessel may be satisfied by an examination of essentially 100 percent of the reactor vessel shell welds specified in § 50.55a(g)(6)(ii)(A)(*2*) that has been completed, or is scheduled for implementation with a written commitment, or is required by § 50.55a(g)(4)(i), during the inservice inspection interval in effect on _____ (effective date of rule will be inserted).

(h) *Protection systems.* For construction permits issued after January 1, 1971, protection systems must meet the requirements set forth in editions or revisions of the Institute of Electrical and Electronics Engineers Standard: "Criteria for Protection Systems for Nuclear Power Generating Stations" (IEEE–279) in effect [7] on the formal docket date [8] of the application for a construction permit. Protection systems may meet the requirements set forth in subsequent editions or revisions of IEEE–279 which become effective.

* * * * *

Dated at Rockville, MD, this 16th day of January 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–2288 Filed 1–30–91; 8:45 am]

BILLING CODE 7590–01–M

[7] For purposes of this regulation the proposed IEEE 279 became "in effect" on August 30, 1968, and the revised issue IEEE 279—1971 became "in effect" on June 3, 1971. Copies may be obtained from the Institute of Electrical and Electronics Engineers, United Engineering Center, 345 East 47th St., New York, NY 10017. Copies are available for inspection at the Commission's Technical Library, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland.

[8] Where an application for a construction permit is submitted in four parts pursuant to the provisions of § 2.101(a–1) and subpart F of part 2 of this chapter, "the formal docket date of the application for a construction permit" for purposes of this section must be the date of docketing of the information required by § 2.101(a–1) (2) or (3), whichever is later.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. 91–ASW–2; Notice No. SC–91–2–SW]

Special Conditions: McDonnell Douglas Model MD–900 Helicopter, Critical Functioning Electrical/Electronic Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the McDonnell Douglas Model MD–900 helicopter. This helicopter will have a novel or unusual design feature associated with certain engine installations identified as utilizing a Full Authority Digital Engine Control (FADEC). This design feature contains an electronic device that utilizes embedded software to perform the critical function of engine control. The applicable airworthiness regulations do not contain appropriate safety standards for the requirements to protect critical function systems and equipment from the effects of external radio frequency energy sources. This notice contains proposed additional safety standards that the Administrator considers necessary to ensure that critical functions of systems and equipment in the McDonnell Douglas Model MD–900 helicopter would be maintained.

DATES: Comments must be received on or before May 1, 1991.

ADDRESSES: Comments on this proposed special condition may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Docket No. 91–ASW–2, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, Building 3B,

Room 158, 4400 Blue Mound Road, Fort Worth, Texas.

All comments must be marked Docket No. 91–ASW–2. Comments may be inspected in the Office of the Assistant Chief Counsel, at the address specified above, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Vaughn, FAA, Rotorcraft Standards Staff, Regulations Group, Fort Worth, Texas 76193–0111, telephone 817–624–5121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The special conditions proposed in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Regional Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA pesonnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–ASW–2." The postcard will be date/time stamped and returned to the commenter.

Background

On April 25, 1989, McDonnell Douglas Helicopter Company (MDHC), 5000 East McDowell Road, Mesa, Arizona 85205, submitted an application for a new Type Certificate to include the Model MD–900 helicopter. This aircraft is an eight-passenger, two-engine, 5,400 pound normal category helicopter. This helicopter will possess several advanced features including a hingeless, bearingless composite rotor system, a composite primary airframe structure, an integrated crew station, a centerline instrument display, the NOTAR antitorque system, and one or possibly more electrical/electronic systems performing functions critical to the continued safe flight and landing of the helicopter.

Type Certification Basis

The certification basis for the Model MD–900 will include: FAR part 27, through Amendment 27–23, effective September 2, 1988; Amendment 27–25, effective December 13, 1989; portions of Amendment 27–26, specifically § 27.501; and FAR part 36, appendix H, effective on the date of certification.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

Discussion

The Model MD–900 helicopter was identified as incorporating one and possibly more electrical/electronic systems and equipment that will be performing functions critical to the continued safe flight and landing of the helicopter. A FADEC is an electronic device which performs the critical functions of engine control. The control of the engines is critical to the continued safe flight and landing of the helicopter during all operating flight regimes (both Visual Flights Rules (VFR) and Instrument Flight Rules (IFR)). When the design is finalized, MDHC will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by electrical/electronic systems and equipment.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. These advanced systems are responsive to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of electronic systems by damaging the components or by upsetting the system's functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of the § 27.1309(a) requirement. Higher energy levels radiate from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of the aforementioned technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the techological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the helicopter. Effective measures against the effects of exposure to high intensity radiated fields must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical functions; (2) the reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) the adverse service experience of military aircraft using these technologies; and (4) the increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognized the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to: (1) Determine and define the electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards. The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

At this time, the FAA and airworthiness authorities of other countries have established a level of HIRF environment that a helicopter could be exposed to during IFR operations.

While the HIRF requirements are being finalized, the FAA is adopting special conditions for the certification of aircraft that employ electrical/electronic systems performing critical functions. The accepted maximum energy levels in which civilian helicopter system installations must be capable of operating safely are based on surveys

and analysis of existing radio frequency emitters. This special condition would require that the helicopter be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst-case exposure for a helicopter operating IFR.

The defined HIRF environment specified in this proposed special condition is based on many critical assumptions; among these is that with the exception of takeoff and landing at an airport, the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating VFR routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the given environment by twice or more.

This special condition would require qualification of systems that perform critical functions, as installed in aircraft, to either a defined HIRF environment or to a fixed value using laboratory tests, as follows:

(1) The applicant may demonstrate that the operation and the operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined in Table 1; or

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions withstand a peak electromagnetic field strength of 100 volts per meter (v/m) in a frequency range of 10KH_z to 18 GH_z. If a laboratory test is used to show compliance with the HIRF requirements, no credit would be given for signal attenuation due to installation.

For helicopters, the primary electronic flight displays are critical for IFR operations and a FADEC is an example of a critical functioning system for all operations (both IFR and VFR).

A level of 100 v/m and further considerations such as an alternate technology backup that is immune to HIRF are appropriate at this time for critical functions during IFR operations. A level of 200 v/m and further considerations such as an alternate technology backup that is immune to HIRF are more appropriate for critical functions during VFR operations.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements would only apply to critical functions.

TABLE 1—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10 to 500 KH_z	80	80
500 to 2000	80	80
2 to 30 MH_z	200	200
30 to 100	33	33
100 to 200	33	33
200 to 400	150	33
400 to 1000	8.3K	2K
1 to 2 GH_z	9K	1.5K
2 to 4	17K	1.2K
4 to 6	14.5K	800
6 to 8	4K	666
8 to 12	9K	2K
12 to 20	4K	509
20 to 40	4K	1K

Compliance with HIRF requirements would be demonstrated by tests, analysis, models, similiarity with existing systems, or a combination thereof. Service experience alone would not be acceptable since such experience in normal flight operations may not include an exposure to the HIRF environmental condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

The modulation should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 H_z square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH_z sine wave with 80 percent depth of modulation in the frequency range from 10 KH_z to 400 MH_z and 1 KH_z square wave with greater than 90 percent depth of modulation from 400 MH_z to 18 GH_z. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable and would need to be independently assessed by the FAA for each application.

Conclusion

This action would affect only certain unusual or novel design features on one series of rotorcraft. It would not be a rule of general applicability and would affect only the manufacturer who applied to the FAA for approval of these features on the rotorcraft.

List of Subjects in 14 CFR Parts 21 and 27

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857(f)–10, 4321 et seq.; E.O. 11541; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as a part of the type certification basis for the MDHC Model MD–900 helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on January 22, 1991.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91–2293 Filed 1–30–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 29

[Docket No. 91-ASW-1; Notice No. SC-91-1-SW]

Special Conditions: Sikorsky Model S-76C Helicopter, Turbomeca Arriel Model 1S1 Engine Tachometer Box

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Sikorsky Model S-76 helicopter. This helicopter will have a novel or unusual design feature associated with installation of the Turbomeca Arriel Model 1S1 engine. This design feature is associated with the tachometer box which is installed as an approved accessory to the Arriel Model 1S1 engine. This tachometer box is an electronic device that performs the critical function of engine overspeed protection and is susceptible to interference from high intensity radiated fields (HIRF). The applicable airworthiness regulations do not contain appropriate safety standards for the requirements to protect critical function systems and equipment from the effects of external radio frequency energy sources. This notice contains proposed additional safety standards that the Administrator considers necessary to ensure that critical functions of systems and equipment in the Sikorsky Model S-76C helicopter would be maintained.

DATES: Comments must be received on or before May 1, 1991.

ADDRESSES: Comments on this proposed special condition may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Docket No. 91-ASW-1, Fort Worth, Texas 76193-0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, Building 3B, room 158, 4400 Blue Mound Road, Fort Worth, Texas.

All comments must be marked Docket No. 91-ASW-1. Comments may be inspected in the Office of the Assistant Chief Counsel, at the address specified above, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Vaughn, FAA, Rotorcraft Standards Staff, Regulations Group, Fort Worth, Texas 76193-0111, telephone 817-624-5121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The special conditions proposed in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Regional Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ASW-1." The postcard will be date/time stamped and returned to the commenter.

Background

On June 15, 1989, Sikorsky Aircraft, Division of United Technologies Corporation, 6900 Main Street, Stratford, Connecticut 06601-1381, applied for an amendment to its Type Certificate No. H1NE to include the new Sikorsky Model S-76C helicopter. The Sikorsky Model S-76B is being modified to incorporate two Turbomeca Arriel Model 1S1 engines in place of the two Pratt and Whitney Corporation Model PT6 B-36 engines. Various other alterations will be made to accomodate the installation of these different engines, including the installation of the required Arriel engine accessory tachometer box. The Model S-76C will be a derivative of the Model S-76B, which is currently approved under Type Certificate No. H1NE. The Model S-76B is a 12-passenger, two-engine, 11,400-pound transport category helicopter.

Type Certification Basis

The certification basis of the Model S-76B includes: FAR part 29, February 1, 1965, and Amendments 29-1 through 29-11, and in addition, portions of Amendment 29-12, specifically, §§ 29.67, 29.71, 29.75, 29.141, 29.173, 29.175, 29.931, 29.1189(a)(2), 29.1555(c)(2), 29.1557(c) and portions of Amendment 29-13, specifically § 29.965; Instrument Flight Criteria for S-76 (interim) dated February 10, 1977; Special Conditions 29-82-NE-3 (Docket No. 17721), dated March 27, 1978; Partial Grant of Exemption from § 29.811(h), Exemption No. 2542 (Docket No. 17403), dated January 9, 1979, for the Model S-76A, granted July 3, 1985, for the Model S-76B, Equivalent safety finding for § 29.173(b); National Environmental Act of 1969; Noise Control Act of 1972; Sikorsky Aircraft also elected to comply with: Ditching provisions §§ 29.563 including 29.801 and 29.807(d) and excluding 29.1411, 29.1415, and 29.1561 of Amendment 29-12, when emergency flotation gear, P/N 76076-02002, is installed. For over water operations compliance with the operating rules and §§ 29.1411, 29.1415, and 29.1561 must be shown. Cargo Hook § 29.865 including § 29.25 of Amendment 29-12, when cargo hook system, P/N 76255-02000, is installed. For external load operations, part 133, including Amendments 1-4. In addition, for the Model S-76B: Portions of Amendment 29-24, specifically § 29.1325(f); equivalent safety finding for §§ 29.1013(e), 29.1203(a), 29.1181(a)(6), and 29.1189(a).

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

Discussion

The Sikorsky Model S-76C helicopter was identified as incorporating one and possibly more electrical/electronic systems and equipment that will be performing functions critical to the continued safe flight and landing of the helicopter. The "tachometer box," which is a required accessory of the Turbomeca Arriel Model 1S1 engine, is an electronic device performing the function of engine overspeed protection. This protection from engine overspeed is critical to the continued safe flight and landing of the helicopter during all operating flight regimes (both Visual Flight Rules (VFR) and Instrument Flight Rules (IFR)). When the design is finalized, Sikorsky Aircraft will provide the FAA with a preliminary hazard analysis to identify any other critical functions performed by electrical/electronic systems and equipment.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform

functions required for continued safe flight and landing. These advanced systems are responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of electronic systems by damaging the components or by upsetting the system's functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of the § 29.1309(a) requirement. Higher energy levels radiate from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of the aforementioned technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the helicopter. Effective measures against the effects of exposure to high intensity radiated electromagnetic fields must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical functions; (2) the reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) the adverse service experience of military aircraft using these technologies; and (4) the increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognized the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to: (1) Determine and define the electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards. The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

At this time, the FAA and airworthiness authorities of other countries have established a level of HIRF environment that a helicopter could be exposed to during IFR operations.

While the HIRF requirements are being finalized, the FAA is adopting special conditions for the certification of aircraft that employ electrical/electronic systems performing critical functions. The accepted maximum energy levels in which civilian helicopter system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. This special condition would require that the helicopter be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst-case exposure for a helicopter operating IFR.

The defined HIRF environment specified in this proposed special condition is based on many critical assumptions; among these is that with the exception of takeoff and landing at an airport, the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating VFR routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the given environmental by twice or more.

This special condition would require qualification of systems that perform critical functions, as installed in aircraft, to either a defined HIRF environment or to a fixed value using laboratory tests, as follows:

(1) The applicant may demonstrate that the operation and the operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined in Table 1; or

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions withstand a peak electromagnetic field strength of 100 volts per meter (v/m) in a frequency range of 10HK$_z$ to 18 GH$_z$. If a laboratory test is used to show compliance with the HIRF requirements, no credit would be given for signal attenuation due to installation.

For helicopters, the primary electronic flight displays are critical for IFR operations and a full authority digital engine control (FADEC) is an example of a critical functioning system for all operations (both IFR and VRF).

A level of 100 v/m and further considerations such as an alternate technology backup that is immune to HIRF are appropriate at this time for critical functions during IFR operations. A level of 200 v/m and further considerations such as an alternate technology backup that is immune to HIRF are more appropriate for critical functions during VFR operations.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements would only apply to critical functions.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10 to 500KH$_z$	80	80
500 to 2000	80	80
2 to 30 MH$_z$	200	200
30 to 100	33	33
100 to 200	33	33
200 to 400	150	33
400 to 1000	8.3K	2K
1 to 2 GH$_z$	9K	1.5K
2 to 4	17K	1.2K
4 to 6	14.5K	800
6 to 8	4K	666
8 to 12	9K	2K
12 to 20	4K	509
20 to 40	4K	1K

Compliance with HIRF requirements would be demonstrated by tests, analysis, models, similiarity with existing systems, or a combination thereof. Service experience alone would not be acceptable since such experience in normal flight operations may not include an exposure to the HIRF environmental condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

The modulation should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 H_z square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH_z sine wave with 80 percent depth of modulation in the frequency range from 10 KH_z to 400 MH_z and 1 KH_z square wave with greater than 90 percent depth of modulation for 400 MH_z to 18 GH_z. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable and would need to be independently assessed by the FAA for each application.

Conclusion

This action would affect only certain unusual or novel design functions on one series of rotorcraft. It would not be a rule of general applicability and would affect only the manufacturer who applied to the FAA for approval of these features on the rotorcraft.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11541; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as a part of the type certification basis for the Sikorsky Model S–76C helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that peforms critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on January 22, 1991.

James D. Erickson,

Manager, Rotocraft Directorate, Aircraft Certification Directorate.

[FR Doc. 91–2294 Filed 1–30–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–CE–58–AD]

Airworthiness Directives; Cessna 210, T210, P210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); Extension of comment period.

SUMMARY: This notice extends the comment period of an advance notice of proposed rulemaking (ANPRM) that was previously published in the **Federal Register**. The FAA has received reports that certain Cessna 210, T210, and P210 series airplanes equipped with integral fuel tanks may be experiencing loss of fuel or problems in fueling. The purpose of this notice is to allow persons more time to respond to what is the best action (if any) to be taken in order to correct this problem. All comments and ideas will be evaluated by the FAA and the FAA will research the situation to decide whether rulemaking is needed.

DATES: Comments must be received on or before April 1, 1991.

ADDRESSES: Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–58–AD, room 1558, 601E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted. Information related to this notice can be examined at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas 67209; Telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

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 triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before any other action is taken. 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 that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket. After consideration of the available data and comments, a notice of proposed rulemaking (NPRM) will be issued if it is determined that it is in the public interest to proceed with regulatory action.

Availability of ANPRMs

Any person may obtain a copy of this ANPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–58–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA is currently investigating a possible unsafe condition on Cessna 210, T210, and P210 series airplanes that were manufactured with cantilever wing integral fuel tanks. Cessna produced 7,064 of these airplanes between 1967 and 1986. Within a recent five-year period, over 100 of these airplanes were involved in fuel exhaustion incidents. The problem was initially thought to be caused by the inability to fuel the tanks to total capacity.

Recent investigations have led the FAA to believe that tank capacity is obtainable under normal conditions, but that certain fuel cap and fuel filler port configurations could constrain the normal flow rate of the last several gallons to the fuel tanks while refueling. In addition, recent tests conducted by the Cessna Pilots Association revealed the possiblity of fuel siphoning because of fuel cap and/or vent valve failure, which may cause undetected in-flight fuel loss.

The fuel cap and filler port configurations on these airplanes have been changed several times and the FAA is aware that at least 6 different designs are currently being utilized. In addition, Cessna changed the fuel vent valve design and location beginning with the 1985 models. Cessna has also provided retrofit kits that some operators have voluntarily installed.

These actions may have decreased the probability of reduced fuel capacity and in-flight siphoning, but fuel exhaustion incidents are still being reported. The FAA has determined that specific fueling procedures and limitations and cautionary information regarding the possibility of fuel siphoning may be necessary for Cessna 210, T210, and P210 series airplanes that were manufactured with cantilever wing integral fuel tanks.

An advance notice of proposed rulemaking (ANPRM) was published in the **Federal Register** on December 20, 1990 (55 FR 52179), which provided an opportunity for the general public to participate in the decision whether to initiate rulemaking. The FAA has received requests to extend the comment period on this subject. This notice allows additional time for interested persons to provide information that describes what they consider the best action (if any) to be taken to correct this problem. In this regard, the FAA is especially interested in comments and viewpoints on the following:

1. Do the fuel gauges register one level that appeared incorrect upon visual inspection? i.e., .

a. Do the fuel gauges indicate full with less than the certificated fuel capacity onboard?

b. Do the fuel gauges register fuel onboard when the fuel tanks are empty?

c. Do fuel gauges register empty or at an unusable quantity when several gallons of fuel are still available?

2. Do you have to use special procedures to completely fill the fuel tanks?

3. Is the airplane normally refueled on level ground?

4. Have you seen evidence of fuel siphoning from the fuel tank caps or tank vents that occurred while the airplane was in flight. If so, did you believe it to be a significant amount?

5. Have fueling stops been more frequent than usual?

6. Would it be effective to:

a. Limit the fuel that would be available under certain conditions through operational, AFM restrictions, mechanical means, or similar means or methods?

b. Modify existing or install different fuel tank caps, filler ports, and vents?

c. Require an Airplane Flight Manual Supplement with special fuel system operating procedures and limitations?

d. Take any other actions or implement other airplane modifications to solve the problem?

7. Have you obtained any information relating to this topic through safety seminars, public information classes or any other general information programs? If so, please share the views and ideas you received and what you think to be the most important.

8. Are there suggestions other than those addressed above for reducing the possibility of fuel exhaustion accidents or incidents on these airplanes?

Issued in Kansas City, Missouri on January 24, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-2292 Filed 1-30-91; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Part 243

[Docket No. 47381; Notice 91-2]

RIN 2105 AB 78

Aviation Security: Passenger Manifest Information

January 11, 1991.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Public Law 101-604, enacted November 16, 1990, mandates that the Secretary of Transporation require all U.S. airlines to comply with a Passenger Manifest Collection Regulation for international flights. The Department of Transportation intends to meet this statutory requirement and is therefore soliciting comments and suggestions from the public pertaining to cost-effective methods for facilitating the collection of the required information.

DATES: Comments must be submitted on or before February 19, 1991. Comments received on or before the deadline will have the best chance of being considered for inclusion in the Notice of Proposed Rulemaking (NPRM); however, the Department of Transportation will continue to accept late comments and consider them to the extent possible. Given the close proximity of the statutory deadline, the NPRM will be released shortly after the ANPRM comment deadline.

ADDRESSES: Comments on this advance notice of proposed rulemaking should be mailed, in triplicate, to: Docket Clerk, U.S. Department of Transportation, room 4107, Docket No. 47381, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Megan Marshall, Office of the Assistant Secretary for Policy and International Affairs, Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Telephone (202) 366-4877.

SUPPLEMENTARY INFORMATION: During the 101st Congress, Section 410, subsection (a) of the Federal Aviation Act of 1958 (49 U.S.C. app. 1380, Public Law 101-604, signed November 16, 1990) was amended to mandate that "not later than 120 days after the date of the enactment of this section, the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State—(1) not later than 1 hour after any such carrier is notified of an aviation disaster outside the United States which involves such flight; or (2) if it is not technologically feasible or reasonable to fulfill the requirement of this subsection within 1 hour, then as expeditiously as possible, but not later than 3 hours after such notification." The statute specifically prescribes that the passenger manifest contain the following information: "The full name of each passenger, the passport number of each passenger, if required for travel, and the name and telephone number of a contact for each passenger." In addition, in subsection (b), the statute states that "the Secretary of Transportation shall consider the necessity and feasibility of requiring United States carriers to collect passenger manifest information as a condition for passenger boarding of any flight subject to such requirement," and subsection (c) requires the Secretary of Transportation to consider "a requirement for foreign air carriers comparable to that imposed pursuant to the amendment made by subsection (a)."

Besides the Congressional mandate, the President's Commission on Aviation Security and Terrorism, in its final report to the President, also recommended that airlines be required to collect additional passenger identification and emergency contact information on all flights entering and leaving the United States (Report on the President's Commission on Aviation Security and Terrorism, p. 102). The Department of State regards the timely provision of a passenger manifest that, at a minimum, contains the elements specified in Public Law 101-604 and in the Commission's report as essential to permit it to fulfill its responsibility under the statute to provide timely notification to victims' families.

Public Law 101-604 does not define the term "aviation disaster." The Department proposes to define the term

as "an occurrence associated with a U.S. air carrier's international operations that takes place between the time any person has checked in for boarding of a flight and the time all such persons have disembarked, and during the time which any person suffers death or serious injury, is taken hostage, or the aircraft receives substantial damage either as the result of accident or of an unlawful act directed at the aircraft or its passengers." The Department invites comment on this definition.

In past industry/government discussions, the U.S. carriers have expressed concern about the practicality of complying with the requirements such as those now contained in section 203 of Public Law 101–604 in terms of reservations procedures and information systems. The airlines stated that they would be forced to provide additional counter space in airports that are already facing serious facility constraints. Although the carriers would purchase and install additional computer terminals, the airlines contend that passengers would still be faced with increased processing time at the ticket counters. The airlines have also identified some difficulties with relying on current computer reservations systems (CRS) to facilitate the collection and verification of data.

According to the airlines, the technical problems that arise within a single computer system are likely to be exacerbated when information has to be transferred between systems of varying degress of sophistication and capacity The internal reservations systems of airlines that do not own a CRS of the type marketed to travel agents are usually less sophisticated. While standard formats exist for the transfer of some information, full passenger data are not routinely transmitted from the system in which the reservation is made to other airlines in a passenger's itinerary. Therefore, formats would need to be agreed upon and implementing software would need to be developed to facilitate the transfer of additional information.

Another problem that has been identified by the airlines is ensuring that the necessary data are collected at the time the reservation is made. While airlines can control reservations that are made directly with their own personnel, the carriers cannot exercise the same degree of control over reservations made through travel agents. Travel agents book 70–80% of scheduled service in the United states.

On December 3, 1990, staff of the Office of the Secretary of Transportation met with a representative of the Air Transport Association (ATA), at the representative's request. Although Department of Transportation policy discourages oral contacts with individual parties during the course of a rulemaking, if such contacts do occur, Department of Transportation Order 2100.2 (Policies of Public Contact in Rulemaking) requires that a report be submitted to the docket and, where appropriate, that the contact be discussed in the preamble to a notice. In this case, the industry representative expressed the airlines' concerns about the costs of implementing such a rule as well as the feasibility of meeting the 120 day deadline and recommended that the Department of Transportation address these concerns. Department of Transportation staff replied that it would consider those issues raised by the ATA representative. A full summary of the discussion has been placed in the Docket.

By this advance notice we request comments on various issues arising from the implementation of Public Law 101–604, signed November 16, 1990. The Department of Transportation will meet the statutory requirements and has issued this ANPRM as a method for acquiring information necessary to the production of an NPRM and accompanying Regulatory Evaluation.

The Department of Transportation has identified two possible approaches to meeting the statutory requirements. We would appreciate comments on the feasibility and the desirability of each of these approaches, along with any others.

Possible Approaches

(1) Require airlines to collect and to maintain in computer reservations systems (e.g., and not any other data collection system) the required data at the time each passenger books a reservation. Airlines would be required to ensure the information is collected by all ticket and travel agents.

(2) Require each of the airlines to obtain the approval of the Department of Transportation for its own individually developed data collection system (e.g., computer reservation system, manual system, passport reading machine-based system, information storage unit).

Note: Such a system must possess the capability of collecting all of the passenger manifest information required by the statute.

Specifically, interested parties are asked to respond to any or all of the following questions in addition to issues discussed previously.

Data Collection and Protection

(1) Should the U.S. air carriers be made legally responsible for the collection of passenger manifest information or should collection be limited to requiring air carriers to use their "best-efforts" to obtain the necessary information? Assuming the air carriers are made legally responsible, should a passenger who does not wish to provide the information be barred from traveling? Could such a passenger be issued a ticket after signing a waiver form that releases the air carrier from accountability?

(2) How should the data collection process be applied to non-direct, air-taxi, and commuter airlines vis-a-vis the Regulatory Flexibility Act? In the case of charter flights, should the responsibility for collecting the manifest information be attributed to the charter operators or the airlines themselves?

(3) Should the airlines be required to collect identification information for all passengers or just for U.S. citizens? Commenters are specifically invited to address problems that a passenger manifest rule could pose if foreign laws forbid the collection of personal information.

In addition to foreign nationals, how could the following types of passengers fit into data collection procedures (standbys, walk-ups, no-shows, industry non-revenuers, lap infants, and rerouters)?

(4) Should a legal distinction be made in reporting requirements and implementation for flight segments to/from the United States vs. those between two foreign points?

(5) What are the current methods available for collecting passenger information data? In the opinion of those entities affected, what are the most cost-effective of these data collection methods? What elements (e.g., equipment and procedures) would these collection systems require? What would be the costs of implementing these systems?

(6) Are there technical problems that can be foreseen in current computer systems' capabilities and compatibility? What are they? How can they be addressed?

(7) Many different people will have access to passenger manifest information including, of course, employees of airlines and travel agencies who will be collecting it. This raises questions of privacy protection. How should this problem of confidentiality be addressed? Should the privacy of reservations made abroad be treated differently than those made in the United States?

Facilitation

(8) What effect would the information collection process have on passenger processing time and flight schedules? What steps could be taken to alleviate protential problems in this area? (e.g., Is it technically feasible and cost effective to indicate in the passenger check-in process, CRS departure control mode, (by an asterisk or another symbol) that the additional passenger manifest data had been previously entered into the passenger name record?)

Domestic/Foreign

(9) How can we ensure foreign airlines and travel agents pass on data they have previously collected for passengers who will be traveling on U.S. carriers?

(10) Should foreign airlines serving U.S. markets comply with additional information collection requirements? How will this information differ from the customs data such airlines already collect? Should the Department of Transportation mandate how the foreign carriers conduct the collection?

(11) If foreign carriers are not subject to the rule, would there be a competitive impact on U.S. carriers? If so, to what extent? Will the traveling public view airlines who are required to collect passenger manifest information as less secure or more secure? Is it credible to believe that many passengers would select an airline on the basis of the need to provide additional information?

(12) In addition to foreign travel, should the regulation also apply to domestic passenger flights (including travel between the U.S. mainland and U.S. territories and possessions)?

(13) What special problems might arise for flights where no passport is required for travel, such as to Canada, Mexico, and the Caribbean?

Benefits/Costs

The anticipated benefits of the proposed collection of information are difficult to quantify; the additional information would primarily aid the Department of State in its efforts to notify the next of kin of passengers involved in aviation disasters. The benefits here can be measured in terms of time saved and mistakes avoided once an airline disaster occurs. Comments are invited on this issue.

Regulatory Flexibility Considerations

Congress enacted the Regulatory Flexibility Act of 1980 (RFA) to ensure that small entities are not unfairly and disproportionately burdened by the government. Small entities are defined as small nonprofit organizations and independently owned and operated small businesses. RFA requires rules that may have a significant effect on a great number of small entities to be reviewed by the agencies. We invite comments to address whether, and to what extent, small entities would be affected by rules of the kind discussed in this notice, and to make suggestions regarding ways to minimize the burden on small entities.

Issued in Washington, DC, January 22, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91-2217 Filed 1-30-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 16

[Order No. 1470-91]

Fee for Production of Identification Record

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises 28 CFR 16.33, permitting the Federal Bureau of Investigation (FBI) Identification Division to increase the fee from $14.00 to $17.00 for the production of identification records to the subjects of those records.

DATES: Comments must be received on or before March 4, 1991.

ADDRESSES: Send comments to Federal Bureau of Investigation Identification Division, Room 10861, Washington, DC 20537-9700.

FOR FURTHER INFORMATION CONTACT: Melvin D. Mercer, Jr., Chief of the Correspondence and Special Services Section, Identification Division, FBI, Washington, DC 20537-9700, telephone number (202) 324-5454.

SUPPLEMENTARY INFORMATION: Departmental Order 556-73 (38 FR 32806, November 28, 1973) directed that the FBI publish rules for the dissemination of arrest and conviction records upon request. This order resulted from a determination that section 534, title 28 of the United States Code does not prohibit the subjects of arrest and conviction records for accessing those records. In accordance with the Attorney General's order, the FBI will release to the subjects of identification records copies of such records upon submission of a written request, a set of rolled-inked fingerprint impressions, and the appropriate processing fee. Based on current cost analysis, the cost for production of an FBI identification record has increased from $14.00 to $17.00.

This is not a major rule within the meaning of Executive Order No. 12291, and it will not have a substantial impact on a significant number of small buisnesses.

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information, Privacy, and Sunshine Act.

PART 16—[AMENDED]

By virtue of the authority vested in me as Attorney General, including 28 U.S.C. 509, 510, and 5 U.S.C. 301, part 16, subpart C of title 28 of the CFR is amended as follows:

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.33 is proposed to be revised to read as follows:

§ 16.33 Fee for production of identification record.

Each written request for production of an identification record must be accompanied by a fee of $17.00 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in § 16.10 of this part. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigence.

Dated: January 22, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-2146 Filed 1-30-91; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 90-481; DA 91-52]

Construction, Licensing, and Operation of Private Land Mobile Radio Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: This action extends the reply comment period for a proposed rule regarding construction, licensing, and operation of private land mobile radio stations until February 11, 1991. This action is necessary to ensure the development of a complete record. The intended effect is to encourage comments from interested parties.

DATES: Reply comments are due February 11, 1991.

FOR FURTHER INFORMATION CONTACT: Maria Strong, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

Order Extending Reply Comment Period

Adopted: January 16, 1991; Released: January 25, 1991

By the Chief, Private Radio Bureau:

1. On October 11, 1990, the Commission adopted a Notice of Proposed Rule Making in the above captioned matter. Notice of Proposed Rule Making, PR Docket No. 90–481, 5 FCC Rcd 6401 (1990) 55 FR 46834, November 7, 1990. The original deadlines for comments and reply comments were December 24, 1990 and January 8, 1991, respectively. On November 29, 1990, the Special Industrial Radio Service Association, Inc. (SIRSA) filed a motion requesting an extension of the deadlines for comments and reply comments by approximately two weeks. We approved SIRSA's request and extended the deadlines until January 8, 1991 for comments and January 24, 1991 for reply comments. Order Extending Comment Period, PR Docket No. 90–481, DA 90–1775 (released December 11, 1990).

2. On January 15, 1991, the American SMR Network Association, Inc. (ASNA) filed a motion requesting an extension to file reply comments unitl February 11, 1991. Because of the number of comments submitted to the Commission, ANSA believes that a brief additional period to review all comments would well-serve the public interest.

3. Extensions of time are not routinely granted. See 47 CFR 1.46(a). As we stated in the order extending the comment period, the rules proposed in this proceeding have a potential impact on virtually every private radio licensee. In some instances, the loss of operating authority could result. The brief length of the requested extension would ensure the development of a complete record in this proceeding without causing undue delay. We therefore find good cause to grant the extension requested.

4. Accordingly, *It is ordered,* pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, 47 CFR 0.331, that all interested parties will have until February 11, 1991 to file reply comments in this proceeding.

Federal Communications Commission

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 91–2308 Filed 1–30–91; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 56, No. 21
Thursday, January 31, 1991

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

January 25, 1991.

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) 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.

Revision

- Foreign Agricultural Service, Regulations—Financing Commercial Sales of Agricultural Commodities Under Title I, Public Law 480—Recordkeeping and Reporting Requirements, Recordkeeping; On occasion, Businesses or other for-profit; Small businesses or organizations; 724 responses; 923 hours, James Chase, (202) 447–5780.

Donald E. Hulcher,
Deputy Departmental Clearance Officer.

[FR Doc. 91–2286 Filed 1–30–91; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Van Camp Timber Sales and Winter Range Improvement; Clearwater National Forest, Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will analyze and disclose the environmental impacts of a proposal to clearcut and reforest 700 acres of timber; regenerate 612 acres of nonstocked, seral brushfields by slashing, burning, and planting; reconstruct 5.7 miles of existing roads; construct 3.0 miles of new roads; and improve big game winter range by burning 160 acres and grass seeding and fertilizing an additional 130 acres in the Deadman Creek and Tick Creek drainages on the Lochsa Ranger District. The proposed action is partially located within the southwest corner of the North Lochsa Slope Roadless Area (# 1307). An environmental impact statement will be prepared which will document the analysis. This EIS will tier to the Clearwater National Forest Land and Resource Management Plan Final Environmental Impact Statement of September 1987, which provides overall guidance in achieving the desired future condition for the area. The purpose of the proposed action is to provide a short-term supply of timber for local mills, improve growth on timber producing ground, improve timber age class diversity, increase forage availability for wintering big game, and reforest brushfields created by large wildfires in 1910 and 1934.

The agency invites written comments and suggestions on the issues and management oportunities for the area being analyzed.

DATES: Comments concerning the scope of the analysis should be received by March 1, 1991 to receive timely consideration in the preparation of the Draft EIS. The Draft Environmental Impact Statement will be filed with the Environmental Protection Agency by April 1, 1991. The Final EIS and Record of Decision are expected in July of 1991.

ADDRESSES: Send written comments to Jon B. Bledsoe, District Ranger, Lochsa Ranger District, Rt. 1 Box 398, Kooskia, ID 83539.

FOR FURTHER INFORMATION CONTACT: Kris Hazelbaker, Van Camp Interdisciplinary Team Leader, or Jon B. Bledsoe, District Ranger, Lochsa Ranger District, Clearwater National Forest, (208) 926–4275.

SUPPLEMENTARY INFORMATION: Clearcutting followed by reforestation is proposed to improve forest growth and to provide the optimum amount of forage for wintering elk. Timber harvest is proposed in T34N, R7E, sections 10, 11, 14, 24, 25, and 36 (10 harvest blocks); and T34N, R8E, sections 20, 28, 29, 30, 31, 32, and 33 (11 harvest blocks). Reforestation of old brushfields is proposed to return nonproductive lands to timber production. Reforestation of brushfields is proposed in T34N, R8E, sections 6, 7, 8, 9, 16, 17, 20, and 21 (9 blocks). Burning is proposed on winter range in order to rejuvenate old shrubs and so produce more forage for wintering elk. Winter range improvement by burning is proposed in T34N, R8E, sections 19, 30, and 33 (4 blocks). Grass seeding and fertilizing are proposed to provide more forage for wintering elk. Winter range improvement by grass seeding and fertilizing is proposed in T34N, R8E, sections 31 and 32 (2 blocks). All legal descriptions are based on the Boise Principal Meridian. All but three proposed harvest blocks and one burning block are within the Deadman Creek drainage. One harvest unit is within the Tick Creek drainage. The two remaining harvest units and burn unit are in a small, unnamed drainage between Deadman Creek and Tick Creek.

The Clearwater National Forest Land and Resource Management Plan provides overall guidance for management activities in the potentially affected area through goals, objectives, standards, guidelines, and management area direction. Management areas found within the study area emphasize management for Recreation River character along the Lochsa River; for big game winter range on low elevation shrubfields; for big game winter range and timber on low elevation forested

ground; for high quality elk summer range on higher elevation, currently unroaded lands; for optimum timber management on higher elevation roaded lands; for natural processes in the Lochsa Research Natural Area; or for riparian resources along streamcourses.

This proposal has been analyzed in an environmental assessment. As a result of that analysis, the Forest Service decided that the proposed action was not significant, and issued a decision notice in August 1990. It was appealed, with contentions based on significance of the area's unique character, the level of controversy and uncertainty surrounding the roadless and gray wolf issues, the lack of cumulative effects analysis for the North Lochsa Slope roadless area, and others. The decision was upheld with the exception that it did not fully consider the cumulative impacts of other proposals in the North Lochsa Slope roadless area. Because the significance of the effects of the proposal seem to be controversial, we have decided to proceed with further analysis. It will include the cumulative effects of all reasonably foreseeable actions on the roadless area, and culminate in an invironmental impact statement.

Scoping for the original proposal began in 1987, with consultations with a number of resource specialists on the Clearwater National Forest, and letters to key interest groups and individuals. Key issues identified by the Interdisciplinary Team during scoping were:

1. Access through the Lochsa Research Natural Area via Road # 481;
2. Potential impacts of timber harvest and road construction on elk summer range;
3. Potential impacts of road construction and timber harvest on the North Lochsa Slope Roadless Area;
4. Potential economic and safety impacts of alternative access routes to the area;
5. Potential impacts to soils and the timber resource of regenerating nonstocked brushfields;
6. Potential impacts of timber harvest and road construction on steelhead habitat, riparian-dependent resources, and resident fish habitat.

In response to the issues and concerns identified, eleven alternatives have been considered, six in detail, including the "no action" alternative.

Because of the time lapse since scoping began and the decision to prepare an EIS, the Forest Service is now looking for further information and comments from Federal, State, and local agencies, and from people or groups who are interested in or affected by the proposed action. No meetings are planned, but letters, phone calls, or personal visits are invited for the purpose of providing information related to this proposal. This additional information will be used to prepare a Draft Environmental Impact Statement. This process will include:

1. Determination of significant issues.
2. Determination of potential cooperating agencies.
3. Identification and elimination from detailed study of nonsignificant issues, or issues that have been covered by previous environmental review.
4. Identification of additional, reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.

Public participation is important all through the analysis process. Two key time periods have been identified for receipt of formal comments on the proposal and analysis:

1. Scoping period, which is not through March 1, 1991; and
2. Review of the Draft Environmental Impact Statement in April and May, 1991.

The Forest Service expects to file the Draft EIS with the Environmental Protection Agency by April 1, 1991. The Final Environmental Impact Statement and Record of Decision are expected in July of 1991. The responsible official is the Forest Supervisor of the Clearwater National Forest.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: January 18, 1991.

Fred L. Trevey,

Forest Supervisor.

[FR Doc. 91–2257 Filed 1–30–91; 8:45 am]

BILLING CODE 3410–11–M

Somes and Butler Compartments EIS

AGENCY: Forest Service, USDA.

ACTION: Revision of a notice of intent.

SUMMARY: The Department of Agriculture, Forest Service is revising its notice of intent to prepare the Somes-Butler environmental impact statement (EIS). The purpose and need has expanded from a timber sale project analysis to the development of long range management objectives for all of the area's natural resources.

DATES: Comments received during previous scoping are on file and are being considered in the present analysis. Additional comments concerning the Somes-Butler area must be received by March 1, 1991, to be most helpful in preparation of the Draft EIS.

ADDRESSES: Send written comments and suggestions concerning the scope of the analysis to Sam Wilbanks, District Ranger, Ukonom Ranger District, Klamath National Forest, P.O. Drawer 410, Orleans, CA 95556.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Debi Wright, Planner, Ukonom Ranger District, phone (916) 627–3291.

SUPPLEMENTARY INFORMATION: The original timeframe for the completion of the EIS has been extended to accommodate the expanded scope of the

analysis. This occurred as a result of identified issues, both public and agency, during the previous scoping process.

A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider an array of resource management strategies. These will range from stressing timber production capabilities to maintaining the undeveloped character of the area.

The Forest Service has sought and continues to seek information from Federal, State, and local agencies and other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the Draft EIS and will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat for any species found to exist in the analysis area.

Barbara Holder, Forest Supervisor, Klamath National Forest, is the responsible official.

The analysis is expected to take an additional 18 months.

The draft environmental impact statement (DEIS) is to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 1991. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Somes and Butler Compartments EIS participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by May 1992. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Dated: January 22, 1991.

David N. Diaz,

Acting Deputy Forest Supervisor.

[FR Doc. 91-2254 Filed 1-30-91; 8:45 am]

BILLING CODE 3410-11-M

South Beckler Timber Sales, Mt. Baker-Snoqualmie National Forest, Snohomish and King Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal to harvest and regenerate timber, construct/reconstruct roads, provide fish and wildlife habitat enhancement, and enhance recreation within the South Beckler Project Area. The project area is located within a portion of the Glacier Peak B Roadless Area #B6031. The proposal will be in compliance with the Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (Forest Plan) of June 1990, which provides overall guidance in achieving the desired future condition of the area, including a schedule of proposed activities for the next ten years. The proposed project is located in the Beckler, Rapid and Tye River drainages on the Skykomish Ranger District and is scheduled in the Forest Plan for one fiscal year 1991 timber sale, two fiscal year 1992 timber sales, and one fiscal year 1993 timber sale. The Mt. Baker-Snoqualmie National Forest invites written comments and suggestions on the scope of the analysis.

DATES: Comments concerning the scope of the analysis should be received in writing by March 4, 1991.

ADDRESSES: Send written comments to Phyllis Green, District Ranger, Skykomish Ranger District, P.O. Box 305, Skykomish, WA 98288.

FOR FURTHER INFORMATION CONTACT: Ed DeCarlo, Timber Management Assistant, at the above address or (206) 677-2414.

SUPPLEMENTARY INFORMATION: The proposal includes harvesting timber and constructing/reconstructing roads on four timber sales and enhancement of fish and wildlife habitat, and recreation within the project area. Four proposed timber sales are listed in the Timber Program Activity Schedule, (Forest Plan, appendix A). The Harbeck timber sale is listed for 1991, and the Beckler II, the Johnson Creek, and the Rapid River timber sales are listed for 1993. The area being analyzed is approximately 12,000 acres in size, and is located in all or portions of: Section 24, T. 26 N., R. 11 E; Sections 2-8, and 15-21, T. 27 N., R. 12 E.; and Sections 13, 14, 22-27, and 29-36, T. 27 N., R. 12 E., Willamette Meridian.

The environmental analysis of proposed timber sales in the Beckler, Rapid, and Tye River drainages have been ongoing for several years as separate analyses. Due to geographic proximity, similarity of issues, and the schedules of the proposed timber sales, the environmental analysis for all four areas will be considered and documented in one EIS.

This Draft EIS will be tiered to the Final EIS for the Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (June 1990). The Forest Plan's direction for this project area is MA 1D (Recreation Roaded Natural), MA 12 (Mature and Old Growth Wildlife Habitat), MA 14 (Deer and Elk Winter Range), MA 17 (Timber Management Emphasis), MA (Mountain Hemlock Zone), and MA 27 GF (Alpine Lakes Area, General Forest). MA 13

(Watershed, Wildlife, and Fisheries Emphasis in Riparian Areas) will be mapped as a part of the project, to meet Forest-wide Standards and Guidelines in the Forest Plan. Timber harvest may be proposed only in MA 1D, MA 13, MA 14, MA 17, and MA 27 GF. The proposed sale area would include a portion of the Glacier Peak B Roadless Area #B6031, which was considered but not selected for wilderness designation in the 1984 Washington State Wilderness Act.

Interested environmental groups, individuals, timber purchasers, and Federal, State, and local agencies were invited to participate in early scoping meetings of the Five Year Harvest Schedule held in 1985, 1987, 1988, and 1989. The Beckler, Rapid and Tye River drainages were being considered as separate analyses at that time. Comments have been received from several organizations and individuals. An informational letter is being sent concurrently to those previously involved to update them on the analysis and the intent to prepare an EIS, and to invite further involvement. Further scoping meetings may be scheduled if additional issues are raised.

Preliminary issues identified are: Timber harvest; maintenance of deer and elk winter range; stream stability, fish habitat, and associated riparian wildlife habitat; downstream water quality and quantity; slope stability; visual quality; threatened, endangered and sensitive wildlife and plants; cumulative effects; impacts to trails; entry into roadless area parcels; historical and cultural values associated with railroad logging artifacts; old growth values; Native American religious values; potential effects on private landowners; and potential impacts to small hydro-electric projects and domestic water users.

Preliminary alternatives have been identified; one of these includes no action. Alternatives for timber harvest will examine clearcutting, partial cutting, selection, and single entry shelterwood options, and both cable and helicopter logging systems.

The draft environmental impact statement is expected to be completed about June 1991. Your comments and suggestions are encouraged and should be in writing. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council in Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

The final environmental impact statement is scheduled for completion by September 1991. In the final EIS, the Forest Service will respond to comments and responses received on the draft EIS. The Forest Service is the lead agency. J. D. MacWilliams, Forest Supervisor, Mt. Baker-Snoqualmie National Forest, is the responsible official and will make a decision regarding this proposal. The decision and reasons for the decision will be documented in a Record of Decision. The decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: January 18, 1991.

Bernie Weingardt,

Deputy Forest Supervisor.

[FR Doc. 91-2278 Filed 1-30-91; 8:45 am]

BILLING CODE 3410-11-M

Corkindale/Olson Timber Sales, Mt. Baker-Snoqualmie National Forest, Skagit County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal to harvest and regenerate timber, provide fish and wildlife habitat enhancement, and enhance recreation within the Corkindale/Olson Project Area. The project area is located within a portion of the Mt. Baker (Noisy-Diobsud) Roadless Area #6041. The proposal will be in compliance with the Mt. Baker-Snoqualmie National Forest Land and Resource Mangement Plan (Forest Plan) of June 1990, which provides overall guidance in achieving the desired future condition of the area, including a schedule of proposed activities for the next ten years. The proposed project is located in the Corkindale Creek and Olson Creek drainages on the Mount Baker Ranger District and is scheduled in the Forest Plan for a fiscal year 1992 timber sale. The Mt. Baker-Snoqualmie National Forest invites written comments and suggestions on the scope of the analysis.

DATES: Comments concerning the scope of the analysis should be received in writing by March 4, 1991.

ADDRESSES: Send written comments to Larry Hudson, District Ranger, Mount Baker Ranger District, 2105 Highway 20, Sedro Woolley, WA 98284.

FOR FURTHER INFORMATION CONTACT: Karen Nolan, Planning Forester, at the above address or (206) 856-5700.

SUPPLEMENTARY INFORMATION: The proposal includes harvesting timber and constructing/reconstructing roads on one or two timber sales and enhancement of fish and wildlife habitat and recreation within the project area. A proposed timber sale (Corkindale/Olson) is listed in the Timber Program Activity Schedule, (Forest Plan, appendix A) for 1992. The area being analyzed is approximately 11,000 acres in size, and is located in all or portions of: Sections 13, 23-27, 32-36 of T. 36 N., R. 10E.; Sections 18, 19, 30 of T. 36 N., R. 11 E.' and Sections 1-5, 9-12, 14-16, and 22 of T. 35 N., R. 10 E..

The environmental analysis of proposed timber sales in the Corkindale Creek drainage and the Olson Creek drainage has been ongoing for several years as two separate analyses. Due to

geographic proximity, similarity of issues, and the schedule for the timber sales, the environmental analysis for both areas will be considered and documented in one EIS.

This Draft EIS will be tiered to the Final EIS for the Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (June, 1990). The Forest Plan's direction for this project area is MA 2B (Scenic Viewshed Middleground), and MA 1A (Primitive-Dispersed Recreation). MA 13 (Watershed, Wildlife, and Fisheries Emphasis in Riparian Areas) will be mapped as a part of the project, to meet Forest-wide Standards and Guidelines in the Forest Plan. Timber harvest may be proposed only in MA 2B and MA13. The proposed sale area would include a portion of the Mt. Baker (Noisy-Diobsud) Roadless Area #6041, which was considered but not selected for wilderness designation in the 1984 Washington State Wilderness Act.

Interested environmental groups, individuals, timber purchasers, and Federal, State, and local agencies were invited to participate in early scoping meetings for the Five Year Harvest Schedule held in 1985, 1987, 1988, and 1989. The Olson drainage and Corkindale drainage were being considered as two separate analyses at that time. Comments have been received from several organizations and individuals. An informational letter is being sent concurrently to those previously involved to update them on the analysis and the intent to prepare an EIS, and to invite further involvement. Further scoping meetings may be scheduled if additional issues are raised.

Preliminary issues identified are: Timber harvest; maintenance of deer and elk winter range; stream stability, fish habitat, and associated riparian wildlife habitat; downstream water quality and quantity; slope stability; visual quality; threatened, endangered and sensitive wildlife and plants; cumulative effects; impacts to trails; entry into roadless area parcels; old growth values; Native American religious values; potential effects on private landowners; and potential impacts to samll hydro-electric projects and domestic water users.

Preliminary alternatives have been identified; one of these includes no action. Alternatives for timber harvest will examine clearcutting, partial cutting, selection, and single entry shelterwood options, and both cable and helicopter logging systems.

The draft environmental impact statement is expected to be completed about July, 1991. Your comments and suggestions are enouraged and should be in writing. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

The final environmental impact statement is scheduled for completion by March, 1992. In the final EIS, the Forest Service will respond to comments and responses received on the draft EIS. The Forest Service is the lead agency. J. D. MacWilliams, Forest Supervisor, Mt. Baker-Snoqualmie National Forest, is the responsible official and will make a decision regarding this proposal. The decision and reasons for the decision will be documented in a Record of Decision. The decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: January 17, 1991.

J.D. MacWilliams,

Forest Supervisor.

[FR Doc. 91-2279 Filed 1-30-91; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding 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 the Lahaina Flood Control Project, Maui, Hawaii.

FOR FURTHER INFORMATION CONTACT: Warren M. Lee, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii, 96850, Telephone (808) 541-2601.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Warren M. Lee, 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 to provide a 50 year level of flood protection to the lower Lahaina Watershed. The planned works of improvement include a flood water diversion that runs between Lahainaluna Road and Kauaula Stream that is supported by an inlet basin, a water-energy dissipating basin, and three sediment basins. The construction of a debris basin on Kauaula Stream and the replacement of the channel's existing, rock masonary lining with a rectangular, steel reinforced concrete channel are also proposed.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Enviornmental 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 information developed

during the environmental assessment are on file and may be reviewed by contacting Warren M. Lee, State Conservationist, Soil Conservation Service, P.O. Box 50004, Honolulu, Hawaii, 96850, (808) 541–2601.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Protection Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local Officials.

Dated: January 2, 1991.

Warren M. Lee,

State Conservationist.

[FR Doc. 91–2249 Filed 1–30–91; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Application; Little Rock, AK

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 U.S.C. 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period August 1, 1991 to July 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Little Rock Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firm's with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is March 5, 1991. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before March 5, 1991. Anticipated processing time of this award is 120 days.

ADDRESS: Dallas Regional Office, 1100 Commerce Street, suite 7B23, Dallas, Texas 75242–0790, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Yvonne Guevara, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the proceeding information, copies of application kits and applicable regulations can be obtained at the above address. A pre-bid conference will be held on February 12, 1991 in the Federal Building on 700 West Capital Street, room 2503 in Little Rock, Arkansas at 10 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Notice: Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until those debts have been paid or arrangements satisfactory to the Department of are made to pay the debt.

Notice: Section 319 of Public Law 101–121 generally prohibits recipients of Federal contract, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Notice: Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agrement.

Notice: Awards under this program shall be subject to all Federal and Department regulations, policies, and, procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Dated: January 25, 1991.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 91–2244 Filed 1–30–91; 8:45 am]

BILLING CODE 3510–21–M

Minority Business Development Agency

Business Development Center Applications; Baton Rouge, LA.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 U.S.C. 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period August 1, 1991 to July 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Baton Rouge Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is March 5, 1991. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before March 5, 1991. Anticipated processing time of this award is 120 days.

ADDRESSES: Dallas Regional Office, 1100 Commerce Street, suite 7B23, Dallas, Texas 75242–0790, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Yvonne Guevara, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A pre-bid conference will be held on February 6, 1991 in the U.S. Post Office at 750 Florida Street, room 311 in Baton Rouge, Louisiana at 1:30 p.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Notice: Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of are made to pay the debt.

Notice: Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Notice: Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Notice: Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Dated: January 25, 1991.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 91–2245 Filed 1–30–91; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications; Oklahoma City, OK

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 U.S.C. 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period August 1, 1991 to July 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will

operate in the Oklahoma City Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is March 5, 1991. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before March 5, 1991. Anticipated processing time of this award is 120 days.

ADDRESSES: Dallas Regional Office, 1100 Commerce Street, suite 7B23, Dallas, Texas 75242–0790, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Yvonne Guevara, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A pre-bid conference will be held on February 14, 1991 in the Federal Building at 215 Dean A McGee Street, room 132 in Oklahoma City, Oklahoma at 10 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Notice: Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of are made to pay the debt.

Notice: Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Notice: Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Notice: Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Dated: January 25, 1991.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 91–2243 Filed 1–30–91; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Public Meetings

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

TIME AND DATE: Meeting will convene at 10 a.m., February 11, 1991.

PLACE: Second Floor Conference Room, Silver Spring Metro Center Building Two (SSMCII), 1325 East-West Highway, Silver Spring, Maryland.

MATTERS TO BE CONSIDERED: Section 114(1)(3) of the Marine Mammal Protection Act (MMPA) requires that the National Marine Fisheries Service (NMFS) consult with the Marine Mammal Commission, Regional Fishery Management Councils and other interested governmental and nongovernmental organizations concerning its proposed regime to govern the taking of marine mammals incidental to commercial fishing operations. The purpose of this meeting is to consult on the NMFS proposal which reaffirms the goal to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality rate and addresses the following issues including (1) Scope of proposal, (2) Optimum Sustainable Population, OSP, (3) Monitoring of stocks, (4) Calculating Acceptable Biological Removal (ABR), (5) Process for establishing ABRs, (6) Zero mortality goal, (7) Depleted species, (8) Endangered Species Act, (9) Allocation among user groups, (10) Fishery quotas, (11) Intentional non-lethal takes, (12) Intentional lethal takes, (13) Marine Mammal Protection Act, MMPA, authorization, (14) Categories of fisheries, (15) Monitoring takes, (16) Enforcing quotas, (17) Applicability to Native Americans, (18) User fees, and (19) Implementation date.

Similar consultation meetings with the same agenda are scheduled for February 19, 1991, at 10 a.m. at the NOAA Sandpoint Facility, Auditorium (Bldg. 9),

7600 Sand Point Way, NE., Seattle, Washington, and February 22, 1991, at 1 p.m. at the Sheraton Anchorage Hotel, 401 East 6th Ave., Anchorage, Alaska. Additionally, the NMFS proposal is an agenda item at the Fishery Management Council Chairmen's meeting to be held on February 7 and 8, 1991, at the Hyatt Regency Westshore at Tampa International, 6200 Courtney Campbell Causeway, Tampa, Florida. After these consultation meetings and the publication of the proposed regime in the **Federal Register**, a Draft Legislative Environmental Impact Statement (DLEIS) that analyzes the NMFS proposal and three alternative management regimes will be available for further public comment after the notice of its availability and request for comments is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Chief, Protected Species Management Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland. *Telephone:* (301) 427–2323.

Dated: January 25, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91–2219 Filed 1–30–91; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology-Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfiled, Virginia 22151. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487–4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

Department of Agriculture

SN6–779,958 (4,724,632) Filament Seed Thresher

SN6–797,538 (4,764,371) Postharvest Biological Control of Stone Fruit Brown Rot by Bacillus Subtilis

SN6–814,944 (4,723,038) Process of Preparing Seed Germinating Stimulants

SN6–876,047 (4,765,263) Method and Apparatus for Placement of Fertilizer Below Seed with Minimum Soil Disturbance

SN6–882,103 (4,865,978) Lipolytic Splitting of Fats and Oils

SN6–894,140 (4,962,027) Production of 3-Hydroxypropionaldehyde From Glycerol By Klebsiella Pneumoniae

SN7–075,169 (4,765,796) Process of Flameproofing Cellulosic Fibers Prior to Dyeing

SN7–080,190 (4,774,098) Modified Plant Fiber Additive for Food Formulations

SN7–098,174 (4,767,441) Method for the Preparation of Mycoherbicide Containing Pellets

SN7–101,918 (4,959,310) Monoclonal Antibodies to Soybean Kunitz Trypsin Inhibitor and Immunoassay Methods

SN7–123,411 (4,839,450) Moisture-Shrinkable Films from Starch Graft Copolymers

SN7–159,995 (4,966,845) Microbial Production of L-Altrose

SN7–201,143 (4,973,601) Control of Insects by Fungal Tremorgenic Mycotoxins

SN7–248,743 (4,960,525) Hydrocyclone for Washing Particles in Liquid Suspension

SN7–274,721 Method for Reduction of Endotoxin in Cotton Lint or Dust

SN7–299,174 (4,961,752) Sequential Oxidative and Reductive Bleaching in a Multicomponent Single Liquor System

SN7–303,327 (4,968,620) Microbial Detoxification of Xenobiotics

SN7–315,239 (4,867,884) Separation of Cyclodextrins by Affinity Chromatography

SN7–325,804 (4,972,889) Self-Feeding Wood Chunker

SN7–362,992 (4,973,595) Composition and Method for Increasing the Hatchability of Turkey Eggs

SN7–371,881 (4,970,757) Automated Excision of Undersirable Material and Production of Starting Matererial for Restriction Meat

SN7–462,928 (4,973,559) Cellulolytic N2-Fixing Bacteria and Use Thereof

SN7–505,219 (4,966,913) Organic Nitriles As Insect Antifeedants

SN7–536,861 Supercritical Fluid Extraction Enhancer

SN7–551,100 Laser Treatment of Livestock Feeds

SN7–551,102 A Plutella Xylostella Cell Line for the Production of Baculoviruses

SN7–560,792 Nematode-Releasing Compositions for Use in Agriculture

SN7–592,735 Twin Rinse Columns for Freeze Concentration of Rinsable Concentrates

SN7–592,946 Insect Control Using Insect Attraticide Compositions

SN7–609,848 Compositions and Methods for Biocontrol Using Flurescent Brighteners

Department of Commerce

SN7–117,259 (4,963,523) High-Tc Superconducting Unit Having Low Contact Surface Resistivity and Method of Making

SN7–229,935 (4,973,194) Method for Burial and Isolation of Waste Sludge

SN7–410,387 (4,965,529) High Current, Very Wide Band Transconductance Amplifier

Department of Health and Human Services

SN6–922,811 (4,832,745) Non-Aqueous Dental Cements Based on Dimer and Trimer Acids

SN6–797,440 (4,970,162) Human-Mouse Hybrid Cell Line Expressing Monocyte-Macrophage Properties

SN6–920,780 (4,963,497) Isolation and Purification of the R Gene of HTLV–III

SN7–000,229 (4,968,672) Adenosine Receptor Prodrugs

SN7–089,391 (4,948,790) Long Acting Androgenic Compounds and Pharmaceutical Compositions Thereof

SN7–104,894 (4,943,579) Water Soluble Products of Camptothecin

SN7–153,933 (4,968,601) Method for Diagnosing Latent Viral Infection

SN7–158,035 (4,808,630) Method of Treating Psychotic Illnesses

SN7–165,173 (4,942,184) Water Soluble, Antineoplastic Derivatives of Taxol

SN7–261,303 (4,967,764) A Method to Measure Contact Stress

SN7–294,119 (4,968,692) Attenuation of Ethyl Alcohol Intoxication with Alpha-2 Adrenoceptor Antagonists

SN7–299,021 (4,968,690) 3-Deazaneplanocin, Intermediates For

It, And Antiviral Composition and Method of Treatment Using It
SN7–307,115 (4,975,434) Antiviral and Anticancer Cyclopentenyl Cytosine
SN7–346,492 Detection of Non-A, Non-B Hepatitis
SN7–489,825 Peptides Stimulating Cytotoxic T Cells Immune to HIV Reverse Transcriptase
SN7–504,591 RNA Template-Specific Polymerase Chain Reaction (PCR)
SN7–507,645 Diagnosis of Thalassemia Using cDNA Amplification of Globin nRNA With PCR
SN7–509,183 Use of Purinergic Receptor Agonists as Antineoplastic Agents
SN7–520,456 Method of Treating Retroviral Infections in Mammals (Camptothecin As Topoisomerase Inhibitor)
SN7–527,195 Adeno-Associated Virus (AAV)-Based Eucaryotic Vectors
SN7–528,076 Selective Retroviral Proteinase Inhibitor (Using Peptide Containing Pipecolic Acid)
SN7–530,585 Intra-Urethral Valve With Integral Spring
SN7–531,311 Method for Purification of Basic Proteins and Highly Purified Basic Proteins (Process for Manufacture of HIV–1 Reverse Transcriptase and Related Reverse Transcriptases from E. Coli)
SN7–536,101 A Marker for Early Detection of Human Hydatidiform Moles and Choricarcinomas

Department of the Interior

SN7–336,168 (4,971,685) Bubble Injected Hydrocyclone Flotation Cell
SN7–211,650 (4,959,164) Rock Fragmentation Method
SN7–383,111 (4,966,237) Method of Effecting Expanding Chemical Anchor/Seals for Rock Cavities
SN7–561,436 Digital Roughness Gauge
SN7–570,749 Chemical Process for the Denitrification of Water
SN7–574,169 Microwave Energy-Assisted Comminution
SN7–581,628 Binary Concentration and Recovery Process
SN7–582,690 Pneumatic Wall-Locking Geophone System
SN7–596,669 Method of Flocculating Clay-Containing Waste Slurries
SN7–602,598 Geological Gyrocompass

[FR Doc. 91–2216 Filed 1–30–91; 8:45 am]
BILLING CODE 3510–04–M

COMMISSION OF FINE ARTS

1991 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Public Law 99–190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded for 1991 in the amount of $6,217,000. All requests for information and applications for grants should be addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, Pension Building, suite 312, 411 F Street NW., Washington, DC 20001, Phone: 202–504–2200.

Deadlines for receipt of submission of grants applications is 1 March 1991.

This program provides grants for general operating support of organizations whose primary purpose is performing, exhibiting, and/or presenting the arts. To be eligible for these grants, organizations must be located in the District of Columbia, must be not-for-profit, non-academic institutions of demonstrated national repute, and must have annual income, exclusive of federal funds, in excess of one million dollars for the current year and for the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 91–2273 Filed 1–30–91; 8:45 am]
BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

NAME OF THE COMMITTEE: Army Science Board (ASB).

DATES OF MEETING: 19 February 1991.

TIME: 1000–1600.

PLACE: Pentagon, Washington, DC.

AGENDA: The Army Science Board (ASB) 1991 Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet to review progress of individual members on assigned tasks and will meet with DA officials to discuss the structure of the military and civilian personnel systems and the proposed Army Acquisition Corps. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–2280 Filed 1–30–91; 8:45 am]
BILLING CODE 3710–08–M

Department of the Navy

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 will meet February 25–26, 1991 from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions of key issues regarding national security policy, and related intelligence. 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 meeting, 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: January 22, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91–2215 Filed 1–30–91; 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 February 21, 1991 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 discuss energy issues that currently affect, or may in the future affect, the U.S. Navy. 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 meeting, 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: January 22, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91–2250 Filed 1–30–91; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Achievement Levels and Executive Committees of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: February 12, 1991.

TIME: 3 P.M. (e.s.t.)

PLACE: National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC 20005–4013, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Achievement Levels Committee and the Executive Committee of the National Assessment Governing Board will meet via teleconference on February 12, 1991 to approve plans to validate and refine achievement levels recommended for Board adoption. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committees' deliberations. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC, from 8:30 A.M. to 5:30 P.M.

Dated: January 25, 1991.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–2223 Filed 1–30–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Solicitation Availability Notice; (Cooperative Agreement)

AGENCY: Morgantown Energy Technology Center, U.S. Department of Energy (DOE).

ACTION: Notice of the Availability of a Financial Assistance Solicitation.

SUMMARY: On or about January 31, 1991, the DOE, Morgantown Energy Technology Center, plans to issue a Request for Proposal (RFP) No. DE–RP21–91MC28065 for the solicitation of applications in support of research and development entitled "Molten Carbonate Fuel Cells (MCFC) Stack Demonstration." Authority for the RFP is the DOE Organization Act (Pub. L. 95–91 (42 U.S.C. 7101) and the DOE Financial Assistance Regulations, 10 CFR part 600, subparts A and C. DOE anticipates award of a Cooperative Agreement with a project duration of approximately 24 months. Total estimated cost of the effort is $9,500,000; Government share is not expected to exceed $5,000,000.

FOR FURTHER INFORMATION CONTACT: R. Diane Manilla, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26505, Telephone: (304) 291–4086, RFP No. DE–RP21–91MC28065.

SUPPLEMENTARY INFORMATION: The objective of this effort is to support the demonstration of full-area, full-height 100–1,000 kilowatt molten carbonate fuel cell (MCFC) stacks in order to accelerate commercialization of the MCFC technology. The DOE shall fund the design, manufacture, and assembly of the MCFC stacks to be used in the demonstration. It is anticipated these stacks would be transported to a utility or other end-user demonstration site for system testing. Because the DOE will only provide funds for the design, manufacture, and assembly of the stacks, cost share is required for funding all other remaining work. Copies of the RFP may be obtained by submitting a request to the address provided above. Telephone requests will not be honored.

Dated: January 25, 1991.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91–2305 Filed 1–30–91; 8:45 am]

BILLING CODE 6450–01–M

Conference on Technology Options for Clean Air Compliance

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of conference on technology options for clean air compliance.

INTRODUCTION: The Clean Air Act Amendments of 1990 signed into law November 15, 1990, will have a major impact on the electric power generation industry. Through its legislation, emission reduction targets have been established for the year 1995 and year 2000 timeframe that will require utilities and independent power producers to develop compliance strategies now.

PURPOSE OF THE MEETING: The Department of Energy (DOE) will hold a conference and exhibition designed to discuss key elements of the 1990 Clean Air Act Amendments and their implications on permitting and compliance options and to afford attendees the opportunity to evaluate clean coal technologies as a means of compliance.

LOCATION AND DATES: The conference will be held on May 22 and 23, 1991 at the Westin William Penn, 530 William Penn Place, Pittsburgh, Pennsylvania

15219 (Tel. 412–553–5100 or 1–800–228–3000).

FORMAT OF THE MEETING: The first day will commence with a plenary session that will include presentations on the status of the Clean Coal Technology Program; DOE statements on the implications of the Clean Air Act Amendments on compliance options; EPA overview of key elements of the Clean Air Act Amendments affecting compliance strategies; industry views of the Clean Air Act Amendments; and views from utilities, independent power producers, regulators, and legislators on the role of clean coal technologies in meeting the Clean Air Act Amendments.

On the second day, May 23, 1991, sequential panel sessions will be held to discuss such subjects as: (1) Clean Air Act Amendments requirements affecting SO_2 and NO_x reduction compliance strategies; (2) allowance trading considerations in developing Clean Air Act Amendments compliance strategies; and (3) determining the cost of applying clean coal technologies as well as risk and prudency considerations.

The panel sessions will be led by experts in each of these areas. The panelists will provide diverse view points. Attendees will be asked to engage in discussions with the panelists on the areas described earlier in this Notice, and on such other subjects as may be introduced by members of the audience or by the panelists. The panel discusions will be informal and not recorded.

The conference is expected to adjourn late afternoon on May 23, 1991.

An adjacent area will be available for exhibits. These exhibits will be available over the two day period to allow attendees the opportunity to interact with technology suppliers. The exhibit space will be provided on a priority basis to firms presently participating in the Clean Coal Technology Program. However, other clean coal technology exhibits will be considered on a space available, first-come-first-served basis. Nominal exhibit space will be 10' wide by 8' feet deep, although multiple spaces or special space needs will be provided if possible.

PUBLIC PARTICIPATION: Individuals may attend the conference without notification in advance to DOE, and there is no registration fee or other charge for attendance. However, exhibitors will be responsible for making financial arrangements with the hotel relative to charges associated with exhibits. It is anticipated that the exhibit fee will be approximately $125.00 depending on the exhibitors requirements. For those wishing to provide an exhibit, contact should be made with Jean L. Lerch or Faith L. Cline, Fossil Energy, FE–20 (GTN), U.S. Department of Energy, Washington, DC 20545, (301) 353–3965. Attendees are responsible for making their own travel and lodging arrangements. DOE will not provide any meals or other refreshments at the meetings.

Issued in Washington, DC, January 23, 1991.

Robert H. Gentile,

Assistant Secretary, Fossil Energy.

[FR Doc. 91–2301 Filed 1–30–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TM91–6–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 25, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 22, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective January 1, 1991

29 Rev Sheet No. 211.
2 Sub 25 Rev Sheet No. 214.

Proposed to be effective February 1, 1991

26 Rev Sheet No. 214.

Algonquin states that, pursuant to Section 10 of Rate Schedule STB and section 9 of Rate Schedule SS–III, it is herein filing to track the changes in the underlying service provided by Texas Eastern Transmission Corporation's Rate Schedules SS–2 and SS–3, respectively. The proposed effective dates for the listed tariff sheets are January 1, 1991 and February 1, 1991, as appropriate, to coincide with the effective date of Texas Eastern's filing.

The effect of the change in rates is to reduce the Injection rate under Rate Schedule STB and SS–III by 0.6¢ per MMBtu.

Algonquin notes that copies of this filing were served upon each affected party and interested state commission.

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 February 1, 1991. 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. 91–2222 Filed 1–30–91; 8:45 am]

BILLING CODE 6717–01–M

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

[Docket Nos. RP89–169–018, RP86–105–019, RP87–25–007]

January 25, 1991.

Take notice that, on January 22, 1991, ANR Pipeline Company ("ANR") tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the below listed tariff sheets with a requested effective date of November 1, 1990:

Substitute Seventh Revised Sheet No. 16
Substitute Seventh Revised Sheet No. 17
Substitute Seventh Revised Sheet No. 18
Substitute Seventh Revised Sheet No. 19
Substitute Ninth Revised Sheet No. 20
Substitute Eighth Revised Sheet No. 21
Substitute Third Revised Sheet No. 22

The tariff sheets are filed to resubmit rejected tariff sheets and to reflect tariff modifications pursuant to an unpublished Letter Order issued on December 21, 1990 by the Office of Pipeline and Producer Regulation. Such Letter Order rejected certain tariff sheets which were filed on October 1, 1990 in compliance with the Article XII of the Stipulation and Agreement dated August 16, 1989 in the above captioned dockets, whereby ANR's X-rates are to be recalculated effective November 1, 1990. On January 22, 1991, ANR submitted its request for rehearing of the December 21, 1990 Letter Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before February 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2223 Filed 1-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-136-013, et al.]

National Fuel Gas Supply Corp.; Report of Refunds

January 24, 1991.

Take notice that on January 15, 1991, National Fuel Gas Supply Corporation (National), tendered for filing its Report of Refunds in compliance with the Stipulation and Agreement in Docket No. RP86-136, *et al.*, filed on July 19, 1990 and approved by this Commission on November 1, 1990. Such agreement required National to make payment of all refunds by January 15, 1991, and submit a report to the Commission detailing the distribution of the refunds to the various customers and setting forth the data and computations supporting such distribution.

National states that it distributed all applicable refunds to its entitled customers on January 15, 1991, in accordance with § 154.67(c)(2)(iii) of the Commission's Regulations, with copies of the report served upon both its customers and upon all interested state regulatory agencies.

National has reserved the right to modify its refunds subject to any revisions of its rates by the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such protests should be filed on or before January 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2224 Filed 1-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-27-001]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

January 25, 1991.

Take notice that North Penn Gas Company (North Penn) on January 22, 1991, tendered for filing Substitute Fourth Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1.

North Penn states that the revised tariff sheet is being filed to correct certain computation errors made in its original Annual PGA filing submitted on December 28, 1990. This filing in North Penn's Annual PGA rate filing proposed to become effective March 1, 1991 and is designed to reflect changes in the cost of gas for the period March 1, 1991 through May 31, 1991. The changes in the cost of gas for this period result in a decrease of $.29706 per Mcf to the G-1 Rate Schedule.

North Penn requests waiver of any of the Commission's Rules and Regulations as may be deemed necessary in order to permit the proposed tariff sheet to become effective March 1, 1991.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and state commissions shown on the attached service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission. 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before February 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 91-2225 Filed 1-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-104-007]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 24, 1991.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on January 17, 1991, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 2-A:

Third Substitute Original Sheet No. 10.
Third Substitute Original Sheet No. 11.
Substitute First Revised Sheet No. 11.

Texas Gas states that these tariff sheets are being filed to reflect newly revised IT rates, filed on January 6, 1991, in compliance with the directive of the December 18, 1990, "Letter Order Pursuant to § 375.301(b)(1) and (b)(3)" in the referenced docket. The instant filing reflects the correction of a typographical error on Sheet Nos. 10 and 11 with respect to the mainline minimum rate, and the current Gas Research Institute (GRI) funding unit effective January 1, 1991.

Texas Gas states that a copies of the filing were served upon Texas Gas's jurisdictional customer and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before January 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91-2226 Filed 1-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-52-004]

Texas Gas Transmission Corp.; Report of Refunds

January 24, 1991.

Take notice that Texas Gas Transmission Corporation (Texas Gas) on December 10, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Supplemental Report of Refunds, made in accordance with the provisions of Article I of the Stipulation Agreement in Texas Gas's Docket No. RP90-52-004.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the

commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989). All such protests should be filed on or before January 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2227 Filed 1-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-92-000, RP88-27-000 and RP84-42-000, RP91-28-000]

Entex, A Division of Arkla, Inc., et al. v. United Gas Pipe Line Company

January 24, 1991.

On January 15, 1991, United Gas Pipe Line Company ("United") filed a proposed Stipulation and Agreement ("Settlement") in the above-referenced proceeding to: (1) Effectuate reduced rates and revenue responsibility for all customers effective April 1, 1991; (2) propose a final resolution of all outstanding issues regarding the allocation of and responsibility for United's take-or-pay costs; (3) set forth the parameters of a restructuring of United's sales, transportation, and storage services which United will seek to make available in its general section 4(e) rate case to be filed of March 31, 1991, with a proposed effective date of October 1, 1991; (4) finally resolve United's Unpaid Accruals proceeding in Docket Nos. RP84-42, *et al.* by providing for cash refunds totalling $13 million with interest in twelve quarterly installments, thereby resolving all issues in that proceeding; (5) resolve all issues pending in the Complaint proceeding recently filed under Section 5 of the Natural Gas Act in Docket No. RP91-28-000 by Entex, a division of Arkla, Inc., *et al.;* (6) resolve all issues relating to the alleged effectiveness of the ANGST tracking provisions of United's FERC Gas Tariff, thereby rendering moot the "Partial Initial Decision" issued in Docket No. RP88-92, *et al.* on November 2, 1990; (7) resolve all issues regarding the "Expedited Initial Decision" issued December 20, 1990 in Docket No. RP88-92, *et al.* with respect to the application of the Commission's Rate Design resolve all issues in Docket No. CP89-2114 relating to the abandonment by United of its Texas facilities.

Take notice that Initial Comments on the Settlement must be filed on or before February 4, 1991, and Reply Comments must be filed on or before February 14, 1991. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

Lois D. Cashell,

Secretary.

[FR Doc. 91-2228 Filed 1-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-43-002, TM91-3-43-002 and RP89-183-026]

Williams Natural Gas Co.; Proposed Changes In FERC Gas Tariff

January 25, 1991.

Take notice that Williams Natural Gas Company (WNG) on January 22, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Second Revised Sheet No. 122. Substitute Original Sheet Nos. 128, 233, and 249.

WNG states that this filing is being made in compliance with the Commission's December 28, 1990 Order in Docket Nos. RP91-43-000, et al.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 1, 1991. 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 proceedings. 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. 91-2229 Filed 1-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. IS90-21-000, IS90-31-000, IS90-32-000, IS90-40-000, IS91-1-000, SP91-3-000 and SP91-5-000, Docket Nos. IS90-39-000 and IS91-3-000]

Williams Pipe Line Co. and Enron Liquids Pipeline Co.; Informal Settlement Conference

January 25, 1991.

Take notice that a conference will be convened in this proceeding beginning on February 21, 1991 at 1 p.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426, for the purposes of exploring the possible settlement of the above-referenced dockets.

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, please contact Irene E. Szopo at (202) 208-1589, or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2230 Filed 1-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-02-009]

Williston Basin Interstate Pipeline Co.; Report of Refunds

January 24, 1991.

Take notice that Williston Basin Interstate Pipeline Company (Williston) on December 20, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds, made pursuant to a Commission "Order Granting Rehearing in Part" issued November 23, 1990 under Docket No. RP90-02-009. Williston's filing has been submitted under protest due to Williston's intention to file an Application for Rehearing of the Commission's November 23, 1990 order, and is made without prejudice to Williston's rights on rehearing of such order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989). All such protests should be filed on or before January 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–2231 Filed 1–30–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 90–102–NG]

CanStates Petroleum Marketing; Order Granting Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order in FE Docket No. 90–102–NG granting blanket authorization to CanStates Petroleum Marketing (CanStates) to import from Canada up to 180 Bcf of natural gas for short-term sales over a two-year term beginning from the date of first delivery. The order authorizes CanStates to import the gas from any point on the international border where existing facilities are located.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 25, 1991.

Clifford P. Tomaszewski,

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

[FR Doc. 91–2302 Filed 1–30–91; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. FE C&E 91–07; Certification Notice—75]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has a filed self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Saguaro Power Company, Irvine, CA	01–16–90	Combine Cycle.	90	Henderson, NV.

Amendments to the FUA on May 21, 1987 (Pub. L. 100–42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or further information call Myra Couch at (202) 586–6769.

Issued in Washington, DC on January 25, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91–2304 Filed 1–30–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of December 31, 1990 Through January 4, 1991

During the week of December 31, 1990 through January 4, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeal

Hanford Education Action League, 01/02/91, LFA–0082

Hanford Education Action League filed an Appeal from a partial denial by the Deputy Assistant Secretary for Nuclear Materials of a Request for Information that it submitted under the Freedom of Information Act (FOIA). In considering the portions of the Appeal that concern information withheld pursuant to Exemption 6 of the FOIA, the DOE determined that the Deputy Assistant Secretary had not adequateiy justified the applicability of Exemption 6

to the deleted material. The Appeal was therefore remanded to the Deputy Assistant Secretary with instructions to either release the material withheld under Exemption 6 or provide a more thorough justification for its withholding. Accordingly, the Appeal was granted in part.

Refund Applications

Associated Service Corporation, 01/04/91, RF272–41459

The DOE issued a Decision and Order in the subpart V crude oil special refund proceeding denying an Application for Refund filed by Associated Service Corporation of Indianapolis, Indiana. The applicant had received a refund from the Retailers' Escrow pursuant to the M.D.L. No. 378 Stripper Well Settlement Agreement. The applicant had also signed the required waiver pursuant to which a firm released all rights to a Subpart V crude oil refund. The applicant claimed that it had altered the terms of the waiver to limit its release to gallons which were specifically reimbursed from the Retailers' Escrow. The DOE found that the alteration to the waiver was ineffective because no party to the Settlement Agreement has the right to unilaterally alter the court-approved terms. Accordingly, the DOE denied the application.

Columbus Bituminous Concrete R.J. Noble Company, 01/02/91, RF272–22415, RD272–22415, RF272–27307, RD272–27307

The DOE issued a Decision and Order granting the subpart V crude oil refund applications of Columbus Bituminous Concrete and R.J. Noble Company, both road construction companies principally involved in the production of asphalt. A group of state governments and territories of the United States (the States) objected to the applications, offering data concerning the construction industry as a whole. The DOE determined that the States had failed to produce any convincing evidence to show that the applicants had been able to pass on the crude oil overcharges to their customers, and found that the States failed to properly address the individual situations of the applicants. The DOE granted Columbus a refund of $45,147, based on its approved purchases of 56,433,817 gallons of petroleum products. The DOE granted R.J. Noble a refund of $26,910, based on its purchases of 33,637,939 gallons. The DOE also denied the Motions for Discovery filed by the States in each case, for reasons discussed in earlier Subpart V crude oil Decisions. See, e.g., *Christian Haaland A/S,* 17 DOE ¶ 85,439 (1988).

Texaco Inc./Larry Tate, 01/04/91, RF321–12454

The DOE issued a Supplemental Decision and Order in the Texaco Inc. special refund proceeding regarding Larry Tate. In *Texaco Inc./Hinson Oil Co.,* Case Nos. RF321–2494 *et al.* (December 7, 1990), the DOE granted a refund of $3,574 to Larry Tate for his purchases of refined petroleum products. However, on December 7, 1990, Mr. Tate filed a second refund application on behalf of the same station in which he certified that he had filed only one refund application in the Texaco refund proceeding. In view of this false certification, the DOE rescinded the applicant's refund and stated that it will deny the second application unless Mr. Tate can provide a satisfactory explanation for the filing of the duplicate application.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Co./Farmland Industries, Inc.	RF304–11835	01/04/91
Atlantic Richfield Co./L.R. Waters, Inc.	RF304–2374	01/04/91
Perfection Oil, Inc	RF304–2375	
Carl King, Inc	RF304–4443	
Exxon Corporation/ Oceana Terminal Corporation.	RF307–10166	01/04/91
Exxon Corporation/ Skyline Exxon.	RF307–10167	01/02/91
Gulf Oil Corp./Bi-Rite Oil Company, Inc. *et al.*	RF300–11036	01/02/91
Gulf Oil Corp./Robert L. Davis *et al.*	RF300–6562	01/04/91
Marsden Chevrolet, Inc.	RR272–33	01/04/91
Murphy Oil Corp./ Don's Spur Station *et al.*	RF309–660	01/03/91
Shell Oil Company/ Attaway's Shell Service Station.	RF315–127	01/02/91
Ken Milleville	RF315–289	
Shell Oil Company/ Butler Aviation *et al.*	RF315–8341	01/02/91
Shell Oil Company/ United Airlines, Inc.	RF315–5541	01/04/91
Texaco Inc./Clancy's Texaco *et al.*	RF321–118	01/02/91
Texaco Inc./College Square Texaco.	RF321–10614	01/04/91
College Square Texaco.	RF321–11869	
Texaco Inc./Farrell Lines, Inc. *et al.*	RF321–3022	01/02/91
Texaco Inc./North Brady Texaco.	RF321–3717	01/04/91
Mississippi Valley Petroleumservices, Inc.	RF321–10117	
Texaco Inc./Ray C. Pepe.	RF321–10719	01/03/91
Green Mountain Texaco.	RF321–10917	
Texaco Inc./Red Carpet Car Wash.	RF321–3606	01/04/91
Blakewell-Rica Inc	RF321–5802	
H.C. Blakewell, Inc	RF321–10697	
Texaco Inc./Robert H. Hall *et al.*	RF321–3285	01/04/91
Texaco Inc./Wagner Oil Company *et al.*	RF321–3242	01/04/91

Dismissals

The following submissions were dismissed:

Name and Case No.

Adams Texaco; RF321–730
Amherst Exempted Village Schools; RF272–82049
Baldwyn Seperate School District; RF272–79931
Charlie Oh; RF304–6409
Clayton's Texaco; RF321–2212
Dassell & Son Texaco; RF321–3043
Die Arco Tankstelle; RF304–2667
Dodson Texaco Service; RF321–4192
Don's Texaco; RF321–1920
Edfel MP&G Tune Up; RF304–6274
Edfel MP&G Tune Up; RF304–6273
F.L. Hatcher & Son, Inc.; RF307–7151
Frank's Texaco; RF321–5665
George R. Brown Leasing; RF272–84773
Girton's Texaco; RF321–6084
Harris & Riggs Gulf Service; RF300–13131
Holbert's Texaco; RF321–2899
Joe Cantu Texaco; RF321–1115
Johnston's Texaco; RF321–1139
Julian Clingingsmith; RF304–690
Kenmare School District #28; RF272–80225
Kennecott Corporation; RF272–12164
Knechel's Texaco; RF321–8007
Mac's Garage; RF304–2609
Matawan Texaco; RF321–667
Mather's Market; RF304–435
Meridian Texaco; RF321–2111
Miller Texaco; RF321–714
Nebraska Energy Office; LEE–0018
Needham Gulf Service; RF300–8650
Robert H. Hall; RF321–11821
The Auto Works; RF304–2908
Tidewater Drive Texaco; RF321–1350
Vander Pluym Oil Co., Inc.; RF300–11588
Walnut Grove Products; RF272–12140
Wes' Texaco; RF321–1492
Western Reserve Local School District; RF272–82069

Woodland Texaco; RF321–8400

[FR Doc. 91–2303 Filed 1–30–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59291A; FRL–3877–8]

Certain Chemicals; Approval of a Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as T–91–5 and T–91–6. The test marketing conditions are described below.

EFFECTIVE DATE: January 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Howard, New Chemicals Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611C, 401 M St. SW., Washington, DC 20460, (202) 245–4143.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury. EPA hereby approves T–91–5 and T–91–6. EPA has determined that test marketing of these new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volumes, uses, and the number of customers must not exceed that specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to T–91–5 and T–91–6. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substances produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substances.

T–91–5

Date of Receipt: December 18, 1990.

Notice of Receipt: January 16, 1991 (56 FR 1634).

Applicant: Westinghouse Electric Corporation.

Chemical: Polymer of Maleic Anhydride [108–31–6], Adipic Acid [124–04–9], Tetrahydrophtalic Anhydride [85–43–9], Diethylene Glycol [111–46–6], Neopentyl Glycol [126–30–7], and Dimer Acids [61788–89–4].

Use: Potting compound for electro–magnets.

Production Volume: 21,500 kilograms.

Number of Customers: 5.

Test Marketing Period: 15 months, commencing on first day of commercial manufacture.

T–91–6

Date of Receipt: December 18, 1990.

Notice of Receipt: January 16, 1991 (56 FR 1634).

Applicant: Westinghouse Electric Corporation.

Chemical: Polymer of Maleic Anhydride [108–31–6], Dicyclopentadiene [77–73–6], Diethylene Glycol [111–46–6], Ethylene Glycol [107–21–1], Propylene Glycol [55–55–6], Isophtalic Acid [121–91–5], and water [7732–18–5].

Use: Electric insulating varnish for dip and vacuum/pressure impregnation applications.

Production Volume: 16,500 kilograms.

Number of Customers: 15.

Test Marketing Period: 18 months, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: January 25, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91–2298 Filed 1–30–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Black Hills Christian Communications, Inc. et al.: Applications for New Stations

1. The Commission has before it the following mutually exclusive applications for four new FM stations:

Applicant, city and state	File No.	MM docket No.
	I	
A. Black Hills Christian Communications, Inc.; Spokane, WA.	BPH–890123MO	90–622
B. Upper Columbia Broadcasting, Inc.; Spokane, WA.	BPH–890123MV	
C. Earlimart Educational Foundation, Inc.; Spokane, WA.	BPED–890123MA (Dismissed Herein)	
Issue heading and applicants 1. Financial, B 2. Comparative, A, B 3. Ultimate, A, B		
	II	
A. John Strelitz; Santa Fe, N.M..	BPH–890313MT	90–621
B. Vincente Silva; Santa Fe, N.M..	BPH–890313MU	
C. SKR, Inc.; Santa Fe, N.M..	BPH–890313MV	
D. Jemez Mountain Broadcasters; Santa Fe, N.M..	BPH–880310MI (Previously Dismissed)	
E. T.C. Monte, Inc.; Santa Fe, N.M..	BPH–890313MS (Dismissed Herein)	
Issue heading and applicants		

Applicant, city and state	File No.	MM docket No.
1. Site Availability, C 2. Air Hazard, C 3. City Coverage, A, B, C 4. Comparative, A, B, C 5. Ultimate, A, B, C		
III		
A. Heart of the Lakes Broadcasting; Pelican Rapids, MN.	BPH-881221MO	90-618
B. Bruce Harrison Linder; Pelican Rapids, MN.	BPH-881221MP	
C. Ingstad Broadcasting, Inc.; Pelican Rapids, MN.	BPH-881221MQ	
Issue heading and applicants 1. Air Hazard, A, B, C 2. Comparative, A, B, C 3. Ultimate, A, B, C		
IV		
A. Evan Doss, Jr., Corporation; Port Gibson, MS.	BPH-890420MH	90-625
B. Edward Carter, Sr., d/b/a Tri-County Broadcasting, L.P.; Port Gibson, MS.	BPH-890420MP	
Issue heading and applicant(s) 1. Comparative, A, B 2. Ultimate, A, B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-2306 Filed 1-30-91; 8:45 am]

BILLING CODE 6712-01-M

Topp Broadcasting Limited Partnership, et al.; Applications for New Stations

1. The Commission has before it the following mutually exclusive applications for two new FM stations:

Applicant, city and state	File No.	MM docket No.
I.		
A. Topp Broadcasting Limited Partnership; Stewartville, MN.	BPH-880615MB	90-630
B. Fog Communications; Stewartville, MN.	BPH-880615MH	
C. Root River Radio, Inc.; Stewartville, MN.	BPH-880616NB	
D. Rochester FM, Inc.; Stewartville, MN.	BPH-880616ND	
E. Gary L. Lusk; Stewartville, MN.	BPH-880616NE	
F. Obed S. Borgen; Stewartville, MN.	BPH-880616NT	
Issue heading and applicants 1. Site Availability, D 2. Air Hazard, A, B, D, F 3. Comparative, A-F 4. Ultimate, A-F		
II		
A. Susan Beauchamp; Wakefield-Peacedale, RI.	BPH-880217MS	90-632
B. Washington County Communications, Inc.; Wakefield-Peacedale, RI.	BPH-880217MW	
C. Radio Wakefield, Inc.; Wakefield-Peacedale, RI.	BPH-880217NA	
D. Amerzine Broadcasting, L.P.; Wakefield-Peacedale, RI.	BPH-880217NB	
E. Wake Partnership; Wakefield-Peacedale, RI.	BPH-880217NG	
F. Blount Communications, Inc.; Wakefield-Peacedale, RI.	BPH-880217NJ	
G. Wakefield Broadcasting Limited Partnership; Wakefield-Peacedale, RI.	BPH-880217MQ (Dismissed Herein)	
H. Holly P. Wood, Stephanie S. Pabis and Krystyne M. Pabis; Wakefield-Peacedale, RI.	BPH-880217MO (Previously Dismissed)	
Issue heading and applicant(s) 1. Air Hazard, A, B, F 2. Comparative, A, B, C, D, E, F 3. Ultimate, A, B, C, D, E, F		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-2307 Filed 1-30-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Extension of Comment Period for Supervisory Policy Statement Concerning Selection of Securities Dealers, Securities Portfolio Policies and Strategies and Unsuitable Investment Practices, and Stripped Mortgage-Backed Securities, Certain CMO Tranches, Residuals, and Zero-Coupon Bonds

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Notice of extension of public comment period.

SUMMARY: The FFIEC, in response to requests, is extending the comment period for 30 days. The end of the comment period will now be March 6, 1991. As published in the Federal Register on January 3, 1991, the comments were to be received by February 4, 1991.

DATES: Comments should be received by March 6, 1991.

ADDRESSES: Comments should be directed to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street NW., suite 850B, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: At the FRB: Rhoger H. Pugh, Manager, Policy Development, Division of Banking Supervision and Regulation (202) 728–5883); Charles H. Holm, Senior Accountant, Division of Banking Supervision and Regulation (202) 452–3502. At the FDIC: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898–8906; William A. Stark, Assistant Director, Division of Supervision, (202) 898–6972), At the NUCA: Charles Felker, (202) 682–9460. At the OCC: Owen Carney, Senior Advisor for Investment Securities, (202) 447–1901. At the OTS: John M. Frech, Senior Accountant, Accounting Policy, (202) 906–5649.

Dated: Janaury 28, 1991.

Robert J. Lawrence,

Executive Secretary, FFIEC.

[FR Doc. 91–2297 Filed 1–30–91; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL MARITIME COMMISSION

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

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: California Cruise Lines, Inc., 7676 Hazard Center Dr., 5th Floor, San Diego, CA 92108

Vessel: PRIDE OF SAN DIEGO

Dated: January 25, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–2235 Filed 1–30–91; 8:45 am]

BILLING CODE 6730–01–M

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

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Kloster Cruise Limited (d/b/a Royal Viking Line), 95 Merrick Way, Coral Gables, FL 33134.

Vessel: ROYAL VIKING QUEEN

Dated: January 25, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–2236 Filed 1–30–91; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 91–04]

Maritima Aragua S.A. v. Worldwide Uniexpress Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Maritima Aragua S.A. ("Complainant") against Worldwide Uniexpress Inc. ("Respondent") was served January 25, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing to remit ocean freight and charges due and payable, notwithstanding demand for payment, on shipments from New York to Venezuela.

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 January 27, 1992, and the final decision of the Commission shall be issued by May 26 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91–2209 Filed 1–30–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 25, 1991

BACKGROUND: Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public)

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202–395–7340).

Final Approval Under OMB Delegated Authority of the Extension With Revision the Following Report:

Report title: Report of Condition for Edge and Agreement Corporations.

Agency form number: FR 2886b.

OMB Docket number: 7100–0086.

Frequency: Quarterly or annually.

Reporters: Edge and Agreement corporations.

Annual reporting hours: 6,844 hours.

Estimated average hours per response: Ranges from 0.2 to 6.3, depending on type of reporter and the number of schedules to be completed.

Number of respondents: 158 banking corporations, 35 investment corporations.

Small businesses are not affected.

General description of report: This report collects balance sheet and income data from Edge and Agreement corporations. The data are used to supplement examination reports and support the applications process, to monitor aggregate institutional trends, and to measure the effect of and compliance with the Board's Regulation K. The proposed revisions consist of an increase in the reporting frequency of the income schedule, for both banking

and investment Edge corporations, from annually to quarterly and a requirement that investment Edge corporations submit a quarterly balance sheet. In addition, it is proposed that foreign branches of investment corporations submit reports semi-annually rather than annually. Further, it is proposed that one item be added to Schedule F to provide a breakdown of noninterest income from affiliates into that provided by subsidiaries and by all other sources. Certain minor wording changes will also be made to maintain consistency with the commercial bank Report of Condition. The proposed increased frequency will strengthen the Federal Reserve's ability to monitor these corporations, whose deposits are uninsured and which are ineligible to borrow from the discount window, for safety and soundness. The proposed additional item would improve the Federal Reserve's information on profitability of affiliates.

This report is required and authorized by law (12 USC 602 and 625). Certain respondent data are given confidential treatment) 5 USC 552(b)(4)).

Board of Governors of the Federal Reserve System, January 25, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-2248 Filed 1-30-91; 8:45 am]

BILLING CODE 6210-01-M

Amy Lynn Scott Wyoming Trust, 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 February 14, 1991.

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

1. Amy Lynn Scott Wyoming Trust, Amy Scott Willer, grantor with voting control, Omaha, Nebraska; W. David Scott Wyoming Trust, W. David Scott, grantor with voting control, Elk Mountain, Wyoming; Karen Ann Dixon Wyoming Trust, Karen Ann Dixon, grantor with voting control, Leawood, Kansas; and Sandra Scott Parker, Omaha, Nebraska; to each acquire 8.23 percent of the voting shares of 304 Corporation, Omaha, Nebraska, and thereby indirectly acquire Mid City Bank, Inc., Omaha, Nebraska.

Board of Governors of the Federal Reserve System, January 25, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2239 Filed 1-30-91; 8:45 am]

BILLING CODE 6210-01-F

Banc One Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 1991.

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

1. Banc One Corporation, Columbus, Ohio, and Banc One Ohio Corporation, Columbus, Ohio; to acquire certain branches of Citizens Federal Savings and Loan Association, Dayton, Ohio, through its newly chartered savings associations, Banc One Milford Federal Savings Bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 25, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-2240 Filed 1-30-91; 8:45 am]

BILLING CODE 6210-01-F

I-5 State Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

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

Comments regarding this application must be received not later than February 21, 1991.

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

1. I–5 State Bancorp, Wilsonville, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Wilsonville, Wilsonville, Oregon.

Board of Governors of the Federal Reserve System, January 25, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–2241 Filed 1–30–91; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89P–0105]

Sour Cream Deviating from Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension and amendment of a temporary permit issued to H.P. Hood, Inc., to market test a product designated as "light sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). These actions will allow the permit holder to continue experimental market testing of the product while the agency takes action on the permit holder's petition to establish a new standard of identity for "light sour cream."

DATES: The new expiration date of the permit will be either the effective date of a final rule which may result from the petition, or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods that deviate from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), a temporary permit was issued to H.P. Hood, Inc., 500 Rutherford Ave., Boston, MA 02129, to market test a product designated as "light sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). Notice of issuance of the temporary permit to H.P. Hood, Inc., was published in the **Federal Register** of May 11, 1989 (54 FR 20435). H.P. Hood, Inc., has requested that the temporary permit be extended so the market test period can continue while agency action on a petition to establish a new standard of identity for "light sour cream" proceeds. The permit holder also requested that their existing temporary permit be amended to provide for market testing on an annual basis of 1,100,000 quarts (1,040,930 liters) of the test product.

H.P. Hood, Inc., in accordance with 21 CFR 130.17(i), submitted a petition to establish a new standard of identity for "light sour cream" at the same time the application for extension was submitted. FDA is inviting interested persons to participate in the market test under the conditions that apply to H.P. Hood, Inc., including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply.

Any person who wishes to participate in the extended market test must notify, in writing, the Acting Director, Division of Food Chemistry and Technology (HFF–410), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the area of distribution, and the labeling that will be used for the test product (i.e., a label for each size of container and each brand of product to be test marketed).

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the expiration date of the permit so that the permit expires either on the effective date of a final rule which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: January 22, 1991

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–2309 Filed 1–30–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91N–0027]

Drug Export; Floxin® (Ofloxacin) Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that R.W. Johnson Pharmaceutical Research Institute has filed an application requesting approval for the export of the human drug Floxin® Tablets to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that R.W. Johnson Pharmaceutical Research Institute, U.S. Route 202 South, P.O. Box 300, Raritan, NJ 08869–0602, has filed an application requesting approval for the export of the drug Floxin® Tablets to Canada. This drug is indicated for use as a broad spectrum antibacterial agent The application was received and filed in the Center for Drug Evaluation and Research on December 12, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets

Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 11, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 17, 1991.

Daniel L. Michels,

Office of Compliance, Director, Center for Drug Evaluation and Research.

[FR Doc. 91-2260 Filed 1-30-91; 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 February 1991.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: February 24-26, 1991, 8:30 a.m.-5 p.m.

Place: Westfields International Conference Center, 14750 Conference Center Drive, Westfields, Virginia 22021.

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: Updates of programs including the National Health Service Corps, scholarships and loan repayment—Federal and State. Individuals from both the public and private sectors will meet with the Council and react to a draft of a paper relating to the shortage of nurse practitioners, physician assistants and certified nurse midwives.

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: January 25, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-2258 Filed 1-30-91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

State Offices of Rural Health Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy, Health Resources and Services Administration (HRSA), announces that applications are being accepted for matching grants to States for the purpose of improving health care in rural areas through the operation of State Offices of Rural Health. This program is authorized by Public Law 101-597, and awards will be made from funds appropriated under Public Law 101-517 (HHS Appropriations Act for FY 1991). It is anticipated that approximately $1.5 million will be available to support this grant program for one year. The program is authorized under section 338J of the Public Health Service Act. Given the wide range of health care needs in rural areas, this program addresses many of the objectives contained in Healthy People 2000.

DATES: Applications for the program must be received by the close of business on April 30, 1991. Applications must be received by the Grants Management Officer at the address shown below. Applications shall be considered as meeting the deadline if they are either (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will be returned to the sender.

ADDRESSES: Requests for grant application kits and guidance should be directed to: Gary Houseknecht, Grants Management Office, Bureau of Health Care Delivery and Assistance, HRSA, PHS, U.S. Department of Health and Human Services, 12100 Parklawn Drive, Rockville, Maryland 20857, (301) 443-5887.

The standard application form and general instructions for completing applications (Form PHS-5161-1, OMB #0937-0189) have been approved by the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Jerry Coopey, Senior Policy Analyst, Office of Rural Health Policy, HRSA, PHS, U.S. Department of Health and Human Services, room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-8035.

SUPPLEMENTARY INFORMATION:

Program Objectives

The purpose of the program is to improve health care in rural areas by making matching grants to States to support the operation of State Offices of Rural Health.

These federal funds are available to all States whether or not they have previously established an office or "focal point" for rural health.

To receive a Federal grant, each State must agree that its Office of Rural Health will carry out at least the following activities: (1) Establish and maintain a clearinghouse for collecting and disseminating information on rural health care issues, research findings relating to rural health care, and innovative approaches to the delivery of health care in rural areas, (2) coordinate the activities carried out in the State that relate to rural health care, including providing coordination for the purpose of avoiding redundancy in such activities; (3) identify Federal and State programs regarding rural health, and provide technical assistance to public and nonprofit private entities regarding participation in such programs, and (4) submit an annual report regarding its activities. In addition to these required activities, a State Office of Rural Health may use Federal grant funds for activities which support recruiting and retaining health professionals to serve in rural areas.

The State (e.g. Department of Health, Governor's Office, State University) can conduct the required and any discretionary activities directly or through grants or contracts to other public or nonprofit entities (e.g. private universities, Area Health Education Centers, foundations).

States, however, may not use grant funds to (1) Provide health care (2) duplicate activities for which Federal funds are being used under the State primary care association, cooperative

agreement and State loan repayment programs, (3) purchase medical equipment, vehicles, or real property, or (4) conduct certificate of need activities. In addition, not more than 10% of grant funds may be expended on research.

To encourage States to commit their own resources toward improving rural health care, this program requires a minimum non-Federal match to support the establishment and operation of State Offices of Rural Health. For the first fiscal year of participation, States must match at least $1 for each $3 of Federal funds; $1 for each $1 in the second year; and $3 for each $1 in the third year. In the first year, the State match can be 100% in-kind. In the second year at least 50% must be in cash, and in the third year solely in cash. Rules regarding in-kind and in cash State contributions are found in 45 CFR part 92.

To assure that each State Office of Rural Health has the resources to carry out its minimum responsibilities, a State must provide that the Office has a total budget of not less than $50,000.

Eligible Applicants

The fifty States.

Review Consideration

Grant applications will be evaluated on the basis of the following criteria:

(1) The extent to which the application is responsive to the requirements and purposes of the program.

(2) The extent to which the applicant has developed measurable goals, objectives, and an evaluation plan for the required, and any discretionary, activities.

(3) The extent to which the Office is coordinated with, and has the cooperation of, other health entities and activities within the State.

(4) The strength of the applicant's plans for administrative and financial management of the Office.

(5) The reasonableness of the budget proposed for the Office.

(6) The likelihood that the Office will be continued after Federal grant support is completed.

Other Award Information

Approximately $1.5 million will be available to support this Grant Program for one year. Although difficult to predict, it is expected that approximately 35 grants will be awarded. Grant applications should be submitted for a three-year project period. While support for additional years is contingent upon the availability of funds for this program, States should be aware that continued participation will require an increase in their contribution. Only one grant application will be accepted from each State and must indicate review and approval by the Governor.

Executive Order 12372

The State Office of Rural Health Grant Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intragovernmental review of Federal programs, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application date to submit its review comments. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

(The OMB Catalog of Federal Domestic Assistance number is 93.913)

Dated: December 17, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 91-2311 Filed 1-30-91; 8:45 am]

BILLING CODE 4160-15-M

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92-463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (Peer Review Panel) on March 11 and 12, 1991, in the Conference Center, Building 101, South Camputs, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 9 a.m. both days and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies and short-term toxicity studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on March 11 and 12 are draft Technical Reports of long-term studies on nine chemicals, listed alphabetically, along with supporting information in Table 1. All studies were done using Fischer 344 rats and B6C3F1 mice. The order of review is given in the far right column of the table.

Also scheduled to be peer reviewed are draft Technial Reports of toxicity studies on four chemicals, listed alphabetically, along with supporting information in Table 2. Order of presentation is given in the far right column of the table. Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone or by mail no later than March 5, 1991, and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members and staff and made available at the meeting for attendees. Oral presentations should supplement and not just repeat the written statement.

Presentations should be limited to no more than seven minutes. The Program would welcome receiving toxicology and carcinogenesis information from completed, ongoing or planned studies by others, as well as current production data, human exposure information, and use patterns on any of the studies listed in this announcement. Please contact the staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, RTP, North Carolina 27709 (telephone 919/541-3971, FTS 629-3971) will furnish final agenda, a roster of subcommittee and panel members, and other program information prior to the meeting. Summary minutes subsequent to the meeting will be available upon request.

Dated: January 24, 1991.

David G. Hoel,

Acting Director, National Toxicology Program.

TABLE 1.—SUMMARY DATA FOR LONG TERM NTP TOXICOLOGY AND CARCINOGENESIS TECHNICAL REPORTS SCHEDULED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON MARCH 11–12, 1991

Chemical CAS number	Staff, scientist/technical report number	Primary uses	Route/exposure levels	Study laboratory	Review Order
Gamma-butyrolactone 96–48–0	Dr. S. Eustis, 919–541–3231; TR–406.	Intermediate in the synethesis of polyvinylpyrrolidone, Dl-methionine, piperidine, phenylbutyric acid, and thiobutyric acids. Solvent for resins. Constituent of paint removers. Textile aids. Drilling oils. (TDB).	Oral, gavage (corn oil): MR: 0,112,225, FR: 0,225,450, M: 0, 262,525 mg/kg/50 per group.	Southern Research Institute.	4
C.I. acid red 114 6459–94–5	Dr. J. Dunnick, 919–541–4811; TR–405.	Dye for silk, jute fibers, wool, leather. (TDB).	Oral with Water (water): MR: 0,70, 150,300, FR: 0,150, 300,600 ppm (70,45, 75,70 per group respectively).	Hazleton (Vienna)	2
C.I. pigment red 23 6471–49–4	Dr. K. Abdo, 919–541–7819; TR–411.	In paint, ink, plastic, rubber and textile printing. (TDB).	Oral in feed (feed): R&M: 0, 10000, 25000, 50000 ppm (60 per group).	Southern Research Institute.	9
2,4-diaminophenol dihydrochloride 137–09–7	Dr. R. Irwin, 919–541–3340; TR–401.	Photographic developer. Dyeing furs and hair. Analytical reagent. (TDB).	Oral, gavage (corn oil): R: 0,12,5,25, M: 0,19,38 mg/kg/60 per group.	T.S.I. Mason Research Institute.	6
Furan 110–00–9	Dr. R. Irwin, 919–541–3340; TR–402.	Chemical intermediate. Solvent for resins. In lacquer formation. Organic synthesis. (TDB).	Oral, gavage (corn oil): R: 0,2,4,8, M: 0,8,15 mg/kg/50 per group.	Southern Research Institute.	1
Mercuric chloride 7487–94–7	Dr. G. Boorman, 919–541–3440; TR–408.	Preserving wood. Embalming. Browning and etching steel and iron. Reagent. Chemical intermediate. Insecticide. Fungicide. Mordant for furs. Veterinary disinfectant and antiseptic. (TDB).	Oral, gavage: R: 0, 2.5,5, M: 0,5,10 mg/kg/60 per group.	International Research & Development Corp.	7
Naphthalene 91–20–3	Dr. K. Abdo, 919–541–7819; TR–410.	Chemical intermed., insecticides, repellants, synthetic resins. (TDB) Occurs in coal tar.	Inhalation: Mice only: 0,10,30, 30 ppm/50 per group.	Northrop	8
Quercetin 117–39–5	Dr. J. Dunnick, 919–541–4811; TR–409.	Capillary protectant (Merck 1989)	Oral in feed (feed): rats only: 0,1000, 10000,40000 ppm/50 per group.	T.S.I. Mason Research Institute.	5
Resorcinol 108–46–3	Dr. M. Jokinen, 919–541–3233; TR–403.	Tanning, chemical production, dyes, cosmetics, pharmaceuticals, photography, intermediate.	Oral, gavage: MR&M: 0,112,225 FR: 0,50, 100,150 mg/kg/60 per group.	International Research & Development Corp.	3

TABLE 2.—SUMMARY DATA FOR SHORT TERM NTP TOXICITY STUDY TECHNICAL REPORTS SCHEDULED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON MARCH 11–12, 1991

Chemical CAS number	Staff, scientist/technical report number	Primary uses	Route/exposure levels	Study laboratory	Review Order
Tert-butyl perbenzoate 614–45–9	Dr. H. Matthews, 919–541–3252; TOX–15.	Curing agent for unsaturated polyesters. Polymerization initiator for polyester and other resins. Chemical intermediate. (TDB).	Oral, gavage (deionized water): 0,30,60,125,250,500 mg/kg.	Battelle Columbus Laboratory.	12
p-chloro-a,a,a-trifluorotoluene 98–56–6	Dr. M. Dieter, 919–541–3368; TOX–14.	Dye intermediate, solvent & dielectric fluid, intermediate for herbicides.	Oral, gavage (corn oil/alphacyclodextrin): R&M: 0,50,500,1000 mg/kg.	NIEHS	10
Glyphosate 1071–83–6	Dr. P. Chan, 919–541–7561; TOX–16.	Agricultural chemical	Oral in feed (NIH–07): R&M:0,3125, 6250, 12500,25000, 50000 ppm/10 per group.	Southern Research Institute.	13
2,4,7-trinitrofluoren-9-one 129–79–3	Dr. F. Kari, 919–541–2926; TOX–13.	Used in photocopiers, forms charge-transfer complexes with aromatic hydrocarbons and amines. (TDB).	Oral in feed (feed): R: 0, 1000, 2000, 4000, 8000, 16000; M: 0, 3212, 6250, 12500, 25000, 55000 ppm.	Southern Research Institute.	11

[FR Doc. 91–2211 Filed 1–30–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–00–4320–02–ADVB]

Boise District Grazing Advisory Board; Meetings

AGENCY: Boise District, Bureau of Land Management, Idaho.

ACTION: Notice of meeting.

SUMMARY: The Boise District Grazing Advisory Board will meet February 28th to discuss the proposed expenditure of Grazing Advisory Board Funds for Fiscal Year 1991. The meeting is open to the public and a comment period will be held at 2 p.m.

DATES: The meeting will begin at 9 a.m. on Thursday, February 28th, in the district office conference room.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Fred Schley, Boise District, BLM, (208) 384–3457.

Dated: January 16, 1991.

Rodger E. Schmitt,

Associate District Manager.

[FR Doc. 91–2214 Filed 1–30–91; 8:45 am]

BILLING CODE 4310–84–M

[AZ040–01–4333–02]

San Pedro Riparian National Conservation Area Advisory

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting, San Pedro Riparian National Conservation Area Advisory Committee.

SUMMARY: Notice is hereby given in accordance with Public Law 100–696 and 43 CFR part 1780, that a meeting of the San Pedro Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: Wednesday, February 27, 1991, at 1 p.m..

ADDRESSES: Arizona Electric Power Cooperative Inc., Office, North Boardroom, located at 1000 South Highway 80, Benson, Arizona.

FOR FURTHER INFORMATION CONTACT: Greg Yuncevich, San Pedro Project Manager, Bureau of Land Management, Box 9853, Rural Rte. 1, Huachuca City, Arizona 85616. Telephone (602) 457–2265; or Diane Drobka, Public Affairs Officer, Safford District, 425 E. 4th Street, Safford, Arizona 85546. Telephone (602) 428–4040.

SUPPLEMENTARY INFORMATION: The agenda for the San Pedro Advisory Committee meeting includes, but is not limited to, the following items:

1. Update of San Pedro visitor center architectural design contract.
2. Water rights.
3. NCA boundary fencing.
4. Upcoming San Pedro Riparian NCA tours.
5. Status of Charleston Bridge construction.

The meeting is open to the public. Interested persons may make oral statements to the Advisory Council between 2 and 2:30 p.m. or may file written statements for consideration by the Advisory Committee. Anyone wishing to make an oral statement must contact the BLM San Pedro Project Manager by Friday, February 22, 1991.

Summary minutes of the meeting will be maintained in the San Pedro Project Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: January 22, 1991.

Ray Brady,

District Manager.

[FR Doc. 91–2272 Filed 1–30–91; 8:45 am]

BILLING CODE 4310–32–M

[WY–920–41–5700; WYW116521]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW116521 for lands in Fremont County, Wyoming, was timely filed and was acompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW116521 effective September 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 91–2274 Filed 1–30–91; 8:45 am]

BILLING CODE 4310–22–M

[CA–27838 CA–050–4212–13]

Realty Action: Proposed Land Exchange in Lake, Colusa, Napa, Yolo, and Mendocino Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action: Exchange of public and private lands in Lake, Colusa, Napa, Yolo and Mendocino Counties in California.

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

Note: Not all of the lands identified below will be involved in the exchange. Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve equal fair market value between the public and private lands.

Mount Diablo Meridian

Parcel 1: T. 12 N., R. 5 W.
Sec 17: E½SE¼
Parcel 2: T. 12 N., R. 5 W.
Sec 30: Lot 3
Parcel 3: T. 10 N., R. 6 W.
Sec 14: Lot 2
Parcel 4: T. 10 N., R. 6 W.
Sec 14: NE¼SW¼
Parcel 5: T. 10 N., R. 6 W.
Sec 14: SW¼SE¼
Parcel 6: T. 11 N., R. 6 W.
Sec 5: S½SW¼
Sec 6: SE¼SE¼
Parcel 7: T. 12 N., R. 6 W.
Sec 1: SW¼SW¼
Parcel 8: T. 12 N., R. 6 W.
Sec 9: NE¼NE¼, S½NE¼
Sec 10: SW¼NW¼
Parcel 9: T. 12 N., R. 6 W.
Sec 10: E½SW¼
Sec 13: NW¼SW¼
Sec 14: N½S½, S½SW¼, SW¼SE¼
Sec 15: E½NW¼, SW¼NW¼, N½SW¼, SE¼SW¼, SE¼
Parcel 11: T. 12 N., R. 10 W.
Sec 2: SE¼SE¼
Parcel 13: T. 11 N., R. 7 W.
Sec 1: Lots 1–3, W½SE¼
Parcel 14: T. 14 N., R. 7 W.
Sec 7: Lots 3, 4, E½SW¼, SE¼
Sec 17: S½NE¼, NW¼, N½SW¼, SE¼
Sec 18: Lot 1–3, NE¼, E½NW¼, N½SE¼
Parcel 15: T. 14 N., R. 7 W.
Sec 14: SW¼
Sec 15: Lots 1–4, and all remaining private lands within the SW¼
Sec 22: NE¼NE¼
Sec 23: Lots 1–4, SW¼NE¼
Parcel 16: T. 14 N., R. 7 W.
Sec 20: Lot SE¼SW¼
Parcel 17: T. 14 N., R. 7 W.
Sec 26: Lots 1–4, 6–11, 13–16
Sec 27: NE¼NE¼, SE¼SW¼, S½SE¼
Sec 34: NE¼
Sec 35: N½NE¼, SW¼NE¼, NW¼, N½SW¼, SW¼SW¼
Parcel 18: T. 14 N., R. 7 W.
Sec 27: SE¼NW¼
Parcel 19: T. 14 N., R. 8 W.
Sec 1: Lots 3, 4, SW¼NE¼, S½NW¼, SW¼, NW¼SE¼
Sec 12: W½NW¼
Parcel 20: T. 14 N., R. 8 W.
Sec 14: Lot W½NE¼, N½NW¼, NW¼SE¼
Parcel 21: T. 14 N., R. 8 W.
Sec 26: NE¼SW¼
Parcel 22: T. 12 N., R. 9 W.
Sec 7: Lots 3, 4 SE¼
T. 12 N., R. 10 W.
Sec 12: Lots 7–9
Parcel 23: T. 15 N., R. 9 W.
Sec 9: SW¼SW¼
Parcel 24: T. 15 N., R. 9 W.
Sec 15: Lots 1–3, 6–8, 11–13
Parcel 25: T. 16 N., R. 9 W.

Sec 31: N½NE¼
Parcel 26: T. 14 N., R. 10 W.
Sec 15: SE¼SW¼
Parcel 27: T. 10 N., R. 6 W.
Sec 19: Lot SE¼SE¼
Parcel 28: T. 10 N., R. 6 W.
Sec 28: Lot 6
Parcel 29: T. 10 N., R. 6 W.
Sec 28: Lot 7
Parcel 30: T. 10 N., R. 6 W.
Sec 28: Lot 8
Parcel 31: T. 10 N., R. 6 W.
Sec 28: Lot 9
Parcel 32: T. 10 N., R. 6 W.
Sec 28: Lot 10
Parcel 33: T. 10 N., R. 6 W.
Sec 29: Lot NW¼SE¼, NE¼SW¼
Parcel 35: T. 10 N., R. 6 W.
Sec 32: Lot 13
Parcel 36: T. 10 N., R. 6 W.
Sec 32: Lot 14
Parcel 37: T. 10 N., R. 6 W.
Sec 32: Lot 15 & 16
Parcel 38: T. 10 N., R. 6 W.
Sec 32: Lot 17
Parcel 39: T. 10 N., R. 6 W.
Sec 32: Lot 18
Sec 33: Lot 21
Parcel 40: T. 10 N., R. 6 W.
Sec 32: Lot 19
Parcel 41: T. 10 N., R. 6 W.
Sec 33: Lot 6 & 10
Parcel 42: T. 10 N., R. 6 W.
Sec 33: Lot 7
Parcel 43: T. 10 N., R. 6 W.
Sec 33: Lot 18
Parcel 44: T. 10 N., R. 6 W.
Sec 33: Lot 19
Parcel 45: T. 10 N., R. 6 W.
Sec 33: Lot 20
Parcel 46: T. 13 N., R. 6 W.
Sec 8: NE¼SW¼
Parcel 47: T. 12 N., R. 8 W.
Sec 7: NE¼SW¼
Parcel 48: T. 12 N., R. 8 W.
Sec 20: SE¼SW¼

Containing 7,000.00 acres more or less.

In exchange for these lands, the United States will acquire from The Trust For Public Land the following described private lands:

Mount Diablo Meridian

T. 12 N., R. 5 W.
Sec 5: S½
Sec 6: Lots 6, 7, E½SW¼, SE¼
Sec 7: Lot 1–4, NE¼, E½W½, W½SE¼, NE¼SE¼
Sec 8: E½, N½NW¼, SW¼NW¼
Sec 9: W½, S½SE¼
Sec 15: W½SW¼
Sec 16: W½NE¼, SE¼NE¼, W½, SE¼
Sec 18: NW¼NE¼, NE¼NW¼
Sec 21: N½NE¼, NW¼
Sec 22: NW¼NW¼
T. 13 N., R. 5 W.
Sec 3: Lot 3, SE¼NW¼, NE¼SW¼
Sec 4: Lots 1–4, S½N½, S½
Sec 5: Lots 1–4, S½NE¼
Sec 18: Lots 2–4
Sec 19: Lot 1, W½SE¼
Sec 27: SW¼NW¼, NW¼SW¼,
Sec 28: N½S½
Sec 29: N½NE¼, SW¼NE¼, NW¼
Sec 30: N½NE¼
T. 13 N., R. 6 W.
Sec 1: Lots 3, 4 S½NW¼
Sec 2: NW¼SW¼NE¼ S½NW¼, N½SW¼
Sec 12: NW¼SW¼
Sec 15: NW¼NW¼NE¼, SE¼NE¼, NE¼NW¼
Sec 20: SE¼NE¼
Sec 24: Lot 1
Sec 30: SE¼
Sec 31: Lot 1, W½E½, E½W½
Sec 32: SE¼NE¼, NW¼NW¼, S½NW¼
Sec 36: Lots 1, 2, W½E½, W½
T. 13 N., R. 7 W.
Sec 25: Lot SW¼
Sec 26: S½NE¼, SE¼
Sec 35: NE¼
Sec 36: N½
T. 14 N., R. 5 W.
Sec 30: Lot S½
Sec 31: Lots 1–3, 5, W½NE¼,
Sec 32: Lots 2–12, W½SW¼, SE¼SW¼, NE¼SE¼, S½SE¼
Sec 33: All
T. 14 N., R. 6 W.
Sec 36: All

Containing 10,000.00 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire non-Federal lands contained wholly or partially in the Cache Creek Management Area in Lake, Colusa and Yolo Counties, California. Acquiring the private land will help provide protection and management of the riparian and primitive recreation values, wintering Bald Eagle habitat, Tule Elk habitat and significant cultural resources and other special resource values. Federal lands proposed for disposal in the exchange are generally isolated parcels surrounded by private lands with no public access.

The proposed exchange will not be completed until all necessary reports and Environmental Assessment(s) are completed. Following the completion of mineral reports, the authorized officer will determine what, if any, mineral interest will be reserved to the United States. The exchange is consistent with the Bureau's planning for the lands involved. The public interest will be well served by making the exchange.

The exchange will be completed on an equal value basis. Full equalization of values will be achieved by acreage adjustments and/or by a payment to the United States by the Trust For Public Land of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

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

Reserving to the United States

A right-of-way for ditches or canals constructed under the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945), as it affects all parcels.

Parcel 22

Those rights for a road easement reserved to the United States, BLM Ukiah District office, serial No. SAC–076875, under the Act of January 13, 1916 (44 LD 513).

Subject to

Parcels 1 and 2

The oil and gas rights in the above described land may be conveyed subject to lease CA–14703 issued under the Mineral Leasing Act of 1920, as amended, and the United States reserves for the duration of said lease unto itself all the rights of the lessor under said lease (including, without limitation, the right to collect royalties and extend the lease pursuant to its terms and applicable law and regulation).

This exchange is made under section 29 of the Act of February 25, 1920 (30 U.S.C. 186) and the Act of March 4, 1933 (30 U.S.C. 124), and the patent will be issued subject to the rights of prior permittees or lessees to use so much of the surface of said land as is required for mining operations, without compensation to the patentee for damages resulting from proper mining operations, for the duration of oil and gas lease CA–14703 and any authorized extensions of that lease.

Parcel 6

The oil and gas rights in the above described land may be conveyed subject to lease CA–14699 issued under the Mineral Leasing Act of 1920, as amended, and the United States reserves for the duration of said lease unto itself all the rights of the lessor under said lease (including, without limitation, the right to collect royalties and extend the lease pursuant to its terms and applicable law and regulation).

This exchange is made under section 29 of the Act of February 25, 1920 (30 U.S.C. 186) and the Act of March 4, 1933 (30 U.S.C. 124), and the patent will be issued subject to the rights of prior permittees or lessees to use so much of the surface of said land as is required for mining operations, without compensation to the patentee for damages resulting from proper mining operations, for the duration of oil and gas lease CA–14699 and any authorized extensions of that lease.

Parcels 7, 8 and 9

The oil and gas rights in the above described land may be conveyed subject

to lease CA–14704 issued under the Mineral Leasing Act of 1920, as amended, and the United States reserves for the duration of said lease unto itself all the rights of the lessor under said lease (including, without limitation, the right to collect royalties and extend the lease pursuant to its terms and applicable law and regulation).

This exchange is made under section 29 of the Act of February 25, 1920 (30 U.S.C. 186) and the Act of March 4, 1933 (30 U.S.C. 124), and the patent will be issued subject to the rights of prior permittees or lessees to use so much of the surface of said land as is required for mining operations, without compensation to the patentee for damages resulting from proper mining operations, for the duration of oil and gas lease CA–14704 and any authorized extensions of that lease.

Parcel 9

Those rights for an access road granted to Department of Public Works, Lake County, its successors or assigns, by right-of-way No. CA–14770, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); Those rights for a 115 kv power transmission line granted to Pacific Gas and Electric Company, its successors or assigns, by right-of-way No. CA–14669, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); Those rights for water well site purposes granted to Homestake Mining Company, its successors or assigns, by right-of-way No. CA–15665, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); Those rights for telephone line purposes granted to AT&T Company, its successors or assigns, by right-of-way No. CA–19384, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Parcel 13

Those rights for transmission line purposes granted to Pacific Gas and Electric Company, its successors or assigns, by right-of-way No. SAC–065024, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).

Parcel 14

Those rights for transmission line purposes granted to Pacific Gas and Electric Company, its successors or assigns, by right-of-way No. SAC–039843, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961).

Parcels 14, 15, 16, 17 and 18

The oil and gas rights in the above described land may be conveyed subject to lease CA–14696 issued under the Mineral Leasing Act of 1920, as amended, and the United States reserves for the duration of said lease unto itself all the rights of the lessor under said lease (including, without limitation, the right to collect royalties and extend the lease pursuant to its terms and applicable law and regulation).

This exchange is made under section 29 of the Act of February 25, 1920 (30 U.S.C. 186) and the Act of March 4, 1933 (30 U.S.C. 124), and the patent will be issued subject to the rights of prior permittees or lessees to use so much of the surface of said land as is required for mining operations, without compensation to the patentee for damages resulting from proper mining operations, for the duration of oil and gas lease CA–14696 and any authorized extensions of that lease.

Parcel 22

Those rights for an access road granted to Virgil and Ivy Freeman, its heirs or assigns, by right-of-way No. CA–11747, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); those rights for telephone line purposes granted to AT&T Company, its successors or assigns, by right-of-way No. CA–19384, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Parcel 47

Those rights for an access road granted to Department of Water Resources, its successors or assigns, by right-of-way No. CA–10238, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Publication of this notice in the **Federal Register** shall segregate the public lands from operation of the public land laws and the mining laws, but not the mineral leasing laws. This segregative effect shall terminate upon issuance of patent, or two (2) years from the date of publication of this notice in the **Federal Register**, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Catherine Robertson, Clear Lake Area Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482; Phone (707) 462–3873.

DATES: Until March 18, 1991, interested parties may submit comments to the BLM, Clear Lake Resource Area Manager, at the address shown above. Comments should specify the legal description (Township, Range, Section, and Subsection) of the specific parcel affected by the comment. Any adverse comments will be evaluated by the Bureau, which may sustain, vacate, or modify this realty action and State Director will issue a final determination. In the absence of any adverse comments, this action will become the final determination of the Department of Interior.

Scott C. Adams,

Acting Clear Lake Resource Area Manager.

[FR Doc. 91–2275 Filed 1–30–91; 8:45 am]

BILLING CODE 4310–40–M

[OR 45862); OR–030–00–4212–14: GP1–097]

Realty Action; Proposed Exchange; Oregon

This exchange will be between the United States (Bureau of Land Management) and the City of McMinnville, Oregon, acting by and through its Water and Light Commission, a municipal corporation.

The following described public lands (Revested Oregon and California Railroad Grant land status) have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*):

Willamette Meridian, Oregon,

T. 3 S., R. 6 W.,
Sec. 22, SE¼NE¼, NE¼SE¼
Sec. 23, E½NW¼
The parcels described above contain 160.00 acres in Yamhill County.

In exchange for these parcels, the United States will acquire the following described land from the City of McMinnville:

Willamette Meridian, Oregon,

T. 3 S., R. 7 W.,
Sec. 8, S½SW¼, SW¼SE¼
The parcel described above contains 120.00 acres in Tillamook County.

The purpose of the exchange is to facilitate resource management opportunities as identified in the Salem District's Westside Management Framework Plan. The city land offered is surrounded by other public lands which are being managed for multiple use, including protection of bald eagle habitat and the sustained yield of timber. The public lands selected are adjacent to McMinnville's existing McGuire Reservoir. Acquisition of these parcels by McMinnville would give it greater control of the watershed from which it receives its drinking water. The public interest will be highly served by making this exchange.

The value of the lands to be exchanged is approximately equal or the acreage will be adjusted to equalize the values upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment

to the United States of funds in an amount not to exceed 25 percent of the value of the public land to be transferred. All mineral rights will be transferred with the surface estate.

The deed to the selected land will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals. Act of August 30, 1890 (43 U.S.C. 945)

2. Perpetual exclusive road easements (locations to be described).

3. The reservation of the right to remove timber within the Tigger Too Timber Sale Contract Area.

4. Valid existing rights.

Publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, except for exchange under section 206 of the Federal Land Policy and Management Act. Any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant (43 CFR 2201.1(b)). The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

Detailed information concerning this exchange, including the environmental assessment/land report, is available for review at the Salem District Office, 1717 Fabry Road SE., Salem, OR 97306, or at the Tillamook Resource Area Office, 6615 Officer's Row, Tillamook, OR 97141.

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 Yamhill Area Manager at the above address. Any objections will be reviewed by the Salem District Manager 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.

Richard C. Prather,

Yamhill Area Manager.

[FR Doc. 91-2276 Filed 1-30-91; 8:45 am]

BILLING CODE 4310-33-M

[AK-932-01-4214-10; F-031914]

Termination of Proposed Withdrawal and Reservation of Land; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of land requested by the Bureau of Land Management for public recreational purposes.

EFFECTIVE DATE: January 31, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management filed application F-031914 to withdraw land at Mankomen Lake to provide public recreational facilities and to retain recreation values in public ownership. Notice of proposed withdrawal and reservation of this land was published in the **Federal Register** on March 7, 1964 (29 FR 3172). The Bureau of Land Management has since determined that there is no longer a need for the proposed withdrawal and has cancelled the application which affects the following described land:

Copper River Meridian (Unsurveyed)

T. 14 N., R. 4 E.,
secs. 1, 12, 13, and 24.
T. 14 N., R. 5 E.,
secs. 7, 8, and 16 to 21, inclusive.

Fairbanks Meridian (Unsurveyed)

T. 22 S., R. 16 E.,
secs. 12 and 13.

The area described contains approximately 8,681 acres, of which approximately 1,100 acres comprise Mankomen Lake.

At 8 a.m. Alaska Daylight Time, on the date of this publication, such land will be relieved of the segregative effect of this proposed withdrawal, pursuant to 43 CFR 2310.2-1(c).

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 91-2277 Filed 1-30-91; 8:45 am]

BILLING CODE 4310-JA-M

Bureau of Reclamation

Kellogg Unit Reformulation Study, Delta Division, Central Valley Project, Contra Costa County, CA

AGENCY: Bureau of Reclamation (Interior).

ACTION: Notice of cancellation of Kellogg Unit Reformulation Study, Planning Report/Draft Environmental Statement, (PR/DES), INT DES 88-56.

SUMMARY: The Bureau of Reclamation (Reclamation) is canceling the Planning Report/Draft Environmental Statement, Kellogg Unit Reformulation Study, filed with the Environmental Protection Agency on December 2, 1988.

FOR FURTHER INFORMATION CONTACT: Douglas Kleinsmith (Project Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region), telephone: (916) 978-5121; or Dr. Wayne Deason (Manager, Environmental Services Staff, Bureau of Reclamation, Denver Federal Center), telephone: (303) 236-9336.

SUPPLEMENTARY INFORMATION: Reclamation published a Notice of Intent to prepare a Planning Report/Environmental Statement for the Kellogg Unit Reformulation Study in the **Federal Register**, Vol. 50, No. 231, dated December 2, 1985. A scoping meeting was held in Concord, California, on December 16, 1985. The purpose of the study was to develop alternatives to improve the quality and reliability of municipal and industrial water deliveries for Contra Costa Water District (CCWD).

The Planning Report/Draft Environmental Statement (PR/DES) for the Kellogg Unit Reformulation Study was filed with the Environmental Protection Agency on December 2, 1988, and the Notice of Availability was published in the **Federal Register**, Vol. 53, No. 234, dated December 6, 1988. A public hearing on the PR/DES was held in Concord, California, on January 19, 1989.

Since the PR/DES was filed with EPA, CCWD has begun studying the Los Vaqueros Project (LVP) to meet the water quality needs of CCWD and to provide needed reliability through a storage reservoir. Reclamation is the lead Federal agency for the LVP. The objectives of the Kellogg Unit Reformulation Study have been incorporated into the LVP. To avoid duplication of work, CCWD has requested that Reclamation end all work on the Kellogg Study. Therefore, Reclamation is not proceeding further with the Kellogg Study and is canceling the PR/DES.

Dated: January 25, 1991.

J. Austin Burke,

Deputy Assistant Commissioner—Administration.

[FR Doc. 91-2246 Filed 1-30-91; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following renewal application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and

the regulations governing marine mammals (50 CFR part 18).

Applicant

Name: Envirosphere Company—PRT–740037, 10900 NE. 8th Street, Bellevue, Washington 98004.

Type of Permit: Scientific Research.

Name and Number of Animals: Walrus (Odobenus rosmarus)—250,000.

Summary of Activity to be Authorized: The applicant proposes to conduct aerial surveys and vessel observations of walruses in the Chukchi Sea to develop information for determining walrus abundance, distribution, and behavior relative to offshore oil/gas drilling and associated activities.

Source of Marine Mammals for Research: Chukchi Sea—east of the U.S.-Russia convention line of 1867 and north of 68 N latitude.

Period of Activity: From date of issuance to December 31, 1993.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Drive, room 432, Arlington, VA 22203, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 am. to 4:15 pm.) at 4401 N. Fairfax Drive, room 432, Arlington, Va 22203.

Dated: January 28, 1991.

Karen Willson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–2270 Filed 1–30–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Established 1991 Aggregate Production Quotas.

SUMMARY: This notice establishes 1991 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration (DEA) by § 0.100 of title 28 of the Code of Federal Regulations.

On Monday, October 22, 1990, a notice of the proposed 1991 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (55 FR 42660). All interested parties were invited to comment on or object to those proposed aggregate production quotas on or before November 21, 1990. No comments and no requests for a hearing were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this matter will have no significant impact upon entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1991 aggregate production quotas for Schedules I and II controlled substances, expressed as grams of anhydrous acid or base, be established as follows:

BASIC CLASS AND ESTABLISHED 1991 QUOTAS

Schedule I:	
Lysergic Acid Diethylamide	11
3,4-Methylenedioxyamphetamine	7
3,4-Methylenedioxymethamphetamine	12
Tetrahydrocannabinols	12,000
Psilocyn	5
Psilocybin	5
4-Methylaminorex	5
Methaqualone	2
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
N-Ethylamphetamine	5
Schedule II:	
Alfentanil	5,300
Amobarbital	395,000
Amphetamine	98,000
Cocaine	663,000
Codeine (for sale)	56,907,000
Codeine (for conversion)	6,055,000
Desoxyephedrine	1,289,000
1,284,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 5,000 grams for methamphetamine.	
Dextropropoxyphene	85,267,000
Dihydrocodeine	241,000
Diphenoxylate	707,000
Ecgonine (for conversion)	650,000
Fentanyl	50,500
Hydrocodone	3,671,000
Hydromorphone	223,000
Levorphanol	10,300
Meperidine	10,452,000
Methadone	1,875,000
Methadone Intermediate (4-Cyano-2-dimethylamino-4,4-diphenyl butane	2,344,000
Methamphetamine (for conversion)	965,000
Methylphenidate	1,979,000
Mixed Alkaloids of Opium	5,000
Morphine (for sale)	4,008,000
Morphine (for conversion)	67,226,000
Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium)	1,184,000
Oxycodone (for sale)	2,654,000
Oxycodone (for conversion)	6,300
Oxymorphone	2,500
Pentobarbital	13,432,000
Phencyclidine	15
Phenylacetone (for conversion)	488,000
Secobarbital	782,000
Sufentanil	420
Thebaine	7,330,000

DEA will review the above established quotas early in 1991 to take into consideration actual 1990 sales and actual December 31, 1990 inventories as well as other information which becomes available.

Dated: December 14, 1990.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 91–2263 Filed 1–30–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-24,964]

Valley Vulcan Mold Co., Latrobe, PA; Negative Determination Regarding Application for Reconsideration

By an application dated January 7, 1991, Local #758 of the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on December 10, 1990 and published in the **Federal Register** on January 8, 1991 (56 FR 710).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produce ingot molds for the steel industry. The union claims that imported steel caused a decline in sales and production of ingot molds used in steel making.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. U.S. imports of ingot molds were negligible during the period under investigation.

Certification under the Trade Act of 1974 is based upon increased inports of articles that are like or directly competitive with the articles produced by the workers' firm and which "contributed importantly" to decreased sales or production and employment at the workers' firm. Finished articles are not like or directly competitive with the articles used in their manufacture. Accordingly, imports of steel are not like or directly competitive with " ingot molds" used in steelmaking.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of January 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-2313 Filed 1-30-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,557]

Varco International, Inc., Martin-Decker, a/k/a Cooper Industries, Marshall, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 22, 1990 applicable to all workers of Martin-Decker, Marshall, Texas. The Certification Notice was published in the **Federal Register** on September 7, 1990 (55 FR 36918).

At the request of the State Agency, the Department reviewed the subject certification. The findings show that on May 21, 1990, Varco International purchased the Martin-Decker facility in Marshall, Texas from Cooper Industries. The Marshall facility produced the same products and employed the same workforce while under both ownerships. The Marshall facility under Cooper Industries meets all the requirements for a predecessor-in-interest firm. Therefore, the certification is amended to properly reflect the correct worker group. The amended notice applicable to TA-W-24,557 is hereby issued as follows:

All workers of Martin-Decker, a/k/a Cooper Industries, Marshall, Texas who became totally or partially separated from employment on or after January 1, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of January 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-2314 Filed 1-30-91; 8:45 am]

BILLING CODE 4510-30-M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The addresses of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the attestation process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202-535-0163 (this is not a toll-free number).

Regarding the complaint process: Chief, Farm Labor Programs, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant

to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 25th day of January 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[01/14/91 to 01/18/91]

CEO-Name	Phone	Facility name	State	Approval date
Mr. David Banks	714-837-8000	Beverly Enterprises, Beverly Manor, Laguna Hills, CA 92653. Beverly Manor, Seal Beach, CA 90740.	CA	01/18/91
Ms. Beth Haarsma	712-737-6811	Heritage House Nursing Home, 519 Albany Ave., S.E., Orange City, Iowa 51041.	IA	01/18/91
Mr. Kirk R. Wascom	504-646-5000	Northshore Reg'l Med. Ctr., 100 Medical Ctr. Dr., Slidell, LA 70461.	LA	01/18/91
Mr. Luciano D. Rama	301-523-9400	Golden Touch Care Center, 140 W. Lafayette, Baltimore, MD 21217.	MD	01/18/91
Ms. Sandra Bruce	616-471-7761	Berrien Gen. Hosp., 6418 Deans Hill Rd., Berrien Center, MI. 49102.	MI	01/18/91
Mr. Lester M. Bornst	201-926-7000	Newark Beth Israel Medical Ct, 201 Lyons Avenue, Newark, NJ 07112.	NJ	01/18/91
Earnest K. Ragin	914-636-2800	Woodland Nursing Home, 490 Pelham Road, New Rochelle, NY 10805.	NY	01/15/91
Mr. Thomas G. Dohert	212-566-7322	Corp.—North Cent. Bronx Hosp, 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Lincoln Hosp., 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Woodhull Hosp., 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Bellevue Hosp., 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Bronx Municipal, 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Sea View Hosp., 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Coler Hosp., 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Harlem Hosp., 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Coney Island Hosp., 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Kings County Hosp., 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Gouverneur Med., 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Metropolitan Hosp., 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Neponsit Health C., 125 Worth Street, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Elmhurst Hosp., Immigration Unit, New York, NY 10013.	NY	01/16/91
Mr. Thomas G. Dohert	212-566-7322	Corporation—Queens Hosp., Immigration Unit, New York, NY 10013.	NY	01/16/91
Sister M. Fatima McC	409-899-7165	St. Elizabeth Hosp., 2830 Calder Avenue, Beaumont, TX 77702.	TX	01/18/91

Number of Attestations: 24.

[FR Doc. 91-2312 Filed 1-30-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-91-05-C]

Tara K Coal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Tara K Coal, Inc., PO Box 558, Norton, Virginia 24273 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-06425) located in Wise 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 cabs or canopies be installed on the mine's electric face equipment.

2. Due to soft and uneven bottom, the use of canopies would result in a diminution of safety because canopies would:

(a) Dislodge roof support;

(b) Tear down check or line curtains;

(c) Decrease the operator's visibility; and

(d) Create discomfort to the operator.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 4, 1991. Copies of the petition are available for inspection at that address.

Dated: January 25, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-2315 Filed 1-30-91; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.
2. *The title of the information collection:*
   10 CFR part 40, "Domestic Licensing of Source Material"
   NRC Form 244, "Registration Certificate—Use of Depleted Uranium Under General License"
   NRC Form 484, "Sample Format for Reporting Detection Monitoring Data"
3. *The form number if applicable:* NRC Forms 244 and 484.
4. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses are submitted every five years. NRC Form 244 is submitted when depleted uranium is received or transferred under general license. NRC Form 484 is submitted to report ground-water monitoring data necessary to implement EPA ground-water standards.
5. *Who will be required or asked to report:*
   10 CFR part 40: Applicants for and holders of NRC licenses authorizing the receipt, possession, use, or transfer of radioactive source and byproduct material.
   NRC Form 244: Persons receiving, possessing, using, or transferring depleted uranium under the general license established in 10 CFR 40.25(a).
   NRC Form 484: Uranium recovery facility licensees reporting ground-water monitoring data pursuant to 10 CFR 40.65.
6. *An estimate of the number of responses:*
   10 CFR part 40—1,499
   NRC Form 244—3
   NRC Form 484—Included in 10 CFR part 40, above
7. *An estimate of the total number of hours needed annually to complete the requirement or request:*
   10 CFR part 40—14,988 (Approximately 3.4 hours per response for applications and reports plus approximately 33 hours annually per recordkeeper).
   NRC Form 244—3 (An average of one hour per response).
   NRC Form 484—Included in 10 CFR part 40, above.
8. *An indication of whether section 3504(h), Public Law 96-511 applies:* Not applicable.
9. *Abstract:* 10 CFR part 40 establishes requirements for licenses for the receipt, possession, use, and transfer of radioactive source and byproduct material. NRC Form 244 is used to report receipt and transfer of depleted uranium under general license, as required by 10 CFR part 40. NRC Form 484 is used to report certain ground-water monitoring data required for uranium recovery licensees.

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.

Comments and questions may be directed by mail to the OMB reviewer:
Ronald Minsk,
Paperwork Reduction Project (3150-0020 and 3150-0031),
Office of Information and Regulatory Affairs, NEOB-3019,
Office of Management and Budget,
Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance officer is Brenda J. Shelton, (301) 492-8132. Dated at Bethesda, Maryland, this 23rd day of January 1991.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 91-2289 Filed 1-30-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time exemption from the requirements of 10 CFR part 55 to Carolina Power & Light Company (the licensee), for the H.B. Robinson Steam Electric Plant, Unit 2 (HBR-2), located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief from paragraph 55.59(c)(4)(i) for one calendar quarter on a one-time only basis.

The licensee's request for exemption and the bases therefor are contained in a letter dated December 28, 1990.

The Need for the Proposed Action

The proposed exemption is from paragraph 55.59(c)(4)(i) which requires "Comprehensive requalification written examinations and annual operating tests. . . ." be conducted for licensed operators and senior operators. The exemption request is for a one-time extension of one calendar quarter to the requalification examination schedule from January to April 1991.

The requested extension is needed to relieve the burden on the work schedules of the operators who have to attend to returning the facility to power operations following the 13th refueling outage. The licensee is planning for restart during the second half of January 1991.

The requested exemption is on a one-time basis so the future schedule of the requalification program will not be affected and there will be no permanent adjustment to the 24-month requalification cycle and the annual requalification examination schedule.

Environmental Impacts of the Proposed Action

The proposed action would extend, on a one-time basis, the HBR–2 operator examination schedule for a calendar quarter. This exemption will not increase the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant increase in occupational exposure. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternate to the Proposed Action

Because it has been concluded that there is no measurable impact associated with the proposed exemption, any alternatives to the exemption will have either no environmental impact or greater environmental impact. Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative to the exemption would be to deny the requested exemption. This would not reduce the environmental impacts attributable to this facility and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the HBR–2 facility, dated April 1975.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated December 28, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland, this 28th day of January 1991.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–2408 Filed 1–30–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–335 and 50–389]

Florida Power & Light Co.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Florida Power and Light Company (the licensee) for amendments to Facility Operating Licenses Nos. DPR–67 and NPF–16 issued to the licensee for operation of the St. Lucie Plant, Units 1 and 2 located in St. Lucie County, Florida. A Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Determination and Opportunity for Hearing was published in the **Federal Register** on April 4, 1990 (55 FR 12593).

The purpose of the licensee's amendment request was to revise the requirement to determine control element assembly (CEA) operability at least once per 31 days to once per 92 days. Additionally, it was proposed that the surveillance interval for the performance of the functional test of the CEA block circuit, which is performed as part of the CEA operability test, be performed on a quarterly basis, rather than on the current monthly basis.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated January 24, 1991.

By March 4, 1991, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated February 12, 1990, and (2) the Commission's letter to the licensee dated January 24, 1991.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 24th day of January 1991.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-2290 Filed 1-30-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28824; File No. SR-NASD-90-62]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Improvements in NASD Code of Arbitration Procedure

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 November 21, 1990,[1] the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend part I, section 1 and part III, sections 25, 26, 41, and 42 of the NASD Code of Arbitration Procedure (the "Code"). The proposal also amends a Resolution of the Board of Governors pertaining to Failure to Act Under Provisions of the Code of Arbitration Procedure to improve the efficiency of its arbitration process, and to provide recognition of the status of securities arbitration awards of members of the Securities Industry Conference on Arbitration ("SICA") and the American Arbitration Association.

In general, the proposed changes are intended to correct a reference to the NASD By-Laws; clarify procedures concerning joinder and consolidation of arbitration cases; clarify the authority of the Director of Arbitration and arbitrators to determine the venue of hearings; specify that awards bear interest until paid and provide for the immediate payment of arbitration fees and assessments imposed in awards; incorporate by reference the NASD Code of Arbitration Procedure in all agreements to arbitrate under the rules of the NASD; and deem inconsistent with just and equitable principles of trade a failure to honor an arbitration award rendered by arbitration forums sponsored by members of SICA and under the securities arbitration rules of the American Arbitration Association.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Correction of By-Laws Reference: Section 1 of the Code of Arbitration Procedure currently cites Article IV, section 2(b) of the Association's By-Laws as the source of the Board of Governors' authority to prescribe rules for the arbitration of disputes between members and between members and customers. The proposed rule change substitutes the proper citation to Article VII, section 1(a)(3) of the NASD By-Laws.

Joinder and Consolidation: The proposed rule change to section 25(d) of the Code clarifies the concepts of joinder and consolidation in cases submitted to arbitration; and authorizes the Director of Arbitration to make preliminary determinations in cases where issues concerning joinder and consolidation are in dispute. All final determinations with respect to joinder and consolidation remain with the designated arbitration panel.

Designation of Time and Place of Hearing: The proposed rule change to section 26 of the Code clarifies the authority of the Director of Arbitration to determine the time and place of initial arbitration hearings, notwithstanding the possible existence of a contractual designation of situs previously entered into between the parties, which authority devolves to the arbitrator(s) as to subsequent hearings.

Awards: The proposed rule change to section 41(g) of the Code codifies the inherent authority of arbitrators to award interest from the date of the cause of action, and mandates that interest accrues from the date of the award until payment at either the so-called "legal" rate prevailing in the state where the award is rendered, or at a rate specified by the arbitrators. This change encourages prompt payment of awards and increases confidence in the arbitration process. The proposed change also adds new section 41(i), which was not considered by SICA but which was found by the NASD to be necessary to facilitate the collection of forum fees owed to the Association. It would require immediate payment of fees and costs specified in an award, but makes clear that payment of such fees and costs is not deemed to constitute a ratification of the award. Pursuant to a recommendation of the NASD National Arbitration Committee, the NASD intends to utilize summary procedures under Article VI, section 3 of the NASD By-Laws to collect such fees and costs from member firms upon the expiration of appropriate time periods for the vacation or modification of awards.

Incorporated By Reference: The proposed rule change to section 42 of the Code incorporates by reference the provisions of the NASD Code of Arbitration Procedure in every agreement to arbitrate.

Resolution of the Board of Governors—Failure To Act Under Provisions of the Code of Arbitration Procedure: Under the current Resolution of the Board of Governors in the Code, it may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Article III, section 1 of the Association's Rules of Fair Practice for a member or a person associated with a member to, *inter alia*, fail to honor an award of arbitration properly rendered pursuant to the Code of Arbitration Procedure. The proposed change in the Resolution of the Board of Governors would make it explicit that the failure to honor an award of arbitrators, rendered pursuant to the Uniform Code of Arbitration (encompassing awards rendered by all members of the Securities Industry Conference on Arbitration which provide arbitration facilities) or pursuant to the rules applicable to the arbitration of securities disputes before the American Arbitration Association, where a timely motion has not been made to vacate or modify such award pursuant to applicable law, may constitute a violation of Article III, section 1 of the Association's Rules of Fair Practice. This amendment is intended to enhance the efficacy of securities industry self-regulatory

[1] Amendment No. 1, filed on December 11, 1990, clarifies the wording of the discussion on joinder and consolidation in the filing. The amendment does not change the substance of the proposal.

organizations and the American Arbitration Association, thereby contributing to the success of securities arbitration as a fair and efficient means of dispute resolution.

The Association believes the proposed rule change is consistent with section 15A(b)(6) of the Act, which requires that the Association's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest, in that the proposed rule change will facilitate the arbitration process, thereby benefitting the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the pubic in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 21, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 25, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2281 Filed 1-30-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28825; File Nos. SR-NSCC-90-13 and SR-MCC-90-05]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by National Securities Clearing Corp. and Midwest Clearing Corp., Relating to Clearance of Securities Transactions Executed on the Chicago Board Options Exchange, Inc.

January 25, 1991.

On July 16, and August 23, 1990, respectively the National Securities Clearing Corporation ("NSCC") and the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") proposed rule changes (Files Nos. SR-NSCC-90-13 and SR-MCC-90-05) under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposals would enable NSCC and MCC to accept, on behalf of participants, trade data input for transactions executed on the Chicago Board Options Exchange, Inc. ("CBOE"). Notice of NSCC's proposal appeared in the Federal Register on August 10, 1990.[2] Notice of MCC's proposal appeared in the Federal Register on October 10, 1990.[3] The Commission did not receive any letters of comments. For the reasons discussed below, the Commission is approving the proposed rule changes.[4]

I. Description of the Proposal

The proposals permit NSCC and MCC to process transactions executed by NSCC or MCC participants at CBOE. Pursuant to the proposals, transactions will be compared at CBOE and reported to NSCC and MCC as fully compared trades. The proposals will allow participants of different registered clearing corporations executing trades at CBOE to clear and settle transactions at NSCC or MCC through interregional interfaces.[5] In order to be able to settle transactions through interregional interfaces, the proposals require that clearing corporations settling transactions on their participants' behalf at NSCC or MCC must have entered into a Pilot Interregional Interface Agreement with NSCC (if settling on their participants' behalf at NSCC) or with MCC (if settling on their participant's behalf at MCC).[6] Pursuant to the proposals the terms of these Agreements must govern the settling of transactions between either MCC or NSCC and the interfacing clearing corporation.

Until recently, only option contracts were traded at CBOE.[7] On October 19, 1990, however, the Commission approved a rule proposal expanding the scope of CBOE's market to include trading of stock, warrants and other securities instruments and contracts on either a listed or an unlisted basis.[8] On May 25, 1990, CBOE filed a proposal [9] to permit the trading of interests in, or relating to, unit investment trusts.[10]

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[1] 15 U.S.C. 78s(b) (1989).

[2] Securities Exchange Act Release No. 28311 (August 3, 1990), 55 FR 32723 (August 10, 1990).

[3] Securities Exchange Act Release No. 28496 (September 28, 1990), 55 FR 41287 (October 10, 1990).

[4] In approving this proposal, the Commission is not addressing CBOE's filing to permit the trading of interest in, or relating to, unit investment trusts. *See Infra* note 9. Instead, this proposal approves the operational aspects of the clearing and settlement interface between CBOE, MCC and NSCC. Commission approval of the aspects of NSCC's and MCC's proposals that are necessary to clear interest in, or relating to, unit investment trusts is contingent upon the Commission's approval of CBOE's proposal to permit the trading of interest in, or relating to, unit investment trusts.

[5] Interregional interfaces allow clearing corporations to interact by providing clearing services to each other by means of bilateral arrangements that enable each clearing corporation to provide the same service and independently perform all tasks essential to that service.

[6] Pilot Interregional Interface Agreements are bilateral arrangements between clearing corporation allowing participants of a clearing corporation to designate such clearing corporation as the facility through which some or all of its transactions should be settled. *See, e.g.*, Pilot Interregional Interface Agreement between Stock Clearing Corporation ("SCC") and MCC (January 23, 1976), novated and assumed by NSCC on May 1, 1976. Agreement of Novation between SCC, NSCC and MCC (May 1, 1976).

[7] COBE Rules, Ch. V, R. 5.1 (January 1990).

[8] Securities Exchange Act Release No. 28556 (October 19, 1990), 55 FR 43233 (October 26, 1990).

[9] File No. SR-CBOE-90-13. Securities Exchange Act Release No. 28132 (June 19, 1990), 55 FR 26036 (June 26, 1990). Amended on July 30, and August 21 1990. Securities Exchange Act Release No. 28382 (August 28, 1990), 55 FR 36369 (September 5, 1990).

[10] A "unit investment trust" is an investment company, as defined in section 4 of the Investment Company Act of 1940, 15 U.S.C. 80a-4, which, (A) Is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B)

Continued

On July 13, 1990, representatives of NSCC and CBOE signed an Agreement ("NSCC Agreement") setting forth procedures to clear trades in "cleared securities," executed at CBOE, between participants of NSCC and participants of interfacing clearing corporations. On August 15, 1990, MCC and CBOE representatives signed a similar Agreement ("MCC Agreement"), facilitating the clearance of transactions involving "eligible securities," executed at CBOE between participants of MCC and participants of interfacing clearing corporation.[11] Consideration of the NSCC and MCC Agreements are the subject of this Order.

Pursuant to MCC's Rules an "eligible security" is a security which MCC has determined to be eligible for deposit or for delivery through MCC.[12] NSCC's Rules define "cleared securities" as securities that may be the subject of contracts cleared through NSCC.[13] In addition, both NSCC's and MCC's proposals specifically contemplate the clearance and settlement of certain securities to be traded at CBOE, which represent interests in, or relating to, unit investment trusts (*e.g.*, "supershares").[14]

Pursuant to the proposals, CBOE will compare trades executed at CBOR.[15] CBOE will then provide NSCC with reports corresponding to fully compared trades in NSCC "cleared securities" executed at CBOE by each NSCC participant who has chosen to settle its CBOE trades at NSCC. Likewise, CBOE will provide MCC with reports corresponding to fully compared trades in MCC "eligible securities" executed at CBOE by each MCC participant who has chosen to settle its CBOE trades at MCC. The CBOE reports to NSCC and MCC will contain the following information: (a) The identity of both sides to the trade, (b) the quantity of securities traded, (c) the contract amount, and (d) the trade date.

CBOE will submit the trade data to NSCC in a computer-to-computer, machine readable format before 5 a.m.[16] of the day following the day when the trade was executed ("T+1").[17] NSCC will report transactions to its members, through the Interface Clearing Report,[18] by 8 a.m. on T+1. NSCC's Interface Clearing Report will be transmitted to participants in either computer-to-computer, machine readable format or type format. CBOE will submit reports to MCC in tape format by 9 p.m. of the day when the trade is executed. MCC will report trade data to participants on T+1, by 7 a.m., through a Purchases and Sales Report.[19] MCC will make these reports available to participants in hard copy, computer-to-computer, machine readable format or via transmission to computer terminals in participants' offices.

Pursuant to the Agreements, both NSCC and MCC may accept as complete and accurate the trade data reported by CBOE, without any obligation to inquire into the accuracy or genuineness of such data. In the event of errors regarding the trade data reported to NSCC or MCC, however, CBOE may effect trade corrections by replacing the original transaction with a reversed transaction.[20] This procedure requires CBOE to submit a new trade designating the original purchaser as the buyer and the original buyer as the new purchaser. After reversing the original transaction, CBOE will submit to NSCC a corrected trade in the form of an "As-of Input."[21] Under MCC's Rules, after reversing the transaction, CBOE, if authorized by the contraside, would be able to record the correct trade.[22]

NSCC and MCC will guarantee the settlement of trades reported in the Interface Clearing Report and the Purchases and Sales Report around midnight[23] of the day when NSCC and MCC make such reports available to participants.[24] This guarantee policy only will be applicable to trades involving securities that can be settled through NSCC's or MCC's Continuous Net Settlement ("CNS") System.[25] Therefore, if the transactions are submitted by CBOE as fully compared trades, enabling NSCC and MCC to report such transactions to their participants on the morning of T+1, NSCC and MC will guarantee completion of the transaction after midnight of T+1. If, however, CBOE reports uncompared sides of trades involving CNS Securities, for subsequent comparison at NSCC or MCC, NSCC and MCC will guarantee settlement of transactions after midnight on the day the transactions are reported to participants as compared, usually T+2.[26]

Does not have a board of directors, and (C) Issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust. 15 U.S.C. 80a–4(2).

[11] The terms, "cleared securities" and "eligible securities" refer to securities that may be the subject of contracts cleared through either NSCC or MCC. NSCC Rules, R. 1 & 3 (October 1, 1978 revised March 14, 1990); MCC Rules, Art. I, R. 1 & 2 (1989).

[12] MCC Rules, Art. I, R. 1 (1989).

[13] NSCC Rules and Procedures, R. 1 & 3 (October 1, 1978 revised March 14, 1990).

[14] *See supra* note 10 (defining "unit investment trust"). "Supershares" represent interests in two trusts operated on an open end basis with no maximum number of holders. "Supershares" are divided into four distinct types of securities, some of which convey the right to receive dividends declared for securities held in the trusts' *Corpus*.

[15] CBOE's Rules require daily submission of trade information regarding transactions made during that particular business day. CBOE Rules, R. 6.50 & 6.51. On each business day, CBOE matches the trade information submitted on that day and issues reports listing trades for which CBOE did not receive corresponding matching trade data. *Id.* at R. 6.60. CBOE participants are required to resolve unmatched trades from the previous day's trading no later than the opening of trading on the following business day. *Id.* at R. 6.61 and accompanying Interpretations and Policies § .01.

[16] Times referenced in this Release are Eastern times.

[17] NSCC, however, expects to receive, on a regular basis, trade reports by 8 p.m. of the day when the trade is executed. Telephone conversation between Alison N. Hoffman, Attorney, NSCC, and Julius R. Leiman-Carbia, Attorney, Transfer Agent Regulation Branch, Division of Market Regulation, Commission (September 18, 1990).

[18] NSCC's Interface Clearing Report contains the identities of the buyer and the seller, the CUSIP number of the transacted security, the contract amount, the trade date and the settlement date.

[19] MCC's Purchases and Sales Reports identify the security, the counterpart of the transaction, the contract value, trade and settlement data and, for purposes of the proposed rule filing, the market of execution (*i.e.*, CBOE).

[20] Under MCC's Rules, upon discovery of an error CBOE must notify MCC and the transaction's counterpart. CBOE only may reverse the incorrect trade upon authorization by the contra-side. MCC Rules, Art. II R.3.

[21] An "As-of input" allows NSCC to accept corrected data for processing following the time required for the original trade input. *See* NSCC Procedures Section II.B.2.(b).

[22] MCC Rules, Art. II R. 3. MCC will process corrected trades as new trades, settling such transactions on T+5.

[23] While NSCC will guarantee completion of trades as of midnight, MCC will guarantee trades as of 11:59 p.m.

[24] Until settlement of a trade is guaranteed, each side to the trade bears the risk of a default by its counterpart. Once NSCC or MCC guarantee settlement, the original contractual obligations are discharged and replaced by contracts between the clearing corporations and each of the original parties (*i.e.*, the clearing corporation becomes the buyer to every seller and the seller to every buyer).

[25] CNS is an accounting and settlement procedure whereby a participant's settling trades are netted against prior settlement positions and other payables are receivables. *See* NSCC Rules, R. 11 section 1, MCC Rules, Art. 2 R. 2 section 1.

[26] NSCC's and MCC's guarantee policies, as applied to this proposal, do not deviate from their current guarantee policies, as approved by the Commission. Securities Exchange Act Release No. 27192 (August 29, 1989), 54 FR 37070, 37071 (September 6, 1989), *see* Securities Exchange Act Release No. 28728 (December 31, 1990), 56 FR 717 (January 8, 1991) (extending approval of NSCC's and MCC's guarantee policies).

Some trades executed at CBOE may not settle in CNS because the security is not CNS eligible or the parties to the trade elect not to process the trade through CNS. In that case, the trade will be cleared and settled through another accounting system at NSCC or MCC.

NSCC will continue to guarantee the completion of trades submitted for clearance and settlement, through accounting systems other than the CNS System, such as the balance order system, from the morning of T+4 through the close of business on T+5, unless the participant could have made

Continued

A trade reported by CBOE involving settlement of each side through different clearing facilities will settle through regional interfaces. Accordingly, CBOE's trade report to NSCC or MCC will identify the participant who has chosen to clear and settle its side of the transaction at either NSCC or MCC and, as the contra-side, the omnibus account [27] of the clearing corporation designated by the transaction's counterpart ("interfacing clearing corporation"). [28] Once the reported transaction is guaranteed, fNSCC and MCC assume a settlement obligation to the interfacing clearing corporation.[29] Simultaneously, a corresponding settlement obligation between NSCC or MCC and its participant is created. At the time when CBOE submits trade reports to NSCC or MCC, CBOE also will submit a corresponding trade report to the interfacing clearing corporation, identifying the participant who has chosen to settle its transaction at the interfacing clearing coropration. This results in a settlement obligation between the interfacing clearing corporation and its participant.

NSCC and MCC settle their payment and delivery obligations for interface activity on behalf of their participants on either a net or a trade-for-trade basis. On T+5, NSCC or MC will debit or credit the interfacing clearing corporation's omnibus account. Underlying depository eligible and book-entry securities transfers will occur through the depository accounts of NSCC and MCC at their corresponding depositories (*i.e.*, The Depository Trust Company and Midwest Securities Trust Company, respectively). The obligations between NSCC or MCC and its participant and the obligation between the interfacing clearing corporation and its participant will be settled on T+5 pursuant to the corresponding clearing corporation's settlement procedures.[30] Consistent with existing price policies, neither NSCC nor MCC will charge participants for interface settlement activity.[31]

II. Rationale for the Proposed Rule Changes

NSCC and MCC believe that the proposed rule changes are consistent with section 17A of the Act [32] in that they will facilitate the prompt and accurate settlement of securities transactions by providing an efficient mechanism to clear and settle NSCC and MCC eligible securities transactions that are executed on the CBOE, a national registered securities exchange.

III. Discussion

The Commission believes that the proposed rule changes are consistent with section 17A of the Act. In particular, as required by the Act, the proposals foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and assist in the removal of impediments to, and perfect the mechanism of, a national system for the prompt and accurate clearance and settlement of securities transactions.[33] Accordingly, the proposals will expedite the reconciliation process of trades by establishing interfacing procedures to allow market participants to settle CBOE executed transactions directly at the clearing facility of their choice. The Commission believes that, as required by the Act, the procedures set forth in NSCC's and MCC's proposals are designed to assure the prompt and accurate clearance and settlement of securities transactions.[34]

In administering section 17A of the Act, the Commission has underscored the importance of automated interconnections among participants in the national clearance and settlement system ("National System") [35] in order to promote the development of a National System where market participants are allowed to choose the marketplace of execution, and then process resulting transactions through the clearance and settlement facilitiy of their choice.[36] Accordingly, the National System, while encompassing a number of different clearing entities, allows any market participant to deal through one clearing entity in order to settle its securities transactions or the market in which the transactions were executed ("one account settlement").[37]

NSCC's and MCC's proposed link settlement services will further the development of a National System by establishing procedures that will enable participants of NSCC and MCC to clear and settle their CBOE executed transactions directly at the clearing facility of their choice. The proposals, moreover, will allow participants to use one clearing facility to net their CBOE related settlement obligations with settlement obligations undertaken in other markets of execution. Accordingly, NSCC and MCC participants will be able to make one daily money settlement which would satisfy all of their obligations to the National System for that day.

Facilitating netting of market transactions is only one of the ways in which NSCC's and MCC's proposals will encourage prompt and accurate clearance and settlement of securities transactions. The proposals are designed to assure settlement certainty for trades executed at CBOE.[38] In order

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delivery on T+5. In such a situation, the transactions are only guaranteed through T+4. Letter from Alison N. Hoffman, Attorney, Agent Regulation Branch, Division of Market Regulation, Commission (September 27, 1990).

Ordinarily, while MCC guarantees trades settled through the CNS System, it does not guarantee trades settled through the trade-by-trade accounting system. If, however, pursuant to the proposed rule change, CBOE reports to MCC a trade identifying NSCC as the contra-side, for settlement through the trade-by-trade accounting system, MCC will guarantee such transactions by 9 a.m. on T+4. Pilot Interregional Interface Agreement, *supra* note 6, at section 3.

[27] Clearing corporations maintain omnibus accounts at other clearing corporations in order to clear and settle transactions for their participants on a regular basis. These accounts do not identify the participant for whom a clearing corporation is clearing and settling a transaction. Instead omnibus accounts serve as a medium for clearing corporations to receive and deliver funds and securities on their participants' behalf.

[28] If both participants to a CBOE trade have chosen to clear and settle their transaction at the same clearing corporation, CBOE will submit to the clearing corporation (*i.e.*, NSCC or MCC) the identity of both participants. Under those circumstances the trade will clear and settle in accordance with the rules of the corresponding clearing corporation.

[29] Pursuant to the proposed Agreement, NSCC and MCC will cease to have any obligation regarding the processing of transactions reported by CBOE if, prior to midnight of the day when NSCC and MCC make reports available to participants, either clearing corporation notifies CBOE that it has suspended or ceased to act for a participant identified by CBOE as a counterpart to a trade. Likewise, NSCC and MCC will be relieved from liability for settlement of a transaction submitted by CBOE, if, pursuant to the terms of the corresponding Pilot Interregional Interface Agreement, the clearing corporation identified by CBOE as the contra-side to a transaction suspends or ceases to act for the counterpart trading participant.

[30] *See* NSCC Rules, R. 12 and MCC Rules, Arts. III & IV.

[31] *See* Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916, 3929 (January 21, 1977).

[32] 15 U.S.C. 78q–1.

[33] Act section 17A(b)(3)(F), 15 U.S.C. 78q–1(b)(3)(F).

[34] *Id.*

[35] *E.g.*, Securities Exchange Act Release No. 20519 (December 30, 1983), 49 FR 966 (January 6, 1984) (approving proposed rule changes to establish electronic communication systems linking several individual depositories with their participants).

[36] *See e.g.*, Securities Exchange Act Release No. 27517 (December 7, 1989), 54 FR 51532 (December 15, 1989) (approving a rule proposal by MCC facilitating the settlement of certain participants' trades directly at depository facilities of their choice).

[37] *See, e.g.*, Securities Exchange Act Release No. 19227 (November 9, 1982), 47 FR 51658 (November 16, 1982) (approving rule proposals by several securities exchanges that mandated the use of a securities depository for processing and settling most institutional trades).

[38] Under NSCC's rules, a securities issue is eligible for CNS processing if, among other things, it is eligible for deposit at a securities depository and

Continued

to achieve this objective, NSCC and MCC have established a firm time schedule that will ensure efficient input of accurate trade data into their systems. Pursuant to the proposals, CBOE will submit reports of fully compared trades in an automated format, several hours prior to the opening of business on T+1. Accordingly, NSCC and MCC will have sufficient time to process the data in order to issue trade reports to their participants prior to the opening of business on T+1. These reports will allow participants to discover and correct, on a timely basis, any errors regarding the previous day's transactions.

Rather than enforcing the T+4 guarantee policy regularly applied to interregional transactions, NSCC and MCC have agreed to extend their regular guarantee policies to CBOE trades involving CNS securities that are eligible for processing at their facilities. The Commission believes that NSCC's and MCC's decision to increase the guarantee period from T+4 to the midnight of either T+1 or T+2 will offer their participants additional protection against the risk of contra-side default.

Earlier CNS guarantees without appropriate safeguards may pose increased risk to member funds and securities. In order to guard NSCC and MCC against any additional risks, the proposals set forth procedures to limit NSCC's and MCC's responsibility in the event they suspend or cease to act for a member, or whenever an interfacing clearing corporation takes similar action against one of its participants. As an additional protection against undue financial risk, participants using NSCC or MCC facilities to clear and settle transactions pursuant to the proposed rule changes will continue to be subject to existing NSCC and MCC safeguards. Accordingly, participants will be required to contribute additional clearing fund deposits in proportion to the increased usage of either NSCC's or MCC's facilities in order to clear and settle transactions pursuant to the proposed rule changes.

Finally, the Commission believes that NSCC's and MCC's proposals do not impose a burden on competition. As a result of the free interface policy contained in the Agreements, neither NSCC nor MCC will be able to charge participants of other clearing corporations for the proposed interface settlement service. Instead, the cost of the proposed service will be mutualized by the clearing corporations whose participants will be required to pay only the fees ordinarily assessed by clearing corporations in order to defray their cost of processing transactions.[39] In light of these considerations, the Commission believes that NSCC's and MCC's proposals are consistent with section 17A(b)(3)(I) of the Act.[40]

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the Act and, in particular with section 17A. As previously stated, however, the Commission is not approving NSCC's and MCC's proposal to clear and settle trades executed at CBOE which involve interests in, or relating to, unit investment trusts, contingent on approval by the Commission of CBOE's proposal of May 25, 1990 as amended.[41]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[42] that the proposed filings (SR–NCSS–90–13 and SR–MCC–90–05) be, and are hereby approved, provided that, the authority granted by this Order may not be used by NSCC or MCC to clear and/or settle trades executed at CBOE which involve interests in, or relating to, unit investment trusts until such time as the Commission approves CBOE's proposal of May 25, 1990, as amended, to permit the trading of interest in, or relating to, unit investment trusts (SR–CBOE–90–13).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–2282 Filed 1–30–91; 8:45 am]

BILLING CODE 8010–01–M

the issue complies with rule 10b–17 under the Act, 17 CFR 240.10b–17 (1990). NSCC, however, may waive the latter requirement. NSCC Rules, R. 3. NSCC also must determine that it has the operational capability to accept a security as "cleared security" while successfully continuing to provide its services to participants. NSCC Rules, R. 3 section 1(a). The Commission expects NSCC to continue making these findings prior to making a security eligible for processing through NSCC's facilities and to maintain records of the decisionmaking process.

[39] The Commission notes that the free interface policy contained in NSCC's Agreement is consistent with one of the conditions imposed by the Commission as a prerequisite to NSCC's final registration as a clearing agency under section 17A of the Act. *See* Securities Exchange Act Release No. 13163, *supra* note 31, *see also Bradford National Clearing Corporation* v. *Commission,* 590 F.2d 1085, 1100 (DC Cir. 1978).

[40] 15 U.S.C. 78q–1(b)(3)(I).

[41] File No. SR–CBOE–90–13. Securities Exchange Act Releases Nos. 28132 & 28332, *supra* note 9.

[42] 15 U.S.C. 78s(b).

[Release No. 34–28823; File No. SR-NSCC–90–20]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Revising Standard Letter of Credit

January 25, 1991

I. Introduction

On October 5, 1990, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of NSCC's proposal was published for comment in the **Federal Register** on October 29, 1990.[2] No comments were received. As discussed below, the Commission is approving NSCC's proposal.

II. Description

NSCC proposes to revise the standard letter of credit form that it requires to be used by approved banks issuing letters of credit on behalf of its members as clearing fund collateral. More specifically, the proposal would revise NSCC's standard letter of credit form to state that NSCC may transfer and assign to a bank transferee the right to draw the entire amount of the letter of credit upon presentation to the issuing bank of an executed transfer and assignment form. To ensure that the transfer and pledge of letter of credit collateral does not impair a member's rights to its clearing fund collateral, the bank transferee will, by agreement with NSCC, be able to draw down on the letter of credit only if requested by NSCC or if NSCC defaults on its borrowing obligations that is secured by the letter of credit. As a further protection, the revised letter of credit expressly will provide that the bank transferee may not assign or transfer the letter of credit except to transfer it back to NSCC.

The standard letter of credit form also will be revised to delete certain requirements that NSCC currently must comply with at the time of a drawdown. Specifically, NSCC no longer will be required to present to the issuing bank a signed statement certifying, in effect, that: (1) The amount of the drawdown does not exceed the amount necessary to satisfy the member's liabilities to NSCC after NSCC has first applied to

[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 28567 (October 23, 1990), 55 FR 43426.

such liabilities the member's cash and securities deposited in the clearing fund; and (2) the member has failed to meet an obligation to NSCC that permits such drawdown. The purpose of this revision is to further ensure that the standard letter of credit form is readily transferable and is to remove any preconditions that would raise question as to such.

III. Discussion

Section 17A of the Act provides that the rules of a clearing agency must be designed to promote the safeguarding of funds and securities in the clearing agency's possession and control or for which it is responsible.[3] As discussed below, the Commission believes that NSCC's proposal is consistent with this requirement.

In its May 1988 Interim Report, the President's Working Group on Financial Markets noted that many clearing organizations maintained high proportions of their guarantee funds in letters of credit. Accordingly, because of the potential demand for sudden cash flows during periods of market stress, the Working Group suggested that clearing organizations take steps to enhance the liquidity of their guarantee funds.[4] NSCC has taken steps to implement this recommendation by reducing its reliance on letters of credit as clearing fund collateral.[5] As discussed below, the Commission believes that NSCC's proposal would help to safeguard funds and securities by further enhancing the liquidity of its clearing fund.

As the Commission previously has stated, there are advantages and disadvantages to NSC's acceptance of letters of credit as clearing fund collateral.[6] For example, one of the advantages letters of credit provide is cost savings. Typically, the cost of a letter of credit is very low (usually between .25% and .50% of the face value of the letter of credit) compared to depositing cash or government securities as clearing fund collateral. In addition, unlike government securities, the value of a letter of credit does not fluctuate with market conditions. This feature allows NSCC members to satisfy their clearing fund contribution requirements at a fixed cost.

On the other hand, one of the disadvantages of letters of credit is that the funds secured thereunder may not be immediately realizable. Under the commercial laws of most states, a bank issuing a letter of credit may defer honor of a payment request until the close of business on the third day following receipt of the documentation necessary to a request for payment.[7] Consequently, this delay could cause temporary liquidity concerns for NSCC by impeding its ability to satisfy a member default through a drawdown on the letter of credit deposited by the defaulting member. As a result, NSCC could be required to use the collateral deposited by nondefaulting members to satisfy the default.

The Commission believes that NSCC's proposal will address these concerns to some degree. First, by clarifying its right to pledge the entire amount of letters of credit deposited as clearing fund collateral, NSCC's proposal ensures that it will have ready access to a temporary source of financing that can be used to satisfy a member default. In addition, by streamlining the process for pledging letters of credit, NSCC's proposal also assures that it will be able to raise necessary funds without delay. This, in turn, will safeguard the funds and securities deposited by nondefaulting members to satisfy their clearing fund contribution requirements by reducing the likelihood that NSCC will be required to use such collateral to satisfy a member default.[8]

The Commission believes that NSCC's proposal also promotes the safeguarding of funds and securities by placing strict limitations on a transferee bank's ability to transfer or liquidate letter of credit collateral pledged by NSCC. For example, by limiting a transferee bank's right to draw on such letters of credit, NSCC's proposal preserves a member's residual right to its collateral.[9] In addition, NSCC's proposal also reduces the potential for a transferee bank to create competing claims against a letter of credit pledged as collateral by NSCC by providing that the bank may not transfer the letter of credit except back to NSCC. Accordingly, the Commission believes that these aspects of NSCC's proposal are consistent with section 17A.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NSCC–90–20) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–2283 Filed 1–30–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17958; 812–7625]

Equus Investments I, L.P. et al.; Application

January 24, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Equus Investments I, L.P. (the "Partnership"), Equus Investments Incorporated (the "Fund"), Equus Capital Corporation ("ECC"), and Equus Capital Management Corporation ("ECMC").

RELEVANT ACT SECTIONS: Order requested under section 57(c) that would exempt a transaction otherwise prohibited by the provisions of section 57(a).

SUMMARY OF APPLICATION: Applicants propose to effect a reorganization under which the Partnership will transfer all of its assets, including all securities and cash (subject to liabilities), to the Fund in exchange for Fund shares having an aggregate net asset value equal to the value of the net assets of the Partnership.

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[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] The President's Working Group on Financial Markets, Interim Report (May 1988), appendix D.

[5] Securities Exchange Act Release No. 27664 (January 31, 1990), 55 FR 4297 (Order approving a proposed rule change limiting to 70% the portion of a member's required clearing fund contribution that may be satisfied through depositing letters of credit issued by NSCC approved banks).

[6] *Id.*

[7] *E.g.*, N.Y. Uniform Commercial Code Section 5–12(1)(a) (McKinney 1964).

[8] The use of nondefaulting members' funds and securities could create problems for nondefaulting members in two respects. First, under NSCC's rules, any member whose clearing fund contribution is assessed by NSCC must replace the amount assessed within the time specified by NSCC. NSCC Rule 4, section 5. In addition, NSCC's temporary use of its clearing fund to finance member settlement obligations may raise net capital concerns for non-defaulting members whose contributions are assessed. Under the Commission's uniform net capital rule, assets contributed to NSCC's clearing fund may be included in a member's net capital computation (letters of credit, however, may not be included in that computation). When NSCC assesses a member's contribution to its clearing fund, however the member must deduct the amount assessed from its capital position. 17 CFR 240.15c3–1(c)(2)(E).

[9] Under NSCC's rules, NSCC's use of funds raised by the pledge of a letter of credit deposited as clearing fund collateral is generally limited to satisfying member defaults; paying fees, fines, and other charges; and satisfying NSCC's settlement obligations to its members. NSCC Rule 4 section 2. Thus, NSCC members retain certain rights to such collateral to the extent it is not used for the foregoing purposes.

FILING DATE: The application was filed on November 13, 1990, and amended on January 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 19, 1991, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 2929 Allen Parkway, suite 2500, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership, a business development company ("BDC"), was organized as a Delaware limited partnership on April 30, 1984. The investment objective of the Partnership is to achieve capital appreciation by making equity investments in leveraged buy-outs of established medium-sized companies or divisions thereof located in the United States. On May 11, 1984, the Partnership filed a registration statement under the Securities Act of 1933. In the public offering that ensued, 36,534 units of limited partnership interest were sold for an aggregate sales price of $36,109,135. The net proceeds of the offering have been invested primarily in leveraged buy-out investments.

2. ECC and its controlling corporation, ECMC, are both registered as investment advisers under the Investment Advisers Act of 1940. ECC and ECMC both provide investment advisory services to the Partnership. ECC serves as the managing general partner of the Partnership and is responsible for approving the Partnership's investments, arranging financing for leveraged buy-out transactions, and providing management assistance to portfolio companies. ECMC serves as the Partnership's management company.

3. The Fund, a closed-end management investment company, was organized as a Delaware corporation on October 25, 1990. The investment objective of the Fund is substantially the same as that of the Partnership. The Fund is more fully described in the Registration Statement filed under the Securities Act on Form N–14 on November 13, 1990 (File No. 33–37726). The Fund intends to elect BDC status.

4. Applicants wish to enter into an agreement and plan of exchange (the "Proposed Exchange") under which the Partnership will transfer to the Fund all of the assets of the Partnership, including all securities and cash (subject to liabilities), in exchange for Fund shares having an aggregate net asset value equal to the value of the net assets of the Partnership. Immediately following the Proposed Exchange, the former partners of the Partnership will hold the only outstanding Fund shares. These shares will include 80 shares with an aggregate value of $1,000 which represent the initial capital contributed to the Fund by the Partnership. The Fund shares will then be distributed by the Partnership to the partners, with each partner receiving a pro rata distribution of the Fund shares (or fraction thereof) for the partnership interest held prior to the Proposed Exchange. Following this distribution, the Partnership will be liquidated and dissolved.

5. As compensation for its services to the Partnership, ECC is allocated a portion of the Partnership's net realized capital gains or losses, as the case may be, for each calendar year until it has received: (a) 10% of the Partnership's net realized capital gains calculated on a cumulative basis over the life of the Partnership through the calendar year, if the Partnership has generated net realized capital gains on that cumulative basis; or (b) 5% of the Partnership's net realized capital losses calculated on a cumulative basis over the life of the Partnership through the calendar year, if the Partnership has generated net realized capital losses on that cumulative basis ("Special Allocation"). In addition, ECC, together with the other general partners and the limited partners, receives allocations and distributions of the Partnership's net realized capital gains or losses in excess of ECC's Special Allocation and all other profits, losses, deductions, and credits, in proportion to its capital contribution to the Partnership.

6. Pursuant to a management agreement between ECMC and the Partnership, ECMC receives an annual management fee of 2% of the net assets of the Partnership and an incentive fee equal to 10% of the Partnership's cumulative net realized capital gains over the life of the Partnership. The cumulative and annual amount of the ECMC incentive fee will be determined at the end of each fiscal year and upon termination of the Partnership. If, at the end of any year or upon termination of the Partnership, net payments previously made to ECMC exceed 10% of the Partnership's cumulative net realized capital gains less unrealized capital depreciation, ECMC would be required to repay all or a portion of the ECMC incentive fee previously received.

7. The Fund intends to enter into a management agreement with ECMC whereby ECMC will render services to the Fund substantially the same as those services ECMC currently renders to the Partnership. ECMC intends to enter into a sub-adviser agreement with ECC whereby ECC will render services to the Fund substantially the same as those services ECC currently renders to the Partnership.

8. In return for its services and the expenses which ECMC assumes under the Fund management agreement, the Fund will pay ECMC, on a quarterly basis, a management fee equal to 0.5% of the net assets of the Fund on the last day of each calendar quarter (2% per annum). The management fee is payable quarterly in arrears.

9. In addition to the management fee, the Fund will pay ECMC annually and at the final dissolution or liquidation of the Fund an incentive fee in an amount equal to 20% of the net realized capital gains less unrealized capital depreciation of the Fund and the Partnership on a cumulative basis from November 14, 1984 through the end of the calendar year, less the aggregate amount of the incentive fee payments and Special Allocation distributions to ECC in prior years. If the amount of the incentive fee in any year is a negative number, or cumulative net realized capital gains less unrealized capital depreciation at the end of any year is less than such amount calculated at the end of the previous year, ECMC will be required to repay to the Fund all or a portion of the incentive fee previously paid.

10. In return for its services, ECMC will pay ECC annually and at the final dissolution or liquidation of the Fund an incentive fee in an amount equal to 10% of the net realized capital gains less unrealized capital depreciation of the

Fund and the Partnership on a cumulative basis from November 14, 1984 through the end of each calendar year, less the aggregate amount of the incentive fee payments in prior years. If the amount of the incentive fee in any year is a negative number, or cumulative net realized capital gains less unrealized capital depreciation at the end of any year is less than such amount calculated at the end of the previous year, ECC will be required to repay to the ECMC all or a portion of the incentive fee previously paid.

11. At a meeting of the general partners of the Partnership, including all of the independent general partners, held on December 13, 1990, ECC recommended that the general partners consider, and the general partners approved, the Proposed Exchange. At a meeting held on the same date, the board of directors of the Fund, including all of the prospective independent directors, also considered and approved the Proposed Exchange.

12. The Proposed Exchange must be approved by a majority in interest of the limited partners of the Partnership, in accordance with the Delaware Revised Uniform Limited Partnership Act. Solicitation of limited partner approval of the Plan will be made by means of a proxy statement/prospectus, an example of which is in the N–14 registration statement. The proxy statement/prospectus will describe the nature of and reasons for the Proposed Exchange, the tax and other consequences of the limited partners of the Partnership, and other relevant matters, including comparisons of the Fund and the Partnership in terms of their investment objectives and policies, fee structures, management structures, and other aspects of their operations, as well as the financial information required by Form N–14.

13. The Proposed Exchange will establish the Fund as a successor investment vehicle to the Partnership. the Proposed Exchange will permit investors to maintain the investment objectives, policies, and pass-through tax features of the Partnership, while providing investors with increased liquidity and ease of operation. To avoid being classified as a publicly traded partnership and suffering the adverse tax consequences of such a classification, aggregate annual transfers of partnership interests currently may not exceed 5% of the total interests in the Partnership's capital or profits because the Omnibus Budget Reconciliation Act of 1987 (the "1987 Act") treats "publicly traded partnerships" as corporations for tax purposes. When the Partnership was organized, BDCs could not qualify as "regulated investment companies" under the Internal Revenue Code of 1986 (the "Code"). The only way to provide the investors in a business development company with distributions free from double taxation was by use of the partnership format. However, the Technical and Miscellaneous Revenue Act of 1988 amended the Code to provide that business development companies may qualify as regulated investment companies. Thus, the Proposed Exchange will have the effect of eliminating the 5% limit on aggregate annual transfers, which will enhance the liquidity of the investors' interests. It is also believed that organization as a corporation will prove beneficial in that the Fund will be simpler and less expensive to operate than the Partnership.

14. The Proposed Exchange will not be effected unless and until each of the following conditions is satisfied: (a) The N–14 Registration Statement has been declared effective; (b) the Proposed Exchange has been approved by a majority in interest of the limited partners of the Partnership; (c) the SEC has issued an order relating to the application; and (d) the Fund has received opinions of counsel that the Proposed Exchange will have specified tax consequences.

15. A portion of the expenses of the Proposed Exchange are being borne by ECC and ECMC in the form of services provided by ECC and ECMC's employees in designing and effectuating the Proposed Exchange and in preparing the application. These services have an estimated value, as of the date of the amended application, of $15,000. The terms of the Proposed Exchange provide that the other expenses of the Proposed Exchange (including, without limitation, fees and disbursements of attorneys and auditors and printing costs of proxy soliciting material) will be borne by the Partnership up to the amount of $100,000. Any amount in excess of $100,000 will be allocated to ECC and ECMC. As of the time of the filing of the amended application, ECC estimates that the $100,000 level will be exceeded by approximately $60,000. The directors of the Fund and general partners of the Partnership believe that, in view of the expected benefits to applicants, it is reasonable to allocate expenses of the Proposed Exchange in the foregoing manner.

16. The general partners of the Partnership and the directors of the Fund have considered the desirability of the Proposed Exchange, and found that the Proposed Exchange is in the best interests of the Partnership and the Fund, and that the Proposed Exchange will not result in dilution of the financial interests of the limited or general partners of the Partnership when their interests are converted to Fund shares.

Applicants' Legal Conclusions

1. Applicants seek an exemption pursuant to section 57(c) of the Act from the provisions of section 57(a) of the Act to the extent necessary to permit the Proposed Exchange.[1] Section 57(a), in pertinent part, prohibits certain affiliated persons from selling to or purchasing from a BDC any security or other property. Section 57(a) of the Act disallows the Proposed Exchange because the Partnership is the sole shareholder of the Fund, and therefore controls the Fund as that term is used in section 56(b)(2) of the Act. Section 57(a) also applies to the Proposed Exchange because ECC, in addition to being an interest holder in the Partnership, will be an investment adviser of the Fund.

2. Applicants believe that the terms of the Proposed Exchange meet the criteria contained in section 57(c) of the Act, *i.e.*, (a) that the terms of the proposed transaction are reasonable and fair to all parties, and do not involve overreaching of the Partnership or the Fund on the part of any person concerned, (b) that the proposed transaction is consistent with the policies of the Partnership and the Fund, and (c) that the proposed transaction is consistent with the general purposes of the Act. Applicants offer the following arguments in support of this conclusion:

(a) Given the similarity of investment objectives and policies of the Fund and the Partnership, the Fund will be attempting to assemble a portfolio of securities substantially similar to that held by the Partnership. The same investment adviser that selected the investments for the Partnership will be selecting them for the Fund.

(b) No brokerage commission, fee, or other remuneration will be paid in connection with the Proposed Exchange. Neither the limited partners nor ECC will receive any financial benefit from the Proposed Exchange apart from their pro rata interests in Fund shares and

[1] Applicants also requested relief under sections 57(i) and 17(d) of the Act and rule 17d–1 thereunder. Section 17(d) of the Act, however, is made inapplicable to business development companies by section 6(f) of the Act. Although rule 17d–1 is made applicable to business development companies by section 57(i) of the Act, rule 17d–1(d)(8) permits an investment adviser to bear reorganization expenses without obtaining a prior order of the SEC. Accordingly, the staff believes that an order under section 57(i) and rule 17d–1 is unnecessary.

other property distributed by the Partnership upon dissolution.

(c) If effected in the manner described in the application, the Proposed Exchange will result in no gain or loss being recognized by partners of the Partnership. Thus, as a body, the partners will become investors in an entity that offers greater liquidity than the Partnership without immediate tax consequences and without having incurred brokerage charges in order to do so.

(d) A majority of the members of the board of directors of the Fund and a majority of the general partners of the Partnership, including a majority of the prospective independent directors and a majority of the independent general partners, have approved the Proposed Exchange.

(e) Fund shares will be issued at their net asset values. At the time the Proposed Exchange is effected, there will be no Fund shares outstanding, except for the shares issued when seed capital was contributed. Thus, the question of whether Fund shareholders will be diluted as a result of the exchange does not arise.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2284 Filed 1-30-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17959; International Series Rel. No. 222; 812-7420]

New South Wales Treasury Corp.; Application

January 25, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: New South Wales Treasury Corporation.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: The Applicant, a public authority established by the State of New South Wales, Commonwealth of Australia, seeks an order exempting it from all provisions of the 1940 Act in connection with the offering and sale of its debt securities in the United States.

FILING DATES: The application was filed on October 30, 1989, and amendments to the application were filed on October 2, 1990, and January 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 19, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Jeffrey F. Browne, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant is a statutory authority of the State of New South Wales ("New South Wales"), Commonwealth of Australia. It was established by the Treasury Corporation Act 1983 of New South Wales (the "Act") principally to borrow in both the Australian and international capital markets and lend to certain public authorities, including semi-governmental and local authorities in New South Wales and other entities designated by regulations made on the recommendation of the Treasurer of New South Wales ("Participating Authorities").

2. The Applicant is also empowered to engage in certain related activities and use the revenues earned from those activities to minimize its administrative charges to Participating Authorities. It accepts funds for investment from New South Wales and Participating Authorities, for example, and provides or arranges other financial services for Participating Authorities. All investments by the Applicant are made in accordance with an "Investment Placement Policy" and "Counterparty Credit Policy" that impose strict limits on the manner in which its funds may be invested, with respect to both the nature of the investment and the creditworthiness of the counterparty. To date, however, the Applicant's principal activities have been, and are presently intended to continue to be, borrowing moneys as principal and promptly lending substantially all of the proceeds to Participating Authorities. Approximately 90 percent of the Applicant's $17.3 billion of assets as of June 30, 1990 consisted of advances to Participating Authorities.

3. Under the Act, each member of the Board of Directors of the Applicant must be either an official of the Government of New South Wales or a person appointed by the Governor of New South Wales on the recommendation of the Treasurer of New South Wales. Although the Applicant has delegated authority to make its own day-to-day operating decisions, these decisions must serve to carry out government policy, as determined by the Board of Directors. No equity in the Applicant has been sold, and there is neither a provision in the Act permitting the sale of equity in the Applicant nor a present intention to amend the Act to permit the sale of equity in the Applicant.

4. The Applicant is required under the Annual Reports (Statutory Bodies) Act 1984 of New South Wales within four months of the end of each financial year to prepare and submit to the Treasurer of New South Wales an annual report containing financial statements in respect of the financial year in the manner and form according to the provisions of the Public Finance and Audit Act 1983 of New South Wales, together with a report of its operations during that financial year. The financial statements are audited by the Auditor-General of New South Wales.

5. The Applicant proposes, from time to time in the future, to offer and sell unsecured debt securities in the United States ("Debt Securities"). The payment of principal of, and any interest or premium on, the Debt Securities issued by the Applicant will be unconditionally guaranteed by New South Wales pursuant to section 15(1) of the Public Authorities (Financial Arrangements) Act 1987 of New South Wales (the "Public Authorities Act"). Under section 15(1), there is no distinction between foreign and domestic borrowings with respect to the operation of the statutory guarantee of New South Wales. Further, there is no requirement that legal proceedings be commenced against the Applicant prior to making a demand against or, if necessary, taking proceedings against New South Wales in respect of section 15(1) of the Public Authorities Act.

6. The Applicant complies with the arrangements which govern borrowings by the Commonwealth of Australia and the Australian States. Pursuant to these arrangements, New South Wales, in common with the other Australian States, is not permitted to issue its own long-term debt instruments without the approval of the Australian Loan Council, although it may guarantee the debt of its authorities, such as the Applicant.

Applicant's Legal Analysis

1. As of June 30, 1989, substantially all of the Applicant's assets consisted of obligations of the Participating Authorities to repay loans made to them by the Applicant and investments to facilitate its cash flow management and maximize return on its surplus funds. These obligations could be deemed to be "investment securities" within the meaning of section 3(a)(3) of the 1940 Act. As a result, the Applicant may be deemed to be an "investment company" under the 1940 Act. The Applicant accordingly filed the application to prevent uncertainties as to its status under the 1940 Act.

2. The Applicant believes that granting the exemption requested would be appropriate in the public interest. It would expand the United States market for the Applicant's securities and thus further the policy of the United States to encourage the free flow of capital among nations.

3. The Applicant further believes that granting the exemption requested would be consistent with the protection of investors. The payment of the principal of, and any premium or interest on, the Debt Securities will be unconditionally guaranteed by New South Wales. As a result, the Debt Securities will be backed by the sovereign credit of New South Wales and not merely the credit and assets of the Applicant.

4. Finally, the Applicant believes an exemption would be consistent with the purposes fairly intended by the policy and provisions of the 1940 Act. The Applicant is a governmental central borrowing authority with characteristics different from the types of investment companies at which the 1940 Act was generally directed and for which its substantive provisions are necessary or suitable.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. No Debt Securities will be offered or sold unless (a) they are registered under the Securities Act of 1933 (the "1933 Act") or (b) in the opinion of United States counsel for the Applicant an exemption from registration under the 1933 Act is available with respect to such offer and sale.

2. All borrowings by the Applicant, including the issuance of Debt Securities by the Applicant, will be effected in accordance with the provisions of the Act. All investments of the Applicant's funds, including temporary investments of funds to be on-lent to Participating Authorities, will be made by the Applicant in accordance with the requirements of the Act and the Applicant's Investment Placement Policy and Counterparty Credit Policy, as from time to time in effect.[1]

3. The payment of principal of, and any interest or premium on, Debt Securities issued by the Applicant will be unconditionally guaranteed by New South Wales pursuant to section 15(1) of the Public Authorities Act.

4. In connection with any offering by the Applicant of its Debt Securities in the United States, each of the Applicant and New South Wales will appoint an agent in the United States to accept service of process in any suit, action or proceeding brought with respect to such Debt Securities instituted in any state or federal court in The City or State of New York. The Applicant and New South Wales will expressly submit to the jurisdiction of any such court with respect to any such suit, action or proceeding. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of such Debt Securities have been paid. The Applicant will agree to explicitly waive any immunity it may have from jurisdiction and from execution or attachment or any process in the nature thereof in respect of any such action. New South Wales will agree to explicitly waive any immunity it may have from jurisdiction in respect of any such action. The foregoing waivers of immunity shall be limited to the extent that any such action removed or transferred to a court in New South Wales would be subject to section 7(2) of the Crown Proceedings Act 1988 of New South Wales (the "Crown Proceedings Act"), which would prevent execution, attachment or similar process being issued out of any court of New South Wales against the Applicant or New South Wales or any of their property. However, under section 7(1) of the Crown Proceedings Act, the Treasurer of New South Wales shall pay (out of any money legally available) all money payable by the Applicant or New South Wales under any judgment of any competent court, including any interest, except to the extent that the money is paid by some person other than the Treasurer.[2]

5. In addition, in respect of any suit, action or proceeding brought with respect to such Debt Securities instituted in any state or federal court in the United States (other than any suit, action or proceeding referred to in condition 4 above), each of the Applicant and New South Wales will agree to accept service of process by any form of mail requiring a signed receipt effected in accordance with sections 1608(b)(3)(B) and 1608(a)(3), respectively, of the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. 1608). In agreeing to accept such service of process in any such suit, action or proceeding, neither the Applicant nor New South Wales will waive any claim of sovereign immunity it may have in respect of any such suit, action or proceeding, consent to the subject matter jurisdiction or jurisdiction *in personam* of any such court, agree that any such court is a proper forum for any such suit, action or proceeding or waive any rights it may have to remove any such suit, action or proceeding from state court to federal court.

6. The Applicant and New South Wales consent to any order of the SEC being expressly conditioned on their compliance with the conditions and representations contained in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2285 Filed 1-30-91; 8:45 am]

BILLING CODE 8010-01-M

[1] The Investment Placement Policy has been approved by, and may be amended only on authority of, the Chief of Executive of the Applicant, who is appointed by the Governor of New South Wales on the recommendation of the Treasurer of New South Wales. The Counterparty Credit Policy has been approved by, and may be amended only on authority of, the Board of Directors of the Applicant, each of whom is either a government official or appointed on the recommendation of a government official.

[2] Under section 7(1) of the Crown Proceedings Act the Treasurer would be required to make payment in respect of a judgment against the Applicant in relation to its Debt Securities and would similarly be required to make payment in respect of a judgment against New South Wales in its capacity as guarantor of such Debt Securities.

DEPARTMENT OF STATE

[Public Notice 1327]

New Task Force of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that a Task Force of the Strategic Planning Group has been established under the framework of, and will report to, the U.S. Organization for the International Radio Consultative Committee (CCIR) to study issues relating to the Voluntary Group of Experts of the International Telecommunication Union. Mr. Dale N. Hatfield, President of Hatfield Associates Inc., and Mr. L.R. Raish, a partner in the law firm of Fletcher, Heald & Hieldreth, will serve as co-chairmen.

The international Voluntary Group of Experts (VGE) has been given two tasks, as follows:

1. To review, in the light of technical developments, the definitions and allocations structure of the Radio Regulations with a view to improving the utilization and economic use of the radio frequency spectrum, increasing flexibility in order to give more sharing possibilities, and considering alternatives in the manner in which spectrum is allocated; and

2. To review the regulatory provisions and procedures of the Radio Regulations with a view to developing recommendations to simplify them in general.

The ITU Radio Regulations have treaty status for the United States and provide the framework for national regulations.

The VGE is expected to complete its work within an 18–24 month period and to prepare a Report recommending changes to the Radio Regulations. The Report will be provided to ITU Members for consideration and amendment of the treaty text at a future World Administrative Radio Conference (WARC). Hence, it is important that private sector and Federal agency interests participate in the proceedings, which will likely lead to proposed changes of the relevant national rules and regulations.

The first meeting of the Task Force will be held at 9:30 a.m., February 27, 1991 in room 1105 of the Department of State, 2201 C Street, NW., Washington, DC. The main purpose of this meeting will be to identify the work to be carried out, to establish goals and objectives, and to set up a work program and timetable. Subsequent meetings and activities of the Task Force will be announced within the group itself.

It is essential that participants indicate their desire to attend in advance of the meeting. Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairmen. Entrance to the Department of State is controlled and attendees must use the 22nd and C Street entrance, where an escort will be available to facilitate entry. Persons planning to attend the meeting should contact the office of Richard Shrum, State Department; (202) 647–2592, fax (202) 647–7407, in order to pre-register and arrange for entry into the building.

Dated: January 18, 1991.

Warren G. Richards,

Chairman, U.S. CCIR National Organization.

[FR Doc. 91–2255 Filed 1–30–91; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1326]

United States Organization for the International Telegraph and Telephone Consultative Committee; Meeting

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Friday, February 15, 1991, in Conference Room 1107 commencing at 11 a.m. at the Department of State, 2201 C Street NW., Washington, DC. 20520. In addition, an ad hoc group of the U.S. CCITT Study Group A dealing with only CCITT Study Group I issues will convene at the same location from 9 to 11 a.m. on the same date.

The Agenda for the National Committee Meeting will include the following: A debrief and review of the results of Ad Hoc group for Resolution #18 session held in Geneva January 29 to February 8, 1991; reports of the various CCITT Strategic Planning Group Task Forces and activities; report of the four U.S. National Study Groups A–D; discussion of joint activities of CCITT/CCIR including Universal Personal Telecommunications (UPT); a briefing of the upcoming High Level Committee (HLC) meeting and a discussion of the upcoming regional standards groups meeting scheduled for March in France.

Member of the general public may attend the meetings 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) 647–74–7407. The above includes government and non-government attendees. All attendees must use the C Street entrance.

Dated: January 22, 1991.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 91–2251 Filed 1–30–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–91–3]

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 February 20, 1991.

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 (AGC–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 Independence 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 January 23, 1991.

Denise Donohue Hall,

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

Petitions for Exemption

Docket No.: 23805.
Petitioner: United States Department of the Interior.
Sections of the FAR Affected: 14 CFR 91.119 [old 91.79].
Description of Relief Sought: To amend Exemption No. 3017B, which allows petitioner to conduct low-level operations below an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet from the aircraft and closer than 500 feet to persons, vehicles, and structures in other than congested areas. The amendment would update the exemption to reflect the current part 91 section numbers and modify the conditions and limitations of the exemption.
Docket No.: 26401.
Petitioner: National Air Transportation Association.
Sections of the FAR Affected: 14 CFR 135.157(b)(2)(ii).
Description of Relief Sought: To allow petitioner's members, when operating above 15,000 feet mean sea level, to carry sufficient oxygen to supply all passengers for 10 minutes only.
Docket No.: 26403.
Petitioner: Blue Sky Aviation.
Sections of the FAR Affected: 14 CFR 103.1.
Description of Relief Sought: To allow petitioner to instruct students in flight training in a two-place ultralight aircraft.
Docket No.: 26406.
Petitioner: USAir.
Sections of the FAR Affected: 14 CFR 121.337(d)(2).
Description of Relief Sought: To allow petitioner until July 31, 1991, to meet the protective breathing equipment requirements for flight crewmembers. The compliance date for providing protective breathing equipment on the flight deck is January 31, 1991.
Docket No.: 26412.
Petitioner: The Soaring Society of America, Inc.
Sections of the FAR Affected: 14 CFR 61.69.
Description of Relief Sought: To allow petitioner's members to provide glider tow services as private pilots meeting the requirements of § 61.69 rather than operating as commercial pilots under part 135.
Docket No.: 26418.
Petitioner: Daniel L. Wilder.
Sections of the FAR Affected: 14 CFR 121.383.
Description of Relief Sought: To allow petitioner to serve as a pilot on aircraft operated under part 121 after reaching age 60.

Dispositions of Petitions

Docket No.: 7908.
Petitioner: Hartzell Propeller Products Division, TRW Aircraft Components Group.
Sections of the FAR Affected: 14 CFR 21.231(a).
Description of Relief Sought/ Disposition: To allow petitioner to apply for a delegation option authorization for Hartzell propellers manufactured for use on turbopropeller and reciprocating engines of not more than 1500 brake horsepower.
GRANT, January 8, 1991, Exemption No. 5266.
Docket No.: 26114.
Petitioner: Pemco Aeroplex, Inc.
Sections of the FAR Affected: 14 CFR 145.37(b).
Description of Relief Sought/ Disposition: To extend Exemption No. 5152, which allows petitioner to exercise the privileges of its repair station certificate using facilities that do not comply with the permanent housing requirements of the FAR.
GRANT, December 28, 1990, Exemption No. 5152A.

[FR Doc. 91–2295 Filed 1–30–91; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Canadian and Grady Counties, OK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Canadian and Grady Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Bruce A. Lind, Assistant Division Administrator, Federal Highway Administration, 200 Northwest Fifth Street, room 454, Oklahoma City, Oklahoma 73102, Telephone: (405) 231–4725.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oklahoma Department of Transportation, will prepare an EIS on a proposal to construct a new highway link between Tuttle in Grady County and Mustang in Canadian County. The proposed new highway would consist of a four-lane facility extending from SH–37, in Tuttle, northward approximately 7.0 miles to SH–152 in Mustang. A new crossing of the South Canadian River will be included as part of this project.

The proposed project would link the communities of Tuttle and Mustang as well as surrounding areas now separated by a natural barrier, the South Canadian River. Currently, all highway users in this area are forced into circuitous travel (up to approximately 35 miles) due to the lack of a connecting facility. Alternatives under consideration include taking no action and several build alternates. The build alternates will consider several locations to address the transportation needs of the area and any possible social, economic, and environmental effects of building the proposed new highway.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies. At least one public meeting will be held to provide an opportunity for any member of the general public to raise issues which should be considered during the early environmental studies. In addition, a public hearing will be held. Public notice will be given to the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 22, 1991.

Gary E. Larsen,

Division Administrator, Oklahoma City, Oklahoma.

[FR Doc. 91-2252 Filed 1-30-91; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket 90-27-IP-No. 2]

Cooper Tire & Rubber Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Cooper Tire & Rubber Company (Cooper), of Findlay, Ohio to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.109, Federal Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on November 15, 1990, and an opportunity afforded for comment (55 FR 47824).

Section S4.3(a) of Standard No. 109, requires that tires have molded into or onto both sidewalls, one size designation. Cooper manufactured 10,931 Tempra Year Round polyester/steel belted, tubeless, white sidewall, radial tires that did not comply with this requirement. These tires were stamped with the incorrect size designation of P255/75R15 on the non serial side of the tire, in the area between the maximum section width of the tire and the bead, with characters .156 inch in height. The correct size designation for these tires is P225/75R15.

Cooper supported its petition for inconsequential noncompliance with the following:

(1) The tires in question are correctly stamped on the serial side, in the area between the maximum section width of the tire and the bead, with the designation P225/75R15. The tires are correctly stamped on both sides in the upper sidewall of the tire with the designation P225/75R15 in characters .625 inches in height. In addition each tire contains an adhesive paper tread label indicating the correct size of P225/75R15.

(2) The single mislabel on each tire is incorrect only as to the cross section width, that is 225, of the tire. The series 75, the designation of radial, and the rim diameter of 15 are all correct. Also the maximum load and inflation stamping on both sidewalls of each tire are correct for a P225/75R15 tire.

(3) A P255/75R15 has never been produced by Cooper, has never been standardized by the Tire & Rim Association, and to the best of our knowledge has never been produced by anyone, therefore the possibility of misapplication does not exist.

(4) The tires * * * comply with all other requirements of 49 CFR 571.

No comments were received on the petition.

On the tires in question, tire size designations permanently appear twice on each sidewall, once in the area between the maximum section width of the tire and the bead, and once in the upper sidewall of the tire. Of the four designations on the tires, only one is incorrect: the designation on the non serial side of the tire in the area between the maximum section width of the tire and the bead. The size of the characters making up the incorrect designation is .156 inch. The size of the characters of the correct designation in the upper sidewall of the non serial side is .625 inch. Thus, the attention of an observer may more readily be drawn to the larger characters. Even if it is not, and an attempt made to replace the tire with a "255", such an attempt will be unsuccessful as there is no tire with that designation, and, in that event, the correct designation "225" appearing elsewhere on the tire will inform the observer of the proper size of the tire.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: January 24, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-2220 Filed 1-30-91; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 21
Thursday, January 31, 1991

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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Admistration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 1, 1991, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). The matters to be considered at the meeting are:

Open Session

- Prior Approvals;
  —Minnesota Valley PCA and Willmar and Marshall FLBAs—ACA Merger with Bifurcated Charter.

Dated: January 28, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–2373 Filed 1–29–91; 8:46 am]

BILLING CODE 6705–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552B(e)(3)), that the February 5, 1991, regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Thursday, February 28, 1991, starting at 10:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: January 28, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–2374 Filed 1–29–91; 8:45 am]

BILLING CODE 6705–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the March 5, 1991, regular meeting of the Farm Credit Administration Board (Board) will not be held.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090

Dated: January 28, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–2375 Filed 1–29–91; 8:46 am]

BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at approximately 2:30 p.m. (or immediately following the adjournment of the open meeting of the Board of Directors of the Resolution Trust Corporation which is scheduled for 2:00 p.m. on that same day) on Tuesday, February 5, 1991, to consider the following matter:

Memorandum and resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which establish the criteria and standards the Corporation will use in calculating the minimum leverage capital requirement and in determining capital adequacy.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: January 29, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–2407 Filed 1–29–91; 11:29 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91–1719.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 31, 1991, 10:00 a.m.

MEETING OPEN TO THE PUBLIC:

THE FOLLOWING ITEM HAD BEEN ADDED TO THE AGENDA: Letter to Secretaries of State Regarding The New Allocation Regulations.

DATE AND TIME: Tuesday, February 5, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, February 7, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

MATTERS TO BE CONSIDERED:

Setting Dates for Future Meetings
Correction and Approval of Minutes
Draft Advisory Opinion 1990–30—Helms for Senate
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–2464 Filed 1–29–91; 2:42 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—February 5, 1991.

PLACE: Hearing Room One—1100 L Street NW., Washington, DC 20573–0001.

STATUS: Open.

MATTER(S) TO BE CONSIDERED:

1. Petition No. P3–90—*Standards for Terminal Handling Charges and Other Surcharges*—Consideration of Comments

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91–2473 Filed 1–29–91; 3:35 pm]

BILLING CODE 6730–01–M

NATIONAL SCIENCE FOUNDATION

DATE AND TIME:

February 14, 1991, 2:00 p.m. Closed Session

February 14, 1991, 2:30 p.m. Open Session

PLACE: Arnold and Mable Beckman Center, 100 Academy Drive, Irvine, California 92715.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Thursday, February 14, 1991.

Closed Session (2:00 p.m. to 2:30 p.m.)

1. Minutes—November 1990 Meeting
2. NSB and NSF Staff Nominess
3. Vannevar Bush Award
4. Future NSF Budgets
5. Grants and Contracts

Open Session (2:30 p.m. to 5:30 p.m.)

6. Chairman's Report
7. Minutes—November 1990 Meeting
8. Director's Report
9. PYI Assessment
10. Protocol for NSB Award Approvals
11. Guest Speaker, Dr. L. Donald Shields, Executive Director, California Council on Science and Technology.

Thomas Ubois,

Executive Officer.

[FR Doc. 91–2391 Filed 1–29–91; 11:14 am]

BILLING CODE 7555–01–M

federal register

Thursday
January 31, 1991

Part II

Environmental Protection Agency

40 CFR Parts 148, et al.
Land Disposal Restrictions for Third Third Scheduled Wastes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, and 270

[FRL-3866-4]

Land Disposal Restrictions for Third Third Scheduled Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: On June 1, 1990, EPA published regulations promulgating congressionally-mandated prohibitions on land disposal of certain hazardous wastes. This notice corrects errors and clarifies the language in the preamble and regulations of the June 1, 1990 final rule.

EFFECTIVE DATE: This rule is effective on January 31, 1991.

ADDRESSES: The RCRA docket is open from 9:30 to 3:30, Monday through Friday, excluding Federal holidays, and is located at the following address: EPA RCRA Docket (OS-305), Room M-2427, 401 M Street, SW., Washington, DC 20460. The public must make an appointment to review docket materials by calling (202) 475-9327. Refer to Docket number F-90-L13A-FFFFF when making appointments to review any background documentation for this rulemaking. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 (toll-free) or (202) 382-3000 in the Washington, DC metropolitan area. For technical information contact Rhonda Craig, Office of Solid Waste (OS-320W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308-8462.

SUPPLEMENTARY INFORMATION:

Outline

I. Reasons and Basis for Today's Amendment
II. Summary of Amendments to the Third Third Final Rule
A. Section 148.10
B. Section 148.16
C. Section 261.3
D. Section 261.20
E. Section 261.31
F. Section 262.10
G. Section 262.11
H. Section 262.34
I. Section 268.2
J. Section 268.7
K. Section 268.9
L. Section 268.10
M. Section 268.12
N. Section 268.33
O. Section 268.35
P. Section 268.40
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I. Reasons and Basis for Today's Amendment

The Agency has received comments from the regulated community and State agencies requesting clarification on certain aspects of the June 1, 1990 Third Third final rule (55 FR 22520). Today's rule responds to these concerns.

Several typographical errors were identified in the preamble; however, the Agency did not correct them in this notice. The vast majority of errors identified in the preamble were not substantial and, thus, required no corrections since the context clearly provided the meaning of the misspelled word. The Agency decided not to provide corrections to the preamble because it is long, its organization is complex, and describing where the error was, what the correction should be, and why the correction was necessary would be cumbersome and would be difficult to understand. In fact, the Agency believes that such corrections would actually be of very limited value to the reader.

II. Summary of Amendments to the Third Third Final Rule

Several amendments have been made to the regulations in response to questions about the Third Third final rule and to correct inadvertent omissions. An explanation is provided below for each of the amendments made in today's rule.

A. *Section 148.10.* Treatment standards were established for certain newly listed constituents (i.e., benzene, 1,1,2-trichloroethane, 2-ethoxyethanol, and 2-nitropropane) in the F002 and F005 spent solvent wastes in the Third Third final rule. However, the Agency failed to include the prohibition effective date for these wastes when they are injected underground in hazardous waste injection wells. The Agency intended that such wastes be prohibited as of August 8, 1990 (off-site injection) or November 8, 1990 (on-site injection) (see 55 FR 22648 for a discussion of combustion of liquids). This inadvertent omission is being corrected in today's rule. Effective dates are established today for prohibitions on injection of these wastes in both off-site/commercial and on-site hazardous waste injection facilities that are consistent with the effective dates promulgated in the Third Third final rule.

B. *Section 148.16.* Two waste codes, U087 and U139, were inadvertently included in the Third Third final rule. Treatment standards and prohibition effective dates were established for U087 in the Second Third final rule (see 54 FR 26647 and § 148.16). Iron dextran, U139, was dropped from the hazardous waste listings in 1988 (53 FR 43881). These wastes were included in § 148.16 in the Third Third final rule by mistake; therefore, these two waste codes have been deleted from this section in today's rule.

C. *Section 261.3.* In the Third Third final rule, EPA discussed at length that treatment standards for characteristic wastes could permissibly be established below the characteristic level so long as the wastes were prohibited from land disposal—that is, (in most cases) provided they exhibited a hazardous waste characteristic at the point of generation. (See e.g., 55 FR 22651-22655; see also § 268.43 establishing treatment standards below characteristic levels for certain characteristic wastes.) Since the rule was promulgated, several persons have asked if § 268.1(b) of the regulations—which states that wastes which are excluded or exempted from regulation under part 261 are not subject to part 268—is inconsistent with regulation below characteristic levels.

Section 268.1(b) is consistent with EPA's regulatory approach. This is because although § 261.3 (c)(1) and (d)(1) indicate that wastes no longer exhibiting characteristics are not hazardous wastes, those provisions need not be read to create an outright exclusion or exemption. This distinction is subtle, however, and EPA has decided to place a clarifying cross reference in § 261.3(d) indicating that characteristic wastes no longer exhibiting a characteristic may nevertheless still be subject to the provisions of part 268.

D. *Section 261.20.* A typographical error in paragraph (b) has been corrected by inserting the word "used" after the word "be" in line 6.

E. *Section 261.31.* On page 22619 of the preamble, it is clear that F039, multi-source leachate, is defined as leachate that is derived from the treatment, storage, or disposal of more than one *listed* hazardous waste (see also 54 FR 8264, February 27, 1989). The Third Third regulatory language, however, failed to specify that multi-source leachate is only that leachate that is derived from more than one listed waste. Therefore, the listing description of F039 in § 261.31 is amended in today's rule to reflect this definition.

A question has also arisen as to whether more than one newly listed waste, for which treatment standards have not yet been promulgated, may constitute F039. As the basis for the F039 listing included in appendix VII of part 261 clarifies, the Agency did not intend the F039 listing to include listed wastes without promulgated treatment standards. (In addition, it is clear from the background document that EPA only examined leachates composed of wastes that currently are restricted from land disposal in developing the treatment standards for F039 leachate.) Therefore, the listing description of F039 in § 261.31 is amended in today's rule to specify that only listed wastes that are also restricted are included in F039.

In addition, in order to determine whether one has F039, it is necessary to first determine that the waste meets the definition of leachate. Once it is established that the waste is leachate, it is necessary to determine whether it is derived from one or more listed hazardous wastes in order to be considered F039. Confusion has arisen regarding the definition of *leachate* found at 40 CFR 260.10 as it applies to F039, multi-source leachate. The definition found in § 260.10 states that leachate is "any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste." The confusion primarily concerns the phrase "* * * or drained from * * *" since, if applied generally to all liquids that drained from hazardous wastes, wastewaters such as filtrate would be included in the definition of leachate. The Agency did not intend that such wastewaters be included in the definition of leachate; in order to determine if a waste is F039, only the liquids that have percolated through land disposed wastes ("land disposal" having the meaning of RCRA section 3004(k)) are considered to be leachate, not liquid treatment residues. Language has been added to the description of F039 in § 261.31 to clarify this point.

F. *Section 262.10.* Today's notice corrects an oversight in Note 2 of 40 CFR 262.10. This note is corrected to include part 268 in the standards and requirements that apply to generators who treat, store, or dispose of hazardous waste on-site.

G. *Section 262.11.* An inadvertent error is being corrected in § 262.11. A reference was made to waste listed in "subpart D of this part", which refers, of course, to part 262. Wastes are actually listed as hazardous in subpart D of part 261. The regulatory language is being changed to make the correct reference to part 261.

H. *Section 262.34.* On page 22670 of the preamble, the Agency specified that generators treating prohibited wastes in § 262.34 tanks and containers must prepare a plan justifying the frequency of testing their treatment residues to ascertain compliance with the treatment standards. The reason this requirement was imposed was to close a regulatory gap; these tanks and containers were not subject to a waste analysis plan requirement and, thus, there was no regulatory vehicle for determining the testing frequency in such circumstances. In contrast, under the requirements of § 268.7(b), treatment facilities treating prohibited waste must test their treatment residues according to a frequency determined in their waste analysis plan.

The Agency inadvertently omitted a discussion of how these new requirements apply to small quantity generators of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month that treat in § 262.34 tanks and containers. It was the Agency's intention that such small quantity generators be included under the new procedures since the procedures are being instituted to close a regulatory gap, and since the same regulatory gap exists for small quantity generators as for large quantity generators. In not distinguishing between types of generators, EPA believes that the rule expressed the Agency's intent that all regulated generators (i.e., those generating greater than 100 kg/mo. or greater than 1 kg/mo. acute hazardous waste) must comply with the new waste analysis requirements when so treating their restricted wastes. Today's rule further clarifies that small quantity generators (100–1,000 kg/mo.) treating in § 262.34 tanks and containers must follow the same § 268.7(a)(4) waste analysis procedures as large quantity generators. However, conditionally exempt small quantity generators as defined in 40 CFR 261.5, remain exempt from these and other part 268 requirements.

I. *Section 268.2.* Typographical errors are corrected in the definition of nonwastewaters, F001, F002, F003, F004, F005 wastewaters, and K011, K013, K014 wastewaters.

The definition of *inorganic solid debris* in 40 CFR 268.2(g) is corrected by clarifying that, in order to meet the definition of inorganic solid debris, the debris can be contaminated with only the hazardous wastes specified as D004–D011. This was clearly stated in the preamble on pages 22555–22556; the regulatory language has merely been changed to reflect the preamble language.

J. *Section 268.7.* It was explained on preamble page 22660, under the heading Newly Identified TC Wastes, that wastes exhibiting the toxicity characteristic by the Toxicity Characteristic Leaching Procedure (TCLP) but not the Extraction Procedure (EP) are newly identified wastes and, therefore, are not subject to the land disposal restrictions at this time.

(Note: The actual language of the preamble says that these wastes "are not presently prohibited * * *" This was an incorrect use of the term "prohibited." These wastes are not presently *restricted;* therefore, they are not subject to any of the requirements of the land disposal restrictions, including waste analysis and recordkeeping.)

Questions have arisen regarding the applicability of the EP for purposes of the land disposal restrictions once the TC rule becomes final (September 25, 1990 for large quantity generators, March 29, 1991 for small quantity generators) (55 FR 11798, March 29, 1990). Today's technical amendment addresses this issue.

There are two points under the land disposal restrictions when either the EP or the TCLP must be used; (1) When determining whether a generator has a restricted waste (waste characterization), and (2) when determining whether a treated waste complies with the concentration-based

treatment standards (measuring compliance). The confusion seems to stem from waste characterization rather than from measuring compliance.

Under the requirements of the Toxicity Characteristic (TC) rule, on September 25, 1990 (or March 29, 1991) the TCLP must be used initially to determine whether a waste is hazardous. If a waste, as generated, does not exhibit the amended toxicity characteristic (as measured by the TCLP), it is not subject to the land disposal restrictions nor to any other subtitle C regulation (assuming the waste is not listed and does not exhibit any other hazardous waste characteristic). This is the case even if the waste would have been identified as hazardous by the old Extraction Procedure. On the other hand, if the waste does exhibit the Toxicity Characteristic, then the next step is to determine if the Third Third prohibition applies to it. That prohibition applies to wastes that are hazardous and that exhibit EP toxicity at the point of generation. In other words, after the effective date of the TC rule, a waste must first exhibit the Toxicity Characteristic and, if it also exhibits EP toxicity, it is subject to the Third Third final rule. Section 268.7(a) has been changed in today's rule to clarify this point.

Additionally, since treatment standards were promulgated only for the EP toxic metals (D004–D011) and EP toxic pesticides (D012–D017), only these toxic characteristic constituents are presently subject to the land disposal restrictions; the additional 25 organic toxic constituents that were added in the March 29, 1990 final rule are considered newly identified wastes not yet subject to the land disposal restrictions (unless they are regulated constituents in listed hazardous wastes).

The second point, that of measuring compliance with treatment standards and when the EP or TCLP is to be used, is also addressed on preamble page 22660, under the heading Use of TCLP v. EP Analytical Methods for Compliance. See section II.O below discussing changes being made to § 268.40 to correct the regulatory language pertaining to use of the EP or the TCLP for measuring compliance.

In addition, on preamble page 22668, the Agency explained that it is satisfactory to reference the applicable regulatory provisions on notifications for all restricted wastes except spent solvents (F001–F005), multi-source leachate (F039), and the California list wastes, for which the treatment standards themselves (and not such a reference) must appear on the notification. (This is because a regulatory cross-reference would be ambiguous for these three types of wastes.) The intent of this provision is that either the applicable treatment standards must appear on the notification; or the reference to the applicable regulatory provision where the treatment standards are found. Some persons, however, have found the regulatory language in § 268.7(a)(i)(ii), (2)(i)(B), (3)(ii), and (b)(4)(ii) ambiguous, leading to the question of whether any treatment standard at all must appear on the notification. This regulatory language is being changed in today's rule to clarify that for spent solvents, multi-source leachate, and California list wastes, the applicable treatment standards must appear on the notification; for all restricted wastes other than spent solvents, multi-source leachate, and California list wastes, either the applicable treatment standard, or the reference to the applicable treatment standard, must appear on the notification.

Also on page 22668, the Agency set out what information should be included on the notification when applicable treatment standards were referenced. It was specified that, among other things, the waste's subcategory and treatability group must be identified. Questions have arisen about the difference between "treatability group" and "subcategory." The Agency intended for purposes of the notification that "treatability group" refer to the classification of the waste as either a wastewater or a nonwastewater as defined in § 268.2(d) and (f), and that "subcategory" refer to the subdivisions made within a treatability group based on additional waste-specific criteria (such as D003 reactive cyanides).

In past rulemakings and in other parts of the Third Third preamble, however, no such distinction is made between the terms "treatability group" and "subcategory"; rather, these terms are used interchangeably. This has resulted in confusion as to what is required on the notification when treatment standards are referenced. The Agency is clarifying this issue in today's rule by changing the language of § 268.7(a)(1)(ii), (a)(2)(i)(B), (a)(3)(ii), and (b)(4)(ii) to describe exactly what must be included on the notification, and omitting the terms "treatability group" and "subcategory." Therefore, when treatment standards are referenced on the notification, the following information should be included: The subdivisions made within a waste code based on waste-specific criteria (such as D003 *reactive cyanides),* whether the waste is a wastewater or a nonwastewater, and the CFR section(s) and paragraph(s) where the applicable treatment standard appears.

On preamble page 22662, the Agency explained that the tracking requirements of § 268.7 apply to restricted hazardous wastes, even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under § 261.2–§ 261.6 *subsequent to the point of generation.* Under this requirement, all generators of restricted hazardous wastes must have, at minimum, a one-time record (notification) in the facility files that indicates the generation of a restricted hazardous waste and its disposition. While this requirement was clearly stated in the preamble, it was not included in the regulatory language because it was believed that such information should already exist in the facility files to justify the absence of Subtitle C regulation. It has come to the attention of the Agency that some generators may not have been aware that such information should be placed in their files. To clarify, therefore, that a one-time notification must be placed in the facility's files, this requirement has been added to the regulatory language in today's notice. (This specific regulatory requirement will be applied prospectively.)

Questions have also arisen regarding the applicability of this requirement to wastes subject to a § 261.2–§ 261.6 exclusion, expressing concern that this requirement would impose recordkeeping requirements on nonhazardous wastes. The Agency maintains that such would not be the result of this requirement; only restricted hazardous wastes will be impacted. The key to understanding this requirement is to look at the point that the exclusion attaches to the waste. In the example and discussion provided on page 22662, it is clear that the § 261.4(a)(1) exclusion does not attach to the waste until it passes through the sewer system to a POTW. Since the land disposal restrictions apply *at the point of generation,* and the § 261.4(a)(1) exclusion attaches to the waste at a point subsequent to the point of generation, the waste is a restricted waste. A notice should be made of the generation of this restricted waste and the fact that it was discharged to a POTW. Additionally, even though the example given in the preamble discussed a characteristic waste, the same would be true for a listed waste under the same circumstances. For this reason, this tracking requirement has been added to § 268.7, which applies to

both listed and characteristic wastes, rather than to § 268.9, which applies only to characteristic wastes.

K. *Section 268.9.* Paragraph (a) is being revised in today's rule to clarify that the waste identification requirements of paragraph (a) are consistent with paragraph (b) of that section. Paragraph (a) specifies that for purposes of part 268, a waste will carry a waste code for any applicable listing, and also one or more waste codes when the waste exhibits a relevant characteristic. This seems to conflict with the requirements of paragraph (b) where it is stated that the treatment standard for the listed waste will operate in lieu of the characteristic treatment standard, provided that the treatment standard for the listed waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic. Questions have arisen about which waste codes should be included on notifications in a situation where the treatment standard for the listed waste operates in lieu of the characteristic treatment standard.

The Agency's intent was that when the listed waste treatment standard operated in lieu of the characteristic treatment standard, the listed waste code would be included on the notification in lieu of the characteristic waste code (see 55 FR 22659). Paragraph (a) of § 268.9 is therefore being amended in today's final rule to more clearly reflect the Agency's intent. Preamble section III. of today's rule discusses in detail how to identify a waste as either listed or characteristic on notifications.

A change is also being made in § 268.9(d)(1)(ii) to more clearly identify the information to be included on the notification for wastes that have been rendered nonhazardous through the removal of the characteristic. A question has arisen as to what is meant by the term "treatability group" (see the discussion above regarding changes being made to § 268.7(a)(1)(ii), (a)(2)(i)(B), (a)(3)(ii), and (b)(4)(ii) to clarify information to be included on notifications pursuant to § 268.7). This term is being omitted from § 268.9(d)(1)(ii), and is replaced by clarifying language that specifies that the following information should be included: The subdivisions made within a waste code based on waste-specific criteria (such as D003 *reactive cyanides*), whether the waste is a wastewater or a nonwastewater, and the CFR section(s) and paragraph(s) where the applicable treatment standard appears.

L. *Section 268.10.* On page 22594 of the Third Third preamble, the Agency stated that the wastes listed as K048, K049, K050, K051, and K052 were being rescheduled from the First Third to the Third Third. The Agency neglected to remove these waste codes from § 268.10; this oversight is being corrected in today's rule by removing these wastes.

M. *Section 268.12.* As explained in section L above, the wastes listed as K048, K049, K050, K051, and K052 were rescheduled from the First Third to the Third Third, and thus, they had a new prohibition effective date (May 8, 1990). The Agency neglected, however, to include this rescheduling in the regulatory language. Therefore, today's notice corrects that bookkeeping oversight by including these waste codes in § 268.12.

N. *Section 268.33.* Paragraph (b) set out the prohibition effective date for the wastes listed as K048, K049, K050, K051, and K052, K061 high zinc category, and K071 (no change is being made in today's rule to the K071 prohibition effective date). As explained in section II.L. above, K048, K049, K050, K051, and K052 were rescheduled from the First Third to the Third Third, and thus, they had a new prohibition effective date (May 8, 1990).

(Note: The Agency granted these wastes a six-month national capacity variance in the Third Third final rule that extends the effective date for these wastes from May 8, 1990 until November 8, 1990. The prohibition effective date for these waste codes is found at § 268.35(b).)

The Agency neglected, however, to remove the effective date that was set out in the First Third final rule (53 FR 31217) for K048, K049, K050, K051, and K052. Today's notice, therefore, corrects this oversight by removing these waste codes from § 268.33(b).

Additionally, on preamble page 22599, the Agency stated that it was appropriate to extend the interim K061 treatment standard (the treatment standard for low zinc K061 with less than 15% zinc) as an alternative to high temperature recovery for one additional year. The Agency failed in the Third Third final rule, however, to omit the prohibition effective date for K061 high zinc category from § 268.33; this oversight is corrected in today's rule. (Section 268.35(a) is also corrected in today's rule to clarify that effective August 8, 1990, K061 wastes containing 15% or greater zinc are prohibited from land disposal pursuant to the treatment standards specified in § 268.41 applicable to K061 wastes that contain less than 15% zinc. See section II.O. below.)

O. *Section 268.35.* Certain typographical errors were identified in the prohibition language of § 268.35 (a) and (c). Also, a few of the specified treatability groups (e.g., wastewater, nonwastewater) were inaccurate and did not correspond with the preamble. In some cases, the inaccuracy of the treatability groups was due to the fact that treatment standards for either the wastewater or nonwastewater form of certain wastes were promulgated in previous rulemakings but they were inadvertently included in the language at § 268.35. These errors are corrected in today's notice.

In addition, the prohibition effective date for the interim treatment standard for the K061 high zinc category was discussed in the preamble, but was inadvertently omitted from the regulatory language. On preamble page 22599, the Agency stated that it was appropriate to extend the interim K061 treatment standard (the treatment standard for low zinc K061 with less than 15% zinc) as an alternative to high temperature recovery for one additional year. Section 268.35(a) and the entry for K061 in § 268.41, Table CCWE, are corrected in today's rule to clarify that effective August 8, 1990, and continuing until August 7, 1991, K061 wastes containing 15% or greater zinc are prohibited from land disposal pursuant to the treatment standards specified in § 268.41 applicable to K061 wastes that contain less than 15% zinc.

The language of § 268.35(d) is also being changed to clarify that radioactive waste mixed with any scheduled hazardous waste is subject to a two-year national capacity variance. This capacity variance was in effect for mixed radioactive/scheduled wastes prior to today's notice because all First Third and Second Third mixed radioactive wastes were rescheduled to the Third Third in previous rulemakings. Today's correction merely clarifies that Third Third mixed radioactive wastes include those that were originally in the First and Second Third of the schedule. Note, however, that mixtures containing spent solvent wastes, listed dioxin wastes, or California list wastes are not subject to such capacity variances.

An additional clarification is being made to § 268.35(d). On preamble page 22650, it was stated that a national capacity variance was granted to soil and debris contaminated with mixed radioactive wastes. This particular subset of radioactive mixed/hazardous wastes was not set out in the regulatory language of § 268.35(d) because this subset was subject to the broader national capacity variance granted to all mixed radioactive/scheduled hazardous wastes. A question has arisen, however, about the applicability of this national

capacity variance to soil and debris. In response to this question and to avoid any future confusion, language has been added to § 268.35(d) specifying that the two year national capacity variance also applies to soil and debris contaminated with mixed radioactive/scheduled hazardous wastes (i.e., wastes listed in §§ 268.10, 268.11, 268.12).

The language of § 268.35(e) is being modified in today's rule to add two additional technologies (acid leaching followed by chemical precipitation, and thermal recovery of metals) to the two year national capacity variance for soil and debris contaminated with wastes that have treatment standards based on these technologies. While it was not directly addressed in the preamble that a two-year national capacity extension should be granted for soil and debris contaminated with wastes for which these technologies are BDAT, it was explained that the Agency believes there is inadequate capacity for the treatment of *any* wastes by these technologies (see 55 FR 22635). Process wastes for which BDAT was determined to be either of these technologies were granted a national capacity variance. By extension, it is only logical (and the result EPA intended) that these technologies be added to the technologies qualifying for a soil and debris national capacity variance.

P. *Section 268.40.* The language of § 268.40 is being amended to clarify that either the TCLP or the EP may be used when measuring compliance with the treatment standards for certain arsenic- and lead-containing hazardous wastes. On preamble page 22660, under the heading Use of TCLP v. EP Analytical Methods for Compliance, it was explained that most treatment standards for characteristic wastes were set based on data generated from use of the TCLP; thus, compliance with such standards must be measured using the TCLP. There were two exceptions, however, in the Third Third final rule: treatment standards for characteristic lead nonwastewater (D008), and for certain arsenic-containing nonwastewaters (D004, K031, K084, K101, K102, P010, P011, P012, P036, P038, and U136). For these wastes, the Agency specified that if a waste does not achieve the nonwastewater treatment standard based on analysis of a TCLP extract, but does achieve the standard based on analysis of an EP extract, the waste is in compliance with the treatment standard. This action was taken because the data used to develop the treatment standards for these wastes were based on EP toxicity leachate data.

The regulatory language in § 268.40(a) of the Third Third final rule said that either the test method in appendix I of this part (268), or the test method in appendix II of part 261, could be used to measure compliance with the lead and arsenic nonwastewater treatment standards. (Until promulgation of the Toxicity Characteristic (TC) final rule (55 FR 11798) on March 29, 1990, appendix I of part 268 described the TCLP, and appendix II of part 261 described the EP.) In the TC final rule, however, the TCLP was removed from part 268, appendix I. Part 261, appendix II was also amended to include the procedures for the TCLP, not the EP. The Third Third regulatory language referred to the appendices as they existed before promulgation of the TC final rule. Therefore, the regulatory language in the Third Third final rule was incorrect. This language is amended in today's rule to clarify that either the procedure found in part 261, appendix II (TCLP), or the EP that is being added in today's rule to part 268 (Appendix IX), may be used for measuring compliance with the treatment standards for the specified arsenic and lead nonwastewaters.

Q. *Section 268.41.* A small number of typographical errors are corrected in Table CCWE. Changes are being made to the format of the table as well. In particular, the treatment standards for D-, F-, and K-coded wastes and the treatment standards for P- and U-coded wastes have been unified so they appear in one table. All footnotes have been moved to the end of the table. Also, all superscripted symbols that were used to designate footnotes have been changed to superscripted numbers, to comply with the style requirements of the United States Government Printing Office.

Also in Table CCWE, EPA promulgated a treatment standard of 0.021 mg/l (based on analysis of a TCLP leachate) for lead in nonwastewater forms of F024. Several commenters have since pointed out difficulties in achieving this standard, due primarily to their inability to achieve this level of detection. The Agency examined the data it used to develop this treatment standard and found a discrepancy in the data. This discrepancy, in the Agency's view, appears to substantiate commenters' claims. The promulgated treatment standard for lead thus appears to be unachievable based on detection limits. As a result, the Agency is amending the treatment standard for lead in F024 nonwastewaters to a reserved status, until such time that the Agency can propose and promulgate a revised treatment standard. The Agency has taken this action for several reasons: (1) The performance date utilized to establish the standard contain discrepancies in detection limits; (2) sufficient data have been submitted to raise questions about the achievability of the standard; (3) compliance with the existing standard appears to be unachievable; (4) facilities generating the wastes are already treating the wastes with the technologies identified by the Agency as BDAT and thus lead is being treated; (5) the treatment standards for other metals are being achieved; (6) while the treatment standard for lead is not being achieved, no lead is being detected in the TCLP leachate; (7) the length of time needed to establish a national treatability variance for these wastes would put all generators out of compliance even though they are using technologies considered to be BDAT; and, (8) additional treatment would not be expected to achieve compliance with the promulgated treatment standard of 0.021 mg/l.

The Agency is also amending Table CCWE to indicate that the treatment standard for high zinc K061 wastes is the existing interim treatment standard based on the performance of stabilization technology that EPA promulgated as part of the First Third rule and extended for one additional year as part of the Third Third final rule. The Agency is adopting this position in partial response to the Court's mandate in *American Petroleum Institute* v. *EPA*, 906 F.2d. 729 (D.C. Cir. 1990). In that case, the Court held that due to a misapprehension of the scope of its jurisdiction over hazardous wastes being recycled, the Agency had failed to establish a treatment standard for the slag residue resulting from processing high zinc K061 dusts by high temperature metal recovery. 906 F.2d at 742. The Court remanded the case to the Agency to determine whether to establish a treatment standard in light of the Court's clarification of the potentially broader scope of jurisdiction over recycling activities. *Id.*

EPA is of the view that unless and until it acts to promulgate a new treatment standard for high zinc K061 waste, those wastes can be land disposed if they meet the interim numerical standards based on the performance of stabilization technology. An alternative reading would be that the Court invalidated the treatment standard for high zinc K061 and left no treatment standard in its place, triggering the mandatory prohibition in RCRA section 3004(g)(6)(C). The Agency does not interpret the opinion in this

way. It would prevent land disposal of wastes treated by BDAT (see 55 FR 22598–22599, June 1, 1990; and 53 FR 31221, August 17, 1988, indicating that high temperature metal recovery is BDAT for high zinc K061). EPA is convinced that the Court did not intend to bar treatment residues from the best treatment for high zinc K061 from land disposal. Thus, the Agency is interpreting the opinion to mean that so long as the slag residues meet a treatment standard, they are not prohibited from land disposal. The only treatment standard for high zinc K061 at the present time is the interim standard based on performance of stabilization that the Agency left in place as part of the Third Third rule. Consequently, at the present time, if high zinc K061 is treated by high temperature metal recovery and meets these interim numerical treatment standards, it is not prohibited from land disposal. The Agency notes further that since this interim standard lapses on August 7, 1991, the Agency will have to take some action before that date to avoid the absolute prohibition of the statutory hard hammer in RCRA section 3004(g)(6)(C).

The Agency notes further that it is not addressing any other issue raised by the *API* opinion in this notice. The Agency is continuing to study the opinion and its implications, and hopes to address these issues in the relatively near future.

R. *Section 268.42.* Two typographical errors were corrected in paragraph (a)(2) in today's rule. A small number of typographical errors are also corrected in Table 2. In addition, all superscripted symbols that were used to designate footnotes have been changed to superscripted numbers, to comply with the style requirements of the United States Government Printing Office.

A clarification is also being made in § 268.42(a) by adding new paragraph (3). This clarification is necessary because the Agency inadvertently omitted the inclusion of an alternate treatment standard for *de minimis* leaks to wastewater treatment systems subject to Clean Water Act controls of certain in-process materials that only becomes wastes when they are "discarded" (as that term is used in § 261.33). The circumstances involved roughly parallel those described in the exemption to the mixture rule established in § 261.3(a)(2)(iv)(D) for *de minimis* losses of discarded commercial chemical products listed in § 261.33.

The potential problem arises for those characteristic wastes for which the Agency established a discrete method of treatment as the treatment standard—the example identified to the Agency being high TOC ignitable wastes for which some type of combustion is the prescribed method of treatment. *De minimis* leaks of chemical products (that are not P or U wastes listed in § 261.33) may display a characteristic of hazardous waste. In most cases, these leaks are collected in the facility's wastewater treatment system. If the leaking product displays a characteristic of corrosivity, reactivity, or low TOC ignitability, the treatment standard established in § 268.42 is DEACT (deactivation), under which treatment standard dilution of the waste in the wastewater treatment system, or other wastewater treatment, is permissible in order to remove the applicable characteristic. If, however, the leaking product displays the characteristic of ignitability and falls into the high TOC (greater than 10% TOC) subcategory, the treatment standard established in § 268.42 is incineration or fuel substitution, and wastewater treatment to meet the treatment standard is impermissible. This means that the mixture of wastewater and high TOC ignitable liquid waste product would be subject to the incineration or fuel substitution treatment standard.

The Agency did not intend to apply this treatment standard to *de minimis* leaks of high TOC ignitable product mixtures when the treatment standard for high TOC ignitables was established. EPA established the high TOC ignitable waste subcategory because these wastes were amenable to combustion technologies, and ordinarily could be segregated from other wastes in order to be combusted (see 46 FR 56586, November 17, 1981). In addition, there is an economic incentive to avoid losses of these materials because they are still in the product stream. *Id.* The Agency did not intend, in the Third Third rule, that such losses must be captured and destroyed by combustion. Rather, provided such losses are *de minimis* and involve only materials that are not yet wastes up until the moment of inadvertent loss, deactivation is an appropriate treatment standard, as it is for other ignitable wastes.

The Agency is defining *de minimis* in much the same manner as that used in § 261.3, except that today's definition does not include discharges from safety showers and rinsing and cleaning of personal safety equipment, nor does it include rinsate from empty containers or from containers that are rendered empty by that rinsing (ie., the third rinse in triple rinsing). These activities, the Agency believes, would not (and certainly, should not) involve high TOC ignitable wastes. Segregation of rinsate also is possible. In addition, the Agency notes that to be considered *de minimis*, any losses of high TOC materials would have to be from "normal material handling operations", and thus, would not include constant leaks or large-scale spills. The amendment to the treatment standard adopted today is thus limited to small losses of high TOC product (or other material still in the manufacturing pipeline at the time of the *de minimis* loss) that are, for practical purposes, infeasible to capture for combustion at their point of generation. Finally, the leak must be to a wastewater system subject to regulation under the Clean Water Act, as provided in the existing regulation dealing with *de minimis* losses of commercial chemical products in § 261.3. This condition ordinarily assures that some treatment of the waste will occur (see 46 FR 56586, November 17, 1981).

Wastewater treatment standards for two wastes, P015 and P087, were inadvertently omitted from Table 2 in the Third Third final rule. On preamble page 22617 it is clearly stated that the treatment standards for *all forms* of P015 and P087 is metal recovery (RMETL) or thermal recovery (RTHRM). These wastewater treatment standards are added to Table 2 in today's rule.

An inadvertent error is corrected in Table 3. The treatment standard for D009—Hydraulic oil contaminated with mercury radioactive materials was specified as INCIN (incineration). The treatment standard should have been IMERC (incineration of wastes containing organics and mercury in units operated in accordance with the technical operating requirements of 40 CFR part 264, subpart O, and 40 CFR, part 265, subpart O, with residues complying with the corresponding treatment standard). This treatment standard is being corrected in today's rule.

S. *Section 268.43.* Several typographical errors are corrected in Table CCW. Changes are being made to the format of the table as well. In particular, the treatment standards for D-, F-, and K-coded wastes and the treatment standards for P- and U-coded wastes have been unified so they appear in one table. All footnotes have been moved to the end of the table. Also, all superscripted symbols and numbers that were used to designate footnotes have been changed to superscripted numbers only, to comply with the style requirements of the United States Government Printing Office.

Additionally, a substantive correction is being made in footnote 3 to clarify inconsistencies between the preamble and the regulatory language. On page

22578 of the preamble, the Agency discussed new specifications on the sample size and distillation time required for cyanide analyses for the land disposal restrictions. The preamble discussed these changes in terms of the SW–846 test method 9012, and specified that the sample size must be 10 grams. The footnote on page 22710 in Table CCW refers to method 9010 and specifies a range of sample sizes from 0.5 to 10 grams. These inconsistencies were unintended and have caused confusion; the preamble discussion correctly stated EPA's position. Therefore, footnote 3 following Table CCW is being changed in today's notice to specify that either Method 9010 or 9012 must be used to analyze cyanide, the sample size is 10 grams (not a range), and the distillation time is one hour and fifteen minutes.

Additionally, a correction has been made in § 268.43(c) to clarify that only the organic constituents indicated in Table CCW with a footnote (1) qualify for the new procedures for certifying compliance with a treatment standard when a treater claims to have analytic detection problems or that are discussed on preamble pages 22541–22542. Slight changes are also being made to clarify that the procedures apply only to treaters and disposers (this is implicit in the discussion at 55 FR 22541 (3)), and to clarify that the good-faith analytic effort may be demonstrated by achieving a detection limit that does not exceed the treatment standard by an order of magnitude.

T. *Part 268, Appendices IV and V.* On page 22629 of the preamble, the Agency specified that for wastes placed in lab packs and included in Part 268 Appendix IV—Organometallic Lab Packs, an alternate treatment standard must be met: incineration as a required method, followed by treatment to meet the applicable EP toxic metals (D004–D006, and D010–D011). While appendix IV includes wastes containing other metals, the Agency believes that requiring compliance with the treatment standards for EP toxic metals will reasonably assure treatment of other metals, particularly when these wastes are stabilized.

The Agency also promulgated an alternate treatment of incineration as a required method for wastes contained in lab packs and included in Appendix V—Organic Lab Packs. There is no specific requirement to stabilize the residues from the incineration of these wastes. The Agency inadvertently included several metal-bearing wastes in the appendix V. The purpose of establishing two separate appendices was to distinguish the wastes that are organo-metallics from those that are just organic. The inclusion of these metals in appendix V contradicts the basis for the establishment of two lab pack categories. Therefore, the following metal-bearing wastes (or wastes with treatment standards for metals) are omitted from appendix V in today's rule: F024, K001, K015, K021, K022, K031, K046, K048, K049, K050, K051, K052, K083, K084, K086, K087, K101, K102, K115, P006, P013, P015, P036, P038, P065, P073, P074, P087, P092, P096, P099, P103, P104, P110, P113, P114, P115, P119, P120, P122, U051, U205, and U214.

Today's rule also corrects inconsistencies in both appendices for P-coded wastes containing cyanides. Data from the incineration of wastes containing cyanides indicate destruction of cyanide to detection limits (as measured in ash). Appendix IV included four cyanide wastes containing metals (P013, P074, P099, and P104) and two cyanide wastes without metals (P063 and P098). A mistake was made, however, in that several cyanide wastes (both with and without metals) were not included in the appendices. Cyanide in any of these wastes can be destroyed by incineration. Today's rule corrects these inconsistencies by adding two cyanide wastes with metals (P029 and P121) to appendix IV and four cyanide wastes without metals (P021, P030, P033, and P106) to both appendix IV and V.

The preamble also stated on page 22629 that mercury-bearing wastes are prohibited from disposal in appendix IV lab packs. In fact, all inorganic mercury wastes are prohibited from inclusion in an appendix IV lab pack (including D009, U151, K071 and K106). However, certain organo-mercury wastes (P065 and P092) were included in appendix IV. This was due to the fact that the promulgated treatment standards for P065 and P092 (when these wastes are not placed in lab packs) requires incineration as a pretreatment prior to recovery of mercury from the ash, provided the ash exceeds 260 mg/kg of total mercury. The Agency believes that these two wastes are generated very infrequently, are not expected to constitute a significant portion of any lab pack, and the organo-mercury compounds for which P065 and P092 were listed will no longer exist after passing through an incineration unit. Stabilization is not expected to provide significant treatment of the inorganic mercury that would result from incineration of these wastes. Furthermore, it is unlikely that the ash from incineration of the lab pack will exceed 260 mg/kg (thus ruling out recovery of mercury). For these reasons, the Agency is not withdrawing P065 and P092 from appendix IV at this time.

Furthermore, the Agency inadvertently omitted P046 and P111 (both of which are organic compounds) from Appendix IV—Organometallic Lab Packs. These wastes codes were included in Appendix V—Organic Lab Packs; therefore, these wastes should also be included in appendix IV. In a similar manner, U152 (another organic) was included in appendix IV, but not in appendix V. Also, listed wastes F022 and F025 (both organic wastes) were inadvertently omitted from both appendices and F039 (which is regulated for both metals and organics) was mistakenly omitted from appendix IV. Today's notice corrects these omissions.

The Agency also included several waste codes in both appendices that are currently not regulated under the land disposal restrictions because they are wastes that were listed after November, 1984. These waste codes were included in information supplied by the regulated community during the comment period, and the Agency inadvertently included them in the appendices. The following wastes are, therefore, omitted from both Appendix IV and V in today's rule: K054, K064, K065, K111, K112, K117, K118, K123, K124, K125, K126, K136, U328, U353, and U359. Similarly, P025 and U139 were inadvertently included in both Appendix IV and V; these wastes are no longer regulated under Part 261 of RCRA. These waste codes are removed from the appendices in today's rule.

Finally, today's notice corrects all typographical errors in appendices IV and V (e.g., U032, U136, U137, U144, U145, U146, U154, U214, U215, U216, and U217 were listed in Appendix IV more than once).

U. *Part 268, Appendices VII and VIII.* Appendix VII and appendix VIII are intended to be comprehensive lists of effective dates, arranged according to hazardous waste code, for all of the treatment standards promulgated under the land disposal restrictions. These appendices are included in part 268 for the convenience of the regulated community in determining effective dates for the entire universe of hazardous wastes. Several mistakes and omissions were identified in the appendices as they appeared in the Third Third final rule (55 FR 22715–22719). These mistakes and omissions have been corrected in today's notice.

V. *Part 268, New Appendix IX.* It was explained in section II.J. that the EP, or the generator's knowledge, must be used to determine whether a characteristic waste is restricted under the land

disposal restrictions. The methodology for performing the EP is being provided in Appendix IX for the convenience of the reader.

W. *Section 270.42.* The entry in appendix I to § 270.42 is corrected by adding a footnote symbol to the Class 1 designation that was inadvertently omitted in the Third Third final rule. This correction clarifies that the permit changes associated with F039 (multi-source leachate) sampling or analysis methods is a Class 1 permit modification with prior approval.

III. Clarification of Certain Aspects of the Third Third Final Rule

Several questions have arisen as a result of the Third Third final rule that require clarification in today's rule. These issues do not require regulatory amendments.

A. *Status of Wastes Listed Solely Because They Exhibit a Characteristic.* An issue requiring clarification is what requirements under the land disposal restrictions apply to wastes that were listed in part 261, subpart D, solely due to the presence of a characteristic (such as ignitability or reactivity), now that treatment standards have been promulgated for characteristic wastes.

An example of such a waste is F003, which is listed because of the characteristic of ignitability, and for which treatment standards were promulated on November 7, 1986 (51 FR 40572). Under existing rules, if the hazardous characteristic is removed from such a listed waste and the treatment standard for the listed waste is met, it is no longer considered a hazardous waste, and therefore, need not be disposed in a subtitle C facility.

The question has been asked of where to send the § 268.7 notification and certification following treatment and the removal of the characteristic for these listed wastes. The needed clarification stems from the fact that characteristic wastes that have been treated to remove the hazardous characteristic may also be sent to subtitle D facilities as nonhazardous wastes. The recordkeeping requirements for characteristic wastes state that in such a case, the required notifications and certifications should be sent to the EPA Regional office or authorized State agency rather than to the subtitle D landfill (see § 268.9(d)). The Agency is today clarifying that the § 268.7 notifications and certifications for wastes listed solely for a characteristic, that are treated to meet the treatment standard and for which the characteristic has been removed, and that are lawfully disposed in a subtitle D landfill, should be handled following the procedures of § 268.9(d).

Another related question is how the dilution prohibition should apply to such a listed waste. The issue stems from the fact that the dilution prohibition was modified in the Third Third final rule to address special issues related to characteristic wastes (see discussion on pages 22664–22667 and § 268.3(b)). Since these listed wastes are somewhat analogous to characteristic wastes, some have asked if the § 268.3(b) dilution prohibition for characteristic wastes applies to these listed wastes. The answer is no. The Agency is here clarifying that wastes that are listed under part 261, subpart D, solely for the presence of a characteristic, are subject to the dilution prohibition for listed wastes as stated in § 268.3(a).

B. *Applicability of Land Disposal Restrictions to Characteristic Used Oil.* Questions have arisen regarding the applicability of the land disposal restrictions to used oil displaying a characteristic of hazardous waste. Used oil that is recycled in a manner other than being burned for energy recovery is exempt from RCRA under 40 CFR 261.6(a)(3)(iii) even if the used oil exhibits a characteristic of hazardous waste. Thus, characteristic used oils that are recycled in this way are exempt from the part 268 treatment standards. This exemption should have little practical impact because most used oil exhibiting a characteristic is already banned from road oiling or use as a dust suppressant, the two principle types of used oil recycling involving land disposal (RCRA section 3004(1) and § 266.23).

The land disposal restrictions do apply, however, to characteristic used oils that are burned for energy recovery in boilers and industrial furnaces if that used oil contains greater than 1000 ppm total halogens. Under 40 CFR 266.40(c), such oils are presumed to have been mixed with the listed spent solvents in § 261.31 and are therefore presumed to be hazardous waste under the "mixture rule" of § 261.3. Unless this presumption can be rebutted successfully, these halogen-containing used oils are subject to the part 268 treatment standards for halogenated solvents in addition to the special standards for hazardous waste fuel in part 266, subpart D.

Additionally, characteristic used oil that is disposed rather than recycled is subject to part 268. Such used oil thus must be treated to meet the applicable characteristic treatment standard prior to land disposal (unless exempt as a small quantity generator or as household waste).

C. *Clarification of § 268.42(a)(2) as it Applies to Wastes Being Burned for Energy Recovery.* The Agency removed industrial boilers and furnaces from the treatment standard for nonliquid California list halogenated organic compounds (HOCs) in the Third Third final rule (see preamble page 22675 and § 268.42(a)(2)), after receiving virtually no comment on its proposal to do so. The treatment standard, therefore, for nonliquid hazardous wastes containing California list HOCs and still subject to the California list treatment standard is expressed as a specified method of treatment: incineration. There appears to be very few wastes to which this standard would apply. EPA has consistently made clear that the California list prohibitions would gradually be superseded by the establishment of treatment standards for specific waste codes through the First, Second, and Third Third rulemakings (see 52 FR 25773, July 8, 1987; 52 FR 29993, August 12, 1987; 54 FR 48499, November 22, 1989; 55 FR 22675, June 1, 1990).

The Agency republished § 268.42(a)(2) in the Third Third final rule, and inadvertently left out the article "a" from the second sentence (55 FR 22693). The sentence is corrected today to read:

> "These treatment standards do not apply where the waste is subject to a part 268, subpart C treatment standard for a specific HOC (such as a hazardous waste chlorinated solvent for which a treatment standard is established under § 268.41(a))."

Perhaps because of this typographical error, there has apparently been some confusion in the regulated community with respect to § 268.42(a)(2). Some parties may have believed—by focusing on the first sentence—that all wastes containing 1000 ppm or greater HOCs are precluded from being burned for energy recovery in boilers or furnaces. This is incorrect.

As the second sentence of § 268.42(a)(2) makes clear (especially as corrected), the incineration requirement does not apply to any waste that is now subject to a treatment standard for a specific HOC. As EPA has stated on numerous occasions, because there are now treatment standards for all HOCs, "there are virtually no wastes" to which the Subpart O requirement applies (54 FR 48499, November 22, 1989). (The California list standard would continue to apply, however, during the period of a national capacity variance for a more specific treatment standard (55 FR 22674).

D. *Clarification of the Inorganic Debris Classification.* Since promulgation of the final rule, EPA has

been asked whether material that separates from inorganic solid debris is still considered to be inorganic debris. For example, if dust separates from slag while the slag is being transported, can the dust still be considered to be inorganic solid debris, or must it be segregated and managed separately.

EPA intended that the determination of whether a waste is inorganic solid debris should be made at the point of generation of the material. If any of the nonfriable waste material does not completely pass through a 9.5 mm sieve, then the entire quantity of waste material qualifies as inorganic solid debris. In addition, if the waste material is friable (i.e., easily crumbled) but some of the pieces (after crumbling) will not pass through a 9.5 mm sieve, then the entire quantity of waste material is considered to be inorganic solid debris. EPA has discussed this issue at greater length in a letter from Sylvia Lowrance to G.A. Vogt, which letter is part of the record for this correction notice and is available from EPA's RCRA docket.

Additionally, wastes appearing to meet the definition of inorganic solids debris under § 268.2(g)(6) (metal cans, containers, drums, or tanks) and (g)(7) (metal nuts, bolts, pipes, pumps, valves, appliances or industrial equipment) often contain organic parts that are difficult to separate. This occurs particularly in cases such as: (1) Industrial process equipment being dismantled; (2) industrial valves comprised of composites of organic and inorganic materials; and (3) appliances containing multiple connected parts. Capacity for sizing and separation is also lacking for this type of inorganic solid debris, the key factor in EPA's determination to grant this type of waste a national capacity variance (55 FR 22650). Thus, the variance for inorganic solid debris will apply to these inseparable mixtures except in situations where, during the dismantling, the nonhazardous organic materials or a significant portion of the organic materials are manually separable or separable by simple mechanical means. Only the inorganic solid debris that are separated from the nonhazardous organics are subject to the national capacity variance.

E. *Applicability of Criteria for Inorganic Debris to Flue Slag.* A question has arisen about whether container glass flue slag generated by the glass manufacturing and packaging industry qualifies as inorganic solid debris. Since this material was once molten and is inorganic, it qualifies as inorganic solid debris because it is a slag, provided it also complies with all of the remaining criteria in § 268.2(g) as amended in today's rule. (See previous section of today's preamble on inorganic solid debris.)

F. *Applicability of Soil and Debris Capacity Variance.* A frequent question is whether the soil and debris capacity variance only applies to wastes that have a treatment standard expressed as a required method of treatment. As a point of clarification, the capacity variance for soil and debris applies to soil and debris contaminated with any waste for which the treatment standard, whether expressed as a required method of treatment or as a numerical performance standard, was based on incineration, mercury retorting, vitrification, acid leaching followed by chemical precipitation, or thermal recovery of metals (see 55 FR 22649).

G. *Identification of Wastes as Either Listed or Characteristic.* A question has arisen about a perceived inconsistency between amended 40 CFR 262.11, and amended 40 CFR part 261. The Agency is here clarifying that there is no actual inconsistency between these parts of the regulation. Amended § 262.11 states two circumstances in which the determination of hazardous characteristic must be made: (1) For purposes of compliance with 40 CFR part 268 (since no further conditions are specified, the determination must be made for all solid wastes regardless of whether or not they are listed hazardous wastes); or, (2) if the waste is not a listed hazardous waste (this includes wastes that are not subject to the land disposal restrictions, so the determination must be made only for solid wastes that are not also listed wastes).

H. *Classification of Wastes on § 268.7 Notifications.* Requests have been made for an explanation of how to classify wastes as either characteristic wastes or listed wastes (when the waste is considered both characteristic and listed) for purposes of notifications required under 40 CFR 268.7. The preamble explained that the most specific treatment standard must be met when a listed waste is also a characteristic waste (55 FR 22659). When a listed waste is also a characteristic waste, the EPA Hazardous Waste Number (waste code) for the most specific treatment standard should be included on the notification. A variation of this principle also exists. If the most specific treatment standard is subject to a national capacity variance or a case-by-case extension and thus is not yet in effect, then the treatment standard for the most specific waste code that *is in effect* must be met (see 55 FR 22660). This waste code should be included on the notification.

Scenario 1. If both the treatment standard for a listed waste and the treatment standard for a characteristic waste are in effect for common constituents, then the treatment standard for the listed waste applies because it is more specific (§ 268.9(b)). If the listed waste includes treatment standards for the same constituents that give the waste its characteristic (e.g., the overlap between the metal standards in F006 and the EP toxic metals), the waste code(s) for the characteristic(s) need not be included on the notification (see example 1 below). If, however, the treatment standard for the listed waste does not specifically address the characteristic, the waste code for both the listed waste and the characteristic waste should be included on the notification (see example 2 below).

Example 1. Listed waste F006 contains the EP toxic metal constituents cadmium (D006), chromium (D007), and lead (D008). Since the treatment standard for F006 is more specific and is currently in effect, the metal constituents are subject to the F006 treatment standard rather than the EP toxic treatment standards for those constituents. The question has been asked whether only the F006 waste code should be included on the generator's biennial report (assuming the waste is not both TC and EP toxic because of the presence of other constituents), notification, and manifest, or should F006, D006, D007, and D008 be included? Only the F006 waste code should be included on the biennial report because it is more specific. Only the F006 waste code should be included on the notification, for the same reason. Only the U.S. Department of Transportation (DOT) description is required on the manifest (see Form 8700–22 item 11); there is no Federal requirement to include the waste code. If the State requires the inclusion of waste codes, the F006 code should be used.

Example 2. Spent pickle liquor, K062, is an example of a listed waste that has a treatment standard currently in effect. This waste is listed for the characteristics of corrosivity as well as for toxicity and, thus, would also be identified as a D002 waste. The question arises whether it is necessary to put both the K062 and the D002 waste codes on the notification. Both the K062 and D002 waste codes should be included on the notification because the K062 treatment standard does not specifically address the characteristic of corrosivity.

Scenario 2. If the treatment standard for the listed waste is subject to an

extension of the effective date (through a national capacity variance or case-by-case extension), and the treatment standard for the characteristic waste is in effect, then the treatment standard for the characteristic waste applies because it is the treatment standard that is currently in effect.

Example. An example is the listed waste K048, which contains chromium (D007) and lead (D008). K048 is subject to a six-month national capacity variance; consequently, the treatment standard is not in effect until November 8, 1990. The treatment standards for EP toxic chromium and lead became effective on August 8, 1990 (due to a national capacity variance granted to all Third Third wastes).

During the period from May 8, 1990 until August 8, 1990, the waste was subject to the three-month national capacity variance. K048 was rescheduled (as was K049, K050, K051, and K052) from the First Third to the Third Third, and as already mentioned, a three-month national capacity variance of the May 8, 1990 statutory effective date was granted that extended the effective date to August 8, 1990. The notification for K048 during the three-month capacity variance should have included the K048 waste code and the date upon which the waste was subject to this listed waste prohibition, November 8, 1990. The notification also should have included the D007 and D008 waste codes and the date upon which the waste was subject to these characteristic waste prohibitions, August 8, 1990.

During the period from August 8, 1990 until November 8, 1990, the waste is subject to the treatment standard for EP toxic chromium and lead, since the effective date for these wastes has passed (the K048 treatment standard is not yet in effect). The notification should include the K048 waste code and the date upon which the waste is subject to this prohibition (November 8, 1990), as well as the D007 and D008 waste codes. The waste must be treated to meet the D007 and D008 treatment standards prior to land disposal. See *API* v. *EPA*, 906 F.2d 729, 735–36 (D.C. Cir. 1990).

When the effective date for K048 has passed (November 8, 1990), the waste will be governed by the listed waste code and must meet the treatment standard for K048, since this treatment standard is more specific for the EP constituents. The D007 and D008 waste codes may be omitted from the notification at that time.

Scenario 3. When a waste is listed only for toxicity and displays a characteristic at the point of generation that is not addressed as a constituent of concern in the treatment standard, the notification must include both the listed waste code and the characteristic waste code. The treatment standards for both the listed waste and the characteristic waste must be met (55 FR 22659 and § 268.9(b)).

An example of such a scenario would be that of the listed waste K061 (listed for toxicity only) that also contains greater than 5.0 mg/kg of arsenic (D004). Arsenic is not a constituent of concern in K061. In this case, the D004 waste code should be included on the notification along with the K061 waste code, and the arsenic treatment standard as well as the K061 treatment standard must be met prior to land disposal.

Scenario 4. EPA also prohibits the land disposal of characteristic wastes when the characteristic is identified at the point of disposal (55 FR 22659 and § 268.9(c)). If, after treatment, a hazardous waste displays a characteristic for the first time, the characteristic code should be added to the notification (and to the facility records). The waste must be treated again in order to meet the characteristic treatment standard prior to land disposal.

I. *Treatment Standards For Newly Listed F002 and F005 Constituents.* The question has arisen of whether the technology standards for F002 and F005 are triggered by the presence of 2-nitropropane and 2-ethoxyethanol, or whether the waste has to be listed for those components. The first step in determining what treatment standard applies is proper waste identification. If a waste is identified as F002 and/or as F005, then the applicable treatment standard for that waste must be met prior to land disposal. Treatment standards for 2-nitropropane and 2-ethoxyethanol apply to only wastes listed as F005 with those constituents.

J. *Applicability of the National Capacity Variance For Radioactive Mixed Wastes to Mixed Radioactive/D002 Wastes.* The Agency discussed in detail on preamble page 22674 the issue of applying the California list prohibitions to Third Third wastes that are granted a national capacity variance. The Agency is here reemphasizing that the two-year national capacity variance granted to mixed radioactive/scheduled wastes (see 40 CFR 268.35(d)) does not apply to mixed radioactive/D002 wastes meeting the definition of a California list corrosive waste in § 268.32(a)(1). The California list requirements apply to this mixed radioactive waste.

K. *Applicability of Treatment Standards to D001 High TOC Wastes That Have Undergone Phase Separation.* The treatment standard for the high TOC subcategory of D001 wastes is a required method of treatment, incineration or fuel substitution. It has been brought to the attention of the Agency that this waste may be pretreated and thus separated into solid and liquid phases. In some cases, the solid phase of this waste does not exhibit the characteristic of ignitability. The question has been asked as to what treatment standards and recordkeeping procedures apply to the solid portion of this D001 waste.

As discussed in the preamble at pages 22544, the noncharacteristic solid phase of this waste would no longer be regulated under the hazardous waste regulations, but be subject instead to the solid waste regulations. The Agency considers pretreatment processes that separate phases of a waste to be acceptable provided that the remaining material that exhibits the characteristic is treated by the required technology.

Since the notification requirements attach to hazardous waste at the point of generation, this is the proper point to evaluate whether such notification is necessary for the solid waste portion of the waste. The § 268.7 notification requirements would not attach to the solid portion of this waste because, at the point of generation of this category of waste, it does not display the characteristic of ignitability, and is thus nonhazardous. (As explained on preamble page 22544, each new treatability group is a new point of generation for characteristic wastes.) The treatment residue from the use of the required technology may be sent to a nonhazardous landfill (provided it displays no characteristic of hazardous waste). The generator notification that accompanied the waste to pretreatment, however, must follow the hazardous liquid portion of this high TOC D001 waste to the hazardous waste treatment facility.

L. *Clarification of MACRO Treatment Standard in § 268.42, Table 3.* The treatment standard for radioactive lead (D008) solids is a required method of treatment: Macroencapsulation (MACRO). A question has come up about the applicability of this treatment standard to mixed hazardous wastes inside containers made of elemental lead. The Agency's intent when developing this treatment standard was that the mixed hazardous waste inside the container should be removed and treated to meet applicable treatment standards. Only the radioactive elemental lead container (and not necessarily its contents) is subject to the

treatment standard specified as MACRO.

M. *Applicability of Mercury Wastewater Treatment Standards.* Clarification of how to apply treatment standards to wastes containing mercury in its elemental form is necessary, and is here included in today's rule. Concentrated elemental mercury is an inorganic liquid that is relatively insoluble in water. Significantly quantities of elemental mercury can be suspended in a mixture with aqueous wastes, however, such that the elemental mercury would not be considered a suspended "solid". Because of this, aqueous wastes with suspensions of elemental mercury, and waste elemental mercury itself, seem to qualify as wastewaters under the definitions in § 268.2(f) because they contain less than 1% total organic carbon and less than 1% total suspended solids.

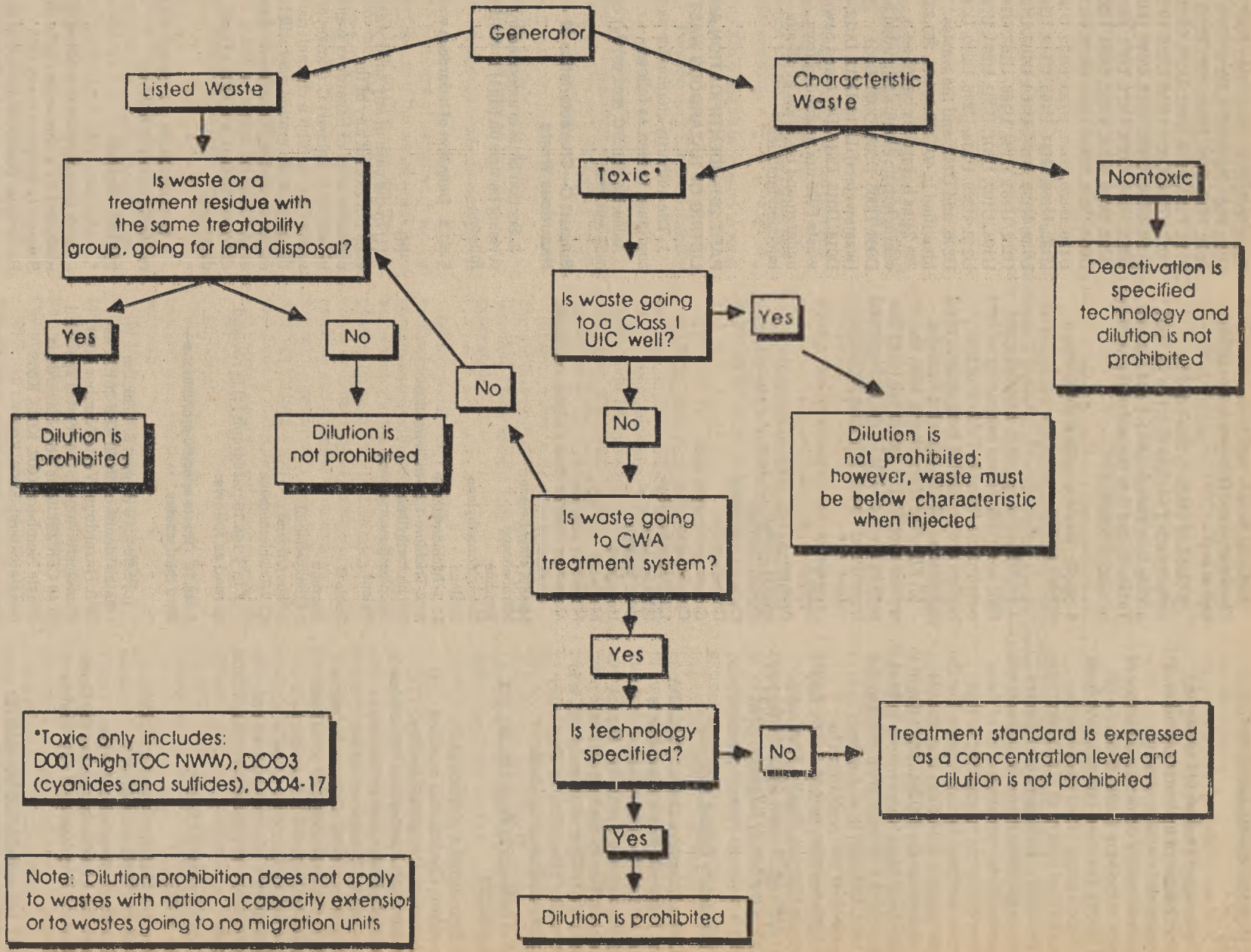
In the Third Third final rule, EPA established recovery (i.e., roasting or retorting) as BDAT for nonwastewater forms of mercury wastes that contain greater than 260 mg/kg of mercury. The primary purpose of these processes is the recovery of mercury in its elemental form. It is often difficult to distinguish between the mercury present in wastes in its elemental form versus in its soluble ionic form. The Agency, therefore, is clarifying that any wastes that contain greater than 260 mg/kg of total mercury, but that otherwise appear to meet the definition of wastewaters, are, in fact, classified as nonwastewaters that must be recovered. This is consistent with the fact that the 260 mg/kg level far exceeds the solubility of elemental mercury in water. Aqueous suspensions of elemental mercury that contain this much mercury should be treated by simple physical separation technologies such as filtration, decantation, and centrifugation, with subsequent recovery of the elemental mercury.

Any wastes containing less than 260 mg/kg total mercury and that otherwise meet the definition of wastewaters in § 268.2(f) are considered to be mercury wastewaters and, as such, require wastewater treatment to the applicable mercury wastewater levels. The residues from these treatment processes would need to be evaluated for applicability of the wastewater or nonwastewater standards for mercury. It is likely that some residues will contain sufficient total suspended "solids" to be clearly classified as nonwastewaters.

N. *The Dilution Prohibition.* The Agency has received a number of questions regarding different aspects of the dilution prohibition. In response, a chart has been developed that should help those in the regulated community to understand when this prohibition could apply. It is being included in today's rule as a convenience to the reader.

BILLING CODE 6560-50-M

DILUTION



BILLING CODE 6560-50-C

IV. Rationale for Immediate Effective Date

Today's notice does not create any new regulatory requirements; rather, it restates and clarifies existing requirements by correcting a number of errors in the June 1, 1990 final rule (55 FR 22520). For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 9903(b)(3), to provide for an immediate effective date. In addition, there already was full opportunity to comment on all of these issues during the rulemaking so that further comment is unnecessary. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to promulgate today's corrections in final form and that there is good cause under 5 U.S.C. 533(d)(3) to waive the requirement that regulations be published at least 30 days before they become effective. Finally, EPA notes that although it is not withdrawing any existing regulatory language, all of today's revisions operate prospectively.

V. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. Due to the nature of this regulation (technical amendment), it is not "major"; therefore, no Regulatory Impact Analysis is required.

List of Subjects in Parts 148, 261, 262, 268, and 270

Administrative practice and procedure, Confidential business information, Designated facility, Environmental protection, Hazardous materials, Hazardous materials transporting, Hazardous waste, Intergovernmental relations, Labeling, Manifests, Packaging and containers, Recycling, Reportable quantities, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

Dated: November 27, 1990.

Mary A. Gade,

Acting Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

2. Section 148.10 is amended by redesignating paragraph (c) as (e), and adding new paragraphs (c) and (d), and Tables A and B to the end of the section to read as follows:

§ 148.10 Waste specific prohibitions—solvent wastes.

* * * * *

(c) Effective August 8, 1990, all spent F002 and F005 wastes containing solvent constituents listed in Table B of this section are prohibited from underground injection at off-site injection facilities.

(d) Effective November 8, 1990, the wastes specified in paragraph (c) of this section are prohibited from underground injection at on-site injection facilities.

(e) * * *

Table A

Acetone
n-Butyl alcohol
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Cresols and cresylic acid
Cyclohexanone
1,2-dichlorobenzene
Ethyl acetate
Ethyl benzene
Isobutanol
Methanol
Methylene chloride
Methylene chloride (from the pharmaceutical industry)
Methyl ethyl ketone
Nitrobenzene
Pyridine
Tetrachloroethylene
Toulene
1,1,1-Trichloroethane
1,2,2-Trichloro-1,2,2-trifluoroethane
Trichloroethylene
Trichlorofluoromethane
Xylene

Table B

Benzene
2-Ethoxyethanol
2-Nitropropane
1,1,2-Trichloroethane

3. In § 148.16 paragraph (c) is revised to read as follows:

§ 148.16 Waste specific prohibitions—third third wastes.

* * * * *

(c) Effective August 8, 1990, the wastes identified in 40 CFR 261.31 as EPA Hazardous Waste Number F039 (nonwastewaters); the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K002, K003, K005 (wastewaters), K006, K007 (wastewaters), K026, K032, K033, K034, and K100 (wastewaters); the wastes specified in 40 CFR 261.33 as P006, P009, P017, P022, P023, P024, P028, P031, P033, P034, P038, P042, P045, P046, P047, P051, P056, P064, P065, P073, P075, P076, P077, P078, P088, P093, P095, P096, P101, P103, P116, P118, P119, U001, U004, U006, U017, U024, U027, U030, U033, U034, U038, U039, U042, U045, U048, U052, U055, U056, U068, U071, U072, U075, U076, U079, U081, U082, U084, U085, U090, U091, U096, U112, U113, U117, U118, U120, U121, U123, U125, U126, U132, U136, U141, U145, U148, U152, U153, U156, U160, U166, U167, U181, U182, U183, U184, U186, U187, U191, U194, U197, U201, U202, U204, U207, U222, U225, U234, U236, U240, U243, U246, and U247; and the wastes identified in 40 CFR 261.21, 261.23 or 261.24 as hazardous based on a characteristic alone, designated as D001, D004, D005, D006, D008, D009 (wastewaters), D010, D011, D012, D013, D014, D015, D016, D017, and newly listed waste F025 are prohibited from underground injection at off-site injection facilities.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

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

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

Subpart C—Characteristics of Hazardous Waste

2. Section 261.3 is amended by revising paragraph (d)(1) to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(d) * * *

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in Subpart C. (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of Part 268, even if they no longer exhibit a characteristic at the point of land disposal.)

* * * * *

3. Section 261.20, paragraph (b) is revised to read as follows:

§ 261.20 General.

* * * * *

(b) A hazardous waste which is identified by a characteristic in this Subpart is assigned every EPA Hazardous Waste Number that is applicable as set forth in this Subpart. This number must be used in complying with the notification requirements of section 3010 of the Act and all

applicable recordkeeping and reporting requirements under Parts 262 through 265, 268, and 270 of this chapter.

* * * * *

4. Section 261.31(a), the table is amended by revising the entry for F039 to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Subpart D of this Part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.)	(T)

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

2. Note 2 in § 262.10 is revised to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

Note 2: A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in 40 CFR parts 264, 265, 266, 268, and 270.

3. Section 262.11 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 262.11 Hazardous waste determination.

* * * * *

(c) For purposes of compliance with 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either:

* * * * *

4. Section 262.34 is amended by revising paragraph (d)(4) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(d) * * *

(4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of subpart C of part 265, the requirements of 40 CFR 268.7(a)(4); and

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.2 is amended by revising paragraphs (d), (f)(1), (f)(2), and (g) to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(d) *Nonwastewaters* are wastes that do not meet the criteria for wastewaters in paragraph (f) of this section.

* * * * *

(f) * * *

(1) *F001, F002, F003, F004, F005, wastewaters* are solvent-water mixtures that contain less than 1% by weight TOC or less than 1% by weight total F001, F002, F003, F004, F005 solvent constituents listed in § 268.41, Table CCWE.

(2) *K011, K013, K014 wastewaters* contain less than 5% by weight TOC and less than 1% by weight TSS, as generated.

* * * * *

(g) *Inorganic Solid Debris* means nonfriable inorganic solids contaminated with D004–D011 hazardous wastes that are incapable of passing through a 9.5 mm standard sieve; and that require cutting, or crushing and grinding in mechanical sizing equipment prior to stabilization; and, are limited to the following inorganic or metal materials:

(1) Metal slags (either dross or scoria);

(2) Glassified slag;

(3) Glass;

(4) Concrete (excluding cementitious or pozzolanic stabilized hazardous wastes);

(5) Masonry and refractory bricks;

(6) Metal cans, containers, drums, or tanks;

(7) Metal nuts, bolts, pipes, pumps, valves, appliances, or industrial equipment;

(8) Scrap metal as defined in 40 CFR 261.1(c)(6);

3. Section 268.7 is amended by redesignating paragraphs (a)(6) through (a)(9) as paragraphs (a)(7) through (a)(10); by revising paragraphs (a) introductory text, (a)(1)(ii), (a)(2)(i)(B), (a)(3)(ii), (a)(7), (b)(4)(ii), and the section heading; and by adding paragraph (a)(6) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32 of this part, if a generator's waste is listed in 40 CFR part 261, subpart D, the generator must test his waste, or test an extract using the test method described in part 261, appendix II, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. Except as specified in § 268.32 of this part, if a generator's waste exhibits one or more of the characteristics set out at 40 CFR part 261, subpart C, the generator must test an extract using the test method described in appendix IX of this part, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this Part.

(1) * * *

(ii) The corresponding treatment standards for wastes F001–F005, F039, and wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 *reactive cyanides*), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification.

* * * * *

(2) * * *

(i) * * *

(B) The corresponding treatment standards for wastes F001–F005, F039, and wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 *reactive cyanides*), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification.

* * * * *

(3) * * *

(ii) The corresponding treatment standards for wastes F001–F005, F039, and wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 *reactive cyanides*), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be listed on the notification.

* * * * *

(6) If a generator determines that he is managing a restricted waste that is excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation, under 40 CFR 261.2–261.6 subsequent to the point of generation, he must place a one-time notice stating such generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from Subtitle C regulation, and the disposition of the waste, in the facility's file.

(7) Generators must retain on-site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to this section for at least five years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal. The five year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. The requirements of this paragraph apply to solid wastes even when the hazardous characteristic is removed prior to disposal, or when the waste is excluded from the definition of hazardous or solid waste under 40 CFR 261.2–261.6, or exempted from Subtitle C regulation, subsequent to the point of generation.

* * * * *

(b) * * *

(4) * * *

(ii) The corresponding treatment standards for wastes F001–F005, F039, and wastes prohibited pursuant to § 268.32 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, the applicable subdivisions made within a waste code based on waste-specific criteria (such as D003 *reactive cyanides*), and the CFR section(s) and paragraph(s) where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in § 268.42, the applicable five-letter treatment code found in Table 1 of § 268.42 (e.g., INCIN, WETOX) also must be included on the notification.

* * * * *

4. Section 268.9 is amended by revising paragraphs (a) and (d)(1)(ii) to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. For purposes of part 268, the waste will carry the waste code for any applicable listing under 40 CFR part 261, subpart D. In addition, the waste will carry one or more of the waste codes under 40 CFR part 261, subpart C, where the waste exhibits a characteristic, except in the case when the treatment standard for the waste code listed in 40 CFR part 261, subpart D operates in lieu of the standard for the waste code under 40 CFR part 261, subpart C, as specified in paragraph (b) of this section.

* * * * *

(d) * * *

(1) * * *

(ii) A description of the waste as initially generated, including the applicable EPA Hazardous Waste Number(s), the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) category, and the subdivisions made within a waste code based on waste-specific criteria (such as D003 *reactive cyanides*).

* * * * *

§ 268.10 [Amended]

5. Section 268.10 is amended by removing the entries for the following hazardous wastes: K048, K049, K050, K051, and K052.

6. Section 268.12(a) is amended by adding the following hazardous wastes in alphanumeric order:

§ 268.12 Identification of wastes to be evaluated by May 8, 1990.

(a) * * *

§ 261.32 Wastes.

* * * * *

K048—Dissolved air flotation (DAF) float from the petroleum refining industry.

K049—Slop oil emulsion solids from the petroleum refining industry.

K050—Heat exchanger bundle cleaning sludge from the petroleum refining industry.

K051—API separator sludge from the petroleum refining industry.

K052—Tank bottoms (leaded) from the petroleum refining industry.

* * * * *

Subpart C—Prohibitions on Land Disposal

7. Section 268.33 is amended by revising paragraph (b) to read as follows:

§ 268.33 Waste specific prohibitions—First Third wastes.

* * * * *

(b) Effective August 8, 1990, the waste specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K071 is prohibited from land disposal.

* * * * *

8. Section 268.35 is amended by revising paragraphs (a), (c), (d), and (e) to read as follows:

§ 268.35 Waste specific prohibitions—Third Third wastes.

(a) Effective August 8, 1990, the following wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F002 (1,1,2-trichloroethane), F005 (benzene), F005 (2-ethoxy ethanol) F005 (2-nitropropane), F006 (wastewaters), F019, F025, and F039 (wastewaters); the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K002; K003; K004

(wastewaters); K005 (wastewaters); K006; K008 (wastewaters); K011 (wastewaters); K013 (wastewaters); K014 (wastewaters); K015 (nonwastewaters); K017; K021 (wastewaters); K022 (wastewaters); K025 (wastewaters); K026; K029 (wastewaters); K031 (wastewaters); K032; K033; K034; K035; K041; K042; K046 (wastewaters, reactive nonwastewaters); K048 (wastewaters); K049 (wastewaters); K050 (wastewaters); K051 (wastewaters); K052 (wastewaters); K060 (wastewaters); K061 (wastewaters) and (high zinc subcategory > 15% zinc); K069 (wastewaters, calcium sulfate nonwastewaters); K073, K083; K084 (wastewaters); K085; K095 (wastewaters); K096 (wastewaters); K097; K098; K100 (wastewaters); K101 (wastewaters); K102 (wastewaters); K105; and K106 (wastewaters); the wastes specified in 40 CFR 261.33(e) as EPA Hazardous Waste Numbers P001; P002; P003; P004; P005; P006; P007; P008; P009; P010 (wastewaters); P011 (wastewaters); P012 (wastewaters); P014; P015; P016; P017; P018; P020; P022; P023; P024; P026; P027; P028; P031; P033; P034; P036 (wastewaters); P037; P038 (wastewaters); P042; P045; P046; P047; P048; P049; P050; P051; P054; P056; P057; P058; P059; P060; P064; P065 (wastewaters); P066; P067; P068; P069; P070; P072; P073; P075; P076; P077; P078; P081; P082; P084; P088; P092 (wastewaters); P093; P095; P096; P101; P102; P103; P105; P108; P110; P112; P113; P114; P115; P116; P118; P119; P120; P122; and P123; and the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Numbers U001; U002; U003; U004; U005; U006; U007; U008; U009; U010; U011; U012; U014; U015; U016; U017; U018; U019; U020; U021; U022; U023; U024; U025; U026; U027; U029; U030; U031; U032; U033; U034; U035; U036; U037; U038; U039; U041; U042; U043; U044; U045; U046; U047; U048; U049; U050; U051; U052; U053; U055; U056; U057; U059; U060; U061; U062; U063; U064; U066; U067; U068; U070; U071; U072; U073; U074; U075; U076; U077; U078; U079; U080; U081; U082; U083; U084; U085; U086; U089; U090; U091; U092; U093; U094; U095; U096; U097; U098; U099; U101; U103; U105; U106; U108; U109; U110; U111; U112; U113; U114; U115; U116; U117; U118; U119; U120; U121; U122; U123; U124; U125; U126; U127; U128; U129; U130; U131; U132; U133; U134; U135; U136 (wastewaters); U137; U138; U140; U141; U142; U143; U144; U145; U146; U147; U148; U149; U150; U151 (wastewaters); U152; U153; U154; U155; U156; U157; U158; U159; U160; U161; U162; U163; U164; U165; U166; U167; U168; U169; U170; U171; U172; U173; U174; U176; U177; U178; U179; U180; U181; U182; U183; U184; U185; U186; U187; U188; U189; U191; U192; U193; U194; U196; U197; U200; U201; U202; U203; U204; U205; U206; U207; U208; U209; U210; U211; U213; U214; U215; U216; U217; U218; U219; U220; U222; U225; U226; U227; U228; U234; U236; U237; U238; U239; U240; U243; U244; U246; U247; U248; U249; and the following wastes identified as hazardous based on a characteristic alone: D001; D002, D003, D004 (wastewaters), D005, D006; D007; D008 (except for lead materials stored before secondary smelting), D009 (wastewaters), D010, D011, D012, D013, D014, D015, D016, and D017 are prohibited from land disposal.

* * * * *

(c) Effective May 8, 1992, the following waste specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F039 (nonwastewaters); the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K031 (nonwastewaters); K084 (nonwastewaters); K101 (nonwastewaters); K102 (nonwastewaters); K106 (nonwastewaters); the wastes specified in 40 CFR 261.33(e) as EPA Hazardous Waste Numbers P010 (nonwastewaters); P011 (nonwastewaters); P012 (nonwastewaters); P036 (nonwastewaters); P038 (nonwastewaters); P065 (nonwastewaters); P087; and P092 (nonwastewaters); the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Numbers U136 (nonwastewaters); and U151 (nonwastewaters); the following wastes identified as hazardous based on a characteristic alone: D004 (nonwastewaters); D008 (lead materials stored before secondary smelting); and D009 (nonwastewaters); inorganic solid debris as defined in 40 CFR 268.2(g) (which also applies to chromium refractory bricks carrying the EPA Hazardous Waste Numbers K048–K052); and RCRA hazardous wastes that contain naturally occurring radioactive materials are prohibited from land disposal.

(d) Effective May 8, 1992, hazardous wastes listed in 40 CFR 268.10, 268.11, and 268.12 that are mixed radioactive/hazardous wastes, and soil or debris contaminated with hazardous wastes listed in 40 CFR 268.10, 268.11, and 268.12 that are mixed radioactive/hazardous wastes, are prohibited from land disposal.

(e) Effective May 8, 1992, the wastes specified in this section having a treatment standard in Subpart D of this Part based on incineration, mercury retorting, vitrification, acid leaching followed by chemical precipitation, or thermal recovery of metals, and which are contaminated soil or debris, are prohibited from land disposal.

* * * * *

Subpart D—Treatment Standards

9. Section 268.40 is amended by revising paragraph (a) to read as follows:

§ 268.40 Applicability of treatment standards.

(a) A restricted waste identified in § 268.41 may be land disposed only if an extract of the waste or of the treatment residue of the waste developed using the test method in Appendix II of part 261 does not exceed the value shown in Table CCWE of § 268.41 for any hazardous constituent listed in Table CCWE for that waste, with the following exceptions: D004, D008, K031, K084, K101, K102, P010, P011, P012, P036, P038, and U136. These wastes may be land disposed only if an extract of the waste or of the treatment residue of the waste developed using either the test method in 40 CFR part 261, appendix II, or the test method in appendix IX of this part, does not exceed the concentrations shown in Table CCWE of § 268.41 for any hazardous constituent listed in Table CCWE for that waste.

* * * * *

10. Table CCWE in § 268.41(a) is revised to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

268.41 Table CCWE.—Constituent Concentrations in Waste Extract

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/l)	Notes
D004	NA	Table CCW in 268.43.	Arsenic	7440-38-2	NA		5.0	(1)
D005	NA	Table CCW in 268.43.	Barium	7440-39-3	NA		100	
D006	NA	Table CCW in 268.43.	Cadmium	7440-43-9	NA		1.0	
D007	NA	Table CCW in 268.43.	Chromium (Total)	7440-47-32	NA		5.0	
D008	NA	Table CCW in 268.43.	Lead	7439-92-1	NA		5.0	(1)
D009 (Low Mercury Subcategory—less than 260 mg/kg Mercury).	NA	Table 2 in 268.42 and Table CCW in 268.43.	Mercury	7439-97-6	NA		0.20	
D010	NA	Table CCW in 268.43.	Selenium	7782-49-2	NA		5.7	
D011	NA	Table CCW in 268.43.	Silver	7440-22-4	NA		5.0	
F001-F005 spent solvents.	NA	Table 2 in 268.42 and Table CCW in 268.43.	Acetone	67-64-1	0.05		0.59	
			n-Butyl alcohol	71-36-3	5.0		5.0	
			Carbon disulfide	75-15-0	1.05		4.81	
			Carbon tetrachloride	56-23-5	0.05		0.96	
			Chlorobenzene	108-90-7	0.15		0.05	
			Cresols (and cresylic acid)		2.82		0.75	
			Cyclohexanone	108-94-1	0.125		0.75	
			1,2-Dichlorobenzene	95-50-1	0.65		0.125	
			Ethyl acetate	141-78-6	0.05		0.75	
			Ethylbenzene	100-41-4	0.05		0.053	
			Ethyl ether	60-29-7	0.05		0.75	
			Isobutanol	78-83-1	5.0		5.0	
			Methanol	67-56-1	0.25		0.75	
			Methylene chloride	75-9-2	0.20		0.96	
			Methyl ethyl ketone	78-93-3	0.05		0.75	
			Methyl isobutyl ketone	108-10-1	0.05		0.33	
			Nitrobenzene	98-95-3	0.66		0.125	
			Pyridine	110-86-1	1.12		0.33	
			Tetrachloroethylene	127-18-4	0.079		0.05	
			Toluene	108-88-3	1.12		0.33	
			1,1,1-Trichloroethane	71-55-6	1.05		0.41	
			1,1,2-Trichloro- 1,2,2-Trifluorethane	76-13-1	1.05		0.96	
			Trichloroethylene	79-01-6	0.062		0.091	
			Trichlorofluoromethane	75-69-4	0.05		0.96	
			Xylene		0.05		0.15	
F006	NA	Table CCW in 268.43.	Cadmium	7440-43-9	NA		0.066	
			Chromium (Total)	7440-47-32	NA		5.2	
			Lead	7439-92-1	NA		0.51	
			Nickel	7440-02-0	NA		0.32	
			Silver	7440-22-4	NA		0.072	
F007	NA	Table CCW in 268.43.	Cadmium	7440-43-9	NA		0.066	
			Chromium (Total)	7440-47-32	NA		5.2	
			Lead	7439-92-1	NA		0.51	
			Nickel	7440-02-0	NA		0.32	
			Silver	7440-22-4	NA		0.072	
F008	NA	Table CCW in 268.43.	Cadmium	7440-43-9	NA		0.066	
			Chromium (Total)	7440-47-32	NA		5.2	
			Lead	7439-92-1	NA		0.51	
			Nickel	7440-02-0	NA		0.32	
			Silver	7440-22-4	NA		0.072	
F009	NA	Table CCW in 268.43.	Cadmium	7440-43-9	NA		0.066	
			Chromium (Total)	7440-47-32	NA		5.2	
			Lead	7439-92-1	NA		0.51	
			Nickel	7440-02-0	NA		0.32	
			Silver	7440-22-4	NA		0.072	
F011	NA	Table CCW in 268.43.	Cadmium	7440-43-9	NA		0.066	
			Chromium (Total)	7440-47-32	NA		5.2	
			Lead	7439-92-1	NA		0.51	
			Nickel	7440-02-0	NA		0.32	
			Silver	7440-22-4	NA		0.072	
F012	NA	Table CCW in 268.43.	Cadmium	7440-43-9	NA		0.066	
			Chromium (Total)	7440-47-32	NA		5.2	
			Lead	7439-92-1	NA		0.51	
			Nickel	7440-02-0	NA		0.32	
			Silver	7440-22-4	NA		0.072	
F019	NA	Table CCW in 268.43.	Chromium (Total)	7440-47-32	NA		5.2	

268.41 TABLE CCWE.—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/l)	Notes
F020–F023 and F026–F028 dioxin containing wastes [2].	NA	NA	HxCDD-All Hexachloro-dibenzo-p-dioxins.		<1 ppb		<1 ppb	
			HxCDF-All Hexachloro-dibenzofurans.		<1 ppb		<1 ppb	
			PeCDD-All Pentachloro-dibenzo-p-dioxins.		<1 ppb		<1 ppb	
			PeCDF-All Pentachloro-dibenzofurans.		<1 ppb		<1 ppb	
			TCDD-All Tetrachloro-dibenzo-p-dioxins.		<1 ppb		<1 ppb	
			TCDF-All Tetrachloro-dibenzofurans.					
			2,4,5-Trichlorophenol	95–95–4	<1 ppb		<1 ppb	
			2,4,6-Trichlorophenol	88–06–2	<0.05 ppm		<0.05 ppm	
			2,3,4,6-Tetrachlorophenol	58–90–2	<0.05 ppm		<0.05 ppm	
			Pentachlorophenol	87–86–5	<0.01 ppm		<0.01 ppm	
F024	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		0.073	
			Lead	7439–92–1	NA		[Reserved]	
			Nickel	7440–02–0	NA		0.088	
F039	NA	Table CCW in 268.43.	Antimony	7440–36–0	NA		0.23	
			Arsenic	7440–38–2	NA		5.0	
			Barium	7440–39–3	NA		52	
			Cadmium	7440–43–9	NA		0.066	
			Chromium (Total)	7440–47–32	NA		5.2	
			Lead	7439–92–1	NA		0.51	
			Mercury	7439–97–6	NA		0.025	
			Nickel	7440–02–0	NA		0.32	
			Selenium	7782–49–2	NA		5.7	
			Silver	7440–22–4	NA		0.072	
K001	NA	Table CCW in 268.43.	Lead	7439–92–1	NA		0.51	
K002	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		0.094	
			Lead	7439–92–1	NA		0.37	
K003	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		0.094	
			Lead	7439–92–1	NA		0.37	
K004	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		0.094	
			Lead	7439–92–1	NA		0.37	
K005	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		0.094	
			Lead	7439–92–1	NA		0.37	
K006 (anhydrous).	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		0.094	
			Lead	7439–92–1	NA		0.37	
K006 (hydrated)	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		5.2	
K007	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		0.094	
			Lead	7439–92–1	NA		0.37	
K008	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		0.094	
			Lead	7439–92–1	NA		0.37	
K015	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		1.7	
			Nickel	7440–02–0	NA		0.2	
K021	NA	Table CCW in 268.43.	Antimony	7440–36–0	NA		0.23	
K022	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		5.2	
			Nickel	7440–02–0	NA		0.32	
K028	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		0.073	
			Lead	7439–92–1	NA		0.021	
			Nickel	7440–02–0	NA		0.068	
K031	NA	Table CCW in 268.43.	Arsenic	7440–38–2	NA		5.6	[1]
K046	NA	Table CCW in 268.43.	Lead	7439–92–1	NA		0.19	
K048	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		1.7	
			Nickel	7440–02–0	NA		0.20	
K049	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		1.7	
			Nickel	7440–02–0	NA		0.20	
K050	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		1.7	
			Nickel	7440–02–0	NA		0.20	
K051	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		1.7	
			Nickel	7440–02–0	NA		0.20	
K052	NA	Table CCW in 268.43.	Chromium (Total)	7440–47–32	NA		1.7	
			Nickel	7440–02–0	NA		0.20	
K061 (Low Zinc Subcategory—less than 15% Total Zinc).	NA	Table CCW in 268.43.	Cadmium	7440–43–9	NA		0.14	
			Chromium (Total)	7440–47–32	NA		5.2	
			Lead	7439–92–1	NA		0.24	
			Nickel	7440–02–0	NA		0.32	

268.41 TABLE CCWE.—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/l)	Notes
K061 (High Zinc Subcategory—greater than 15% Total Zinc)—Effective until August 7th 1991).	NA	Table CCW in 268.43.	Cadmium	7440-43-9	NA		0.14	
			Chromium (Total)	7440-47-32	NA		5.2	
			Lead	7439-92-1	NA		0.24	
			Nickel	7440-02-0	NA		0.32	
K062	NA	Table CCW in 268.43.	Chromium (Total)	7440-47-32	NA		0.094	
			Lead	7439-92-1	NA		0.37	
K069 (Calcium Sulfate Subcategory).	NA	Table 2 in 268.42 and Table CCW in 268.43.	Cadmium	7440-43-9	NA		0.14	
			Lead	7439-92-1	NA		0.24	
K071	NA	Table CCW in 268.43.	Mercury	7439-97-6	NA		0.025	
K083	NA	Table CCW in 268.43.	Nickel	7440-02-2	NA		0.088	
K084	NA	Table CCW in 268.43.	Arsenic	7440-38-2	NA		5.6	(1)
K086	NA	Table CCW in 268.43.	Chromium (Total)	7440-47-32	NA		0.094	
			Lead	7439-92-1	NA		037	
K087	NA	Table CCW in 268.43.	Lead	7439-92-1	NA		0.51	
K100	NA	Table CCW in 268.43.	Cadmium	7440-43-9	NA		0.066	
			Chromium (Total)	7440-47-32	NA		5.2	
			Lead	7439-92-1	NA		0.51	
K101	NA	Table CCW in 268.43.	Arsenic	7440-38-2	NA		5.6	(1)
K102	NA	Table CCW in 268.43.	Arsenic	7440-38-2	NA		5.6	(1)
K106 (Low Mercury Subcategory—less than 260 mg/kg Mercury—residues from RMERC).	NA	Table 2 in 268.42 and Table CCW in 268.43.	Mercury	7439-97-6	NA		0.020	
K106 (Low Mercury Subcategory—less than 260 mg/kg Mercury—that are not residues from RMERC).	NA	Table 2 in 268.42 and Table CCW in 268.43.	Mercury	7439-97-6	NA		0.025	
K115	NA	Table CCW in 268.43.	Nickel	7440-02-0	NA		0.32	
P010	Arsenic acid	Table CCW in 268.43.	Arsenic	7440-38-2	NA		5.6	(1)
P011	Arsenic pentoxide.	Table CCW in 268.43.	Arsenic	7440-38-2	NA		5.6	(1)
P012	Arsenic trioxide	Table CCW in 268.43.	Arsenic	7440-38-2	NA		5.6	(1)
P013	Barium cyanide	Table CCW in 268.43.	Barium	7440-39-3	NA		52	
P036	Dichlorophenylarsine.	Table CCW in 268.43.	Arsenic	7440-38-2	NA		5.6	(1)
P038	Diethylarsine	Table CCW in 268.43.	Arsenic	7440-38-2	NA		5.6	(1)
P065 (Low Mercury Subcategory—Less than 260 mg/kg Mercury—residues from RMERC).	Mercury fulminate.	Table 2 in 268.42 and Table CCW in 268.43.	Mercury	7439-97-6	NA		0.20	

268.41 TABLE CCWE.—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/l)	Notes
P065 (Low Mercury Subcategory—Less than 260 mg/kg Mercury—incinerator residues (and are not residues from RMERC)).	Mercury fulminate.	Table 2 in 268.42 and Table CCW in 268.43.	Mercury	7439-97-6	NA		0.025	
P073	Nickel carbonyl	Table CCW in 268.43.	Nickel	7440-02-0	NA		0.32	
P074	Nickel cyanide	Table CCW in 268.43.	Nickel	7440-02-0	NA		0.32	
P092 (Low Mercury Subcategory—Less than 260 mg/kg Mercury—residues from RMERC).	Phenyl mercury acetate.	Table 2 in 268.42 and Table CCW in 268.43.	Mercury	7439-97-6	NA		0.20	
P092 (Low Mercury Subcategory—Less than 260 mg/kg Mercury—incinerator residues (and are not residues from RMERC)).	Phenyl mercury acetate.	Table 2 in 268.42 and Table CCW in 268.43.	Mercury	7439-97-6	NA		0.025	
P099	Potassium silver cyanide.	Table CCW in 268.43.	Silver	7440-22-4	NA		0.072	
P103	Selenourea	Table CCW in 268.43.	Selenium	7782-49-2	NA		5.7	
P104	Silver cyanide	Table CCW in 268.43.	Silver	7440-22-4	NA		0.072	
P110	Tetraethyl lead	Table CCW in 268.43.	Lead	7439-92-1	NA		0.51	
P114	Thallium selenite	Table CCW in 268.43.	Selenium	7782-49-2	NA		5.7	
U032	Calcium chromate.	Table CCW in 268.43.	Chromium (Total)	7440-47-32	NA		0.094	
U051	Creosote	Table CCW in 268.43.	Lead	7439-92-1	NA		0.51	
U136	Cacodylic acid	Table CCW in 268.43.	Arsenic	7440-38-2	NA		5.6	(1)
U144	Lead acetate	Table CCW in 268.43.	Lead	7439-92-1	NA		0.51	
U145	Lead phosphate	Table CCW in 268.43.	Lead	7439-92-1	NA		0.51	
U146	Lead subacetate	Table CCW in 268.43.	Lead	7439-92-1	NA		0.51	
U151 (Low Mercury Subcategory—Less than 260 mg/kg Mercury—residues from RMERC).	Mercury	Table CCW in 268.43 and Table 2 in 268.42.	Mercury	7439-97-6	NA		0.20	
U151 (Low Mercury Subcategory—Less than 260 mg/kg Mercury—that are not residues from RMERC.	Mercury	Table CCW in 268.43 and Table 2 in 268.42.	Mercury	7439-97-6	NA		0.025	
U204	Selenium dioxide	Table CCW in 268.43.	Selenium	7782-49-2	NA		5.7	

268.41 TABLE CCWE.—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/l)	Notes
U205	Selenium sulfide	Table CCW in 268.43.	Selenium	7782-49-2	NA		5.7	

[1] These treatment standards have been based on EP Leachate analysis but this does not preclude the use of TCLP analysis.
[2] These waste codes are not subcategorized into wastewaters and nonwastewaters.
Note: NA means Not Applicable.

* * * * *

11. In § 268.42 paragraph (a)(2), Table 1, Table 2, and Table 3 in paragraph (a) are revised, and paragraph (a)(3) is added preceding Tables 1–3 to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

(a) * * *

(2) Nonliquid hazardous wastes containing halogenated organic compounds (HOCs) in total concentration greater than or equal to 1,000 mg/kg and liquid HOC-containing wastes that are prohibited under § 268.32(e)(1) of this part must be incinerated in accordance with the requirements of 40 CFR part 264, subpart O, or 40 CFR part 265, subpart O. These treatment standards do not apply where the waste is subject to a part 268, subpart D, treatment standard for a specific HOC (such as a hazardous waste chlorinated solvent for which a treatment standard is established under § 268.41(a)).

(3) A mixture consisting of wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, and *de minimis* losses of materials from manufacturing operations in which these materials are used as raw materials or are produced as products in the manufacturing process, and that meet the criteria of the D001 ignitable liquids containing greater than 10% total organic constituents (TOC) subcategory, is subject to the DEACT treatment standard described in Table 1 of this section. For purposes of this paragraph, *de minimis* losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks from process equipment, storage tanks, or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges.

TABLE 1.—TECHNOLOGY CODES AND DESCRIPTION OF TECHNOLOGY-BASED STANDARDS

Technology code	Description of technology-based standards
ADGAS:	Venting of compressed gases into an absorbing or reacting media (i.e., solid or liquid)—venting can be accomplished through physical release utilizing valves/piping; physical penetration of the container; and/or penetration through detonation.
AMLGM:	Amalgamation of liquid, elemental mercury contaminated with radioactive materials utilizing inorganic reagents such as copper, zinc, nickel, gold, and sulfur that result in a nonliquid, semi-solid amalgam and thereby reducing potential emissions of elemental mercury vapors to the air.
BIODG:	Biodegradation of organics or non-metallic inorganics (i.e., degradable inorganics that contain the elements of phosphorus, nitrogen, and sulfur) in units operated under either aerobic or anaerobic conditions such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Carbon can often be used as an indicator parameter for the biodegradation of many organic constituents that cannot be directly analyzed in wastewater residues).
CARBN:	Carbon adsorption (granulated or powdered) of non-metallic inorganics, organo-metallics, and/or organic constituents, operated such that a surrogate compound or indicator parameter has not undergone breakthrough (e.g., Total Organic Carbon can often be used as an indicator parameter for the adsorption of many organic constituents that cannot be directly analyzed in wastewater residues). Breakthrough occurs when the carbon has become saturated with the constituent (or indicator parameter) and substantial change in adsorption rate associated with that constituent occurs.
CHOXD:	Chemical or electrolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combinations of reagents: (1) Hypochlorite (e.g. bleach); (2) chlorine; (3) chlorine dioxide; (4) ozone or UV (ultraviolet light) assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permangantes; and/or (9) other oxidizing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues). Chemical oxidation specifically includes what is commonly referred to as alkaline chlorination.
CHRED:	Chemical reduction utilizing the following reducing reagents (or waste reagents) or combinations of reagents: (1) Sulfur dioxide; (2) sodium, potassium, or alkali salts or sulfites, bisulfites, metabisulfites, and polyethylene glycols (e.g., NaPEG and KPEG); (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Halogens can often be used as an indicator parameter for the reduction of many halogenated organic constituents that cannot be directly analyzed in wastewater residues). Chemical reduction is commonly used for the reduction of hexavalent chromium to the trivalent state.
DEACT:	Deactivation to remove the hazardous characteristics of a waste due to is ignitability, corrosivity, and/or reactivity.
FSUBS:	Fuel substitution in units operated in accordance with applicable technical operating requirements.
HLVIT:	Vitrification of high level mixed radioactive wastes in units in compliance with all applicable radioactive protection requirements under control of the Nuclear Regulatory Commission.
IMERC:	Incineration of wastes containing organics and mercury in units operated in accordance with the technical operating requirements of 40 CFR part 264 subpart 0 and part 265 subpart 0. All wastewater and nonwastewater residues derived from this process must then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (e.g., High or Low Mercury Subcategories).
INCIN:	Incineration in units operated in accordance with the technical operating requirements of 40 CFR part 264 subpart 0 and part 265 subpart 0.
LLEXT:	Liquid-liquid extraction (often referred to as solvent extraction) of organics from liquid wastes into an immiscible solvent for which the hazardous constituents have a greater solvent affinity, resulting in an extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and a raffinate (extracted liquid waste) proportionately low in organics that must undergo further treatment as specified in the standard.
MACRO:	Macroencapsulation with surface coating materials such as polymeric organics (e.g. resins and plastics) or with a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media. Macroencapsulation specifically does not include any material that would be classified as a tank or container according to 40 CFR 260.10.

TABLE 1.—TECHNOLOGY CODES AND DESCRIPTION OF TECHNOLOGY-BASED STANDARDS—Continued

Technology code	Description of technology-based standards
NEUTR:	Neutralization with the following reagents (or waste reagents) or combinations of reagents: (1) Acids; (2) bases; or (3) water (including wastewaters) resulting in a pH greater than 2 but less than 12.5 as measured in the aqueous residuals.
NLDBR:	No land disposal based on recycling.
PRECP:	Chemical precipitation of metals and other inorganics as insoluble precipitates of oxides, hydroxides, carbonates, sulfides, sulfates, chlorides, flourides, or phosphates. The following reagents (or waste reagents) are typically used alone or in combination: (1) Lime (i.e., containing oxides and/or hydroxides of calcium and/or magnesium; (2) caustic (i.e., sodium and/or potassium hydroxides; (3) soda ash (i.e., sodium carbonate); (4) sodium sulfide; (5) ferric sulfate or ferric chloride; (6) alum; or (7) sodium sulfate. Additional floculating, coagulation or similar reagents/processes that enhance sludge dewatering characteristics are not precluded from use.
RBERY;	Thermal recovery of Beryllium.
RCGAS:	Recovery/reuse of compressed gases including techniques such as reprocessing of the gases for reuse/resale: filtering/adsorption of impurities; remixing for direct reuse or resale; and use of the gas as a fuel source.
RCORR:	Recovery of acids or bases utilizing one or more of the following recovery technologies: (1) Distillation (i.e., thermal concentration); (2) ion exchange; (3) resin or solid adsorption; (4) reverse osmosis; and/or (5) incineration for the recovery of acid—Note: this does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RLEAD:	Thermal recovery of lead in secondary lead smelters.
RMERC:	Retorting or roasting in a thermal processing unit capable of volatilizing mercury and subsequently condensing the volatilized mercury for recovery. The retorting or roasting unit (or facility) must be subject to one or more of the following: (a) a National Emissions Standard for Hazardous Air Pollutants (NESHAP) for mercury; (b) a Best Available Control Technology (BACT) or a Lowest Achievable Emission Rate (LAER) standard for mercury imposed pursuant to a Prevention of Significant Deterioration (PSD) permit; or (c) a state permit that establishes emission limitations (within meaning of section 302 of the Clean Air Act) for mercury. All wastewater and nonwastewater residues derived from this process must then comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (e.g., High or Low Mercury Subcategories).
RMETL:	Recovery of metals or inorganics utilizing one or more of the following direct physical/removal technologies: (1) Ion exchange; (2) resin or solid (i.e., zeolites) adsorption; (3) reverse osmosis; (4) chelation/solvent extraction; (5) freeze crystalization; (6) ultrafiltration and/or (7) simple precipitation (i.e., crystalization)—*Note:* This does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RORGS:	Recovery of organics utilizing one or more of the following technologies: (1) Distillation; (2) thin film evaporation; (3) steam stripping; (4) carbon adsorption; (5) critical fluid extraction; (6) liquid-liquid extraction; (7) precipitation/crystalization (including freeze crystallization); or (8) chemical phase separation techniques (i.e., addition of acids, bases, demulsifiers, or similar chemicals);—Note: this does not preclude the use of other physical phase separation techniques such as a decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the above listed recovery technologies.
RTHRM:	Thermal recovery of metals or inorganics from nonwastewaters in units identified as industrial furnaces according to 40 CFR 260.10 (1), (6), (7), (11), and (12) under the definition of "industrial furnaces".
RZINC:	Resmelting in high temperature metal recovery units for the purpose of recovery of zinc.
STABL:	Stabilization with the following reagents (or waste reagents) or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans (e.g., fly ash and cement kiln dust)—this does not preclude the addition of reagents (e.g., iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to overall reduce the leachability of the metal or inorganic.
SSTRP:	Steam stripping of organics from liquid wastes utilizing direct application of steam to the wastes operated such that liquid and vapor flow rates, as well as, temperature and pressure ranges have been optimized, monitored, and maintained. These operating parameters are dependent upon the design parameters of the unit such as, the number of separation stages and the internal column design. Thus, resulting in a condensed extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and an extracted wastewater that must undergo further treatment as specified in the standard.
WETOX:	Wet air oxidation performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., Total Organic Carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues).
WTRRX:	Controlled reaction with water for highly reactive inorganic or organic chemicals with precautionary controls for protection of workers from potential violent reactions as well as precautionary controls for potential emissions of toxic/ignitable levels of gases released during the reaction.

Note 1: When a combination of these technologies (i.e., a treatment train) is specified as a single treatment standard, the order of application is specified in § 268.42, Table 2 by indicating the five letter technology code that must be applied first, then the designation "fb." (an abbreviation for "followed by"), then the five letter technology code for the technology that must be applied next, and so on.

Note 2: When more than one technology (or treatment train) are specified as *alternative* treatment standards, the five letter technology codes (or the treatment trains) are separated by a semicolon (;) with the last technology preceded by the word "OR". This indicates that any one of these BDAT technologies or treatment trains can be used for compliance with the standard.

268.42 TABLE 2.—TECHNOLOGY-BASED STANDARDS BY RCRA WASTE CODE

Waste code	See also	Waste descriptions and/or treatment subcategory	CAS No. for regulated hazardous constituents	Technology code	
				Wastewaters	Nonwastewaters
D001	NA	Ignitable Liquids based on 261.21(a)(1)—Wastewaters.	NA	DEACT	NA.
D001	NA	Ignitable Liquids based on 261.21(a)(1)—Low TOC Ingitable Liquids Subcategory—Less than 10% total organic carbon.	NA	NA	DEACT.
D001	NA	Ignitable Liquids based on 261.21(a)(1)—High TOC Ingitable Liquids Subcategory—Greater than or equal to 10% total organic carbon.	NA	NA	FSUBS; RORGS; or INCIN.
D001	NA	Ignitable compressed gases based on 261.21(a)(3).	NA	NA	DEACT.[2]
D001	NA	Ignitable reactives based on 261.21(a)(2).	NA	NA	DEACT.
D001	NA	Oxidizers based on 261.21(a)(4)	NA	DEACT	DEACT.

268.42 TABLE 2.—TECHNOLOGY-BASED STANDARDS BY RCRA WASTE CODE—Continued

Waste code	See also	Waste descriptions and/or treatment subcategory	CAS No. for regulated hazardous constituents	Technology code	
				Wastewaters	Nonwastewaters
D002	NA	Acid subcategory based on 261.22(a)(1).	NA	DEACT	DEACT.
D002	NA	Alkaline subcategory based on 261.22(a)(1).	NA	DEACT	DEACT.
D002	NA	Other corrosives based on 261.22(a)(2).	NA	DEACT	DEACT.
D003	NA	Reactive sulfides based on 261.23(a)(5).	NA	DEACT (may not be diluted)	DEACT (may not be diluted).
D003	NA	Explosives based on 261.23(a)(6), (7), and (8).	NA	DEACT	DEACT.
D003	NA	Water reactives based on 261.23(a)(2), (3), and (4).	NA	NA	DEACT.
D003	NA	Other reactives based on 261.23(a)(1).	NA	DEACT	DEACT.
D006	NA	Cadmium containing batteries	7440-43-9	NA	RTHRM.
D008	NA	Lead acid batteries (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80.).	7439-92-1	NA	RLEAD.
D009	Table CCWE in 268.41 and Table CCW in 268.43.	Mercury: (High Mercury Subcategory—greater than or equal to 260 mg/kg total Mercury—contains mercury and organics (and are not incinerator residues)).	7439-97-6	NA	IMERC; or RMERC.
D009	Table CCWE in 268.41 and Table CCW in 268.43.	Mercury: (High Mercury Subcategory—greater than or equal to 260 mg/kg total Mercury—inorganics (including incinerator residues and residues from RMERC)).	7439-97-6	NA	RMERC.
D012	Table CCW in 268.43	Endrin	72-20-8	BIODG; or INCIN	NA.
D013	Table CCW in 268.43	Lindane	58-89-9	CARBN; or INCIN	NA.
D014	Table CCW in 268.43	Methoxychlor	72-43-5	WETOX; or INCIN	NA.
D015	Table CCW in 268.43	Toxaphene	8001-35-1	BIODG; or INCIN	NA.
D016	Table CCW in 268.43	2,4-D	94-75-7	CHOXD; BIODG; or INCIN	NA.
D017	Table CCW in 268.43	2,4,5-TP	93-72-1	CHOXD; or INCIN	NA.
F005	Table CCWE in 268.41 and Table CCW in 268.43.	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN
F005	Table CCWE in 268.41 and Table CCW in 268.43.	2-Ethoxyethanol	110-80-5	BIODG; or INCIN	INCIN.
F024	Table CCWE in 268.41 and Table CCW in 268.43.		NA	INCIN	INCIN.
K025	NA	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	NA	LLEXT fb SSTRP fb CARBN; or INCIN.	INCIN.
K026	NA	Stripping still tails from the production of methyl ethyl pyridines.	NA	INCIN	INCIN.
K027	NA	Centrifuge and distillation residues from toluene diisocyanate production.	NA	CARBN; or INCIN	FSUBS; or INCIN.
K039	NA	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	NA	CARBN; or INCIN	FSUBS; or INCIN.
K044	NA	Wastewater treatment sludges from the manufacturing and processing of explosives.	NA	DEACT	DEACT.
K045	NA	Spent carbon from the treatment of wastewater containing explosives.	NA	DEACT	DEACT.
K047	NA	Pink/red water from TNT operations.	NA	DEACT	DEACT.
K069	Table CCWE in 268.41 and Table CCW in 268.43.	Emission control dust/sludge from secondary lead smelting: Non-Calcium Sulfate Subcategory.	NA	NA	RLEAD.

268.42 TABLE 2.—TECHNOLOGY-BASED STANDARDS BY RCRA WASTE CODE—Continued

Waste code	See also	Waste descriptions and/or treatment subcategory	CAS No. for regulated hazardous constituents	Technology code	
				Wastewaters	Nonwastewaters
K106	Table CCWE in 268.41 and Table CCW in 268.43.	Wastewater treatment sludge from the mercury cell process in chlorine production: (High Mercury Subcategory—greater than or equal to 260 mg/kg total mercury).	NA	NA	RMERC.
K113	NA	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	CARBN; or INCIN	FSUBS; or INCIN.
K114	NA	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	CARBN; or INCIN	FSUBS; or INCIN.
K115	NA	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	CARBN; or INCIN	FSUBS; or INCIN.
K116	NA	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	NA	CARBN; or INCIN	FSUBS; or INCIN.
P001	NA	Warfarin (>0.3%)	81-81-2	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
P002	NA	1-Acetyl-2-thiourea	591-08-2	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P003	NA	Acrolein	107-02-8	NA	FSUBS; or INCIN.
P005	NA	Allyl alcohol	107-18-6	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN
P006	NA	Aluminum phosphide	20859-73-8	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN.
P007	NA	5-Aminoethyl 3-isoxazolol	2763-96-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P008	NA	4-Aminopyridine	504-24-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P009	NA	Ammonium picrate	131-74-8	CHOXD; CHRED, CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
P014	NA	Thiophenol (Benzene thiol)	108-98-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P015	NA	Beryllium dust	7440-41-7	RMETL; or RTHRM	RMETL; or RTHRM.
P016	NA	Bis(chloromethyl)ether	542-88-1	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P017	NA	Bromoacetone	598-31-2	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P018	NA	Brucine	357-57-3	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P022	Table CCW in 268.43	Carbon disulfide	75-15-0	NA	INCIN.
P023	NA	Chloroacetaldehyde	107-20-0	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P026	NA	1-(o-Chlorophenyl) thiourea	5344-82-1	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P027	NA	3-Chloropropionitrile	542-76-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P028	NA	Benzyl chloride	100-44-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P031	NA	Cyanogen	460-19-5	CHOXD; WETOX or INCIN	CHOXD; WETOX; or INCIN.
P033	NA	Cyanogen chloride	506-77-4	CHOXD; WETOX or INCIN	CHOXD; WETOX; or INCIN.
P034	NA	2-Cyclohexyl-4,6-dinitrophenol	131-89-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P040	NA	O,O-Diethyl O-pyrazinyl phosphorothioate.	297-97-2	CARBN; or INCIN	FSUBS; or INCIN.
P041	NA	Diethyl-p-nitrophenyl phosphate	311-45-5	CARBN; or INCIN	FSUBS; or INCIN.
P042	NA	Epinephrine	51-43-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P043	NA	Diisopropyl fluorophosphate (DFP).	55-91-4	CARBN; or INCIN	FSUBS; or INCIN.
P044	NA	Dimethoate	60-51-5	CARBN; or INCIN	FSUBS or INCIN.
P045	NA	Thiofanox	39196-18-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P046	NA	alpha, alpha-Dimethylphenethylamine.	122-09-8	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P047	NA	4,6-Dinitro-o-cresol salts	534-52-1	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P049	NA	2,4-Dithiobiuret	541-53-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.

268.42 TABLE 2.—TECHNOLOGY-BASED STANDARDS BY RCRA WASTE CODE—Continued

Waste code	See also	Waste descriptions and/or treatment subcategory	CAS No. for regulated hazardous constituents	Technology code	
				Wastewaters	Nonwastewaters
P054	NA	Aziridine	151-56-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P056	Table CCW in 268.43	Fluorine	7782-41-4	NA	ADGAS fb NEUTR.
P057	NA	Fluoroacetamide	640-19-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P058	NA	Fluoroacetic acid, sodium salt	62-74-8	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P062	NA	Hexaethyltetraphosphate	757-58-4	CARBN; or INCIN	FSUBS; or INCIN.
P064	NA	Isocyanic acid, ethyl ester	624-83-9	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P065	Table CCWE in 268.41 and Table CCW in 268.43.	Mercury fulminate: (High Mercury Subcategory—greater than or equal to 260 mg/kg total Mercury—either incinerator residues or residues from RMERC).	628-86-4	NA	RMERC.
P065	Table CCWE in 268.41 and Table CCW in 268.43.	Mercury fulminate: (All Nonwastewasters that are not incinerator residues or are not residues from RMERC; regardless of Mercury Content).	628-86-4	NA	IMERC.
P066	NA	Methomyl	16752-77-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P067	NA	2-Methylaziridine	75-55-8	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P068	NA	Methyl hydrazine	60-34-4	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
P069	NA	Methyllactonitrile	75-86-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P070	NA	Aldicarb	116-06-3	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P072	NA	1-Naphthyl-2-thiourea	86-88-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P075	NA	Nicotine and salts	[1] 54-11-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P076	NA	Nitric oxide	10102-43-9	ADGAS	ADGAS.
P078	NA	Nitrogen dioxide	10102-44-0	ADGAS	ADGAS.
P081	NA	Nitroglycerin	55-63-0	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
P082	Table CCW in 268.43	N-Nitrosodimethylamine	62-75-9	NA	INCIN.
P084	NA	N-Nitrosomethylvinylamine	4549-40-0	(WETOX or CHOXD) fb CARBN; OR INCIN.	INCIN.
P085	NA	Octamethylpyrophosphoramide	152-16-9	CARBN; or INCIN	FSUBS; or INCIN.
P087	NA	Osmium tetroxide	20816-12-0	RMETL; or RTHRM	RMETL; or RTHRM.
P088	NA	Endothall	145-73-3	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
P092	Table CCWE in 268.41 and Table CCW in 268.43.	Phenyl mercury acetate: (High Mercury Subcategory—greater than or equal to 260 mg/kg total Mercury—either incinerator residues or residues from RMERC).	62-38-4	NA	RMERC.
P092	Table CCWE in 268.41 and Table CCW in 268.43.	Phenyl mercury acetate: (All nonwastewaters that are not incinerator residues and are not residues from RMERC: regardless of Mercury Content).	62-38-4	NA	IMERC; or RMERC.
P093	NA	N-Phenylthiourea	103-85-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P095	NA	Phosgene	75-44-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P096	NA	Phosphine	7803-51-2	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN.
P102	NA	Propargyl alcohol	107-19-7	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
P105	NA	Sodium azide	26628-22-8	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS, CHOXD; CHRED; or INCIN.
P108	NA	Strychnine and salts	[1] 57-24-9	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P109	NA	Tetraethyldithiopyrophosphate	3689-24-5	CARBN; or INCIN	FSUBS; or INCIN.
P112	NA	Tetranitromethane	509-14-8	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS, CHOXD; CHRED; or INCIN.
P113	Table CCW in 268.43	Thallic oxide	1314-32-5	NA	RTHRM; or STABL.
P115	Table CCW in 268.43	Thallium (I) sulfate	7446-18-6	NA	RTHRM; or STABL.
P116	NA	Thiosemicarbazide	79-19-6	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P118	NA	Thrichloromethanethiol	75-70-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
P119	Table CCW in 268.43	Ammonium vanadate	7803-55-6	NA	STABL.

268.42 TABLE 2.—TECHNOLOGY-BASED STANDARDS BY RCRA WASTE CODE—Continued

Waste code	See also	Waste descriptions and/or treatment subcategory	CAS No. for regulated hazardous constituents	Technology code	
				Wastewaters	Nonwastewaters
P120	Table CCW in 268.43	Vanadium pentoxide	1314-62-1	NA	STABL.
P122	NA	Zinc Phosphide (>10%)	1314-84-7	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN.
U001	NA	Acetaldehyde	75-07-0	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U003	Table CCW in 268.43	Acetonitrile	75-05-8	NA	INCIN.
U006	NA	Acetyl Chloride	75-36-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U007	NA	Acrylamide	79-06-1	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U008	NA	Acrylic acid	79-10-7	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U010	NA	Mitomycin C	50-07-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U011	NA	Amitrole	61-82-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U014	NA	Auramine	492-80-8	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U015	NA	Azaserine	115-02-6	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U016	NA	Benz(c)acridine	225-51-4	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U017	NA	Benzal chloride	98-87-3	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U020	NA	Benzenesulfonyl chloride	98-09-9	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U021	NA	Benzidine	92-87-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U023	NA	Benzotrichloride	98-07-7	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
U026	NA	Chlornaphazin	494-03-1	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U033	NA	Carbonyl fluoride	353-50-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U034	NA	Trichloroacetaldehyde (Chloral)	75-87-6	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U035	NA	Chlorambucil	305-03-3	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U038	Table CCW in 268.43	Chlorobenzilate	510-15-6	NA	INCIN.
U041	NA	1-Chloro-2,3-epoxypropane (Epichlorohydrin).	106-89-8	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U042	Table CCW in 268.43	2-Chloroethyl vinyl ether	110-75-8	NA	INCIN.
U046	NA	Chloromethyl methyl ether	107-30-2	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U049	NA	4-Chloro-o-toluidine hydrochloride	3165-93-3	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U053	NA	Crotonaldehyde	4170-30-3	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U055	NA	Cumene	98-82-8	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U056	NA	Cyclohexane	110-82-7	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U057	Table CCW in 268.43	Cyclohexanone	108-94-1	NA	FSUBS; or INCIN.
U058	NA	Cyclophosphamide	50-18-0	CARBN; or INCIN	FSUBS; or INCIN.
U059	NA	Daunomycin	20830-81-3	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U062	NA	Diallate	2303-16-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U064	NA	1,2,7,8-Dibenzopyrene	189-55-9	(WETOX or CHOXD) fb CARBN or INCIN.	FSUBS; or INCIN.
U073	NA	3,3'-Dichlorobenzidine	91-94-1	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U074	NA	cis-1,4-Dichloro-2-butylene	1476-11-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
		trans-1,4-Dichloro-2-butylene		WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U085	NA	1,2:3,4-Diepoxybutane	1464-53-5	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U086	NA	N,N-Diethylhydrazine	1615--80-1	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
U087	NA	0,0-Diethyl S-methyldithiophosphate.	3288-58-2	CARBN; or INCIN	FSUBS; or INCIN.
U089	NA	Diethyl stilbastrol	56-53-1	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U090	NA	Dihydrosafrole	94-58-6	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U091	NA	3,3'-Dimethoxybenzidine	119-90-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.

268.42 TABLE 2.—TECHNOLOGY-BASED STANDARDS BY RCRA WASTE CODE—Continued

Waste code	See also	Waste descriptions and/or treatment subcategory	CAS No. for regulated hazardous constituents	Technology code	
				Wastewaters	Nonwastewaters
U092	NA	Dimethylamine	124-40-3	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U093	Table CCW in 268.43	p-Dimethylaminoazobenzene	621-90-9	NA	INCIN.
U094	NA	7,12-Dimethyl benz(a)anthracene	57-97-6	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U095	NA	3,3'-Dimethylbenzidine	119-93-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U096	NA	a,a-Dimethyl benzyl hydroperoxide.	80-15-9	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
U097	NA	Dimethylcarbomyl chloride	79-44-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U098	NA	1,1-Dimethylhydrazine	57-14-7	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
U099	NA	1,2-Dimethylhydrazine	540-73-8	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
U103	NA	Dimethyl sulfate	77-78-1	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
U109	NA	1,2-Diphenylhydrazine	122-66-7	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
U110	NA	Dipropylamine	142-84-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U113	NA	Ethyl acrylate	140-88-5	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U114	NA	Ethylene bis-dithiocarbamic acid	111-54-6	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U115	NA	Ethylene oxide	75-21-8	(WETOX or CHOXD) fb CARBN; or INCIN.	CHOXD; or INCIN.
U116	NA	Ethylene thiourea	96-45-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U119	NA	Ethyl methane sulfonate	62-50-0	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U122	NA	Formaldehyde	50-00-0	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U123	NA	Formic acid	64-18-6	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U124	NA	Furan	110-00-9	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U125	NA	Furfural	98-01-1	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U126	NA	Glycidaldehyde	765-34-4	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U132	NA	Hexachlorophenene	70-30-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U133	NA	Hydrazine	302-01-2	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
U134	Table CCW in 268.43	Hydrogen Flouride	7664-39-3	NA	ADGAS fb NEUTR; or NEUTR.
U135	NA	Hydrogen Sulfide	7783-06-4	CHOXD; CHRED; or INCIN.	CHOXD; CHRED; or INCIN.
U143	NA	Lasiocarpine	303-34-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U147	NA	Maleic anhydride	108-31-6	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U148	NA	Maleic hydrazide	123-33-1	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U149	NA	Malononitrile	109-77-3	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U150	NA	Melphalan	148-82-3	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U151	Table CCWE in 268.41 and Table CCW in 268.43.	Mercury: (High Mercury Subcategory—greater than or equal to 260 mg/kg total Mercury).	7439-97-6	NA	RMERC.
U153	NA	Methane thiol	74-93-1	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U154	NA	Methanol	67-56-1	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U156	NA	Methyl chlorocarbonate	79-22-1	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U160	NA	Methyl ethyl ketone peroxide	1338-23-4	CHOXD; CHRED; CARBN; BIODG; or INCIN.	FSUBS; CHOXD; CHRED; or INCIN.
U163	NA	N-Methyl N'-nitro N-Nitrosoguanidine.	70-25-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U164	NA	Methylthiouracil	56-04-2	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U166	NA	1,4-Naphthoquinone	130-15-4	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U167	NA	1-Naphthylamine	134-32-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U168	Table CCW in 268.43	2-Naphthlyamine	91-59-8	NA	INCIN.

268.42 TABLE 2.—TECHNOLOGY-BASED STANDARDS BY RCRA WASTE CODE—Continued

Waste code	See also	Waste descriptions and/or treatment subcategory	CAS No. for regulated hazardous constituents	Technology code	
				Wastewaters	Nonwastewaters
U171	NA	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U173	NA	N-Nitroso-di-n-ethanolamine	1116-54-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U176	NA	N-Nitroso-N-ethylurea	759-73-9	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U177	NA	N-Nitroso-N-methylurea	684-93-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U178	NA	N-Nitroso-N-methylurethane	615-53-2	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U182	NA	Paraldehyde	123-63-7	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U184	NA	Pentachloroethane	76-01-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U186	NA	1,3-Pentadiene	504-60-9	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U189	NA	Phosphorus sulfide	1314-80-3	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN.
U191	NA	2-Picoline	109-06-8	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U193	NA	1,3-Propane sultone	1120-71-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U194	NA	n-Propylamine	107-10-8	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U197	NA	p-Benzoquinone	106-51-4	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U200	NA	Reserpine	50-55-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U201	NA	Resorcinol	108-46-3	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U202	NA	Saccharin and salts	[1] 81-07-2	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U206	NA	Streptozotocin	18883-66-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U213	NA	Tetrahydrofuran	109-99-9	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U214	Table CCW in 268.43	Thallium (I) acetate	563-68-8	NA	RTHRM; or STABL.
U215	Table CCW in 268.43	Thallium (I) carbonate	6533-73-9	NA	RTHRM; or STABL.
U216	Table CCW in 268.43	Thallium (I) chloride	7791-12-0	NA	RTHRM; or STABL.
U217	Table CCW in 268.43	Thallium (I) nitrate	10102-45-1	NA	RTHRM; or STABL.
U218	NA	Thioacetamide	62-55-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U219	NA	Thiourea	62-56-6	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U221	NA	Toluenediamine	25376-45-8	CARBN; or INCIN	FSUBS; or INCIN.
U222	NA	o-Toluidine hydrochloride	636-21-5	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U223	NA	Toluene diisocyanate	26471-62-5	CARBN; or INCIN	FSUBS; or INCIN.
U234	NA	sym-Trinitrobenzene	99-35-4	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U236	NA	Trypan Blue	72-57-1	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U237	NA	Uracil mustard	66-75-1	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U238	NA	Ethyl carbamate	51-79-6	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U240	NA	2,4-Dichlorophenoxyacetic (salts and esters).	[1] 94-75-7	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U244	NA	Thiram	137-26-8	(WETOX or CHOXD) fb CARBN; or INCIN.	INCIN.
U246	NA	Cyanogen bromide	506-68-3	CHOXD; WETOX; or INCIN	CHOXD; WETOX; or INCIN.
U248	NA	Warfarin (.3% or less).	81-81-2	(WETOX or CHOXD) fb CARBN; or INCIN.	FSUBS; or INCIN.
U249	NA	Zinc Phosphide (<10%)	1314-84-7	CHOXD; CHRED; or INCIN	CHOXD; CHRED; or INCIN.

[1] CAS Number given for parent compound only.
[2] This waste code exists in gaseous form and is not categorized as wastewater or nonwastewater forms.
Note: NA means Not Applicable.

268.42 TABLE 3.—TECHNOLOGY-BASED STANDARDS FOR SPECIFIC RADIOACTIVE HAZARDOUS MIXED WASTE

Waste code	Waste descriptions and/or treatment category	CAS No.	Technology code	
			Wastewaters	Non-wastewaters
D002	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT.
D004	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT.

268.42 TABLE 3.—TECHNOLOGY-BASED STANDARDS FOR SPECIFIC RADIOACTIVE HAZARDOUS MIXED WASTE—Continued

Waste code	Waste descriptions and/or treatment category	CAS No.	Technology code	
			Wastewaters	Non-wastewaters
D005	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT.
D006	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT.
D007	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT.
D008	Radioactive lead solids subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding, and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organolead materials that can be incinerated and stabilized as ash.).	7439-92-1	NA	MACRO.
D008	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT.
D009	Elemental mercury contaminated with radioactive materials	7439-97-6	NA	AMLGM.
D009	Hydraulic oil contaminated with mercury; radioactive materials subcategory	7439-97-6	NA	IMERC.
D009	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT.
D010	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT.
D011	Radioactive high level wastes generated during the reprocessing of fuel rods subcategory	NA	NA	HLVIT.
U151	Mercury: Elemental mercury contaminated with radioactive materials	7439-97-6	NA	AMLGM.

Note: NA means Not Applicable.

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12. In § 268.43, Table CCW in paragraph (a), and paragraph (c) are revised to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

(a) * * *

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
D003 (Reactive Cyanides Subcategory based on 261.23(a)(5)).	NA	NA	Cyanides (Total)	57-12-5	[4]		590	[3]
			Cyanides (Amenable).	57-12-5	0.86		30	
D004	NA	Table CCWE in 268.41.	Arsenic	7440-38-2	5.0		NA	
D005	NA	Table CCWE in 268.41.	Barium	7440-39-3	100		NA	
D006	NA	Table CCWE in 268.41.	Cadmium	7440-43-9	1.0		NA	
D007	NA	Table CCWE in 268.41.	Chromium (Total)	7440-47-32	5.0		NA	
D008	NA	Table CCWE in 268.41.	Lead	7439-92-1	5.0		NA	
D009	NA	Table CCWE in 268.41.	Mercury	7439-97-6	0.20		NA	
D010	NA	Table CCWE in 268.41.	Selenium	7782-49-2	1.0		NA	
D011	NA	Table CCWE in 268.41.	Silver	7440-22-4	5.0		NA	
D012	NA	Table 2 in 268.42	Endrin	720-20-8	NA		0.13	[1]
D013	NA	Table 2 in 268.42	Lindane	58-89-9	NA		0.066	[1]
D014	NA	Table 2 in 268.42	Methoxychlor	72-43-5	NA		0.18	[1]
D015	NA	Table 2 in 268.42	Toxaphene	8001-35-1	NA		1.3	[1]
D016	NA	Table 2 in 268.42	2,4-D	94-75-7	NA		10.0	[1]
D017	NA	Table 2 in 268.42	2,4,5-TP (Silvex)	93-76-5	NA		7.9	[1]
F001-F005 spent solvents.	NA	Table CCWE in 268.41 and Table 2 in 268.42.	1,1,2-Trichloroethane.	71-55-6	0.030		7.6	[1]
			Benzene	71-43-2	0.070		3.7	[1]
F001-F005 spent solvents (Pharmaceutical Industry-Wastewater Subcategory).	NA	NA	Methylene chloride.	75-09-2	0.44		NA	
F006	NA	Table CCWE in 268.41.	Cyanides (Total)	57-12-5	1.2		590	
			Cyanides (Amenable).	57-12-5	0.86		30	
			Cadmium	7440-43-9	1.6		NA	
			Chromium	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.040		NA	
			Nickel	7440-02-0	0.44		NA	

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
F007	NA	Table CCWE in 268.41.	Cyanides (Total)	57-12-5	1.9		590	
			Cyanides (Amenable).	57-12-5	0.1		30	
			Chromium (Total)	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.04		NA	
			Nickel	7440-02-0	0.44		NA	
F008	NA	Table CCWE in 268.41.	Cyanides (Total)	57-12-5	1.9		590	
			Cyanides (Amenable).	57-12-5	0.1		30	
			Chromium	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.04		NA	
			Nickel	7440-02-0	0.44		NA	
F009	NA	Table CCWE in 268.41.	Cyanides (Total)	57-12-5	1.9		590	
			Cyanides (Amenable).	57-12-5	0.1		30	
			Chromium	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.04		NA	
			Nickel	7440-02-0	0.44		NA	
F010	NA	NA	Cyanides (Total)	57-12-5	1.9		1.5	
			Cyanides (Amenable).	57-12-5	0.1		NA	
F011	NA	Table CCWE in 268.41.	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.1		9.1	
			Chromium (Total)	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.04		NA	
			Nickel	7440-02-0	0.44		NA	
F012	NA	Table CCWE in 268.41.	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.1		9.1	
			Chromium (Total)	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.04		NA	
			Nickel	7440-02-0	0.44		NA	
F019	NA	Table CCWE in 268.41.	Cyanides (Total)	57-12-5	1.2		590	(3)
			Cyanides (Amenable).	57-12-5	0.86		30	(3)
			Chromium (Total)	7440-47-32	0.32		NA	
F024	NA	Table CCWE in 268.41 and Table 2 in 268.42 (Note: F024 organic standards must be treated via incineration (INCIN)).	2-Chloro-1,3-butadiene.	126-99-8	0.28	(1)	0.28	(1)
			3-Chloropropene	107-05-	0.28	(1)	0.28	(1)
			1,1-Dichloroethane.	75-34-3	0.014	(1)	0.014	(1)
			1,2-Dichloroethane.	107-06-2	0.014	(1)	0.014	(1)
			1,2-Dichloropropane.	78-87-5	0.014	(1)	0.014	(1)
			cis-1,3-Dichloropropene.	10061-01-5	0.014	(1)	0.014	(1)
			trans-1,3-Dichloropropene.	10061-02-6	0.014	(1)	0.014	(1)
			Bis(2-ethylhexyl)-phthalate.	117-81-7	0.036	(1)	1.8	(1)
			Hexachloroethane	67-72-1	0.036	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.35		NA	
			Nickel	7440-02-0	0.47		NA	
F025 (Light Ends Subcategory).	NA	NA	Chloroform	67-66-3	0.046	(2)	6.2	(1)
			1,2-Dichloroethane.	107-06-2	0.21	(2)	6.2	(1)
			1,1-Dichloroethylene.	75-35-4	0.025	(2)	6.2	(1)
			Methylene chloride.	75-9-2	0.089	(2)	31	(1)
			Carbon tetrachloride.	56-23-5	0.057	(2)	6.2	(1)
			1,1,2-Trichloroethane.	79-00-5	0.054	(2)	6.2	(1)
			Trichloroethylene	79-01-6	0.054	(2)	5.6	(1)
			Vinyl chloride	75-01-4	0.27	(2)	33	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
F025 (Spent Filters or Aids and Desicants Subcategory).	NA	NA	Chloroform	67-66-3	0.046	(2)	6.2	(1)
			Methylene chloride.	75-9-2	0.089	(2)	31	(1)
			Carbon tetrachloride.	56-23-5	0.057	(2)	6.2	(1)
			1,1,2-Trichloroethane.	79-00-5	0.054	(2)	6.2	(1)
			Trichloroethylene	79-01-6	0.054	(2)	5.6	(1)
			Vinyl chloride	75-01-4	0.27	(2)	33	(1)
			Hexachlorobenzene.	118-74-1	0.055	(2)	37	(1)
			Hexachlorobutadiene.	87-68-3	0.055	(2)	28	(1)
			Hexachloroethane	67-72-1	0.055	(2)	30	(1)
F039	NA	Table CCWE in 268.41.	Acetone	67-64-1	0.28	(2)	160	(1)
			Acenaphthalene	208-96-8	0.059	(2)	3.4	(1)
			Acenaphthene	83-32-9	0.059	(2)	4.0	(1)
			Acetonitrile	75-05-8	0.17	(2)	NA	
			Acetophenone	96-86-2	0.010	(2)	9.7	(1)
			2-Acetylaminofluorene.	53-96-3	0.059	(2)	140	(1)
			Acrolein	107-02-8	0.28	(2)	NA	
			Acrylonitrile	107-13-1	0.24	(2)	84	(1)
			Aldrin	309-00-2	0.021	(2)	0.066	(1)
			4-Aminobiphenyl	92-67-1	0.13	(2)	NA	
			Aniline	62-53-3	0.81	(2)	14	(1)
			Anthracene	120-12-7	0.059	(2)	4.0	(1)
			Aramite	140-57-8	0.36	(2)	NA	
			Aroclor 1016	12674-11-2	0.013	(2)	0.92	(1)
			Aroclor 1221	11104-28-2	0.014	(2)	0.92	(1)
			Aroclor 1232	11141-16-5	0.013	(2)	0.92	(1)
			Aroclor 1242	53469-21-9	0.017	(2)	0.92	(1)
			Aroclor 1248	12672-29-6	0.013	(2)	0.92	(1)
			Aroclor 1254	11097-69-1	0.014	(2)	1.8	(1)
			Aroclor 1260	11096-82-5	0.014	(2)	1.8	(1)
			alpha-BHC	319-84-6	0.00014	(2)	0.066	(1)
			beta-BHC	319-85-7	0.00014	(2)	0.066	(1)
			delta-BHC	319-86-8	0.023	(2)	0.066	(1)
			gamma-BHC	58-89-9	0.0017	(2)	0.066	(1)
			Benzene	71-43-2	0.14	(2)	36	(1)
			Benz(a)anthracene	56-55-3	0.059	(2)	8.2	(1)
			Benzo(b)-fluoranthene.	205-99-2	0.055	(2)	3.4	(1)
			Benzo(k)-fluoranthene.	207-08-9	0.059	(2)	3.4	(1)
			Benzo(g,h,i)-perylene.	191-24-2	0.0055	(2)	1.5	(1)
			Benzo(a)pyrene	50-32-8	0.061	(2)	8.2	(1)
			Bromodichloromethane.	75-27-4	0.35	(2)	15	(1)
			Bromoform (Tribromomethane).	75-25-2	0.63	(2)	15	(1)
			Bromomethane (methyl bromide).	74-83-9	0.11	(2)	15	(1)
			4-Bromophenyl phenyl ether.	101-55-3	0.055	(2)	15	(1)
			n-Butyl alcohol	71-36-3	5.6	(2)	2.6	(1)
			Butyl benzyl phthalate.	85-68-7	0.017	(2)	7.9	(1)
			2-sec-Butyl-4,6-dinitrophenol.	88-85-7	0.066	(2)	2.5	(1)
			Carbon tetrachloride.	56-23-5	0.057	(2)	5.6	(1)
			Carbon disulfide	75-15-0	0.014	(2)	NA	
			Chlordane	57-74-9	0.0033	(2)	0.13	(1)
			p-Chloroaniline	106-47-8	0.46	(2)	16	(1)
			Chlorobenzene	108-90-7	0.057	(2)	5.7	(1)
			Chlorobenzilate	510-15-6	0.10	(2)	NA	
			2-Chloro-1,3-butadiene.	126-99-8	0.057	(2)	NA	
			Chlorodibromomethane.	124-48-1	0.057	(2)	15	(1)
			Chloroethane	75-00-3	0.27	(2)	6.0	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			bis(2-Chloroethoxy) methane.	111-91-1	0.036	(2)	7.2	(1)
			bis(2-Chloroethyl) ether.	111-44-4	0.033	(2)	7.2	(1)
			Chloroform	67-66-3	0.046	(2)	5.6	(1)
			bis(2-Chloroisopropyl) ether.	39638-32-9	0.055	(2)	7.2	(1)
			p-Chloro-m-cresol	59-50-7	0.018	(2)	14	(1)
			Chloromethane (Methyl chloride).	74-87-3	0.19	(2)	33	(1)
			2-Chloronaphthalene.	91-8-7	0.055	(2)	5.6	(1)
			2-Chlorophenol	95-57-8	0.044	(2)	5.7	(1)
			3-Chloropropylene.	107-05-1	0.036	(2)	28	(1)
			Chrysene	218-01-9	0.059	(2)	8.2	(1)
			o-Cresol	95-48-7	0.11	(2)	5.6	(1)
			Cresol (m- and p-isomers).		0.77	(2)	3.2	(1)
			Cyclohexanone	108-94-1	0.36	(2)	NA	
			1,2-Dibromo-3-chloropropane.	96-12-8	0.11	(2)	15	(1)
			1,2-Dibromoethane (Ethylene dibromide).	106-93-4	0.028	(2)	15	(1)
			Dibromomethane	74-95-3	0.11	(2)	15	(1)
			2,4-Dichlorophenoxyacetic acid (2, 4-D).	94-75-7	0.72	(2)	10	(1)
			o,p'-DDD	53-19-0	0.023	(2)	0.087	(1)
			p,p'-DDD	72-54-8	0.023	(2)	0.087	(1)
			o,p'-DDE	3424-82-6	0.031	(2)	0.087	(1)
			p,p'-DDE	72-55-9	0.031	(2)	0.087	(1)
			o,p'-DDT	789-02-6	0.0039	(2)	0.087	(1)
			p,p'-DDT	50-29-3	0.0039	(2)	0.087	(1)
			Dibenz(a,h) anthracene.	53-70-3	0.055	(2)	8.2	(1)
			Dibenzo(a,e) pyrene.	192-65-4	0.061	(2)	NA	
			m-Dichlorobenzene.	541-73-1	0.036	(2)	6.2	(1)
			o-Dichlorobenzene.	95-50-1	0.088	(2)	6.2	(1)
			p-Dichlorobenzene.	106-46-7	0.090	(2)	6.2	(1)
			Dichlorodifluoromethane.	75-71-8	0.23	(2)	7.2	(1)
			1,1-Dichloroethane.	75-34-3	0.059	(2)	7.2	(1)
			1,2-Dichloroethane.	107-06-2	0.21	(2)	7.2	(1)
			1,1-Dichloroethylene.	75-35-4	0.025	(2)	33	(1)
			trans-1,2-Dichloroethylene.		0.054	(2)	33	(1)
			2,4-Dichlorophenol.	120-83-2	0.044	(2)	14	(1)
			2,6-Dichlorophenol.	87-65-0	0.044	(2)	14	(1)
			1,2-Dichloropropane.	78-87-5	0.85	(2)	18	(1)
			cis-1,3-Dichloropropene.	10061-01-5	0.036	(2)	18	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			trans-1,3-Dichloropropene.	10061-02-6	0.036	(2)	18	(1)
			Dieldrin	60-57-1	0.017	(2)	0.13	(1)
			Diethyl phthalate	84-66-2	0.20	(2)	28	(1)
			2,4-Dimethyl phenol.	105-67-9	0.036	(2)	14	(1)
			Dimethyl phthalate.	131-11-3	0.047	(2)	28	(1)
			Di-n-butyl phthalate.	84-74-2	0.057	(2)	28	(1)
			1,4-Dinitrobenzene.	100-25-4	0.32	(2)	2.3	(1)
			4,6-Dinitro-o-cresol.	534-52-1	0.28	(2)	160	(1)
			2,4-Dinitrophenol	51-28-5	0.12	(2)	160	(1)
			2,4-Dinitrotoluene	121-14-2	0.32	(2)	140	(1)
			2,6-Dinitrotoluene	606-20-2	0.55	(2)	28	(1)
			Di-n-octyl phthalate.	117-84-0	0.017	(2)	28	(1)
			Di-n-propylnitrosoamine.	621-64-7	0.40	(2)	14	(1)
			Diphenylamine	122-39-4	0.52	(2)	NA	
			1,2-Diphenyl hydrazine.	122-66-7	0.087	(2)	NA	
			Diphenyl nitrosamine.	621-64-7	0.40	(2)	NA	
			1, 4-Dioxane	123-91-1	0.12	(2)	170	(1)
			Disulfoton	298-04-4	0.017	(2)	6.2	(1)
			Endosulfan I	939-98-8	0.023	(2)	0.066	(1)
			Endosulfan II	33213-6-5	0.029	(2)	0.13	(1)
			Endosulfan sulfate.	1031-07-8	0.029	(2)	0.13	(1)
			Endrin	72-20-8	0.0028	(2)	0.13	(1)
			Endrin aldehyde	7421-93-4	0.025	(2)	0.13	(1)
			Ethyl acetate	141-78-6	0.34	(2)	33	(1)
			Ethyl cyanide	107-12-0	0.24	(2)	360	(1)
			Ethyl benzene	100-41-4	0.057	(2)	6.0	(1)
			Ethyl ether	60-29-7	0.12	(2)	160	(1)
			bis(2-Ethylhexyl) phthalate.	117-81-7	0.28	(2)	28	(1)
			Ethyl methacrylate.	97-63-2	0.14	(2)	160	(1)
			Ethylene oxide	75-21-8	0.12	(2)	NA	
			Famphur	52-85-7	0.017	(2)	15	(1)
			Fluoranthene	206-44-0	0.068	(2)	8.2	(1)
			Fluorene	86-73-7	0.059	(2)	4.0	(1)
			Fluorotrichloromethane.	75-69-4	0.020	(2)	33	(1)
			Heptachlor	76-44-8	0.0012	(2)	0.066	(1)
			Heptachlor epoxide.	1024-57-3	0.016	(2)	0.066	(1)
			Hexachlorobenzene.	118-74-1	0.055	(2)	37	(1)
			Hexachlorobutadiene.	87-68-3	0.055	(2)	28	(1)
			Hexachlorocyclopentadiene.	77-47-4	0.057	(2)	3.6	(1)
			Hexachlorodibenzo-furans.		0.000063	(2)	0.001	(1)
			Hexachlorodibenzo-p-dioxins.		0.000063	(2)	0.001	(1)
			Hexachloroethane	67-72-1	0.055	(2)	28	(1)
			Hexachloropropene.	1888-71-7	0.035	(2)	28	(1)
			Indeno(1,2,3-c,d)pyrene.	193-39-5	0.0055	(2)	8.2	(1)
			Iodomethane	74-88-4	0.19	(2)	65	(1)
			Isobutanol	78-83-1	5.6	(2)	170	(1)
			Isodrin	465-73-6	0.021	(2)	0.066	(1)
			Isosafrole	120-58-1	0.081	(2)	2.6	(1)
			Kepone	143-50-0	0.0011	(2)	0.13	(1)
			Methacrylonitrile	126-98-7	0.24	(2)	84	(1)
			Methanol	67-56-1	5.6	(2)	NA	
			Methapyrilene	91-80-5	0.081	(2)	1.5	(1)
			Methoxychlor	72-43-5	0.25	(2)	0.18	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			3-Methylcholanthrene.	56-49-5	0.0055	[2]	15	[1]
			4,4-Methylene-bis-(2-chloroaniline).	101-14-4	0.50	[2]	35	[1]
			Methylene chloride.	75-09-2	0.089	[2]	33	[1]
			Methyl ethyl ketone.	78-93-3	0.28	[2]	36	[1]
			Methyl isobutyl ketone.	108-10-1	0.14	[2]	33	[1]
			Methyl methacrylate.	80-62-6	0.14	[2]	160	[1]
			Methyl methansulfonate.	66-27-3	0.018	[2]	NA	
			Methyl parathion	298-00-0	0.014	[2]	4.6	[1]
			Naphthalene	91-20-3	0.059	[2]	3.1	[1]
			2-Naphthylamine	91-59-8	0.52	[2]	NA	
			p-Nitroaniline	100-01-6	0.028	[2]	28	[1]
			Nitrobenzene	98-95-3	0.068	[2]	14	[1]
			5-Nitro-o-toluidine	99-55-8	0.32	[2]	28	[1]
			4-Nitrophenol	100-02-7	0.12	[2]	29	[1]
			N-Nitrosodiethylamine.	55-18-5	0.40	[2]	28	[1]
			N-Nitrosodimethylamine.	62-75-9	0.40	[2]	NA	
			N-Nitroso-di-n-butylamine.	924-16-3	0.40	[2]	17	[1]
			N-Nitrosomethylethylamine.	10595-95-6	0.40	[2]	2.3	[1]
			N-Nitrosomorpholine.	59-89-2	0.40	[2]	2.3	[1]
			N-Nitrosopiperidine.	100-75-4	0.013	[2]	35	[1]
			N-Nitrosopyrrolidine.	930-55-2	0.013	[2]	35	[1]
			Parathion	56-38-2	0.014	[2]	4.6	[1]
			Pentachlorobenzene.	608-93-5	0.055	[2]	37	[1]
			Pentachlorodibenzo-furans.		0.000063	[2]	0.001	[1]
			Pentachlorodibenzo-p-dioxins.		0.000063	[2]	0.001	[1]
			Pentachloronitrobenzene.	82-68-8	0.055	[2]	4.8	[1]
			Pentachlorophenol.	87-86-5	0.089	[2]	7.4	[1]
			Phenacetin	62-44-2	0.081	[2]	16	[1]
			Phenanthrene	85-01-8	0.059	[2]	3.1	[1]
			Phenol	108-95-2	0.039	[2]	6.2	[1]
			Phorate	298-02-2	0.021	[2]	4.6	[1]
			Phthalic anhydride.	85-44-9	0.069	[2]	NA	
			Pronamide	23950-58-5	0.093	[2]	1.5	[1]
			Pyrene	129-00-0	0.067	[2]	8.2	[1]
			Pyridine	110-86-1	0.014	[2]	16	[1]
			Safrole	94-59-7	0.081	[2]	22	[1]
			Silvex (2,4,5-TP)	93-72-1	0.72	[2]	7.9	[1]
			2,4,5-T	93-76-5	0.72	[2]	7.9	[1]
			1,2,4,5,-Tetrachlorobenzene.	95-94-3	0.055	[2]	19	[1]
			Tetrachlorodibenzo-furans.		0.000063	[2]	0.001	[1]
			Tetrachlorodibenzo-p-dioxins.		0.000063	[2]	0.001	[1]
			1,1,1,2-Tetrachloroethane.	630-20-6	0.057	[2]	42	[1]

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			1,1,2,2-Tetrachloroethane.	79-34-6	0.057	(2)	42	(1)
			Tetrachloroethylene.	127-18-4	0.056	(2)	5.6	(1)
			2,3,4,6-Tetrachlorophenol.	58-90-2	0.030	(2)	37	(1)
			Toluene	108-88-3	0.080	(2)	28	(1)
			Toxaphene	8001-35-1	0.0095	(2)	1.3	(1)
			1,2,4-Trichlorobenzene.	120-82-1	0.055	(2)	19	(1)
			1,1,1-Trichloroethane.	71-55-6	0.054	(2)	5.6	(1)
			1,1,2-Trichloroethane.	79-00-5	0.054	(2)	5.6	(1)
			Trichloroethylene	79-01-6	0.054	(2)	5.6	(1)
			2,4,5-Trichlorophenol.	95-95-4	0.18	(2)	37	(1)
			2,4,6-Trichlorophenol.	88-06-2	0.035	(2)	37	(1)
			1,2,3-Trichloropropane.	96-18-4	0.85	(2)	28	(1)
			1,1,2-Trichloro-1,2,2-trifluoroethane.	76-13-1	0.057	(2)	28	(1)
			Tris(2,3-dibromopropyl) phosphate.	126-72-7	0.11	(2)	NA	
			Vinyl chloride	75-01-4	0.27	(2)	33	(1)
			Xylene(s)		0.32	(2)	28	(1)
			Cyanides (Total)	57-12-5	1.2	(2)	1.8	(1)
			Fluoride	16964-48-8	35	(2)	NA	
			Sulfide	8496-25-8	14	(2)	NA	
			Antimony	7440-36-0	1.9	(2)	NA	
			Arsenic	7440-38-2	1.4	(2)	NA	
			Barium	7440-39-3	1.2	(2)	NA	
			Beryllium	7440-41-7	0.82	(2)	NA	
			Cadmium	7440-43-9	0.20	(2)	NA	
			Chromium (Total)	7440-47-32	0.37	(2)	NA	
			Copper	7440-50-8	1.3	(2)	NA	
			Lead	7439-92-1	0.28	(2)	NA	
			Mercury	7439-97-6	0.15	(2)	NA	
			Nickel	7440-02-0	0.55	(2)	NA	
			Selenium	7782-49-2	0.82	(2)	NA	
			Silver	7440-22-4	0.29	(2)	NA	
			Thallium	7440-28-0	1.4	(2)	NA	
			Vanadium	7440-62-2	0.042	(2)	NA	
			Zinc	7440-66-6	1.0	(2)	NA	
K001	NA	Table CCWE in 268.41.	Naphthalene	91-20-3	0.031	(1)	1.5	(1)
			Pentachlorophenol.	87-86-5	0.18	(1)	7.4	(1)
			Phenanthrene	85-01-8	0.031	(1)	1.5	(1)
			Pyrene	129-00-0	0.028	(1)	1.5	(1)
			Toluene	108-88-3	0.028	(1)	28	(1)
			Xylenes (Total)		0.032	(1)	33	(1)
K002	NA	Table CCWE in 268.41.	Lead	7439-92-1	0.037		NA	
			Chromium (Total)	7440-47-32	0.9	(2)	NA	
K003	NA	Table CCWE in 268.41.	Lead	7439-92-1	3.4	(2)	NA	
			Chromium (Total)	7440-47-32	0.9	(2)	NA	
K004	NA	Table CCWE in 268.41.	Lead	7439-92-1	3.4	(2)	NA	
			Chromium (Total)	7440-47-32	0.9	(2)	NA	
K005	NA	Table CCWE in 268.41.	Lead	7439-92-1	3.4	(2)	NA	@
			Chromium (Total)	7440-47-32	0.9	(2)	NA	
			Lead	7439-92-1	3.4	(2)	NA	
			Cyanides (Total)	57-12-5	0.74	(2)	(4)	
K006	NA	Table CCWE in 268.41.	Chromium (Total)	7440-47-32	0.9	3.4	(2)	NA
			Lead	7439-92-1			(2)	NA
K007	NA	Table CCWE in 268.41.	Chromium (Total)	7440-47-32	0.9	(2)	NA	
			Lead	7439-92-1	3.4	(2)	NA	
			Cyanides (Total)	57-12-5	0.74	(2)	(4)	
K008	NA	Table CCWE in 268.41.	Chromium (Total)	7440-47-32	0.9	(2)	NA	
			Lead	7439-92-1	3.4	(2)	NA	
K009	NA	NA	Chloroform	67-66-3	0.1		6.0	(1)
K010	NA	NA	Chloroform	67-66-3	0.1		6.0	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
K011	NA	NA	Acetonitrile	75-05-8	38		1.8	(1)
			Acrylonitrile	107-13-1	0.06		1.4	(1)
			Acrylamide	79-06-1	19		23	(1)
			Benzene	71-43-2	0.02		0.03	(1)
			Cyanide (Total)	57-12-5	21		57	
K013	NA	NA	Acetonitrile	75-05-8	38		1.8	(1)
			Acrylonitrile	107-13-1	0.06		1.4	(1)
			Acrylamide	79-06-1	19		23	(1)
			Benzene	71-43-2	0.02		0.03	(1)
			Cyanide (Total)	57-12-5	21		57	
K014	NA	NA	Acetonitrile	75-05-8	38		1.8	(1)
			Acrylonitrile	107-13-1	0.06		1.4	(1)
			Acrylamide	79-06-1	19		23	(1)
			Benzene	71-43-2	0.02		0.03	(1)
			Cyanide (Total)	57-12-5	21		57	
K015	NA	Table CCWE in 268.41.	Anthracene	120-12-7	1.0		3.4	(1)
			Benzal Chloride	98-87-3	0.28		6.2	(1)
			Sum of Benzo(b) fluoranthene and Benzo(k) fluoranthene.	205-99-2	0.29		3.4	(1)
			Phenanthrene	85-01-8	0.27		3.4	(1)
			Toluene	108-88-3	0.15		6.0	(1)
			Chromium (Total)	7440-47-32	0.32		NA	
			Nickel	7440-02-0	0.44		NA	
K016	NA	NA	Hexachlorobenzene.	118-74-1	0.033	(1)	28	(1)
			Hexachlorobutadiene.	87-68-3	0.007	(1)	5.6	(1)
			Hexachlorocyclopentadiene.	77-47-4	0.007	(1)	5.6	(1)
			Hexachloroethane	67-72-1	0.033	(1)	28	(1)
			Tetrachloroethene.	127-18-4	0.007	(1)	6.0	(1)
K017	NA	NA	1,2-Dichloropropane.	78-87-5	0.85	(1)	18	(1)
			1,2,3-Trichloropropane.	96-18-4	0.85	(1)	28	(1)
			Bis(2-chloroethyl)ether.	111-44-4	0.033	(1)	7.2	(1)
K018	NA	NA	Chloroethane	75-00-3	0.007	(1)	6.0	(1)
			Chloromethane	74-87-3	0.007	(1)	NA	
			1,1-Dichloroethane.	75-34-3	0.007	(1)	6.0	(1)
			1,2-Dichloroethane.	107-06-2	0.007	(1)	6.0	(1)
			Hexachlorobenzene.	118-74-1	0.033	(1)	28	(1)
			Hexachlorobutadiene.	87-68-3	0.007	(1)	5.6	(1)
			Hexachloroethane	67-72-1	NA		28	(1)
			Pentachloroethane.	76-01-7	0.007	(1)	5.6	(1)
			1,1,1-Trichloroethane.	71-55-6	0.007	(1)	6.0	(1)
K019	NA	NA	Bis(2-chloroethyl)ether.	111-44-4	0.007	(1)	5.6	(1)
			Chlorobenzene	108-90-7	0.006	(1)	6.0	(1)
			Chloroform	67-66-3	0.007	(1)	6.0	(1)
			p-Dichlorobenzene.	106-46-7	0.008	(1)	NA	
			1,2-Dichloroethane.	107-06-2	0.007	(1)	6.0	(1)
			Fluorene	86-73-7	0.007	(1)	NA	
			Hexachloroethane	67-72-1	0.033	(1)	28	(1)
			Naphthalene	91-20-3	0.007	(1)	5.6	(1)
			Phenanthrene	85-01-8	0.007	(1)	5.6	(1)
			1,2,4,5-Tetrachlorobenzene.	95-94-3	0.017	(1)	NA	
			Tetrachloroethene.	127-18-4	0.007	(1)	6.0	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			1,2,4-Trichlorobenzene.	120-82-1	0.023	(1)	19	(1)
			1,1,1-Trichloroethane.	71-55-6	0.007	(1)	6.0	(1)
K020	NA	NA	1,2-Dichloroethane.	107-06-2	0.007	(1)	6.0	(1)
			1,1,2,2-Tetrachloroethane.	79-34-6	0.007	(1)	5.6	(1)
			Tetrachloroethene.	127-18-4	0.007	(1)	6.0	(1)
K021	NA	Table CCWE in 268.41.	Chloroform	67-66-3	0.046	(2)	6.2	(1)
			Carbon tetrachloride.	56-23-5	0.057	(2)	6.2	(1)
			Antimony	7440-36-0	0.60	(2)	NA	(1)
K022	NA	Table CCWE in 268.41.	Toulene	108-88-3	0.080	(2)	0.034	(1)
			Acetophenone	96-86-2	0.010		19	(1)
			Diphenylamine	22-39-4	0.52	(2)	NA	
			Diphenylnitrosamine.	86-30-6	0.40	(2)	NA	
			Sum of Diphenylamine and Diphenylnitrosamine.		NA		13	(1)
			Phenol	108-95-2	0.039		12	(1)
			Chromium (Total)	7440-47-32	0.35		NA	
			Nickel	7440-02-0	0.47		NA	
K023	NA	NA	Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.54	(1)	28	(1)
K024	NA	NA	Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.54	(1)	28	(1)
K028	NA	Table CCWE in 268.41.	1,1-Dichloroethane.	75-34-3	0.007	(1)	6.0	(1)
			trans-1,2-Dichloroethane.		0.033	(1)	6.0	(1)
			Hexachlorobutadiene.	87-68-3	0.007	(1)	5.6	(1)
			Hexachloroethane	67-72-1	0.033	(1)	28	(1)
			Pentachloroethane.	76-01-7	0.033	(1)	5.6	(1)
			1,1,1,2-Tetrachloroethane.	630-20-6	0.007	(1)	5.6	(1)
			1,1,2,2-Tetrachloroethane.	79-34-6	0.007	(1)	5.6	(1)
			1,1,1-Trichloroethane.	71-55-6	0.007	(1)	6.0	(1)
			1,1,2-Trichloroethane.	79-00-5	0.007	(1)	6.0	(1)
			Tetrachloroethylene.	127-18-4	0.007	(1)	6.0	(1)
			Cadmium	7440-43-9	6.4		NA	
			Chromium (Total)	7440-47-32	0.35		NA	
			Lead	7439-92-1	0.037		NA	
			Nickel	7440-02-0	0.47		NA	
K029	NA	NA	Chloroform	67-66-3	0.046		6.0	(1)
			1,2-Dichloroethane.	107-06-2	0.21		6.0	(1)
			1,1-Dichloroethylene.	75-35-4	0.025		6.0	(1)
			1,1,1-Trichloroethane.	71-55-6	0.054		6.0	(1)
			Vinyl chloride	75-01-4	0.27		6.0	(1)
K030	NA	NA	o-Dichlorobenzene.	95-50-1	0.008	(1)	NA	
			p-Dichlorobenzene.	106-46-7	0.008	(1)	NA	

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			Hexachlorobutadiene.	87-68-3	0.007	(1)	5.6	(1)
			Hexachloroethane	67-72-1	0.033	(1)	28	(1)
			Hexachloropropene.	1888-71-7	NA		19	(1)
			Pentachlorobenzene.	608-93-5	NA		28	(1)
			Pentachloroethane.	76-01-7	0.007	(1)	5.6	(1)
			1,2,4,5-Tetrachlorobenzene.	95-94-3	0.017	(1)	14	(1)
			Tetrachloroethene.	127-18-4	0.007	(1)	6.0	(1)
			1,2,4-Trichlorobenzene.	120-82-1	0.023	(1)	19	(1)
K031	NA	Table CCWE in 268.41.	Arsenic	7440-38-2	0.79		NA	(1)
K032	NA	NA	Hexachlorocyclopentadiene.	77-47-4	0.057	(2)	2.4	(1)
			Chlordane	57-74-9	0.0033	(2)	0.26	(1)
			Heptachlor	76-44-8	0.0012	(2)	0.066	(1)
			Heptachlor epoxide.	1024-57-3	0.016	(2)	0.066	(1)
K033	NA	NA	Hexachlorocyclopentadiene.	77-47-4	0.057	(2)	2.4	(1)
K034	NA	NA	Hexachlorocyclopentadiene.	77-47-4	0.057	(2)	2.4	(1)
K035	NA	NA	Acenaphthene	83-32-9	NA		3.4	(1)
			Anthracene	120-12-7	NA		3.4	(1)
			Benz(a)anthracene	56-55-3	0.059	(2)	3.4	(1)
			Benzo(a)pyrene	50-32-8	NA		3.4	(1)
			Chrysene	218-01-9	0.059	(2)	3.4	(1)
			Dibenz(a,h)anthracene.	53-70-3	NA		3.4	(1)
			Fluoranthene	206-44-0	0.068	(2)	3.4	(1)
			Fluorene	86-73-7	NA		3.4	(1)
			Indeno(1,2,3-cd)pyrene.	193-39-5	NA		3.4	(1)
			Cresols (m- and p- isomers).		0.77	(2)	NA	
			Naphthalene	91-20-3	0.059	(2)	3.4	(1)
			o-cresol	95-48-7	0.11	(2)	NA	
			Phenanthrene	85-01-8	0.059	(2)	3.4	(1)
			Phenol	108-95-2	0.039		NA	
			Pyrene	129-00-0	0.067	(2)	8.2	(1)
K036	NA	NA	Disulfoton	298-04-4	0.025	(2)	0.1	(1)
K037	NA	NA	Disulfoton	298-04-4	0.025	(2)	0.1	(1)
			Toluene	108-88-3	0.080	(2)	28	(1)
K038	NA	NA	Phorate	298-02-2	0.025	(2)	0.1	(1)
K040	NA	NA	Phorate	298-02-2	0.025	(2)	0.1	(1)
K041	NA	NA	Toxaphene	8001-35-1	0.0095	(2)	2.6	(1)
K042	NA	NA	1,2,4,5-Tetrachlorobenzene.	95-94-3	0.055	(2)	4.4	(1)
			o-Dichlorobenzene.	95-50-1	0.088	(2)	4.4	(1)
			p-Dichlorobenzene.	106-46-7	0.090	(2)	4.4	(1)
			Pentachlorobenzene.	608-93-5	0.055	(2)	4.4	(1)
			1,2,4-Trichlorobenzene.	120-82-1	0.055	(2)	4.4	(1)
K043	NA	NA	2,4-Dichlorophenol.	120-83-2	0.049	(1)	0.38	(1)
			2,6-Dichlorophenol.	87-65-0	0.013	(1)	0.34	(1)
			2,4,5-Trichlorophenol.	95-95-4	0.016	(1)	8.2	(1)
			2,4,6-Trichlorophenol.	88-06-2	0.039	(1)	7.6	(1)
			Tetrachlorophenols (Total).		0.018	(1)	0.68	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			Pentachloro-phenol.	87-86-5	0.022	[1]	1.9	[1]
			Tetrachloroeth-ene.	79-01-6	0.006	[1]	1.7	[1]
			Hexachlorodi-benzo-p-dioxins.		0.001	[1]	0.001	[1]
			Hexachlorodi-benzo-furans.		0.001	[1]	0.001	[1]
			Pentachlorodi-benzo-p-dioxins.		0.001	[1]	0.001	[1]
			Pentachlorodi-benzo-furans.		0.001	[1]	0.001	[1]
			Tetrachlorodi-benzo-p-dioxins.		0.001	[1]	0.001	[1]
			Tetrachlorodi-benzo-furans.		0.001	[1]	0.001	[1]
K046	NA	Table CCWE in 268.41.	Lead	7439-92-1	0.037		NA	
K048	NA	Table CCWE in 268.41.	Benzene	71-43-2	0.011	[1]	14	[1]
			Benzo(a)pyrene	50-32-8	0.047	[1]	12	[1]
			Bis(2-ethylhexyl) phthalate.	117-81-7	0.043	[1]	7.3	[1]
			Chrysene	218-01-9	0.043	[1]	15	[1]
			Di-n-butyl phthalate.	84-74-2	0.06	[1]	3.6	[1]
			Ethylbenzene	100-41-4	0.011	[1]	14	[1]
			Fluorene	86-73-7	0.005	[1]	NA	
			Naphthalene	91-20-3	0.033	[1]	42	[1]
			Phenanthrene	85-01-8	0.039	[1]	34	[1]
			Phenol	108-95-2	0.047	[1]	3.6	[1]
			Pyrene	129-00-0	0.045	[1]	36	[1]
			Toluene	108-88-3	0.011	[1]	14	[1]
			Xylene(s)		0.011	[1]	22	[1]
			Cyanides (Total)	57-12-5	0.028	[1]	1.8	[1]
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K049	NA	Table CCWE in 268.41.	Anthracene	120-12-7	0.039	[1]	28	[1]
			Benzene	71-43-2	0.011	[1]	14	[1]
			Benzo(a)pyrene	50-32-8	0.047	[1]	12	[1]
			Bis(2-ethylhexyl) phthalate.	117-81-7	0.043	[1]	7.3	[1]
			Carbon disulfide	75-15-0	0.011	[1]	NA	
			Chrysene	2218-01-9	0.043	[1]	15	[1]
			2,4-Dimethylphenol.	105-67-9	0.033	[1]	NA	
			Ethylbenzene	100-41-4	0.011	[1]	14	[1]
			Naphthalene	91-20-3	0.033	[1]	42	[1]
			Phenanthrene	85-01-8	0.039	[1]	34	[1]
			Phenol	108-95-2	0.047	[1]	3.6	[1]
			Pyrene	129-00-0	0.045	[1]	36	[1]
			Toluene	108-88-3	0.011	[1]	14	[1]
			Xylene(s)		0.011	[1]	22	[1]
			Cyanides (Total)	57-12-5	0.028	[1]	1.8	[1]
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K050	NA	Table CCWE in 268.41.	Benzo(a)pyrene	50-32-8	0.047	[1]	12	[1]
			Phenol	108-95-2	0.047	[1]	3.6	[1]
			Cyanides (Total)	57-12-5	0.028	[1]	1.8	[1]
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
K051	NA	Table CCWE in 268.41.	Acenaphtene	208-96-8	0.05	(1)	NA	
			Anthracene	120-12-7	0.039	(1)	28	(1)
			Benzene	71-43-2	0.011	(1)	14	(1)
			Benzo(a)-anthracene.	50-32-8	0.043	(1)	20	(1)
			Benzo(a)pyrene	117-81-7	0.047	(1)	12	(1)
			Bis(2-ethylhexyl) phthalate.	75-15-0	0.043	(1)	7.3	(1)
			Chrysene	2218-01-09				
			Di-n-butyl phthalate.	105-67-9	0.043	(1)	15	(1)
					0.06	(1)	3.6	(1)
			Ethylbenzene	100-41-4				
			Fluorence	86-73-7	0.011	(1)	14	(1)
			Naphthalene	91-20-3	0.05	(1)	NA	
			Phenanthrene	85-01-8	0.033	(1)	42	(1)
			Phenol	108-95-2	0.039	(1)	34	(1)
			Pyrene	129-00-0	0.047	(1)	3.6	(1)
			Toluene	108-88-3	0.045	(1)	36	(1)
			Xylene(s)		0.011	(1)	14	(1)
			Cyanides (Total)	57-12-5	0.011	(1)	22	(1)
			Chromium (Total)	7440-47-32	0.028	(1)	1.8	(1)
			Lead	7439-92-1	0.2		NA	
					0.037		NA	
K052	NA	Table CCWE in 268.41.	Benzene	71-43-2	0.011	(1)	14	(1)
			Benzo(a)pyrene	50-32-8	0.047	(1)	12	(1)
			o-Cresol	95-48-7	0.011	(1)	6.2	(1)
			p-Cresol	106-44-5	0.011	(1)	6.2	(1)
			2,4-Dimethylphenol.	105-67-9	0.033	(1)	NA	
			Ethylbenzene	100-41-4	0.011	(1)	14	(1)
			Naphthalene	91-20-3	0.033	(1)	42	(1)
			Phenanthrene	85-01-8	0.039	(1)	34	(1)
			Phenol	108-95-2	0.047	(1)	3.6	(1)
			Toluene	108-88-3	0.011	(1)	14	(1)
			Xylenes		0.011	(1)	22	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K060	NA	NA	Benzene	71-43-2	0.17	(1,2)	0.071	(1)
			Benzo(a)pyrene	50-32-8	0.035	(1,2)	3.6	(1)
			Naphthalene	91-20-3	0.028	(1,2)	3.4	(1)
			Phenol	108-95-2	0.042	(1,2)	3.4	(1)
			Cyanides (Total)	57-12-5	1.9		1.2	
K061	NA	Table CCWE in 268.41.	Cadmium	7440-43-9	1.61		NA	
			Chromium (Total)	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.51		NA	
			Nickel	7440-02-0	0.44		NA	
K062	NA	Table CCWE in 268.41.	Chromium (Total)	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.04		NA	
			Nickel	7440-02-0	0.44		NA	
K069	NA	Table CCWE in 268.41 and Table 2 in 268.42.	Cadmium	7440-43-9	1.6		NA	
			Lead	7439-92-1	0.51		NA	
K071	NA	Table CCWE in 268.41.	Mercury	7439-97-6	0.030		NA	
K073	NA	NA	Carbon tetrachloride.	56-23-5	0.057	(2)	6.2	(1)
			Chloroform	67-66-3	0.046	(2)	6.2	(1)
			Hexachloroethane	67-72-1	0.055	(2)	30	(1)
			Tetrachloroeth-ane.	127-18-4	0.056	(2)	6.2	(1)
			1,1,1-Trichloroethane.	71-55-6	0.054	(2)	6.2	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
K083	NA	Table CCWE in 268.41.	Benzene	71-43-2	0.14	(2)	6.6	(1)
			Aniline	62-53-3	0.81		14	(1)
			Diphenylamine	22-39-4	0.52	(2)	NA	
			Diphenylnitrosamine.	86-30-6	0.40	(2)	NA	
			Sum of Diphenylamine and Diphenylnitrosamine.		NA		14	(1)
			Nitrobenzene	98-95-3	0.068	(2)	14	(1)
			Phenol	108-95-2	0.039		5.6	(1)
			Cyclohexanone	108-94-1	0.36		NA	
			Nickel	7440-02-0	0.47		NA	
K084	NA	NA	Arsenic	7440-38-2	0.79		NA	
K085	NA	NA	Benzene	71-43-2	0.14	(2)	4.4	(1)
			Chlorobenzene	108-90-7	0.057	(2)	4.4	(1)
			o-Dichlorobenzene.	95-50-1	0.088	(2)	4.4	(1)
			m-Dichlorobenzene.	541-73-1	0.036	(2)	4.4	(1)
			p-Dichlorobenzene.	106-46-7	0.090	(2)	4.4	(1)
			1,2,4-Trichlorobenzene.	120-82-1	0.055	(2)	4.4	(1)
			1,2,4,5-Tetrachlorobenzene.	95-94-3	0.055	(2)	4.4	(1)
			Pentachlorobenzene.	608-93-5	0.055	(2)	4.4	(1)
			Hexachlorobenzene.	118-74-1	0.055	(2)	4.4	(1)
			Aroclor 1016	12674-11-2	0.013	(2)	0.92	(1)
			Aroclor 1221	11104-28-2	0.014	(2)	0.92	(1)
			Aroclor 1232	11141-16-5	0.013	(2)	0.92	(1)
			Aroclor 1242	53469-21-9	0.017	(2)	0.92	(1)
			Aroclor 1248	12672-29-6	0.013	(2)	0.92	(1)
			Aroclor 1254	11097-69-1	0.014	(2)	1.8	(1)
			Aroclor 1260	11096-82-5	0.014	(2)	1.8	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
K086	NA	Table CCWE in 268.41.	Acetone	67-64-1	0.28		160	[1]
			Acetophenone	96-86-2	0.010		9.7	[1]
			Bis(2-ethylhexyl) phthalate.	117-81-7	0.28	[2]	28	[1] [1]
			n-Butyl alcohol	71-36-3	5.6		2.6	[1]
			Butylbenzylphthalate.	85-68-7	0.017	[2]	7.9	
			Cycloghexanone	108-94-1	0.36		NA	[1]
			1,2-Dichlorobenzene.	95-50-1	0.088		6.2	[1]
			Diethyl phthalate	84-66-2	0.20	[2]	28	[1]
			Dimethyl phthalate.	131-11-3	0.047	[2]	28	[1]
			Di-n-butyl phthalate.	84-74-2	0.057	[2]	28	[1]
			Di-n-octyl phthalate.	117-84-0	0.017	[2]	28	[1]
			Ethyl acetate	141-78-6	0.34	[2]	33	[1]
			Ethylbenzene	100-41-4	0.057	[2]	6.0	
			Methanol	67-56-1	5.6	[2]	NA	[3]
			Methyl isobutyl ketone.	108-10-1	0.14		33	[1]
			Methyl ethyl ketone.	78-93-3	0.28		36	[1]
			Methylene chloride.	75-09-2	0.089	[2]	33	[1]
			Naphthalene	91-20-3	0.059	[2]	3.1	[1]
			Nitrobenzene	98-95-3	0.068	[2]	14	[1]
			Toluene	108-88-3	0.080	[2]	28	[1]
			1,1,1-Trichloroethane.	71-55-6	0.054	[2]	5.6	[1]
			Trichloroethylene	79-01-6	0.054	[2]	5.6	[1]
			Xylenes (Total)		0.32	[2]	28	[1]
			Cyanides (Total)	57-12-5	1.9		1.5	
			Chromium (Total)	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.037		NA	
K087	NA	Table CCWE in 268.41.	Acenaphthalene	208-96-8	0.028	[1]	3.4	[1]
			Benzene	71-43-2	0.014	[1]	0.071	[1]
			Chrysene	218-01-9	0.028	[1]	3.4	[1]
			Fluoranthene	206-44-0	0.028	[1]	3.4	[1]
			Indeno(1,2,3-cd)pyrene.	193-39-5	0.028	[1]	3.4	[1]
			Naphthalene	91-20-3	0.028	[1]	3.4	[1]
			Phenanthrene	85-01-8	0.028	[1]	3.4	[1]
			Toluene	108-88-3	0.008	[1]	0.65	[1]
			Xylenes		0.014	[1]	0.07	[1]
			Lead	7439-92-1	0.037		NA	
K093	NA	NA	Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.54	[1]	28	[1]
K094	NA	NA	Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.54	[1]	28	[1]
K095	NA	NA	1,1,1,2-Tetrachloroethane.	630-20-6	0.057		5.6	[1]
			1,1,2,2-Tetrachloroethane.	79-34-6	0.057		5.6	[1]
			Tetrachloroethene.	127-18-4	0.056		6.0	[1]
			1,1,2-Trichloroethane.	79-00-5	0.054		6.0	[1]
			Trichloroethylene	79-01-6	0.054		5.6	[1]
			Hexachloroethane	67-72-1	0.055		28	[1]
			Pentachloroethane.	76-01-7	0.055		5.6	[1]
K096	NA	NA	1,1,1,2-Tetrachloroethane.	630-20-6	0.057		5.6	[1]
			1,1,2,2-Tetrachloroethane.	79-34-6	0.057		5.6	[1]

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
			Tetrachloroethene.	127-18-4	0.056		6.0	(1)
			1,1,2-Trichloroethane.	79-00-5	0.054		6.0	(1)
			Trichloroethene	79-01-6	0.054		5.6	(1)
			Trichloroethylene	79-01-6	0.054		5.6	(1)
			1,3-Dichlorobenzene.	541-73-1	0.036		5.6	(1)
			Pentachloroethane.	76-01-7	0.055		5.6	(1)
			1,2,4-Trichlorobenzene.	120-82-1	0.055		19	(1)
K097	NA.	NA	Hexachlorocyclopentadiene.	77-47-4	0.057	(2)	2.4	(1)
			Chlordane	57-74-9	0.0033	(2)	0.26	(1)
			Heptachlor	76-44-8	0.0012	(2)	0.066	(1)
			Heptachlor epoxide.	1024-57-3	0.016	(2)	0.066	(1)
K098	NA.	NA	Toxaphene	8001-35-1	0.0095	(2)	2.6	(1)
K099	NA.	NA	2,4-Dichlorophenoxyacetic acid.	94-75-7	1.0	(1)	1.0	(1)
			Hexachlorodibenzo-p-dioxins.		0.001	(1)	0.001	(1)
			Hexachlorodibenzofurans.		0.001	(1)	0.001	(1)
			Pentachlorodibenzo-p-dioxins.		0.001	(1)	0.001	(1)
			Pentachlorodibenzofurans.		0.001	(1)	0.001	(1)
			Tetrachlorodibenzo-p-dioxins.		0.001	(1)	0.001	(1)
			Tetrachlorodibenzofurans.		0.001	(1)	0.001	(1)
K100	NA.	Table CCWE in 268.41.	Cadmium	7440-43-9	1.6		NA	
			Chromium (Total)	7440-47-32	0.32		NA	
			Lead	7439-92-1	0.51		NA	
K101	NA.	NA	o-Nitroaniline		0.27	(1)	14	(1)
			Arsenic	7440-38-2	0.79		NA	
			Cadmium	7440-43-9	0.24		NA	
			Lead	7439-92-1	0.17		NA	
			Mercury	7439-97-6	0.082		NA	
K102	NA.	Table CCWE in 268.41.	o-Nitrophenol		0.028	(1)	13	(1)
			Arsenic	7440-38-2	0.79		NA	
			Cadmium	7440-43-9	0.24		NA	
			Lead	7439-92-1	0.17		NA	
			Mercury	7439-97-6	0.082		NA	
K103	NA.	NA	Aniline	62-53-3	4.5		5.6	(1)
			Benzene	71-43-2	0.15		6.0	(1)
			2,4-Dinitrophenol	51-28-5	0.61		5.6	(1)
			Nitrobenzene	98-95-3	0.073		5.6	(1)
			Phenol	108-95-2	1.4		5.6	(1)
K104	NA.	NA	Aniline	62-53-3	4.5		5.6	(1)
			Benzene	71-43-2	0.15		6.0	(1)
			2,4-Dinitrophenol	51-28-5	0.61		5.6	(1)
			Nitrobenzene	98-95-3	0.073		5.6	(1)
			Phenol	108-95-2	1.4		5.6	(1)
			Cyanides (Total)	57-12-5	2.7		1.8	(1)
K105	NA.	NA	Benzene	71-43-2	0.14		4.4	(1)
			Chlorobenzene	108-90-7	0.057		4.4	(1)
			o-Dichlorobenzene.	95-50-1	0.088		4.4	(1)
			p-Dichlorobenzene.	106-46-7	0.090		4.4	(1)
			2,4,5-Trichlorophenol.	95-95-4	0.18		4.4	(1)
			2,4,6-Trichlorophenol.	88-06-2	0.035		4.4	(1)
			2-Chlorophenol	95-57-8	0.044		4.4	(1)
			Phenol	108-95-2	0.039		4.4	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
K106	NA	Table CCWE in 268.41 and Table 2 in 268.42.	Mercury	7439-97-6	0.030		NA	
K115	NA	Table CCWE in 268.41.	Nickel	7440-02-0	0.47		NA	
P004	Aldrin	NA	Aldrin	309-00-2	0.021	(2)	0.066	(1)
P010	Arsenic acid	Table CCWE in 268.41.	Arsenic	7440-38-2	0.79		NA	
P011	Arsenic pentoxide	Table CCWE in 268.41.	Arsenic	7440-38-2	0.79		NA	
P012	Arsenic trioxide	Table CCWE in 268.41.	Arsenic	7440-38-2	0.79		NA	
P013	Barium cyanide	Table CCWE in 268.41.	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.1		9.1	
P020	2-sec-Butyl-4,6-dinitrophenol (Dinoseb).	NA	2-sec-Butyl-4,6-dinitrophenol (Dinoseb).	88-85-7	0.066		2.5	(1)
P021	Calcium cyanide	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.1		9.1	
P022	Carbon disulfide	Table 2 in 268.42	Carbon disulfide	75-15-0	0.014		NA	
P024	p-Chloroaniline	NA	p-Chloroaniline	106-47-8	0.46		16	(1)
P029	Copper cyanide	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.1		9.1	
P030	Cyanides (soluble salts and complexes.	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.1		9.1	
P036	Dichlorophenylarsine.	Table CCWE in 268.41.	Arsenic	7440-38-2	0.79		NA	
P037	Dieldrin	NA	Dieldrin	60-57-1	0.017	(2)	0.13	(1)
P038	Diethylarsine	Table CCWE in 268.41.	Arsenic	7440-38-2	0.79		NA	
P039	Disulfoton	NA	Disulfoton	298-04-4	0.017		0.1	(1)
P047	4,6-Dinitro-o-cresol.	NA	4,6-Dinitro-o-cresol.	534-52-1	0.28	(2)	160	(1)
P048	2,4-Dinitrophenol	NA	2,4-Dinitrophenol	51-28-5	0.12	(2)	160	(1)
P050	Endosulfan	NA	Endosulfan I	939-98-8	0.023	(2)	0.066	(1)
			Endosulfan II	33213-6-5	0.029	(2)	0.13	(1)
			Endosulfan sulfate.	1031-07-8	0.029	(2)	0.13	(1)
P051	Endrin	NA	Endrin	72-20-8	0.0028	(2)	0.13	(1)
			Endrin aldehyde	7421-93-4	0.025	(2)	0.13	(1)
P056	Fluoride	Table 2 in 268.42	Fluoride	16964-48-8	35		NA	
P059	Heptachlor	NA	Heptachlor	76-44-8	0.0012	(2)	0.066	(1)
			Heptachlor epoxide.	1024-57-3	0.016	(2)	0.066	(1)
P060	Isodrin	NA	Isodrin	465-73-6	0.021	(2)	0.066	(1)
P063	Hydrogen cyanide	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.10		9.1	
P065	Mercury fulminate	Table CCWE in 268.41 and Table 2 in 268.42.	Mercury	7439-97-6	0.030		NA	
P071	Methyl parathion	NA	Methyl parathion	298-00-0	0.025		0.1	(1)
P073	Nickel carbonyl	Table CCWE in 268.41.	Nickel	7440-02-0	0.32		NA	
P074	Nickel cyanide	Table CCWE in 268.41.	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.10		9.1	
			Nickel	7440-02-0	0.44		NA	
P077	p-Nitroaniline	NA	p-Nitroaniline	100-01-6	0.028	(2)	28	(1)
P082	N-Nitrosodimethylamine.	Table 2 in 268.42	N-Nitrosodimethylamine.	62-75-9	0.40	(2)	NA	
P089	Parathion	NA	Parathion	56-38-2	0.025		0.1	(1)
P092	Phenylmercury acetate.	Table CCWE in 268.41 and Table 2 in 268.42.	Mercury	7439-97-6	0.030		NA	
P094	Phorate	NA	Phorate	298-02-2	0.025		0.1	(1)
P097	Famphur	NA	Famphur	52-85-7	0.025		0.1	(1)
P098	Potassium cyanide.	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.10		9.1	

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
P099	Potassium silver cyanide.	Table CCWE in 268.41.	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.1		9.1	
			Silver	7440-22-4	0.29		NA	
P101	Ethyl cyanide (Propanenitrile).	NA	Ethyl cyanide (Propanenitrile).	107-12-0	0.24	[2]	360	[1]
P103	Selenourea	Table CCWE in 268.41.	Selenium	7782-49-2	1.0	[2]	NA	
P104	Silver cyanide	Table CCWE in 268.41.	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.10		9.1	
			Silver	7440-22-4	0.29		NA	
P106	Sodium cyanide	NA	Cyanides (Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.10		9.1	
P110	Tetraethyl lead	Table CCWE in 268.41 and Table 2 in 269.42.	Lead	7439-92-1	0.040		NA	
P113	Thallic oxide	Table 2 in 268.42	Thallium	7440-28-0	0.14	[2]	NA	
P114	Thallium selenite	Table CCWE in 268.41.	Selenium	7782-49-2	1.0		NA	
P115	Thallium(I)sulfate	Table 2 in 268.42	Thallium	7440-28-0	0.14	[2]	NA	
P119	Ammonia vandate	Table 2 in 268.42	Vanadium	7440-62-2	28	[2]	NA	
P120	Vanadium pentoxide.	Table 2 in 268.42	Vanadium	7440-62-2	28	[2]	NA	
P121	Zinc cyanide	NA	Cyanides Total)	57-12-5	1.9		110	
			Cyanides (Amenable).	57-12-5	0.10		9.1	
P123	Toxaphene	NA	Toxaphene	8001-35-1	0.0095	[2]	1.3	[1]
U002	Acetone	NA	Acetone	67-64-1	0.28		160	[1]
U003	Acetonitrile	Table 2 in 268.42	Acetonitrile	75-05-8	0.17		0.17	
U004	Acetophenone	NA	Acetophenone	98-86-2	0.010	[1]	9.7	[1]
U005	2-Acetylamino-fluorene.	NA	2-Acetylamino-fluorene.	53-96-3	0.059	[2]	140	[1]
U009	Acrylonitrile	NA	Acrylonitrile	107-13-1	0.24	[2]	84	[1]
U012	Aniline	NA	Aniline	62-53-3	0.81		14	[1]
U018	Benz(a)anthracene	NA	Benz(a)anthracene	56-55-3	0.059	[2]	8.2	[1]
U019	Benzene	NA	Benzene	71-43-2	0.14	[2]	36	[1]
U022	Benzo(a)pyrene	NA	Benzo(a)pyrene	50-32-8	0.061	[2]	8.2	[1]
U024	Bis(2-chloroethoxy) methane.	NA	Bis(2-chloroethoxy) methane.	111-91-1	0.036		7.2	[1]
U025	Bis(2-chloroethyl) ether.	NA	Bis(2-chloroethyl) ether.	111-44-4	0.033		7.2	[1]
U027	Bis(2-chloroisopropyl) ether.	NA	Bis(2-chloroisopropyl) ether.	39638-32-9	0.055	[2]	7.2	[1]
U028	Bis(2-ethylhexyl) phthalate.	NA	Bis(2-ethylhexyl) phthalate.	117-81-7	0.54	[1]	28	[1]
U029	Bromomethane (Methyl bromide).	NA	Bromomethane (Methyl bromide).	74-83-9	0.11	[1]	15	[1]
U030	4-Bromophenyl phenyl ether.	NA	4-Bromophenyl phenyl ether.	101-55-3	0.055	[1]	15	[1]
U031	n-Butyl alcohol	NA	n-Butyl alcohol	71-36-3	5.6		2.6	[1]
U032	Calcium chromate	Table CCWE in 268.41.	Chromium (Total)	7440-47-32	0.32		NA	
U036	Chlordane (alpha and gamma).	NA	Chlordane (alpha and gamma).	57-74-9	0.0033	[2]	0.13	[1]
U037	Chlorobenzene	NA	Chlorobenzene	108-90-7	0.057	[2]	5.7	[1]
U038	Chlorobenzilate	Table 2 in 268.42	Chlorobenzilate	510-15-6	0.10	[2]	NA	
U039	p-Chloro-m-cresol	NA	p-Chloro-m-cresol	59-50-7	0.018	[2]	14	[1]
U042	2-Chloroethyl vinyl.	Table 2 in 268.42	2-Chloroethyl vinyl.	110-75-8	0.057		NA	
U043	Vinyl chloride	NA	Vinyl chloride	75-01-4	0.27	[2]	33	[1]
U044	Chloroform	NA	Chloroform	67-66-3	0.046	[2]	5.6	[1]
U045	Chloromethane (Methyl chloride).	NA	Chloromethane (Methyl chloride).	74-87-3	0.19	[2]	33	[1]
U047	2-Chloro-naphthalene.	NA	2-Chloro-naphthalene.	91-58-7	0.055	[2]	5.6	[1]
U048	2-Chlorophenol	NA	2-Chlorophenol	95-57-8	0.044	[2]	5.7	[1]
U050	Chrysene	NA	Chrysene	218-01-9	0.059	[2]	8.2	[1]

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
U051	Creosote	Table CCWE in 268.41.	Naphthalene	91-20-3	0.031		1.5	(1)
			Pentachlorophenol.	87-86-5	0.18		7.4	(1)
			Phenanthrene	85-01-8	0.031		1.5	(1)
			Pyrene	129-00-0	0.028		1.5	(1)
			Toluene	108-88-3	0.028		28	(1)
			Xylenes (Total)		0.032		33	(1)
			Lead	7439-92-1	0.037		NA	
U052	Cresols (Cresylic acid).	NA	o-Cresol	95-48-7	0.11	(2)	5.6	(1)
			Cresols (m- and p- isomers).		0.77	(2)	3.2	(1)
U057	Cyclohexanone	Table 2 in 268.42	Cyclohexanone	108-94-1	0.36		NA	
U060	DDD	NA	o,p'-DDD	53-19-0	0.023		0.087	(1)
			p,p'-DDD	72-54-8	0.023		0.087	(1)
U061	DDT	NA	o,p'-DDT	789-02-6	0.0039	(2)	0.087	(1)
			p,p'-DDT	50-29-3	0.0039	(2)	0.087	(1)
			o,p'-DDD	53-19-0	0.023	(2)	0.087	(1)
			p,p'-DDD	72-54-8	0.023	(2)	0.087	(1)
			o,p'-DDE	3424-82-6	0.031	(2)	0.087	(1)
			p,p'-DDE	72-55-9	0.031	(2)	0.087	(1)
U063	Dibenzo(a,h) anthracene.	NA	Dibenzo(a,h) anthracene.	53-70-3	0.055	(2)	8.2	(1)
U066	1,2-Dibromo-3-chloropropane.	NA	1,2-Dibromo-3-chloropropane.	96-12-8	0.11	(2)	15	(1)
U067	1,2-Dibromo ethane (Ethylene dibromide).	NA	1,2-Dibromo-ethane (Ethylene dibromide).	106-93-4	0.028	(2)	15	(1)
U068	Dibromomethane	NA	Dibromomethane	74-95-3	0.11	(2)	15	(1)
U069	Di-n-butyl phthalate.	NA	Di-n-butyl phthalate.	84-74-2	0.54	(1)	28	(1)
U070	o-Dichlorobenzene.	NA	o-Dichlorobenzene.	95-50-1	0.088	(2)	6.2	(1)
U071	m-Dichlorobenzene.	NA	m-Dichlorobenzene.	541-73-1	0.036		6.2	(1)
U072	p-Dichlorobenzene.	NA	p-Dichlorobenzene.	104-46-7	0.090	(2)	6.2	(1)
U075	Dichlorodifluoromethane.	NA	Dichlorodifluoromethane.	75-71-8	0.23	(2)	7.2	(1)
U076	1,1-Dichloroethane.	NA	1,1-Dichloroethane.	75-34-3	0.059	(2)	7.2	(1)
U077	1,2-Dichloroethane.	NA	1,2-Dichloroethane.	107-06-2	0.21	(2)	7.2	(1)
U078	1,1-Dichloroethylene.	NA	1,1-Dichloroethylene.	75-35-4	0.025	(2)	33	(1)
U079	1,2-Dichloroethylene.	NA	trans-1,2-Dichloroethylene.	156-60-5	0.054	(2)	33	(1)
U080	Methylene chloride.	NA	Methylene chloride.	75-09-2	0.089	(2)	33	(1)
U081	2,4-Dichlorophenol.	NA	2,4-Dichlorophenol.	120-83-2	0.044	(2)	14	(1)
U082	2,6-Dichlorophenol.	NA	2,6-Dichlorophenol.	87-65-0	0.044	(2)	14	(1)
U083	1,2-Dichloropropane	NA	1,2-Dichloropropane	78-87-5	0.85	(2)	18	(1)
U084	1,3-Dichloropropene.	NA	cis-1,3-Dichloropropylene.	10061-01-5	0.036	(2)	18	(1)
			trans-1,3 Dichloropropylene.	10061-02-6	0.036	(2)	18	(1)
U088	Diethyl phthalate	NA	Diethyl phthalate	84-66-2	0.54	(2)	28	(1)
U093	p Dimethylaminoazobenzene.	Table 2 in 268.42	p-Dimethylaminoazobenzene.	60-11-7	0.13	(2)	NA	
U101	2,4-Dimethylphenol.	NA	2,4-Dimethylphenol.	105-67-9	0.036	(2)	14	(1)
U102	Dimethyl phthalate.	NA	Dimethyl phthalate.	131-11-3	0.54	(1)	28	(1)
U105	2,4-Dinitrotoluene	NA	2,4-Dinitrotoluene	121-14-2	0.32	(2)	140	(1)
U106	2,6-Dinitrotoluene	NA	2,6-Dinitrotoluene	606-20-2	0.55	(2)	28	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
U107	Di-n-octyl phthalate.	NA	Di-n-octyl phthalate.	117-84-0	0.54	(1)	28	(1)
U108	1,4-Dioxane	NA	1,4-Dioxane	123-91-1	0.12	(2)	170	(1)
U111	Di-n-propylnitrosoamine.	NA	Di-n-propylnitrosoamine.	621-64-7	0.40	(2)	14	(1)
U112	Ethyl acetate	NA	Ethyl acetate	141-78-6	0.34	(2)	33	(1)
U117	Ethyl ether	NA	Ethyl ether	60-29-7	0.12	(2)	160	(1)
U118	Ethyl methacrylate.	NA	Ethyl methacrylate.	97-63-2	0.14	(2)	160	(1)
U120	Fluoranthene	NA	Fluoranthene	206-44-0	0.068	(2)	8.2	(1)
U121	Trichloromonofluoromethane.	NA	Trichloromonofluoromethane.	75-69-4	0.020	(2)	33	(1)
U127	Hexachlorobenzene.	NA	Hexachlorobenzene.	118-74-1	0.055	(2)	37	(1)
U128	Hexachlorobutadiene.	NA	Hexachlorobutadiene.	87-68-3	0.055	(2)	28	(1)
U129	Lindane	NA	alpha-BHC	319-84-6	0.00014	(2)	0.66	(1)
			beta-BHC	319-85-7	0.00014	(2)	0.66	(1)
			Delta-BHC	319-86-8	0.023	(2)	0.66	(1)
			gamma-BHC (Lindane).	58-89-9	0.0017	(2)	0.66	(1)
U130	Hexachlorocyclopentadiene.	NA	Hexachlorocyclopentadiene.	77-47-7	0.057	(2)	3.6	(1)
U131	Hexachloroethane	NA	Hexachloroethane	67-72-1	0.055	(2)	28	(1)
U134	Hydrogen fluoride	Table 2 in 268.42	Fluoride	16964-48-8	35		NA	
U136	Cacodylic acid	Table CCWE in 268.41.	Arsenic	7440-38-2	0.79		NA	
U137	Indeno(1,2,3-c,d)pyrene.	NA	Indeno(1,2,3-c,d)pyrene.	193-39-5	0.0055	(2)	8.2	(1)
U138	Iodomethane	NA	Iodomethane	74-88-4	0.19	(2)	65	(1)
U140	Isobutyl alcohol	NA	Isobutyl alcohol	78-83-1	5.6		170	(1)
U141	Isosafrole	NA	Isosafrole	120-58-1	0.081		2.6	(1)
U142	Kepone	NA	Kepone	143-50-8	0.0011		0.13	(1)
U144	Lead acetate	Table CCWE in 268.41.	Lead	7439-92-1	0.040		NA	
U145	Lead phosphate	Table CCWE in 268.41.	Lead	7439-92-1	0.040		NA	
U146	Lead subacetate	Table CCWE in 268.41.	Lead	7439-92-1	0.040		NA	
U151	Mercury	Table CCWE in 268.41 and Table 2 in 268.42.	Mercury	7439-97-6	0.030		NA	
U152	Methacrylonitrile	NA	Methacrylonitrile	126-98-7	0.24	(2)	84	(1)
U154	Methanol	NA	Methanol	67-56-1	5.6		NA	
U155	Methapyrilene	NA	Methapyrilene	91-80-5	0.081		1.5	(1)
U157	3-Methylcholanthrene.	NA	3-Methylcholanthrene.	56-49-5	0.0055	(2)	15	(1)
U158	4,4'-Methylenebis(2-chloroaniline)	NA	4,4'-Methylenebis(2-chloroaniline)	101-14-4	0.50	(2)	35	(1)
U159	Methyl ethyl ketone.	NA	Methyl ethyl ketone.	78-93-3	0.28		36	(1)
U161	Methyl isobutyl ketone	NA	Methyl isobutyl ketone	108-10-1	0.14		33	(1)
U162	Methyl methacrylate	NA	Methyl methacrylate	80-62-6	0.14		160	(1)
U165	Naphthalene	NA	Naphthalene	91-20-3	0.059	(6)	3.1	(1)
U168	2-Naphthylamine	Table 2 in 268.42	2-Naphthylamine	91-59-8	0.52	(2)	NA	
U169	Nitrobenzene	NA	Nitrobenzene	98-95-3	0.068	(2)	14	(1)
U170	4-Nitrophenol	NA	4-Nitrophenol	100-02-7	0.12	(2)	29	(1)
U172	n-Nitrosodi-n-butylamine	NA	n-Nitrosodi-n-butylamine	924-16-3	0.40	(2)	17	(1)
U174	N-Nitrosodiethylamine	NA	n-Nitrosodiethylamine	55-18-5	0.40	(2)	28	(1)
U179	N-Nitrosopiperidine	NA	n-Nitrosopiperidine	100-75-4	0.013	(2)	35	(1)
U180	N-Nitrosopyrrolidine.	NA	n-Nitrosopyrrolidine.	930-55-2	0.013	(2)	35	(1)
U181	5-Nitro-o-toluidine	NA	5-Nitro-o-toluidine	99-55-8	0.32	(2)	28	(1)
U183	Pentachlorobenzene.	NA	Pentachlorobenzene.	608-93-5	0.055	(2)	37	(1)

268.43 TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/kg)	Notes
U185	Pentachloronitrobenzene.	NA	Pentachloronitrobenzene.	82-68-8	0.055	[2]	4.8	[1]
U187	Phenacetin	NA	Phenacetin	62-44-2	0.081		16	[1]
U188	Phenol	NA	Phenol	108-95-2	0.039		6.2	[1]
U190	Phthalic anhydride (measured as Phthalic acid).	NA	Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.54	[1]	28	[1]
U192	Pronamide	NA	Pronamide	23950-58-5	0.093		1.5	[1]
U196	Pyridine	NA	Pyridine	110-86-1	0.014	[2]	16	[1]
U203	Safrole	NA	Safrole	94-59-7	0.081		22	[1]
U204	Selenium dioxide	Table CCWE in 268.41.	Selenium	7782-49-2	1.0		NA	
U205	Selenium sulfide	Table CCWE in 268.41.	Selenium	7782-49-2	1.0		NA	
U207	1,2,4,5-Tetrachlorobenzene.	NA	1,2,4,5-Tetrachlorobenzene.	95-94-3	0.055	[2]	19	[1]
U208	1,1,1,2-Tetrachloroethane.	NA	1,1,1,2-Tetrachloroethane.	630-20-6	0.057		42	[1]
U209	1,1,2,2-Tetrachloroethane.	NA	1,1,2,2-Tetrachloroethane.	79-34-5	0.057	[2]	42	[1]
U210	Tetrachloroethylene.	NA	Tetrachloroethylene.	127-18-4	0.056	[2]	5.6	[1]
U211	Carbon tetrachloride.	NA	Carbon tetrachloride.	56-23-5	0.057	[2]	5.6	[1]
U214	Thallium(I)acetate	Table 2 in 268.42	Thallium	7440-28-0	0.14	[2]	NA	
U215	Thallium(I) carbonate.	Table 2 in 268.42	Thallium	7440-28-0	0.14	[2]	NA	
U216	Thallium(I)chloride	Table 2 in 268.42	Thallium	7440-28-0	0.14	[2]	NA	
U217	Thallium(I)nitrate	Table 2 in 268.42	Thallium	7440-28-0	0.14	[2]	NA	
U220	Toluene	NA	Toluene	108-88-3	0.080	[1]	28	[1]
U225	Tribromomethane (Bromoform).	NA	Tribomomethane (Bromoform).	75-25-2	0.63	[2]	15	[1]
U226	1,1,1-Trichloroethane.	NA	1,1,1-Trichloroethane.	71-55-6	0.054	[2]	5.6	[1]
U227	1,1,2-Trichloroethane.	NA	1,1,2-Trichloroethane.	79-00-5	0.054	[2]	5.6	[1]
U228	Trichlorothylene	NA	Trichloroethylene	79-01-6	0.054	[2]	5.6	[1]
U235	tris-(2,3-Dibromopropyl) phosphate.	NA	tris-(2,3-Dibromopropyl)-phosphate.	126-72-7	0.025		0.10	[1]
U239	Xylenes	NA	Xylenes		0.32	[2]	28	[1]
U240	2.4.-Dichlorophenoxyacetic acid.	NA	2,4-Dichlorophenoxyacetic acid.	94-75-7	0.72		10	[1]
U243	Hexachloropropene.	NA	Hexachloropropene.	1888-71-7	0.035	[2]	28	
U247	Methoxychlor	NA	Methoxychlor	72-43-5	0.25	[2]	0.18	[1]

[1] Treatment standards for this organic constituent were established based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may certify compliance with these treatment standards according to provisions in 40 CFR Section 268.7.
[2] Based on analysis of composite samples.
[3] As analyzed using SW-846 Method 9010 or 9012; sample size 10 gram; distillation time: one hour and fifteen minutes.
[4] Reseved.

Note: NA means Not Applicable.

* * * * *

(c) Notwithstanding the prohibitions specified in paragraph (a) of this section, treatment and disposal facilities may demonstrate (and certify pursuant to § 268.7(b)(5)) compliance with the treatment standards for organic constituents specified by a footnote in Table CCW in this section, provided the following conditions are satisfied:

(1) The treatment standards for the organic constituents were established based on incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or part 265, subpart O, or based on combustion in fuel substitution units operating in accordance with applicable technical requirements;

(2) The treatment or disposal facility has used the methods referenced in paragraph (c)(1) of this section to treat the organic constituents; and

(3) The treatment or disposal facility has been unable to detect the organic constituents despite using its best good-faith efforts as defined by applicable Agency guidance or standards. Until such guidance or standards are developed, the treatment or disposal facility may demonstrate such good-faith efforts by achieving detection limits for the regulated organic constituents that do not exceed an order of magnitude of the treatment standards specified in this section.

13. Appendix IV to part 268 is revised to read as follows:

Appendix IV—Organometallic Lab Packs

Hazardous waste with the following EPA Hazardous Waste Code No. may be placed in an "organometallic" or "Appendix IV lab pack:"

P001, P002, P003, P004, P005, P006, P007, P008, P009, P013, P014, P015, P016, P017, P018, P020, P021, P022, P023, P024, P026, P027, P028, P029, P030, P031, P033, P034, P036, P037, P038, P039, P040, P041, P042, P043, P044, P045, P046, P047, P048, P049, P050, P051, P054, P056, P057, P058, P059, P060, P062, P063, P064, P065, P066, P067, P068, P069, P070, P071, P072, P073, P074, P075, P077, P081, P082, P084, P085, P087, P088, P089, P092, P093, P094, P095, P096, P097, P098, P099, P101, P102, P103, P104, P105, P106, P108, P109, P110, P111, P112, P113, P114, P115, P116, P118, P119, P120, P121, P122, P123.

U001, U002, U003, U004, U005, U006, U007, U008, U009, U010, U011, U012, U014, U015, U016, U017, U018, U019, U020, U021, U022, U023, U024, U025, U026, U027, U028, U029, U030, U031, U032, U033, U034, U035, U036, U037, U038, U039, U041, U042, U043, U044, U045, U046, U047, U048, U049, U050, U051, U052, U053, U055, U056, U057, U058, U059, U060, U061, U062, U063, U064, U066, U067, U068, U069, U070, U071, U072, U073, U074, U075, U076, U077, U078, U079, U080, U081, U082, U083, U084, U085, U086, U087, U088, U089, U090, U091, U092, U093, U094, U095, U096, U097, U098, U099, U101, U102, U103, U105, U106, U107, U108, U109, U110, U111, U112, U113, U114, U115, U116, U117, U118, U119, U120, U121, U122, U123, U124, U125, U126, U127, U128, U129, U130, U131, U132, U133, U136, U137, U138, U140, U141, U142, U143, U144, U145, U146, U147, U148, U149, U150, U152, U153, U154, U155, U156, U157, U158, U159, U160, U161, U162, U163, U164, U165, U166, U167, U168, U169, U170, U171, U172, U173, U174, U176, U177, U178, U179, U180, U181, U182, U183, U184, U185, U186, U187, U188, U189, U190, U191, U192, U193, U194, U196, U197, U200, U201, U202, U203, U204, U205, U206, U207, U208, U209, U210, U211, U213, U214, U215, U216, U217, U218, U219, U220, U221, U222, U223, U225, U226, U227, U228, U234, U235, U236, U237, U238, U239, U240, U243, U244, U246, U247, U248, U249.

F001, F002, F003, F004, F005, F006, F010, F020, F021, F022, F023, F024, F025, F026, F027, F028, F039.

K001, K002, K008, K009, K010, K011, K013, K014, K015, K016, K017, K018, K019, K020, K021, K022, K023, K024, K025, K026, K027, K028, K029, K030, K031, K032, K033, K034, K035, K036, K037, K038, K039, K040, K041, K042, K043, K044, K045, K046, K047, K048, K049, K050, K051, K052, K060, K061, K069, K071, K073, K083, K084, K085, K086, K087, K093, K094, K095, K096, K097, K098, K099, K101, K102, K103, K104, K105, K113, K114, K115, K116.

D001, D002, D003, D004, D005, D006, D007, D008, D010, D011, D012, D013, D014, D015, D016, D017.

14. Part 268, appendix V is revised to read as follows:

Appendix V—Organic Lab Packs

Hazardous waste with the following EPA Hazardous Waste Code No. may be placed in an "organic" or "Appendix V" lab pack:

P001, P002, P003, P004, P005, P007, P008, P009, P014, P016, P017, P018, P020, P021, P022, P023, P024, P026, P027, P028, P030, P031, P033, P034, P037, P039, P040, P041, P042, P043, P044, P045, P046, P047, P048, P049, P050, P051, P054, P057, P058, P059, P060, P062, P063, P064, P066, P067, P068, P069, P070, P071, P072, P075, P077, P081, P082, P084, P085, P088, P089, P093, P094, P095, P097, P098, P101, P102, P105, P106, P108, P109, P111, P112, P116, P118, P123.

U001, U002, U003, U004, U005, U006, U007, U008, U009, U010, U011, U012, U014, U015, U016, U017, U018, U019, U020, U021, U022, U023, U024, U025, U026, U027, U028, U029, U030, U031, U033, U034, U035, U036, U037, U038, U039, U041, U042, U043, U044, U045, U046, U047, U048, U049, U050, U052, U053, U055, U056, U057, U058, U059, U060, U061, U062, U063, U064, U066, U067, U068, U069, U070, U071, U072, U073, U074, U075, U076, U077, U078, U079, U080, U081, U082, U083, U084, U085, U086, U087, U088, U089, U090, U091, U092, U093, U094, U095, U096, U097, U098, U099, U101, U102, U103, U105, U106, U107, U108, U109, U110, U111, U112, U113, U114, U115, U116, U117, U118, U119, U120, U121, U122, U123, U124, U125, U126, U127, U128, U129, U130, U131, U132, U133, U135, U137, U138, U140, U141, U142, U143, U147, U148, U149, U150, U152, U153, U154, U155, U156, U157, U158, U159, U160, U161, U162, U163, U164, U165, U166, U167, U168, U169, U170, U171, U172, U173, U174, U176, U177, U178, U179, U180, U181, U182, U183, U184, U185, U186, U187, U188, U189, U190, U191, U192, U193, U194, U196, U197, U200, U201, U202, U203, U206, U207, U208, U209, U210, U211, U213, U218, U219, U220, U221, U222, U223, U225, U226, U227, U228, U234, U235, U236, U237, U238, U239, U240, U243, U244, U246, U247, U248, U249.

F001, F002, F003, F004, F005, F010, F020, F021, F022, F023, F025, F026, F027, F028.

K009, K010, K011, K013, K014, K016, K017, K018, K019, K020, K023, K024, K025, K026, K027, K029, K030, K032, K033, K034, K035, K036, K037, K038, K039, K040, K041, K042, K043, K044, K045, K047, K060, K073, K085, K093, K094, K095, K096, K097, K098, K099, K103, K104, K105, K113, K114, K116.

D001, D012, D013, D014, D015, D016, D017.

15. Appendix VII to part 268 is revised to read as follows:

Appendix VII

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST

Waste code	Waste category	Effective date
California list	Liquid hazardous wastes, including free liquids associated with solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l or certain metals or compounds of these metals greater than or equal to the prohibition levels.	July 8, 1987.
California list	Liquid (aqueous) hazardous wastes having a pH less than or equal to 2	July 8, 1987.
California list	Dilute HOC wastewaters, defined as HOC-waste mixtures that are primarily water and that contain greater than or equal to 1,000 mg/l but less than 10,000 mg/l.	July 8, 1987.
California list	Liquid hazardous waste containing PCBs greater than or equal to 50 ppm	July 8, 1987.
California list	Other liquid and nonliquid hazardous wastes containing HOCs in total concentration greater than or equal to 1,000 mg.	Nov. 8, 1988.
D001	All	Aug. 8, 1990.
D002	All	Aug. 8, 1990.
D003	All	Aug. 8, 1990.
D004	Wastewater	Aug. 8, 1990.
D004	Nonwastewater	May 8, 1992.
D005	All	Aug. 8, 1990.
D006	All	Aug. 8, 1990.
D007	All	Aug. 8, 1990.
D008	Lead materials before secondary smelting	May 8, 1992.
D008	All others	Aug. 8, 1990.
D009	Nonwastewater	May 8, 1992.
D009	All others	Aug. 8, 1990.
D010	All	Aug. 8, 1990.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
D011	All	Aug. 8, 1990.
D012	All	Aug. 8, 1990.
D013	All	Aug. 8, 1990.
D014	All	Aug. 8, 1990.
D015	All	Aug. 8, 1990.
D016	All	Aug. 8, 1990.
D017	All	Aug. 8, 1990.
F001	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids.	Nov. 8, 1988.
F001	All others	Nov. 8, 1986.
F002 (1,1,2-trichloroethane)	Wastewater and Nonwastewater	Aug. 8, 1990.
F002	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids.	Nov. 8, 1988.
F002	All others	Nov. 8, 1986.
F003	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids.	Nov. 8, 1988.
F003	All others	Nov. 8, 1986.
F004	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids.	Nov. 8, 1988.
F004	All others	Nov. 8, 1986.
F005 (benzene, 2-ethoxy ethanol, 2-nitropropane)	Wastewater and Nonwastewater	Aug. 8, 1990.
F005	Small quantity generators, CERCLA response/RCRA corrective action, initial generator's solvent-water mixtures, solvent-containing sludges and solids.	Nov. 8, 1988.
F005	All others	Nov. 8, 1986.
F006	Wastewater	Aug. 8, 1990.
F006	Nonwastewater	Aug. 8, 1988.
F006 (cyanides)	Nonwastewater	July 8, 1989.
F007	All	July 8, 1989.
F008	All	July 8, 1989.
F009	All	July 8, 1989.
F010	All	June 8, 1989.
F011 (cyanides)	Nonwastewater	Dec. 8, 1989.
F011	All others	July 8, 1989.
F012 (cyanides)	Nonwastewater	Dec. 8, 1989.
F012	All others	July 8, 1989.
F019	All	Aug. 8, 1990.
F020	All	Nov. 8, 1988.
F021	All	Nov. 8, 1988.
F022	All	Nov. 8, 1988.
F023	All	Nov. 8, 1988.
F024 (metals)	Wastewater	June 8, 1989.
F024 (metals)	Nonwastewater	Aug. 8, 1990.
F024 [b]	All others	June 8, 1989.
F025	All	Aug. 8, 1990.
F026	All	Nov. 8, 1988.
F027	All	Nov. 8, 1988.
F028	All	Nov. 8, 1988.
F039	Wastewater	Aug. 8, 1990.
F039	Nonwastewater	May 8, 1992.
K001 (organics) [b]	All	Aug. 8, 1988.
K001	All others	Aug. 8, 1988.
K002	All	Aug. 8, 1990.
K003	All	Aug. 8, 1990.
K004	Wastewater	Aug. 8, 1990.
K004 [c]	Nonwastewater	Aug. 8, 1988.
K005	Wastewater	Aug. 8, 1990.
K005 [c]	Nonwastewater	June 8, 1989.
K006	All	Aug. 8, 1990.
K007	Wastewater	Aug. 8, 1990.
K007 [c]	Nonwastewater	June 8, 1989.
K008	Wastewater	Aug. 8, 1990.
K008 [c]	Nonwastewater	Aug. 8, 1988.
K009	All	June 8, 1989.
K010	All	June 8, 1989.
K011	Wastewater	Aug. 8, 1990.
K011	Nonwastewater	June 8, 1989.
K013	Wastewater	Aug. 8, 1990.
K013	Nonwastewater	June 8, 1989.
K014	Wastewater	Aug. 8, 1990.
K014	Nonwastewater	June 8, 1989.
K015	Wastewater	Aug. 8, 1988.
K015	Nonwastewater	Aug. 8, 1990.
K016	All	Aug. 8, 1988.
K017	All	Aug. 8, 1990.
K018	All	Aug. 8, 1988.
K019	All	Aug. 8, 1988.
K020	All	Aug. 8, 1988.
K021	Wastewater	Aug. 8, 1990.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRs [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
K021 [c]	Nonwastewater	Aug. 8, 1988.
K022	Wastewater	Aug. 8, 1990.
K022	Nonwastewater	Aug. 8, 1988.
K023	All	June 8, 1989.
K024	All	Aug. 8, 1988.
K025	Wastewater	Aug. 8, 1990.
K025 [c]	Nonwastewater	Aug. 8, 1988.
K026	All	Aug. 8, 1990.
K027	All	June 8, 1989.
K028 (metals)	Nonwastewater	Aug. 8, 1990.
K028	All others	June 8, 1989.
K029	Wastewater	Aug. 8, 1990.
K029	Nonwastewater	June 8, 1989.
K030	All	Aug. 8, 1988.
K031	Wastewater	Aug. 8, 1990.
K031	Nonwastewater	May 8, 1992.
K032	All	Aug. 8, 1990.
K033	All	Aug. 8, 1990.
K034	All	Aug. 8, 1990.
K035	All	Aug. 8, 1990.
K036	Wastewater	June 8, 1989.
K036 [c]	Nonwastewater	Aug. 8, 1988.
K037 [b]	Wastewater	Aug. 8, 1988.
K037	Nonwastewater	Aug. 8, 1988.
K038	All	June 8, 1989.
K039	All	June 8, 1989.
K040	All	June 8, 1989.
K041	All	Aug. 8, 1990.
K042	All	Aug. 8, 1990.
K043	All	June 8, 1989.
K044 [c]	All	Aug. 8, 1988.
K045 [c]	All	Aug. 8, 1988.
K046 (Nonreactive)	Nonwastewater	Aug. 8, 1988.
K046	All others	Aug. 8, 1990.
K047 [c]	All	Aug. 8, 1988.
K048	Wastewater	Aug. 8, 1990.
K048	Nonwastewater	Nov. 8, 1990.
K049	Wastewater	Aug. 8, 1990.
K049	Nonwastewater	Nov. 8, 1990.
K050	Wastewater	Aug. 8, 1990.
K050	Nonwastewater	Nov. 8, 1990.
K051	Wastewater	Aug. 8, 1990.
K051	Nonwastewater	Nov. 8, 1990.
K052	Wastewater	Aug. 8, 1990.
K052	Nonwastewater	Nov. 8, 1990.
K060	Wastewater	Aug. 8, 1990.
K060 [c]	Nonwastewater	Aug. 8, 1988.
K061	Wastewater	Aug. 8, 1990.
K061 (low zinc) (interim standard for high zinc remains in effect until August 7, 1991).	Nonwastewater	Aug. 8, 1988.
K062	All	Aug. 8, 1988.
K069 (Non-Calcium Sulfate) [c]	Nonwastewater	Aug. 8, 1988.
K069	All others	Aug. 8, 1990.
K071	All	Aug. 8, 1990.
K073	All	Aug. 8, 1990.
K083	All	Aug. 8, 1990.
K084	Wastewater	Aug. 8, 1990.
K084	Nonwastewater	May 8, 1992.
K085	All	Aug. 8, 1990.
K086 (organics) [b]	All	Aug. 8, 1988.
K086	All others	Aug. 8, 1988.
K087	All	Aug. 8, 1988.
K093	All	June 8, 1989.
K094	All	June 8, 1989.
K095	Wastewater	Aug. 8, 1990.
K095	Nonwastewater	June 8, 1989.
K096	Wastewater	Aug. 8, 1990.
K096	Nonwastewater	June 8, 1989.
K097	All	Aug. 8, 1990.
K098	All	Aug. 8, 1990.
K099	All	Aug. 8, 1988.
K100	Wastewater	Aug. 8, 1990.
K100 [c]	Nonwastewater	Aug. 8, 1988.
K101 (organics)	Wastewater	Aug. 8, 1988.
K101 (metals)	Wastewater	Aug. 8, 1990.
K101 (organics)	Nonwastewater	Aug. 8, 1988.
K101 (metals)	Nonwastewater	May 8, 1992.
K102 (organics)	Wastewater	Aug. 8, 1988.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRs *—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
K102 (metals)	Wastewater	Aug. 8, 1990.
K102 (organics)	Nonwastewater	Aug. 8, 1988.
K102 (metals)	Nonwastewater	May 8, 1992.
K103	All	Aug. 8, 1988.
K104	All	Aug. 8, 1988.
K105	All	Aug. 8, 1990.
K106	Wastewater	Aug. 8, 1990.
K106	Nonwastewater	May 8, 1992.
K113	All	June 8, 1989.
K114	All	June 8, 1989.
K115	All	June 8, 1989.
K116	All	June 8, 1989.
P001	All	Aug 8, 1990.
P002	All	Aug. 8, 1990.
P003	All	Aug. 8, 1990.
P004	All	Aug. 8, 1990.
P005	All	Aug. 8, 1990.
P006	All	Aug. 8, 1990.
P007	All	Aug. 8, 1990.
P008	All	Aug. 8, 1990.
P009	All	Aug. 8, 1990.
P010	Wastewater	Aug. 8, 1990.
P010	Nonwastewater	May 8, 1992.
P011	Wastewater	Aug. 8, 1990.
P011	Nonwastewater	May 8, 1992.
P012	Wastewater	Aug. 8, 1990.
P012	Nonwastewater	May 8, 1992.
P013 (barium)	Nonwastewater	Aug. 8, 1990.
P013	All others	June 8, 1989.
P014	All	Aug. 8, 1990.
P015	All	Aug. 8, 1990.
P016	All	Aug. 8, 1990.
P017	All	Aug. 8, 1990.
P018	All	Aug. 8, 1990.
P020	All	Aug. 8, 1990.
P021	All	June 8, 1989.
P022	All	Aug. 8, 1990.
P023	All	Aug. 8, 1990.
P024	All	Aug. 8, 1990.
P026	All	Aug. 8, 1990.
P027	All	Aug. 8, 1990.
P028	All	Aug. 8, 1990.
P029	All	June 8, 1989.
P030	All	June 8, 1989.
P031	All	Aug. 8, 1990.
P033	All	Aug. 8, 1990.
P034	All	Aug. 8, 1990.
P036	Wastewater	Aug. 8, 1990.
P036	Nonwastewater	May 8, 1992.
P037	All	Aug. 8, 1990.
P038	Wastewater	Aug. 8, 1990.
P038	Nonwastewater	May 8, 1992.
P039	All	June 8, 1989.
P040	All	June 8, 1989.
P041	All	June 8, 1989.
P042	All	Aug. 8, 1990.
P043	All	June 8, 1989.
P044	All	June 8, 1989.
P045	All	Aug. 8, 1990.
P046	All	Aug. 8, 1990.
P047	All	Aug. 8, 1990.
P048	All	Aug. 8, 1990.
P049	All	Aug. 8, 1990.
P050	All	Aug. 8, 1990.
P051	All	Aug. 8, 1990.
P054	All	Aug. 8, 1990.
P056	All	Aug. 8, 1990.
P057	All	Aug. 8, 1990.
P058	All	Aug. 8, 1990.
P059	All	Aug. 8, 1990.
P060	All	Aug. 8, 1990.
P062	All	June 8, 1989.
P063	All	June 8, 1989.
P064	All	Aug. 8, 1990.
P065	Wastewater	Aug. 8, 1990.
P065	Nonwastewater	May 8, 1992.
P066	All	Aug. 8, 1990.
P067	All	Aug. 8, 1990.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRs [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
P068	All	Aug. 8, 1990.
P069	All	Aug. 8, 1990.
P070	All	Aug. 8, 1990.
P071	All	June 8, 1989.
P072	All	Aug. 8, 1990.
P073	All	Aug. 8, 1990.
P074	All	June 8, 1989.
P075	All	Aug. 8, 1990.
P076	All	Aug. 8, 1990.
P077	All	Aug. 8, 1990.
P078	All	Aug. 8, 1990.
P081	All	Aug. 8, 1990.
P082	All	Aug. 8, 1990.
P084	All	Aug. 8, 1990.
P085	All	June 8, 1989.
P087	All	May 8, 1992.
P088	All	Aug. 8, 1990.
P089	All	June 8, 1989.
P092	Wastewater	Aug. 8, 1990.
P092	Nonwastewater	May 8, 1992.
P093	All	Aug. 8, 1990.
P094	All	June 8, 1989.
P095	All	Aug. 8, 1990.
P096	All	Aug. 8, 1990.
P097	All	June 8, 1989.
P098	All	June 8, 1989.
P099 (silver)	Wastewater	Aug. 8, 1990.
P099	All others	June 8, 1989.
P101	All	Aug. 8, 1990.
P102	All	Aug. 8, 1990.
P103	All	Aug. 8, 1990.
P104 (silver)	Wastewater	Aug. 8, 1990.
P104	All others	June 8, 1989.
P105	All	Aug. 8, 1990.
P106	All	June 8, 1989.
P108	All	Aug. 8, 1990.
P109	All	June 8, 1989.
P110	All	Aug. 8, 1990.
P111	All	June 8, 1989.
P112	All	Aug. 8, 1990.
P113	All	Aug. 8, 1990.
P114	All	Aug. 8, 1990.
P115	All	Aug. 8, 1990.
P116	All	Aug. 8, 1990.
P118	All	Aug. 8, 1990.
P119	All	Aug. 8, 1990.
P120	All	Aug. 8, 1990.
P121	All	June 8, 1989.
P122	All	Aug. 8, 1990.
P123	All	Aug. 8, 1990.
U001	All	Aug. 8, 1990.
U002	All	Aug. 8, 1990.
U003	All	Aug. 8, 1990.
U004	All	Aug. 8, 1990.
U005	All	Aug. 8, 1990.
U006	All	Aug. 8, 1990.
U007	All	Aug. 8, 1990.
U008	All	Aug. 8, 1990.
U009	All	Aug. 8, 1990.
U010	All	Aug. 8, 1990.
U011	All	Aug. 8, 1990.
U012	All	Aug. 8, 1990.
U014	All	Aug. 8, 1990.
U015	All	Aug. 8, 1990.
U016	All	Aug. 8, 1990.
U017	All	Aug. 8, 1990.
U018	All	Aug. 8, 1990.
U019	All	Aug. 8, 1990.
U020	All	Aug. 8, 1990.
U021	All	Aug. 8, 1990.
U022	All	Aug. 8, 1990.
U023	All	Aug. 8, 1990.
U024	All	Aug. 8, 1990.
U025	All	Aug. 8, 1990.
U026	All	Aug. 8, 1990.
U027	All	Aug. 8, 1990.
U028	All	June 8, 1989.
U029	All	Aug. 8, 1990

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRs [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
U030	All	Aug. 8, 1990.
U031	All	Aug. 8, 1990.
U032	All	Aug. 8, 1990.
U033	All	Aug. 8, 1990.
U034	All	Aug. 8, 1990.
U035	All	Aug. 8, 1990.
U036	All	Aug. 8, 1990.
U037	All	Aug. 8, 1990.
U038	All	Aug. 8, 1990.
U039	All	Aug. 8, 1990.
U041	All	Aug. 8, 1990.
U042	All	Aug. 8, 1990.
U043	All	Aug. 8, 1990.
U044	All	Aug. 8, 1990.
U045	All	Aug. 8, 1990.
U046	All	Aug. 8, 1990.
U047	All	Aug. 8, 1990.
U048	All	Aug. 8, 1990.
U049	All	Aug. 8, 1990.
U050	All	Aug. 8, 1990.
U051	All	Aug. 8, 1990.
U052	All	Aug. 8, 1990.
U053	All	Aug. 8, 1990.
U055	All	Aug. 8, 1990.
U056	All	Aug. 8, 1990.
U057	All	Aug. 8, 1990.
U058	All	June 8, 1989.
U059	All	Aug. 8, 1990.
U060	All	Aug. 8, 1990.
U061	All	Aug. 8, 1990.
U062	All	Aug. 8, 1990.
U063	All	Aug. 8, 1990.
U064	All	Aug. 8, 1990.
U066	All	Aug. 8, 1990.
U067	All	Aug. 8, 1990.
U068	All	Aug. 8, 1990.
U069	All	June 8, 1989.
U070	All	Aug. 8, 1990.
U071	All	Aug. 8, 1990.
U072	All	Aug. 8, 1990.
U073	All	Aug. 8, 1990.
U074	All	Aug. 8, 1990.
U075	All	Aug. 8, 1990.
U076	All	Aug. 8, 1990.
U077	All	Aug. 8, 1990.
U078	All	Aug. 8, 1990.
U079	All	Aug. 8, 1990.
U080	All	Aug. 8, 1990.
U081	All	Aug. 8, 1990.
U082	All	Aug. 8, 1990.
U083	All	Aug. 8, 1990.
U084	All	Aug. 8, 1990.
U085	All	Aug. 8, 1990.
U086	All	Aug. 8, 1990.
U087	All	June 8, 1989.
U088	All	June 8, 1989.
U089	All	Aug. 8, 1990.
U090	All	Aug. 8, 1990.
U091	All	Aug. 8, 1990.
U092	All	Aug. 8, 1990.
U093	All	Aug. 8, 1990.
U094	All	Aug. 8, 1990.
U095	All	Aug. 8, 1990.
U096	All	Aug. 8, 1990.
U097	All	Aug. 8, 1990.
U098	All	Aug. 8, 1990.
U099	All	Aug. 8, 1990.
U101	All	Aug. 8, 1990.
U102	All	June 8, 1989.
U103	All	Aug. 8, 1990.
U105	All	Aug. 8, 1990.
U106	All	Aug. 8, 1990.
U107	All	June 8, 1989.
U108	All	Aug. 8, 1990.
U109	All	Aug. 8, 1990.
U110	All	Aug. 8, 1990.
U111	All	Aug. 8, 1990.
U112	All	Aug. 8, 1990.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
U113	All	Aug. 8, 1990.
U114	All	Aug. 8, 1990.
U115	All	Aug. 8, 1990.
U116	All	Aug. 8, 1990.
U117	All	Aug. 8, 1990.
U118	All	Aug. 8, 1990.
U119	All	Aug. 8, 1990.
U120	All	Aug. 8, 1990.
U121	All	Aug. 8, 1990.
U122	All	Aug. 8, 1990.
U123	All	Aug. 8, 1990.
U124	All	Aug. 8, 1990.
U125	All	Aug. 8, 1990.
U126	All	Aug. 8, 1990.
U127	All	Aug. 8, 1990.
U128	All	Aug. 8, 1990.
U129	All	Aug. 8, 1990.
U130	All	Aug. 8, 1990.
U131	All	Aug. 8, 1990.
U132	All	Aug. 8, 1990.
U133	All	Aug. 8, 1990.
U134	All	Aug. 8, 1990.
U135	All	Aug. 8, 1990.
U136	Wastewater	Aug. 8, 1990.
U136	Nonwastewater	May 8, 1992.
U137	All	Aug. 8, 1990.
U138	All	Aug. 8, 1990.
U140	All	Aug. 8, 1990.
U141	All	Aug. 8, 1990.
U142	All	Aug. 8, 1990.
U143	All	Aug. 8, 1990.
U144	All	Aug. 8, 1990.
U145	All	Aug. 8, 1990.
U146	All	Aug. 8, 1990.
U147	All	Aug. 8, 1990.
U148	All	Aug. 8, 1990.
U149	All	Aug. 8, 1990.
U150	All	Aug. 8, 1990.
U151	Wastewater	Aug. 8, 1990.
U151	Nonwastewater	May 8, 1992.
U152	All	Aug. 8, 1990.
U153	All	Aug. 8, 1990.
U154	All	Aug. 8, 1990.
U155	All	Aug. 8, 1990.
U156	All	Aug. 8, 1990.
U157	All	Aug. 8, 1990.
U158	All	Aug. 8, 1990.
U159	All	Aug. 8, 1990.
U160	All	Aug. 8, 1990.
U161	All	Aug. 8, 1990.
U162	All	Aug. 8, 1990.
U163	All	Aug. 8, 1990
U164	All	Aug. 8, 1990.
U165	All	Aug. 8, 1990.
U166	All	Aug. 8, 1990.
U167	All	Aug. 8, 1990.
U168	All	Aug. 8, 1990.
U169	All	Aug. 8, 1990.
U170	All	Aug. 8 1990.
U171	All	Aug. 8, 1990.
U172	All	Aug. 8, 1990.
U173	All	Aug 8, 1990.
U174	All	Aug. 8, 1990.
U176	All	Aug. 8, 1990.
U177	All	Aug. 8, 1990.
U178	All	Aug. 8, 1990.
U179	All	Aug. 8, 1990.
U180	All	Aug. 8, 1990.
U181	All	Aug. 8, 1990.
U182	All	Aug. 8, 1990.
U183	All	Aug. 8, 1990.
U184	All	Aug. 8, 1990.
U185	All	Aug. 8, 1990.
U186	All	Aug. 8, 1990.
U187	All	Aug. 8, 1990.
U188	All	Aug. 8, 1990.
U189	All	Aug. 8, 1990.
U190	All	June 8, 1989.

TABLE 1.—EFFECTIVE DATES OF SURFACE DISPOSED WASTES (NON-SOIL AND DEBRIS) REGULATED IN THE LDRS [a]—COMPREHENSIVE LIST—Continued

Waste code	Waste category	Effective date
U191	All	Aug. 8, 1990.
U192	All	Aug. 8, 1990.
U193	All	Aug. 8, 1990.
U194	All	Aug. 8, 1990.
U196	All	Aug. 8, 1990.
U197	All	Aug. 8, 1990.
U200	All	Aug. 8, 1990.
U201	All	Aug. 8, 1990.
U202	All	Aug. 8, 1990.
U203	All	Aug. 8, 1990.
U204	All	Aug. 8, 1990.
U205	All	Aug. 8, 1990.
U206	All	Aug. 8, 1990.
U207	All	Aug. 8, 1990.
U208	All	Aug. 8, 1990.
U209	All	Aug. 8, 1990.
U210	All	Aug. 8, 1990.
U211	All	Aug. 8, 1990.
U213	All	Aug. 8, 1990.
U214	All	Aug. 8, 1990.
U215	All	Aug. 8, 1990.
U216	All	Aug. 8, 1990.
U217	All	Aug. 8, 1990.
U218	All	Aug. 8, 1990.
U219	All	Aug. 8, 1990.
U220	All	Aug. 8, 1990.
U221	All	June 8, 1989.
U222	All	Aug. 8, 1990.
U223	All	June 8, 1989.
U225	All	Aug. 8, 1990.
U226	All	Aug. 8, 1990.
U227	All	Aug. 8, 1990.
U228	All	Aug. 8, 1990.
U234	All	Aug. 8, 1990.
U235	All	June 8, 1989.
U236	All	Aug. 8, 1990.
U237	All	Aug. 8, 1990.
U238	All	Aug. 8, 1990.
U239	All	Aug. 8, 1990.
U240	All	Aug. 8, 1990.
U243	All	Aug. 8, 1990.
U244	All	Aug. 8, 1990.
U246	All	Aug. 8, 1990.
U247	All	Aug. 8, 1990.
U248	All	Aug. 8, 1990.
U249	All	Aug. 8, 1990.

[a] This table does not include mixed radioactive wastes (from the First, Second, and Third rules) which are receiving a national capacity variance until May 8, 1992, for all applicable treatment technologies. This table also does not include contaminated soil and debris wastes.
[b] The standard has been revised in the Third Third Final Rule.
[c] No land disposal standard has been revised in the Third Third Final Rule.

Appendix VII

TABLE 2.—SUMMARY OF EFFECTIVE DATES OF LAND DISPOSAL RESTRICTIONS FOR CONTAMINATED SOIL AND DEBRIS (CSD)

Restricted hazardous waste in CSD	Effective date
1. Solvent-(F001–F005) and dioxin-(F020–F023 and F026–F028) containing soil and debris from CERCLA response of RCRA corrective actions.	Nov. 8, 1990.
2. Soil and debris not from CERCLA response or RCRA corrective actions contaminated with less than 1% total solvents (F001–F005) or dioxins (F020–F023 and F026–F028).	Nov. 8, 1988.
3. Soil and debris contaminated with California list HOCs from CERCLA response or RCRA corrective actions.	Nov. 8, 1990.
4. Soil and debris contaminated with California list HOCs not from CERCLA response or RCRA corrective actions.	July 8, 1989.
5. All soil and debris contaminated with First Third wastes for which treatment standards are based on incineration.	Aug. 8, 1990.
6. All soil and debris contaminated with Second Third wastes for which treatment standards are based on incineration.	June 8, 1991.

TABLE 2.—SUMMARY OF EFFECTIVE DATES OF LAND DISPOSAL RESTRICTIONS FOR CONTAMINATED SOIL AND DEBRIS (CSD)—Continued

TABLE 2.—SUMMARY OF EFFECTIVE DATES OF LAND DISPOSAL RESTRICTIONS FOR CONTAMINATED SOIL AND DEBRIS (CSD)—Continued

TABLE 2.—SUMMARY OF EFFECTIVE DATES OF LAND DISPOSAL RESTRICTIONS FOR CONTAMINATED SOIL AND DEBRIS (CSD)—Continued

Restricted hazardous waste in CSD	Effective date
7. All soil and debris contaminated with Third Third wastes or, First or Second Third "soft hammer" wastes which had treatment standards promulgated in the Third Third rule, for which treatment standards are based on incineration, vitrification, or mercury retorting, acid leaching followed by chemical precipitation, or thermal recovery of metals; as well as all inorganic solids debris contaminated with D004–D011 wastes, and all soil and debris contaminated with mixed RCRA/radioactive wastes.	May 8, 1992.

Note: 1. Appendix VII is provided for the convenience of the reader.

2. Contaminated Soil and Debris Rule will be promulgated in the future.

16. Appendix VIII to part 268 is revised to read as follows:

Appendix VIII

NATIONAL CAPACITY LDR VARIANCES FOR UIC WASTES [a]

Waste code	Waste category	Effective date
F001–F005	All spent F001–F005 solvent containing less than 1 percent total F001–F005 solvent constituents	Aug. 8, 1990.
California list	Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l, or containing certain metals or compounds of these metals greater than or equal to the prohibition levels.	Aug. 8, 1990
California list	Liquid hazardous waste having a pH less than or equal to 2	Aug. 8, 1990.
California list	Hazardous wastes containing HOCs in total concentrations less than 10,000 mg/l but greater than or equal to 1,000 mg/l.	Aug. 8, 1990.
D002 [b]	All	May 8, 1992.
D003 (cyanides)	All	May 8, 1992.
D003 (sulfides)	All	May 8, 1992.
D003 (explosives, reactives).	All	May 8, 1992.
D007	All	May 8, 1992.
D009	Nonwastewater	May 8, 1992.
F007	All	June 8, 1991.
F039	Wastewater	May 8, 1992.
K009	Wastewater	June 8, 1991.
K011	Nonwastewater	June 8, 1991.
K011	Wastewater	May 8, 1992.
K013	Nonwastewater	June 8, 1991.
K013	Wastewater	May 8, 1992.
K014	All	May 8, 1992.
K016 (dilute)	All	June 8, 1991.
K049	All	Aug. 8, 1990.
K050	All	Aug. 8, 1990.
K051	All	Aug. 8, 1990.
K052	All	Aug. 8, 1990.
K062	All	Aug. 8, 1990.
K071	All	Aug. 8, 1990.
K104	All	Aug. 8, 1990.

[a] Wastes that are deep well disposed on-site receive a six-month variance, with restrictions effective in November 1990.
[b] Deepwell injected D002 liquids with a pH less than 2 must meet the California List treatment standards on August 8, 1990.

Note: This table is provided for the convenience of the reader.

17. Appendix IX is added to part 268 to read as follows:

Appendix IX—Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test (SW–846, Method 1310A)

1.0 Scope and Application

1.1 This method is an interim method to determine whether a waste exhibits the characteristic of Extraction Procedure Toxicity.

1.2 The procedure may also be used to simulate the leaching which a waste may undergo if disposed of in a sanitary landfill. Method 1310 is applicable to liquid, solid, and multiphase samples.

2.0 Summary of Method

2.1 If a representative sample of the waste contains >0.5% solids, the solid phase of the sample is ground to pass a 9.5 mm sieve and extracted with deionized water which is maintained at a pH of 5±0.2, with acetic acid. Wastes that contain <0.5% filterable solids are, after filtering, considered to be the EP extract for this method. Monolithic wastes which can be formed into a cylinder 3.3 cm (dia) x 7.1 cm, or from which such a cylinder can be formed which is representative of the waste, may be evaluated using the Structural Integrity Procedure instead of being ground to pass a 9.5-mm sieve.

3.0 Interferences

3.1 Potential interferences that may be encountered during analysis are discussed in the individual analytical methods.

4.0 Apparatus and Materials

4.1 Extractor—For purposes of this test, an acceptable extractor is one that will impart sufficient agitation to the mixture to (1) prevent stratification of the sample and extraction fluid and (2) ensure that all sample surfaces are continuously brought into contact with well-mixed extraction fluid. Examples of suitable extractors are shown in Figures 1–3 of this method and are available from: Associated Designs & Manufacturing Co., Alexandria, Virginia; Glas-Col Apparatus Co., Terre Haute, Indiana; Millipore, Bedford, Massachusetts; and Rexnard, Milwaukee, Wisconsin.

4.2 pH meter or pH controller—Accurate to 0.05 pH units with temperature compensation.

4.3 Filter holder—Capable of supporting a 0.45-μm filter membrane and of withstanding the pressure needed to accomplish separation. Suitable filter holders range from simple vacuum units to relatively complex systems that can exert up to 5.3 kg/cm^3 (75 psi) of pressure. The type of filter holder used depends upon the properties of the mixture to be filtered. Filter holders known to EPA and deemed suitable for use are listed in Table 1.

4.4 Filter membrane—Filter membrane suitable for conducting the required filtration shall be fabricated from a material that (1) is not physically changed by the waste material to be filtered and (2) does not absorb or leach the chemical species for which a waste's EP extract will be analyzed. Table 2 lists filter media known to the agency to be suitable for solid waste testing.

4.4.1 In cases of doubt about physical effects on the filter, contact the filter manufacturer to determine if the membrane or the prefilter is adversely affected by the particular waste. If no information is available, submerge the filter in the waste's liquid phase. A filter that undergoes visible physical change after 48 hours (*i.e.*, curls, dissolves, shrinks, or swells) is unsuitable for use.

4.4.2 To test for absorption or leaching by the filter:

4.4.2.1 Prepare a standard solution of the chemical species of interest.

4.4.2.2 Analyze the standard for its concentration of the chemical species.

4.4.2.3 Filter the standard and reanalyze. If the concentration of the filtrate differs from that of the original standard, then the filter membrane leaches or absorbs one or more of the chemical species and is not usable in this test method.

4.5 Structural integrity tester—A device meeting the specifications shown in Figure 4 and having a 3.18-cm (1.25-in) diameter hammer weighing 0.33 kg (0.73 lb) with a free fall of 15.24 cm (6 in) shall be used. This device is available from Associated Design and Manufacturing Company, Alexandria, VA 22314, as Part No. 125, or it may be fabricated to meet these specifications.

5.0 Reagents

5.1 Reagent grade chemicals shall be used in all tests. Unless otherwise indicated, it is intended that all reagents shall conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Other grades may be used, provided it is first ascertained that the reagent is of sufficiently high purity to permit its use without lessening the accuracy of the determination.

5.2 Reagent water. All references to water in this method refer to reagent water, as defined in Chapter One.

5.3 Acetic acid (0.5N), CH_3COOH. This can be made by diluting concentrated glacial acetic acid (17.5N) by adding 57 ml glacial acetic acid to 1,000 ml of water and diluting to 2 liters. The glacial acetic acid must be of high purity and monitored for impurities.

5.4 Analytical standards should be prepared according to the applicable analytical methods.

6.0 Sample Collection, Preservation, and Handling

6.1 All samples must be collected using a sampling plan that addresses the considerations discussed in Chapter Nine of this manual.

6.2 Preservatives must not be added to samples.

6.3 Samples can be refrigerated if it is determined that refrigeration will not affect the integrity of the sample.

7.0 Procedure

7.1 If the waste does not contain any free liquid, go to Step 7.9. If the sample is liquid or multiphase, continue as follows. Weigh filter membrane and prefilter to ±0.01 g. Handle membrane and prefilters with blunt curved-tip forceps or vacuum tweezers, or by applying suction with a pipet.

7.2 Assemble filter holder, membranes, and prefilters following the manufacturer's instructions. Place the 0.45-μm membrane on the support screen and add prefilters in ascending order of pore size. Do not prewet filter membrane.

7.3 Weigh out a representative subsample of the waste (100 g minimum).

7.4 Allow slurries to stand, to permit the solid phase to settle. Wastes that settle slowly may be centrifuged prior to filtration.

7.5 Wet the filter with a small portion of the liquid phase from the waste or from the extraction mixture. Transfer the remaining material to the filter holder and apply vacuum or gentle pressure (10–15 psi) until all liquid passes through the filter. Stop filtration when air or pressurizing gas moves through the membrane. If this point is not reached under vacuum or gentle pressure, slowly increase the pressure in 10-psi increments to 75 psi. Halt filtration when liquid flow stops. This liquid will constitute part or all of the extract (refer to Step 7.16). The liquid should be refrigerated until time of analysis.

Note: Oil samples or samples containing oil are treated in exactly the same way as any other sample. The liquid portion of the sample is filtered and treated as part of the EP extract. If the liquid portion of the sample will not pass through the filter (usually the case with heavy oils or greases), it should be carried through the EP extraction as a solid.

7.6 Remove the solid phase and filter media and, while not allowing them to dry, weigh to ± 0.01 g. The wet weight of the residue is determined by calculating the weight difference between the weight of the filters (Step 7.1) and the weight of the solid phase and the filter media.

7.7 The waste will be handled differently from this point on, depending on whether it contains more or less than 0.5% solids. If the sample appears to have <0.5% solids, determine the percent solids exactly (see Note below) by the following procedure:

7.7.1 Dry the filter and residue at 80 °C until two successive weighings yield the same value.

7.7.2 Calculate the percent solids, using the following equation:

$$\frac{\text{weight of filtered solid and filters} - \text{tared weight of filters}}{\text{initial weight of waste material}} \times 100 = \%\ \text{solids}$$

Note: This procedure is used only to determine whether the solid must be extracted or whether it can be discarded unextracted. It is not used in calculating the amount of water or acid to use in the extraction step. Do not extract solid material that has been dried at 80 °C. A new sample will have to be used for extraction if a percent solids determination is performed.

7.8 If the solid constitutes <0.5% of the waste, discard the solid and proceed immediately to Step 7.17, treating the liquid phase as the extract.

7.9 The solid material obtained from Step 7.5 and all materials that do not contain free liquids shall be evaluated for particle size. If the solid material has a surface area per g of material ≥3.1 cm^2 or passes through a 9.5-mm (0.375-in.) standard sieve, the operator shall proceed to Step 7.11. If the surface area is smaller or the particle size larger than specified above, the solid material shall be prepared for extraction by crushing, cutting, or grinding the material so that it passes through a 9.5-mm (0.375-in.) sieve or, if the material is in a single piece, by subjecting the material to the "Structural Integrity Procedure" described in Step 7.10.

7.10 Structural Integrity Procedure (SIP).

7.10.1 Cut a 3.3-cm diameter by 7.1-cm long cylinder from the waste material. If the waste has been treated using a fixation process, the waste may be cast in the form of a cylinder and allowed to cure for 30 days prior to testing.

7.10.2 Place waste into sample holder and assemble the tester. Raise the hammer to its maximum height and drop. Repeat 14 additional times.

7.10.3 Remove solid material from tester and scrape off any particles adhering to sample holder. Weigh the waste to the nearest 0.01 g and transfer it to the extractor.

7.11 If the sample contains >0.5% solids, use the wet weight of the solid phase (obtained in Step 7.6) to calculate the amount of liquid and acid to employ for extraction by using the following equation:

$W = W_f - W_t$

where:

W = Wet weight in g of solid to be charged to extractor.

W_f = Wet weight in g of filtered solids and filter media.
W_t = Weight in g of tared filters.

If the waste does not contain any free liquids, 100 g of the material will be subjected to the extraction procedure.

7.12 Place the appropriate amount of material (refer to Step 7.11) into the extractor and add 16 times its weight with water.

7.13 After the solid material and water are placed in the extractor, the operator shall begin agitation and measure the pH of the solution in the extractor. If the pH is >5.0, the pH of the solution shall be decreased to 5.0 ±0.2 by slowly adding 0.5N acetic acid. If the pH is ≤5.0, no acetic acid should be added. The pH of the solution shall be monitored, as described below, during the course of extraction, and, if the pH rises above 5.2, 0.5N acetic acid shall be added to bring the pH down to 5.0 ±0.2. However, in no event shall the aggregate amount of acid added to the solution exceed 4 mL of acid per g of solid. The mixture shall be agitated for 24 hours and maintained at 20–40 °C (68–104 °F) during this time. It is recommended that the operator monitor and adjust the pH during the course of the extraction with a device such as the Type 45–A pH Controller, manufactured by Chemtrix, Inc., Hillsboro, Oregon 97123, or its equivalent, in conjunction with a metering pump and reservoir of 0.5N acetic acid. If such a system is not available, the following manual procedure shall be employed.

Note: Do not add acetic acid too quickly. Lowering the pH to below the target concentration of 5.0 could affect the metal concentrations in the leachate.

7.13.1 A pH meter shall be calibrated in accordance with the manufacturer's specifications.

7.13.2 The pH of the solution shall be checked and, if necessary, 0.5N acetic acid shall be manually added to the extractor until the pH reaches 5.0 ± 0.2. The pH of the solution shall be adjusted at 15-, 30-, and 60-minute intervals, moving to the next longer interval if the pH does not have to be adjusted more than 0.5 pH units.

7.13.3 The adjustment procedure shall be continued for at least 6 hours.

7.13.4 If, at the end of the 24-hour extraction period, the pH of the solution is not below 5.2 and the maximum amount of acid (4 mL per g of solids) has not been added, the pH shall be adjusted to 5.0 ± 0.2 and the extraction continued for an additional 4 hours, during which the pH shall be adjusted at 1-hour intervals.

7.14 At the end of the extraction period, water shall be added to the extractor in an amount determined by the following equation:

$V = (20)(W) - 16(W) - A$

Where:

V = mL water to be added.
W = Weight in g of solid charged to extractor.
A = mL of 0.5N acetic acid added during extraction.

7.15 The material in the extractor shall be separated into its component liquid and solid phases in the following manner:

7.15.1 Allow slurries to stand to permit the solid phase to settle (wastes that are slow to settle may be centrifuged prior to filtration) and set up the filter apparatus (refer to Steps 4.3 and 4.4).

7.15.2 Wet the filter with a small portion of the liquid phase from the waste or from the extracted mixture. Transfer the remaining material to the filter holder and apply vacuum or gentle pressure (10–15 psi) until all liquid passes through the filter. Stop filtration when air or pressurized gas moves through the membrane. If this point is not reached under vacuum or gentle pressure, slowly increase the pressure in 10-psi increments to 75 psi. Halt filtration when liquid flow stops.

7.16 The liquids resulting from Steps 7.5 and 7.15 shall be combined. This combined liquid (or waste itself, if it has < 0.5% solids, as noted in Step 7.8) is the extract and shall be analyzed for the presence of any of the contaminants specified in 40 CFR 261.24 using the analytical procedures as designated in Step 7.17.

7.17 The extract is then prepared and analyzed using the appropriate analytical methods described in Chapters Three and Four of this manual.

Note: If the EP extract includes two phases, concentration of contaminants is determined by using a simple weighted average. For example: An EP extract contains 50 mL of oil and 1,000 mL of an aqueous phase. Contaminant concentrations are determined for each phase. The final contamination concentration is taken to be:

$$\frac{50 \times \text{contaminant conc. in oil} + 1{,}000 \times \text{contaminant conc. of aqueous phase}}{1050}$$

Note: In cases where a contaminant was not detected, use the MDL in the calculation. For example, if the MDL in the oily phase is 100 mg/L and 1 mg/L in the aqueous phase, the reporting limit would be 6 mg/L (rounded to the nearest mg). If the regulatory threshold is 5 mg/L, the waste may be EP toxic and results of the analysis are inconclusive.

7.18 The extract concentrations are compared with the maximum contamination limits listed in 40 CFR 261.24. If the extract concentrations are greater than or equal to the respective values, the waste then is considered to exhibit the characteristic of Extraction Procedure Toxicity.

8.0 Quality Control

8.1 Refer to Chapter One for specific quality control procedures.

9.0 Method Performance

9.1 The data tabulated in Table 3 were obtained from records of state and contractor laboratories and are intended to show the precision of the entire method (1301 plus analysis method).

10.0 References

1. Rohrbough, W.G.; et al. *Reagent Chemicals, American Chemical Society Specifications,* 7th ed.; American Chemical Society: Washington, DC 1986.

2. *1985 Annual Book of ASTM Standards,* Vol. 11.01; "Standard Specification for Reagent Water"; ASTM: Philadelphia, PA, 1985; D1193–77.

3. Gaskill, A., Compilation and Evaluation of RCRA Method Performance Data, Work Assignment No. 2, EPA Contract No. 68–01–7075, September 1986.

TABLE 1.—EPA-APPROVED FILTER HOLDERS

Manufacturer	Size	Model No.	Comments
Vacuum Filters			
Gelman	47 mm	4011	Disposable plastic unit, including prefilter, filter pads, and reservoir; can be used when solution is to be analyzed for inorganic constituents.
Nalgene	500 mL	44–0045	
Nuclepore	47 mm	410400	
Millipore	47 mm	XX10 047 00	
Pressure Filters			
Nuclepore	142 mm	425900	
Micro Filtration Systems	142 mm	302300	

TABLE 1.—EPA-APPROVED FILTER HOLDERS—Continued

Manufacturer	Size	Model No.	Comments
Millipore	142 mm	YT30 142 HW	

TABLE 2.—EPA-APPROVED FILTRATION MEDIA

Supplier	Filter to be used for aqueous systems	Filter to be used for organic systems
Coarse prefilters		
Gelman	61631, 61635	61631, 61635
Nuclepore	210907, 211707.	210907, 211707
Millipore	AP25 035 00, AP25 127 50.	AP25 035 00, AP25 127 50
Medium prefilters		
Gelman	61654, 61655	
Nuclepore	210905, 211705.	210905, 211705
Millipore	AP20 035 00, AP20 124 50.	AP20 035 00, AP20 124 50
Fine prefilters		
Gelman	64798, 64803	64798, 64803
Nuclepore	210903, 211703.	210903, 211703
Millipore	AP15 035 00, AP15 124 50.	AP15 035 00, AP15 124 50
Fine filters (0.45 μm)		
Gelman	63069, 66536	60540 or 66149, 66151
Pall	NX04750, NX14225.	
Nuclepore	142218	* 142218
Millipore	HAWP 047 00, HAWP 142 50.	FHUP 047 00, FHLP 142 50
Selas	83485–02, 83486–02.	83485–02, 83486–02

* Susceptible to decomposition by certain polar organic solvents.

TABLE 3.—PRECISIONS OF EXTRACTION-ANALYSIS PROCEDURES FOR SEVERAL ELEMENTS

Element	Sample matrix	Analysis method	Laboratory replicates
Arsenic	1. Auto fluff	7060	1.8,1.5 μg/L
	2. Barrel sludge	7060	0.9, 2.6 μg/L
	3. Lumber treatment company sediment	7060	28, 42 mg/L
Barium	1. Lead smelting emission control dust	6010	0.12, 0.12 mg/L
	2. Auto fluff	7081	791, 780 μg/L
	3. Barrel sludge	7081	422, 380 μg/L
Cadmium	1. Lead smelting emission control dust	3010/7130	120, 120 mg/L
	2. Wastewater treatment sludge from electroplating	3010/7130	360, 290 mg/L
	3. Auto fluff	7131	470, 610 μg/L
	4. Barrel sludge	7131	1100, 890 μg/L
	5. Oil refinery tertiary pond sludge	7131	3.2, 1.9 μg/L
Chromium	1. Wastewater treatment sludge from electroplating	3010/7190	1.1, 1.2 mg/L
	2. Paint primer	7191	61, 43 μg/L
	3. Paint primer filter	7191	—
	4. Lumber treatment company sediment	7191	0.81, 0.89 mg/L
	5. Oil refinery tertiary pond sludge	7191	—
Mercury	1. Barrel sludge	7470	0.15, 0.09 μg/L
	2. Wastewater treatment sludge from electroplating	7470	1.4, 0.4 μg/L
	3. Lead smelting emission control dust	7470	0.4, 0.4 μg/L
Lead	1. Lead smelting emission control dust	3010/7420	940, 920 mg/L
	2. Auto fluff	7421	1540, 1490 μg/L
	3. Incinerator ash	7421	1000, 974 μg/L
	4. Barrel sludge	7421	2550, 2800 μg/L
	5. Oil refinery tertiary pond sludge	7421	31, 29 μg/L
Nickel	1. Sludge	7521	2260, 1720 μg/L
	2. Wastewater treatment sludge from electroplating	3010/7520	130, 140 mg/L
Chromium (VI)	1. Wastewater treatment sludge from electroplating	7196	18, 19 μg/L

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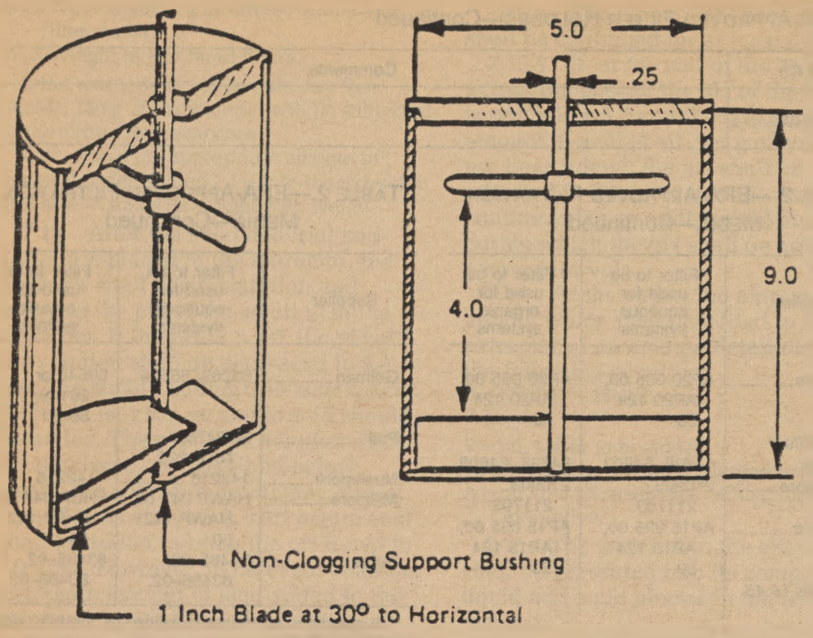


Figure 1. Extractor.

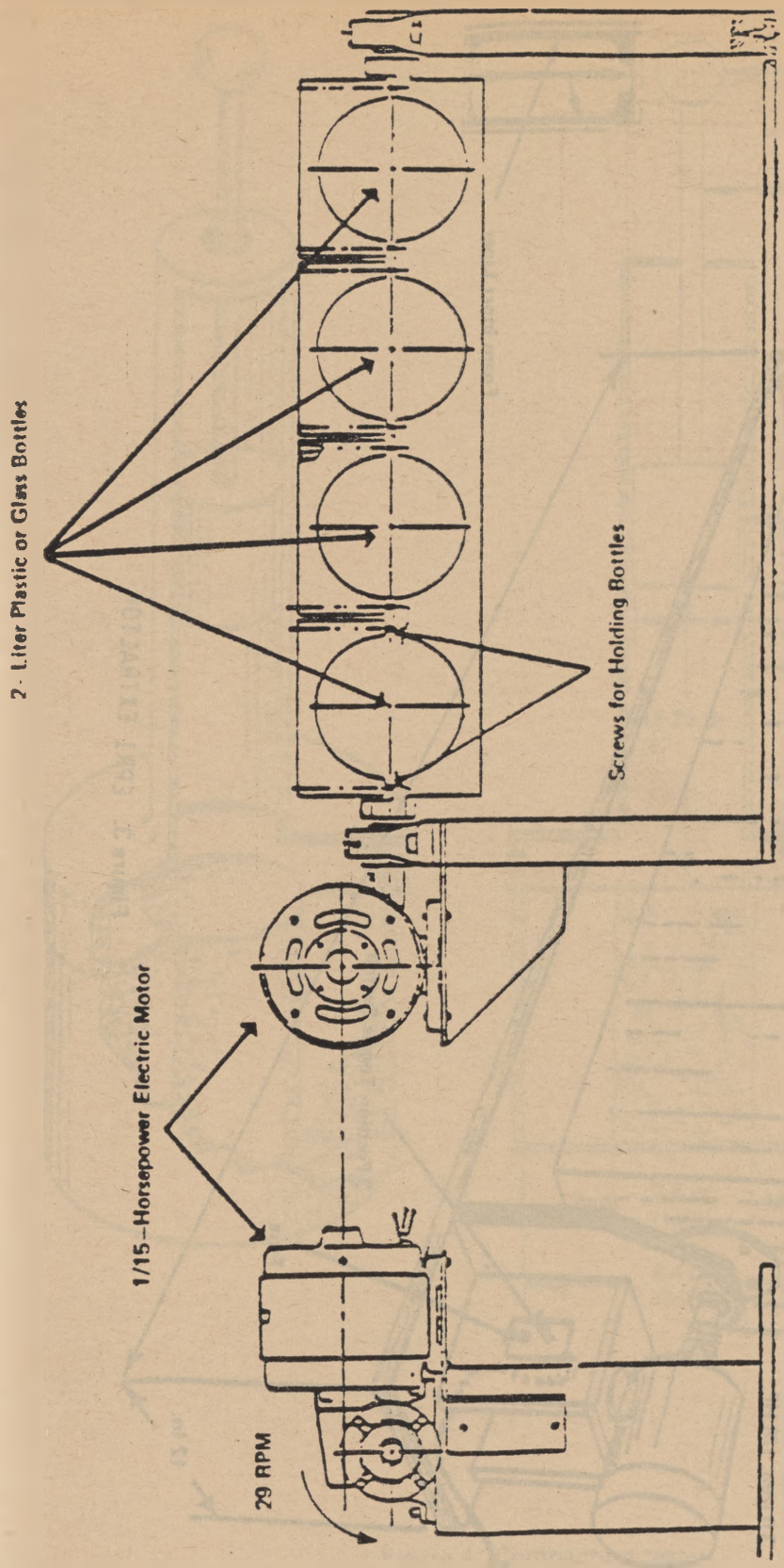


Figure 2. Rotary Extractor.

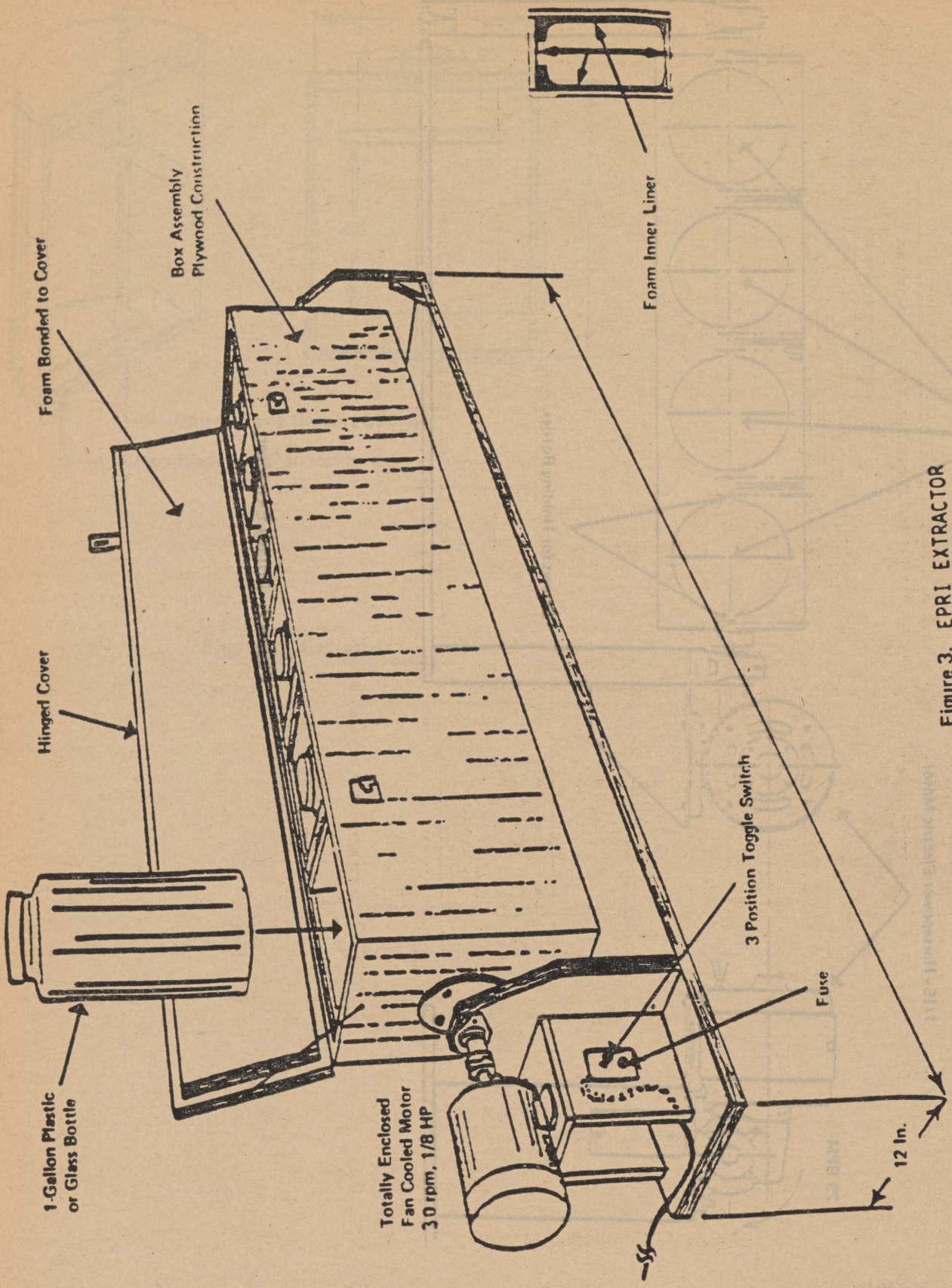


Figure 3. EPRI EXTRACTOR

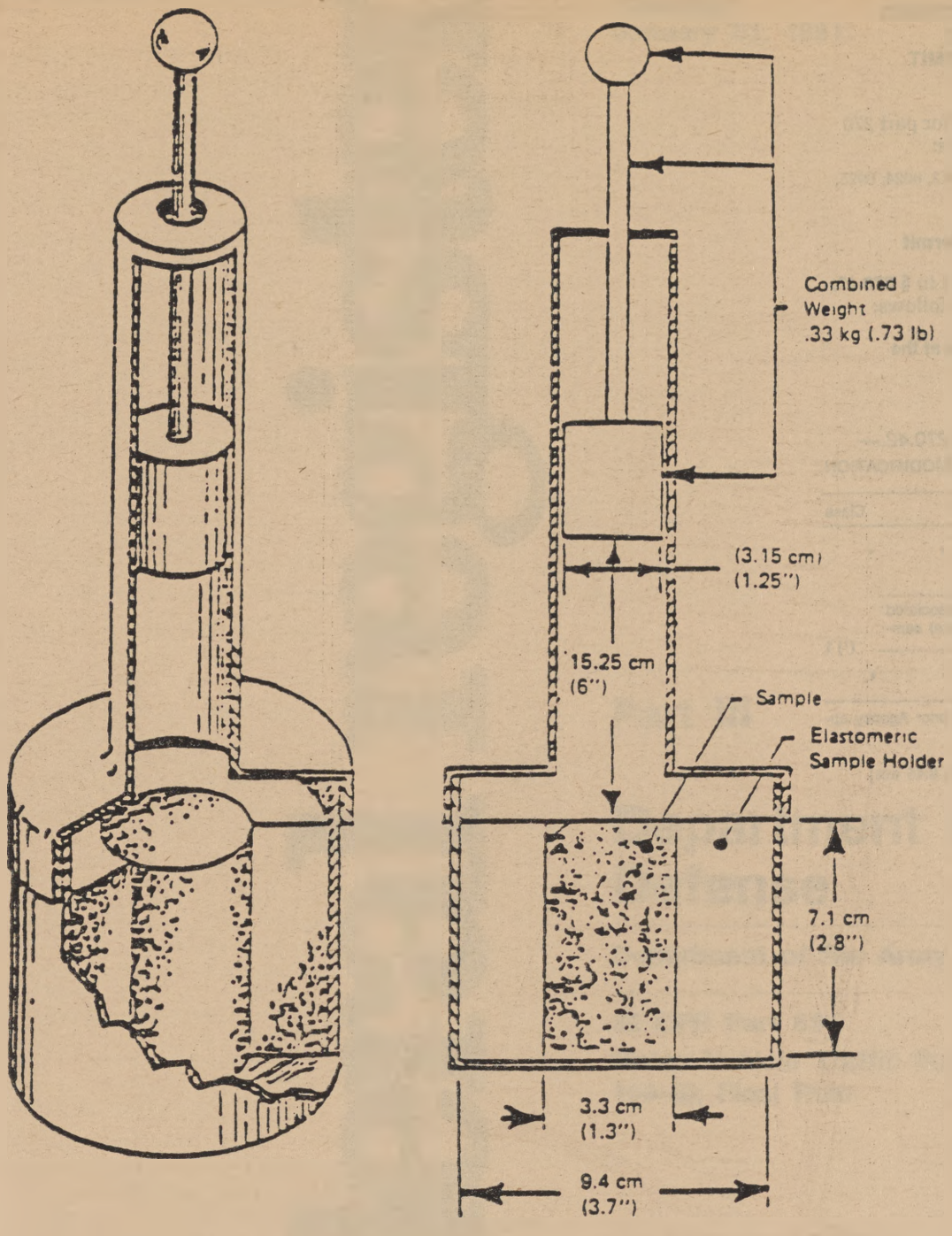


Figure 4. Compaction tester.

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PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart D—Changes to Permit

2. The entry in appendix I to § 270.42, B.1.b., is revised to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

APPENDIX I TO SECTION 270.42.—CLASSIFICATION OF PERMIT MODIFICATION

Modification	Class
* * * * *	
B. General Facility Standards	
1. * * *	
b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods	([1]) 1
* * * * *	

[1] Class 1 modifications requiring prior Agency approval.

[FR Doc. 91-2234 Filed 1-30-91; 8:45 am]
BILLING CODE 6560-50-M

federal register

Thursday
January 31, 1991

Part III

Department of Defense

Department of the Army

32 CFR Part 634

Motor Vehicle Traffic Supervision (AR 190-5); Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 634

Motor Vehicle Traffic Supervision (AR 190–5)

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army announces a total Revision to 32 CFR part 634 to bring it in line with changes promulgated in Army Regulation 190–5, Motor Vehicle Traffic Supervision. This regulation covers motor traffic supervision on Army Installations. It outlines policy on vehicle registration; permits involuntary extraction of blood under revised Military Rules of Evidence in traffic accident cases where intoxicated driving is suspected; provides policy on towing, storing, and impounding vehicles; adopts the National Highway Traffic Safety Administration technical standards for breathalyzer equipment; establishes traffic points for seat belt and child restraint device violations; and requires that new safety requirements be included in the installation traffic code. It implements DOD Directive 1010.7, DOD Directive 5525.4, DOD Instruction 6055.4. It also implements portions of DOD Directive 10003.3 that apply to motor vehicle operation.

EFFECTIVE DATE: January 31, 1991.

FOR FURTHER INFORMATION CONTACT:

a. The Army office of primary interest in this joint publication is the Office of the Deputy Chief of Staff for Operations and Plans, HQDA (DAMO–ODL), Washington, DC 20310–0440.

b. The Marine Corps Staff agency of primary interest is the Deputy Chief of Staff, Plans, Policies, and Operations, Commandant Marine Corps (PO–40), Washington, DC 20380.

c. The Navy office of primary interest is the Naval Security and Investigative Command, Commander, Naval Security and Investigative Command, Washington, DC 20388–5400.

d. The Air Force Office of primary interest is the Office of Security Policy, Security Police Operations, Kirtland Air Force Base, Albuquerque, New Mexico 87117–6001.

e. The DLA office of primary interest is the Command Security Office, Director, Office of Command Security (DLA–IP), Cameron Station, Alexandria, VA 22304–6100.

SUPPLEMENTARY INFORMATION:

a. This regulation applies to persons who are—

(1) Serving in, or employed by, the military Services and the Defense Logistics Agency, or

(2) Subject to the motor vehicle registration requirements in chapter 3.

b. This regulation also applies to Reserve Component personnel of all the Services who operate privately owned motor vehicles on military installations. Administrative actions outlined in § 634.12 apply to U.S. Army Reserve personnel on active duty, active duty for training, and in an inactive duty training status.

c. This regulation does not apply to State-operated Army installations. State adjutants general may use this regulation as a guide to establish motor vehicle traffic supervision programs for their installations.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 634

Alcohol abuse, Drug testing, Federal buildings and facilities, Highway safety, Military personnel, Traffic regulations.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

Accordingly, 32 CFR part 634 is revised to read as follows:

PART 634—MOTOR VEHICLE TRAFFIC SUPERVISION

Subpart A—Introduction

Sec.

634.1 Purpose.
634.2 References.
634.3 Explanation of abbreviations and terms.
634.4 Responsibilities.
634.5 Program objectives.

Subpart B—Driving Privileges

634.6 Requirements for driving privileges.
634.7 Stopping and inspecting personnel or vehicles.
634.8 Implied consent to blood, breath, or urine tests.
634.9 Implied consent to impoundment.
634.10 Suspension or revocation of driving privileges.
634.11 Administrative due process for suspensions and revocations.
634.12 Army administrative actions against intoxicated drivers.
634.13 Remedial driver training programs.
634.14 Alcohol and drug abuse programs.
634.15 Restoration of driving privileges on acquittal.
634.16 Restricted driving privileges or probation.
634.17 Extensions of suspensions and revocations.
634.18 Reciprocal State-military action.

Subpart C—Motor Vehicle Registration

634.19 Registration policy.
634.20 Registration requirements.
634.21 Specifications for DD Form 2220.
634.22 Termination or denial of registration.
634.23 Specified consent to impoundment.

Subpart D—Traffic Supervision

Section I—Traffic Planning and Codes

634.24 Traffic planning.
634.25 Installation traffic codes.

Section II—Traffic Law Enforcement

634.26 Traffic law enforcement principles.
634.27 Speed-measuring devices.
634.28 Traffic accident investigation.
634.29 Traffic accident investigation reports.
634.30 Traffic accident investigation report data.
634.31 Parking.
634.32 Traffic violation reports.

Section III—Standards and Procedures for Processing Drunk Drivers

634.33 Training of law enforcement personnel.
634.34 Blood alcohol concentration standards.
634.35 Chemical testing policies and procedures.
634.36 Detection, apprehension, and testing of intoxicated drivers.
634.37 Voluntary breath and bodily fluid testing based on implied consent.
634.38 Involuntary extraction of bodily fluids in traffic cases.
634.39 Testing at the request of the apprehended person.
634.40 Preparation of sworn statement.

Section IV—Off-Installation Traffic Activities

634.41 General.
634.42 Compliance with State laws.
634.43 Civil-military cooperative programs.

Subpart E—Driving Records and the Traffic Point System

634.44 Driving records.
634.45 The traffic point system.
634.46 Point system application.
634.47 Point system procedures.
634.48 Disposition of driving records.

Subpart F—Impounding Privately Owned Vehicles

634.49 General.
634.50 Standards for impoundment.
634.51 Towing and storage.
634.52 Procedures for impoundment.
634.53 Search incident to impoundment based on criminal activity.
634.54 Disposition of vehicles after impoundment.

Appendix A to Part 634—References

Appendix B to Part 634—Notification of State Driver's License Agencies

Appendic C to Part 634—DOD Directive 5525.4, Enforcement of State Laws on DOD Installations

Appendix D to Part 634—Glossary

Authority: 10 U.S.C. 30112(g); 5 U.S.C. 2951; Pub.L. 89–564; 89–670; 91–605; and 93–87.

Subpart A—Introduction

§ 634.1 Purpose.

(a) This regulation sets policy, responsibilities, and procedures for motor vehicle traffic supervision on military installations in the continental United States (CONUS) and overseas areas. This includes but is not limited to the following:

(1) Granting, suspending, or revoking the privilege to operate a privately owned vehicle (POV).

(2) Registration of POVs.

(3) Administration of vehicle registration and driver performance records.

(4) Driver improvement programs.

(5) Police traffic supervision.

(6) Off-installation traffic activities.

(b) Commanders in overseas areas are authorized to modify these policies and procedures in the following instances:

(1) When dictated by host nation relationships, treaties, and agreements.

(2) When traffic operations under military supervision necessitate measures to safeguard and protect the morale, discipline, and good order in the Services.

§ 634.2 References.

Required and related publications and prescribed and referenced forms are listed in Appendix A.

§ 634.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in Appendix D.

§ 634.4 Responsibilities.

(a) *Departmental.* The Deputy Chief of Staff for Operations and Plans, Headquarters, Department of the Army (HQDA); Commander, Naval Security and Investigative Command U.S. Navy (USN); Chief of Air Force Office of Security Police, Headquarters, U.S. Air Force (USAF); Deputy Chief of Staff, for Plans, Policies, and Operations, Headquarters, U.S. Marine Corps (USMC); and Staff Director, Office of Command Security, Headquarters, Defense Logistics Agency (DLA), will—

(1) Exercise staff supervision over programs for motor vehicle traffic supervision.

(2) Develop standard policies and procedures.

(3) Maintain liaison with interested staff agencies and other military departments on traffic supervision and establish working groups and committees.

(4) Maintain liaison with departmental safety personnel on traffic safety and accident reporting systems.

(5) Coordinate with national, regional, and State traffic officials and agencies, and actively participate in conferences and workshops sponsored by Government or private groups at the national level.

(6) Help organize and monitor police traffic supervision training.

(7) Maintain liaison with the Department of Transportation (DOT) and other Federal departments and agencies on the National Highway Safety Program Standards (NHSPS) and programs that apply to U.S. military traffic supervision.

(8) Participate in the national effort to reduce intoxicated driving.

(b) *All major commanders.* Major commanders of the Army, Navy, Air Force, Marine Corps, and DLA will—

(1) Manage traffic supervision in their commands.

(2) Cooperate with the support programs of State and regional highway traffic safety organizations.

(3) Coordinate regional traffic supervision activities with other major military commanders in assigned geographic areas of responsibility.

(4) Monitor agreements between installations and host State authorities for reciprocal reporting of suspension and revocation of driving privileges.

(5) Participate in State and regional efforts to reduce intoxicated driving.

(6) Establish awards and recognition programs to recognize successful installation efforts to eliminate intoxicated driving. Ensure that criteria for these awards are positive in nature and include more than just apprehensions for intoxicated driving.

(7) Modify policies and procedures when required by host nation treaties or agreements.

(c) *Major Army commanders.* Major Army commanders will ensure subordinate installations utilizing automated vehicle registration programs implement Vehicle Registration System-2 (VRS–2) when fielded.

(d) *Commanding General, U.S. Army Training and Doctrine Command (CG, TRADOC).* The CG, TRADOC will ensure that VRS–2 technical training for functional users is incorporated into service school instructional programs.

(e) *Installation or activity commander.* The installation or activity commander will—

(1) Establish an effective traffic supervision program.

(2) Cooperate with civil police agencies and other local government agencies or civil traffic organizations concerned with traffic supervision.

(3) Ensure that traffic supervision is properly integrated in the overall installation traffic safety program.

(4) Actively participate in Alcohol Safety Action Projects (ASAP) in neighboring communities.

(f) *Installation or activity law enforcement officer.* The installation or activity law enforcement officer will—

(1) Exercise overall staff responsibility for directing, regulating, and controlling traffic, and enforcing laws pertaining to traffic control.

(2) Perform traffic engineering functions at installations by conducting traffic control studies designed to obtain information on traffic problems and usage patterns.

(g) *Safety officer.* The safety officer will participate in and develop traffic accident prevention initiatives in support of the installation traffic safety program.

(h) *Facility engineer (public works officer at Navy installations).* The facility engineer or engineer officer, will—

(1) Perform that phase of engineering concerned with the planning, design, construction, and maintenance of streets, highways, and abutting lands.

(2) Select, determine appropriate design, procure, construct, install, and maintain permanent traffic and parking control devices in coordination with the law enforcement officer and safety officer.

(3) Ensure that traffic signs, signals, and pavement markings conform to the standards in the current Manual on Uniform Traffic Control Devices for Streets and Highways.

(4) Ensure that planning, design, construction, and maintenance of streets and highways conform to the NHSPS as implemented by the Services.

(i) *Traffic engineer.* The traffic engineer, in close coordination with the law enforcement officer, will—

(1) Conduct formal traffic engineering studies.

(2) Apply traffic engineering measures, including traffic control devices, to reduce the number and severity of traffic accidents. (If there is no installation traffic engineer, installation commanders may request these services through channels from the Commander, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041–5050.)

(j) *Army Alcohol and Drug Control Officer (ADCO).* The ADCO will provide treatment and education services to personnel with alcohol or drug abuse problems.

(k) *Navy Counseling and Assistance Center (CAAC) Directors.* These directors will—

(1) Supervise the alcohol/drug rehabilitation services to personnel with alcohol or drug abuse problems.

(2) Provide remedial/motivational education for all persons identified as alcohol or drug abusers who are evaluated as not dependent on alcohol or drugs and who have been referred to Level One rehabilitation by their commands.

(l) *Marine Corps Substance Abuse Program Officer.* This officer will provide alcohol/drug education, treatment, and rehabilitation services to personnel with alcohol/drug abuse problems.

(m) *DLA Employee Assistance Program Officer.* This officer will provide alcohol/drug counseling and referral services to identified personnel with alcohol/drug abuse problems in accordance with procedures prescribed by the Chief, Staffing, Labor, and Employee Relations Division, Office of Civilian Personnel, HQ DLA.

§ 634.5 Program objectives.

The objectives of motor vehicle traffic supervision are to assure—

(a) Safe and efficient movement of personnel and vehicles.

(b) Reduction of traffic deaths, injuries, and property damage from traffic accidents. (Because most traffic accidents can be prevented, motor vehicle accidents should be examined in terms of the roadway conditions, environment, operator, vehicle, and the supervision and control measures involved.)

(c) Integration of installation safety, engineering, legal, medical, and law enforcement resources into the installation traffic planning process.

(d) Removal of intoxicated drivers from installation roadways followed by the expeditious application of appropriate sanctions.

Subpart B—Driving Privileges

§ 634.6 Requirements for driving privileges.

(a) Driving a Government vehicle or POV on a military installation is a privilege granted by the installation commander. Persons who accept the privilege must—

(1) Comply with laws and regulations governing motor vehicle operations on the installation.

(2) Comply with installation registration requirements in subpart C if applicable.

(3) Possess, while operating a motor vehicle and produce on demand to law enforcement personnel, the following:

(i) Proof of vehicle ownership or State registration if required by the issuing State.

(ii) A valid State, overseas command, host nation, or international driver's license and/or OF 346 (U.S. Government Motor Vehicle Operator's Identification Card), as applicable, supported by a DD Form 2A (U.S. Armed Forces Identification Card) or other identification for non-Department of Defense (DOD) civilians.

(iii) A valid record of motor vehicle safety inspection if required.

(b) Operators of Government motor vehicles must have proof of authorization to operate the vehicle.

§ 634.7 Stopping and inspecting personnel or vehicles.

(a) Military vehicles may be stopped by law enforcement personnel on military installations based on the installation commander's policy.

(1) In overseas areas, military vehicles may be stopped on or off installations as determined by host nation agreement and command policy.

(2) Stops and inspections of vehicles at installation gates or entry points and in restricted areas will be conducted according to separate Service policy.

(3) Stops and inspections of POVs within the military installation, other than at restricted areas or at an installation gate, are authorized only when there is a reasonable basis to believe the stop/inspection is necessary to enforce a traffic regulation or the stop is based on suspicion of criminal activity. (Army users, see AR 210–10. Marine Corps users, pending publication of a specific Marine Corps order, will be guided by Military Rules of evidence 311–316 and local command regulations. DLA users, see DLAR 5700.7.)

(b) At the time of stop, the driver and occupants may be required to display all pertinent documents, including but not limited to—

(1) DD Form 2A.

(2) Documents that establish the identity and status of civilians; for example, DD Form 1173 (Uniformed Services Identification and Privilege Card), DA Form 1602 (Civilian Identification), AF Form 354 (Civilian Identification Card), DLA Form 572 (Identification Card), DLA Form 1486 (Application for Identification Card), post pass, or national identity card.

(3) Proper POV registration documents.

(4) Host nation vehicle registration documents if applicable.

(5) Authorization to operate a U.S. Government vehicle if applicable.

(6) Drivers license or OF 346 valid for the particular vehicle and area of operation.

§ 634.8 Implied consent to blood, breath, or urine tests.

Persons accepting installation driving privileges shall be deemed to have given their consent to evidential tests for alcohol or other drug content of their blood, breath, and/or urine if lawfully stopped, apprehended, or cited for any offense allegedly committed while driving or in physical control of a motor vehicle on the installation while under the influence of intoxicants.

§ 634.9 Implied consent to impoundment.

Any person granted the privilege of operating a motor vehicle on an installation shall be deemed to have given his or her consent for the removal and temporary impoundment of the POV when it is parked illegally for unreasonable periods, interfering with operations, creating a safety hazard, disabled by accident, left unattended in a restricted or controlled area, or abandoned. Such persons further agree to reimburse the United States for the cost of towing and storage should their motor vehicle be removed or impounded. Existence of the conditions described above will be determined by the installation commander or designee.

§ 634.10 Suspension or revocation of driving privileges.

The installation commander (or designee not assigned primarily to law enforcement duties) may, for cause, administratively suspend or revoke driving privileges on the installation. The suspension or revocation of installation driving privileges or POV registrations, for lawful reasons unrelated to traffic violations or safe vehicle operation, is not limited or restricted by this regulation.

(a) *Suspension.* (1) Driving privileges are usually suspended when other measures have failed to improve a driver's performance. Measures should

include counseling, remedial driving training, and rehabilitation programs. Driving privileges may also be suspended for up to 6 months if a driver continually violates installation parking regulations. The commander will determine standards for suspension based on frequency of parking violations and publish those standards.

(2) The installation commander has discretionary power to withdraw the authorization of active duty military personnel, DOD civilian employees, and nonappropriated fund (NAF) employees to operate U.S. Government vehicles.

(3) Immediate suspension of installation or overseas command POV driving privileges pending resolution of an intoxicated driving incident is authorized for active duty military personnel, family members, retired members of the military services, DOD civilian personnel, and others with installation or overseas command driving privileges regardless of the geographic location of an intoxicated driving incident. Suspension is authorized for non-DOD affiliated civilians only with respect to incidents occurring on the installation or in areas subject to military traffic supervision. After a review of available evidence as specified in § 634.11, installation driving privileges will be immediately suspended pending resolution of the intoxicated driving incident in the following circumstances;

(i) Refusal to take or complete a lawfully requested chemical test to determine contents of blood for alcohol or other drugs.

(ii) Operating a motor vehicle with a blood alcohol content (BAC) of 0.10 percent by volume or higher or in violation of the law of the jurisdiction that is being assimilated on the military installation.

(iii) Operating a motor vehicle with a BAC of at least 0.05 percent by volume but less than 0.10 percent blood alcohol by volume in violation of the law of the jurisdiction in which the vehicle is being operated if the jurisdiction imposes a suspension solely on the basis of the BAC level.

(iv) On an arrest report or other official documentation of the circumstances of an apprehension for intoxicated driving.

(b) *Revocation.* (1) The revocation of installation or overseas command POV driving privileges is a severe administrative measure to be exercised for serious moving violations or when other available corrective actions fail to produce the desired driver improvement. Revocation of the driving privilege will be for a specific period, but never less than 6 months, applies at all military installations, and remains in effect on reassignment.

(2) Driving privileges are subject to revocation when an individual fails to comply with any of the conditions requisite to the granting of the privilege. (See § 634.6.) Revocation of installation driving and registration privileges is authorized for military personnel, family members, civilian employees of DOD, and other individuals with installation driving privileges. For civilian guests, revocation is authorized only with respect to incidents occurring on the installation or in the areas subject to military traffic supervision.

(3) Driving privileges will be revoked for a mandatory period of not less than 1 year in the following circumstances:

(i) The installation commander or designee has determined that the person lawfully apprehended for intoxicated driving refused to submit to or complete a test to measure the alcohol content in the blood, or detect the presence of any other drug, as required by the law of the jurisdiction, installation traffic code, or by Service directive.

(ii) A conviction, nonjudicial punishment, or a military or civilian administrative action resulted in the suspension or revocation of a driver's license for intoxicated driving. Appropriate official documentation of such conviction is required as the basis for revocation.

(4) When temporary suspensions under § 634.10(a)(3) are followed by revocations, the period of revocation is computed beginning from the date the original suspension was imposed, exclusive of any period during which full driving privileges may have been restored pending resolution of charges. (Example: privileges were initially suspended on 1 January 1996 for a charge of intoxicated driving with a blood alcohol content of 0.14 percent. A hearing was held, extreme family hardship was substantiated, and privileges were restored on 1 February pending resolution of the charge. On 10 March, the driver was convicted for intoxicated driving. The mandatory 1-year revocation period will consist of January 1996 plus March 1996 through January 1997, for a total of 12 months with no installation driving privileges.)

§ 634.11 Administrative due process for suspensions and revocations.

(a) Individual Services will promulgate separate regulations establishing administrative due process procedures for suspension or revocation of driving privileges. The procedures in paragraphs (b) and (c) of this section apply to actions taken by Army commanders with respect to Army military personnel and family members and to civilian personnel operating motor vehicles on Army installations. For Marine Corps users, the provisions of this paragraph apply pending publication of a Marine Corps order addressing administrative due process.

(b) For offenses other than intoxicated driving, suspension or revocation of the installation driving privilege will not become effective until the installation commander or designee notifies the affected person and offers that person an administrative hearing. Suspension or revocation will take place 10 days after this written notice is received unless an application for a hearing is made by the affected person within this period. Such application will stay the pending suspension or revocation for a period of 10 days.

(1) If, due to action by the Government, a hearing is not held within 10 days, the suspension will not take place until such time as the person is granted a hearing and is notified of the action of the installation commander or designee. However, if the affected person requests that the hearing be continued to a date beyond the 10-day period, the suspension or revocation will become effective immediately on receipt of notice that the request for continuance has been granted.

(2) If it is determined as the result of a hearing to suspend or revoke the affected person's driving privilege, the suspension or revocation will become effective when the person receives the written notification of such action. In the event that written notification cannot be verified either through a returned receipt for mail or delivery through command channels, the hearing authority will determine the effective date on a case-by-case basis.

(3) If the revocation or suspension is imposed after such hearing, the person whose driving privilege has been suspended or revoked will have the right to appeal or request reconsideration. Such requests must be forwarded through command channels to the installation commander within 10 days from the date the individual is notified of the suspension or revocation resulting from the administrative hearing. The suspension or revocation will remain in effect pending a final ruling on the request. Requests for restricted privileges will be considered per § 634.16.

(c) For drunk driving or driving while intoxicated offenses, reliable evidence readily available will be presented promptly to an individual designated by the installation commander for review and authorization for immediate

suspension of installation driving privileges

(1) The reviewer should be any officer whose primary duties are not in the field of law enforcement.

(2) Reliable evidence includes material such as witness statements, military or civilian police report of apprehension, chemical test results if completed, refusal to consent to complete chemical testing, video tapes, statements by the apprehended individual, field sobriety or preliminary breath test results, and other pertinent evidence.

(3) Reviews normally will be accomplished within the first normal duty day following final assembly of evidence.

(4) When detailed and reliable evidence is not available, immediate suspension should not be based on published lists of arrested persons, statements by parties not witnessing the apprehension, or telephone conversations or other information not supported by documented and reliable evidence.

(5) Installation commanders may authorize the installation law enforcement officer to conduct reviews and authorize suspensions in cases where the designated reviewer is not reasonably available and, in the judgment of the installation law enforcement officer, such immediate action is warranted. Review by the designated officer will follow as soon as practicable in such cases. When a suspension notice is based on the law enforcement officer's review, there is no requirement for confirmation notice following subsequent review by the designated officer.

(6) For active duty military personnel, written notice of suspension for intoxicated driving will be provided to the individual's chain of command for immediate presentation to the individual.

(7) For civilian personnel, written notice of suspension for intoxicated driving normally will be provided without delay via certified mail. If the person is employed on the installation, such notice will be forwarded through the military or civilian supervisor. When the notice of suspension is forwarded through the supervisor, the person whose privileges are suspended will be required to provide written acknowledgment of receipt of the suspension notice.

(8) Notices of suspension for intoxicated driving will include the following:

(i) The fact that the suspension can be made a revocation under § 634.10(b).

(ii) The right to request, in writing, a hearing before the installation commander or designee to determine if post driving privileges will be restored pending resolution of the charge; and that such request must be made within 10 days of the notice of suspension.

(iii) The right of military personnel to be represented by counsel at his or her own expense and to present evidence and witnesses at his or her own expense. Installation commanders will determine the availability of any local active duty representatives requested.

(iv) The right of Department of the Army (DA) civilian employees to have a personal representative present at the administrative hearing in accordance with applicable laws and regulations.

(v) Written acknowledgment of receipt to be signed by the individual whose privileges are to be suspended or revoked.

(9) If a hearing is requested, it must take place within 10 days of receipt of the request. The suspension for intoxicated driving will remain in effect until a decision has been made by the installation commander or designee, but will not exceed 10 working days after the hearing while awaiting the decision. If no decision has been made by that time, full driving privileges will be restored until such time as the accused is notified of a decision to continue the suspension.

(10) Hearing on suspension actions under § 634.10(a) for intoxicated drivers pending resolution of charges will cover only the pertinent issues of whether—

(i) The law enforcement official had reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or other drugs.

(ii) The person was lawfully cited or apprehended for an intoxicated driving offense.

(iii) The person was lawfully requested to submit to a test for alcohol or other drug content of blood, breath, or urine and was informed of the consequences of refusal to take or complete such test.

(iv) The person refused to submit to the test for alcohol or other drug content of blood, breath, or urine; failed to complete the test; or submitted to the test and the result was 0.10 percent or higher blood alcohol content, or showed results indicating the presence of other drugs for an on-post apprehension or in violation of State laws for an off-post apprehension.

(v) The testing methods used were valid and reliable, and the results accurately evaluated.

(11) For revocation actions under § 634.10(b)(3) for intoxicated driving, the revocation is mandatory on conviction or other findings that confirm the charge. (Pleas of nolo contendere are considered equivalent to guilty pleas.)

(i) Revocations are effective as of the date of conviction or other findings that confirm the charges.

(ii) The notice that revocation is automatic may be placed in the suspension letter. If it does not appear in the suspension letter, a separate letter must be sent and revocation is not effective until receipt of the written notice.

(iii) Revocations cancel any full or restricted driving privileges that may have been restored during suspension and the resolution of the charges. Requests for restoration of full driving privileges are not authorized.

§ 634.12 Army administrative actions against intoxicated drivers.

Army commanders will take appropriate action against intoxicated drivers. These actions will include the following:

(a) A written general officer reprimand, administrative in nature, will be issued to active duty Army officers, commissioned and warrant, and noncommissioned officers, to include soldiers in the grade of E–4 appointed on official orders to corporal, in the cases described below. This reprimand may be issued by an officer frocked to the grade of brigadier general. Subsequent filing of the reprimand will be in accordance with the provisions of AR 600–37.

(1) Conviction of intoxicated driving or driving under the influence of alcohol or other drugs either on or off the installation.

(2) Refusal to take or failure to complete a lawfully requested test to measure alcohol or drug content of the blood, breath, or urine, either on or off the installation, when there is reasonable belief of driving under the influence of alcohol or drugs.

(3) Driving or being in physical control of a motor vehicle on post when the blood alcohol content is 0.10 percent or higher, irrespective of other charges, or off post when the blood alcohol content is in violation of State laws, irrespective of other charges.

(4) Driving or being in physical control of a motor vehicle, either on or off the installation, when lawfully requested chemical tests reflect the presence of illegal drugs.

(b) A written reprimand, administrative in nature, may be issued by a general officer or other appropriate official to active duty soldiers in the grade of E–4 (except corporals) and

below in cases described in paragraph (a) of this section.

(c) Review by commanders of the service records of active duty soldiers apprehended for offenses described in (a) above to determine if the individuals warrant—

(1) Administrative reduction per AR 600–200.

(2) Bar to reenlistment per AR 601–280.

(3) Administrative discharge per AR 635–200.

§ 634.13 Remedial driver training programs.

(a) Navy activities will comply with OPNAVINST 5100.12D, Air Force activities with AFR 30–2, and Marine Corps activities with MCO 5100.19C.

(b) Installation commanders may establish a remedial driver training program to instruct and educate military personnel requiring additional training. Personnel will be chosen for the program on the basis of their individual driving records. The curriculum should provide instruction to improve driving performance and compliance with traffic laws.

(c) Installation commanders may schedule periodic courses if courses on a continuing basis are not practical. If civil authorities conduct such courses, commanders may arrange for installation personnel to attend these courses in lieu of operating a course on or by the installation.

(d) Civilian personnel employed on the installation, contractor employees, and family members of military personnel may voluntarily attend these or similar courses.

§ 634.14 Alcohol and drug abuse programs.

(a) Commanders will refer military personnel suspected of drug or alcohol abuse for evaluation in the following circumstances:

(1) Behavior is indicative of alcohol or drug abuse.

(2) Continued inability to drive a motor vehicle safely because of alcohol or drug abuse.

(b) The commander will ensure military personnel are referred to the installation alcohol and drug abuse program or other comparable facilities when they are convicted of, or receive an official administrative action for, any offense involving intoxicated driving. A first offender may be referred for treatment if more evidence of substance abuse exists than merely the offense of intoxicated driving. The provisions of this paragraph do not limit the commander's prerogatives concerning other actions that may be taken against offenders under separate Service policies. (Army, see AR 600–85; Marine Corps, see MCO P5300.12.)

(c) Active duty Army personnel apprehended for drunk driving, on or off the installation, will be referred to the local Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) for evaluation within 10 days to determine if the person is dependent on alcohol or other drugs which will result in enrollment in Track I or other level of treatment in accordance with AR 600–85.

(d) Active duty Navy personnel apprehended for drunk driving, on or off the installation, will be screened by the respective CAAC facility within 10 days to determine if the individual is dependent on alcohol or other drugs. Active duty Marines apprehended for intoxicated driving, on or off the installation, will be referred for interview by a Level II substance abuse counselor within 10 days for evaluation and determination of the appropriate level of treatment required subsequent to this evaluation, the Marine will be assigned to the appropriate treatment program as prescribed by MCO P5300.12.

(e) The Services may develop preventive treatment and rehabilitative programs for civilian employees with alcohol-related problems section 4561, title 42, U.S. Code (42 U.S.C. 4561).

(f) Army supervisors of civilian employees apprehended for drunk driving will advise employees of ADAPCP services available. Army civilian employees apprehended for intoxicated driving while on duty will be referred to the ADAPCP for evaluation in accordance with AR 600–85. Army commanders will ensure that sponsors encourage family members apprehended for drunk driving to seek ADAPCP evaluation and assistance.

(g) Navy and DLA civilian personnel charged with intoxicated driving will be referred to the Civilian Employee Assistance Program for evaluation in accordance with FPM Supplement 792–2. Such referral does not exempt the employee from appropriate administrative or disciplinary actions under civilian personnel regulations.

(h) Marine Corps civilian employees charged with intoxicated driving, on or off the installation, will be referred to the Employee Assistance Program as prescribed by MCO P5300.12. Marine dependents charged with intoxicated driving, on or off the installation, will be provided assistance as addressed in MCO P5300.12. Such referral and assistance does not exempt the individual from appropriate administrative or disciplinary action under current civilian personnel regulations or State laws.

(i) For Army, DLA, and Marine Corps, installation driving privileges of any person who refuses to submit to or fails to complete chemical testing for blood-alcohol content when apprehended for intoxicated driving, or convicted of intoxicated driving, will not be reinstated unless the person successfully completes either an alcohol education and treatment program sponsored by the installation, State, county, or municipality, or a private program evaluated as acceptable by the installation commander.

(j) For Navy, on-base driving privileges will not be reinstated for Navy personnel convicted of driving under the influence, on- or off-base, unless the person completed the full 36-hour Navy Alcohol and Drug Safety Action Program (NADSAP). The condensed NADSAP supervisor course will not be used for this purpose.

§ 634.15 Restoration of driving privileges on acquittal.

When an official report pertaining to drunk driving or driving while intoxicated indicates a finding of not guilty, that the charges have been dismissed or reduced to an offense not amounting to intoxicated driving, or that an equivalent determination has been made in a nonjudicial punishment proceeding or military or civilian administrative action, the suspension of driving privileges will be vacated except in cases in which:

(a) The preliminary suspension was based on refusal to take a BAC test.

(b) The preliminary suspension resulted from a BAC test (unless disposition of the charges was based on invalidity of the BAC test). When a valid BAC test is involved, the suspension will continue pending completion of a hearing. In such instances, the individual will be notified in writing of the continuation of the preliminary suspension and of the opportunity to request a hearing within 10 working days. At the hearing the arrest report, the commander's report of official disposition, information presented by the individual, and such other information as the hearing officer may deem appropriate will be considered. If the hearing officer determines by a preponderance of evidence that the individual was engaged in intoxicated driving, the revocation will be for 1 year from the date of the original preliminary suspension.

(c) The person was driving or in physical control of a motor vehicle while

under a preliminary suspension or revocation.

(d) An administrative determination has been made by the State or host nation licensing authority to suspend or revoke driving privileges based on local law or pertinent regulations.

(e) The individual has failed to complete a formally directed substance abuse or driver's training program.

§ 634.16 Restricted driving privileges or probation.

(a) For the Navy, Air Force, Marine Corps, and DLA, the installation commander may modify a suspension or revocation of driving privileges in certain cases per paragraph (d) of this section.

(b) Army requests for restricted driving privileges subsequent to suspension or revocation of installation driving privileges will be referred to the installation commander or designee for determination under criteria of (d) below, except for intoxicated driving cases, which must be referred to the General Court Martial Convening Authority. Withdrawal of restricted driving privileges is within the installation commander's discretion.

(c) Probation or restricted driving privileges will not be granted to any person whose driver's license is under suspension or revocation by a State, Federal, or host nation licensing authority.

(d) Aside from any other provisions of this regulation, the installation commander or designee may grant restricted driving privileges or probation on a case-by-case basis to accommodate any of the following reasons, provided the person's State driver's license remains valid:

(1) Mission requirements.

(2) Unusual personal or family hardships.

(3) Delays exceeding 90 days, not attributed to the person concerned, in the formal disposition of an apprehension or charges that are the basis for any type of suspension or revocation.

(4) When there is no reasonably available alternate means of transportation to officially assigned duties. (In this instance, a limited exception can be granted for the sole purpose of driving directly to and from the place of duty.)

(e) The limitations on a restricted driving privilege (for example, an authorization to drive to and from place of employment or duty, selected installation facilities such as hospital and commissary, or other facilities) will be specified in writing and provided to the individual concerned. Persons found to be in violation of the restricted privilege are subject to revocation action as prescribed in § 634.10(b). For good cause, the appropriate authority may withdraw the restricted driving privilege and continue the suspension or revocation period (for example, driver at fault in a traffic accident, or driver cited for a moving traffic violation).

(f) The conditions and terms of probation will be specified in writing and provided to the individual concerned. The original suspension or revocation term in its entirety may be activated to commence from the date of the violation of probation. In addition, separate action may be initiated based on the commission of any traffic, criminal, or military offense that constitutes a probation violation.

(g) DOD employees of the Services or DLA, who can demonstrate that suspension or revocation of installation driving privileges would constructively remove them from employment, may be given a limited suspension/revocation that restricts driving on the installation or activity (or in the overseas command) to the most direct route to and from their respective work sites (5 U.S.C. 2303 (b)(10)). This is not to be construed as limiting the commander from suspension or revocation of on-duty driving privileges or seizure of OF 346, even if this action would constructively remove a person from employment, in those instances in which the person's duty requires driving from place to place on the installation.

§ 634.17 Extensions of suspensions and revocations.

(a) Driving in violation of a suspension or revocation imposed under this regulation will result in the original period of suspension or revocation being increased by 2 years. In addition, administrative action may also be initiated based on the commission of any traffic, criminal, or military offense (for example, active duty military personnel driving on the installation in violation of an order not to do so).

(b) For each subsequent determination within a 5-year period that revocation is authorized under § 634.10(b), military personnel, DOD civilians, and NAF employees will be prohibited from obtaining or using an OF 346 for 6 months for each such incident. A determination whether DOD civilian personnel should be prohibited from obtaining or using an OF 346 will be made under FPM 930, and other laws and regulations applicable to civilian personnel. This does not preclude a commander from imposing such prohibition for a first offense, or for a longer period of time for a first or subsequent offense, or for such other reasons as may be authorized.

(c) Commanders may extend a suspension or revocation of the installation driving privileges of military personnel until completion of an approved remedial driver training course or alcohol or drug counseling program.

(d) Commanders may extend a suspension or revocation of the installation driving privileges of civilian personnel convicted of intoxicated driving on the installation until successful completion of a State or installation approved alcohol or drug rehabilitation program.

§ 634.18 Reciprocal State-military action.

The Services recognize the interests of the States in matters of POV administration and driver licensing. The following procedures will apply:

(a) Statutory authority may exist within some host nations or States for reciprocal suspension and revocation of driving privileges. If so, the installation commander or designee will honor the reciprocal agreements with State or host nation driver licensing authorities. On receipt of written notice, the receiving party may suspend or revoke driving privileges as if the violations or incidents had occurred within its own jurisdiction.

(b) If statutory authority does not exist within the State for formal military reciprocity, the procedures below will be used.

(1) Where military reciprocity has not been established by State law, commanders will act on reports of suspensions or revocations received from state authorities where the installation is located. When any State authority suspends or revokes a person's driver's license, the installation's driving privilege will be automatically terminated. Administrative actions (suspension, revocation, or point assessment) for moving traffic violations off the installation reported by State authorities should not be less than that required for similar offenses on the installation. When notified by a State of a suspension or revocation, the installation commander may suspend or revoke the person's OF 346.

(2) In CONUS, the appropriate State licensing authority will be notified when a person's installation driving privileges are revoked for a period of 1 year or more following final adjudication of an intoxicated driving offense or for refusal to submit to a BAC test. The notification will be sent to the licensing authority of the State where the individual is

licensed. (See Appendix B to part 634.) The notification will include the basis for the revocation and the blood alcohol concentration level.

(c) Overseas installation commanders may be affected by provisions of the applicable status of forces agreement (SOFA) and the law of the host nation concerning reciprocal suspension and revocation. To the extent an agreement concerning reciprocity may be permitted at a particular overseas installation, the installation commander must have prior authorization to negotiate and conclude such an international agreement in accordance with applicable directives, DODD 5530.3, June 1987 and individual Service instructions.

Subpart C—Motor Vehicle Registration

§ 634.19 Registration policy.

(a) Motor vehicles will be registered according to guidance in this regulation and in policies of each Service and DLA. Unless otherwise specified by this regulation or other competent authority, a person who lives or works on a military installation or often uses the facilities will be required to register his or her vehicle. The person need not own the vehicle to register it, but must have a lease agreement, power of attorney, or notarized statement from the owner of the vehicle specifying the inclusive dates for which permission to use the vehicle has been granted.

(b) Vehicles intended for construction and material handling or used solely off the road are not usually registered as motor vehicles. Installation commanders may require registration of off-road vehicles and bicycles under a separate local system.

(c) Commanders can grant limited temporary registration for up to 45 days, pending permanent registration, or in other circumstances for longer terms.

(d) Except for reasons of security, all installations and activities of the Services and DLA within the United States and its territories will honor the DD Form 2220 (Department of Defense Registered Vehicle) issued by other installations or activities.

(e) Visitor identification may be developed and issued locally. (Air Force, see AFR 125–15.)

(f) Registration of POVs is not required at Army installations; however, the conditions in § 634.20 must be met to gain the privilege of operating a POV on an Army installation.

(1) For those installations not registering vehicles, failure to comply with conditions in § 634.20 will be detected through traffic enforcement actions. Failure of an owner to comply with these conditions may result in administrative suspension or revocation of his or her installation driving privileges (§ 634.10).

(2) Installation commanders are authorized to use the Vehicle Registration System (VRS) of the Military Police Management Information System (MPMIS). VRS is a Standard Army Management Information System (STAMIS). For installations using VRS, the maximum number of monthly computer runs will not exceed 15 in peacetime and 4 in wartime.

(3) When fielded, VRS–2, a redesigned system, will be employed by all installations using an automated vehicle registration program.

§ 634.20 Registration requirements.

Systems for registration of POVs on military installations within the United States or its territories and in overseas areas will include the requirements specified below (Registration in overseas commands may be modified in accordance with international agreements or military necessity.)

(a) Possession of a valid State, overseas command, host nation, or international driver's license (as applicable), supported by DD Form 2 (U.S. Armed Forces Retired Identification Card); or other appropriate identification for DOD civilians.

(b) Possession of a certificate of State registration as required by the state in which the vehicle is registered.

(c) Continuing compliance with the minimum requirements of the automobile insurance laws or regulations of the State or host nation. In overseas commands where host nation laws do not require minimum personal injury and property damage liability insurance, the major overseas commander may set reasonable liability insurance requirements for registration and operation of POVs within the confines of military installations and areas. Prior to implementation, insurance requirements in host nations should be formally coordinated with the appropriate host nation agency.

(d) Satisfactory completion of safety and mechanical vehicle inspection by State or jurisdiction in which the vehicle is licensed or located. If neither State nor local jurisdiction requires a periodic safety inspection, installation commanders may require and conduct an annual POV safety inspection; however, inspection facilities must be reasonably accessible to those requiring use. Inspections will meet minimum standards established by the National Highway Traffic Safety Administration (NHTSA) in §§ 570.1 through 570.10, Part 570, ch. V, title 49, Code of Federal Regulations (CFR). Lights, turn signals, brake lights, horn, and wipers should be included in the inspection.

(e) Vehicles with elevated rear ends are unsafe and will be denied registration on Army, DLA, and Marine Corps installations. The CFR (§ 570.8 (Suspension Systems), part 570, ch. V, Title 49) states that springs should not be extended above the vehicle manufacturer's design height.

§ 634.21 Specifications for DD Form 2220.

(a) *Use.* DD Form 2220 will be used to register POVs on Army, Navy, Air Force, Marine Corps, and DLA installations or facilities. The form is produced in single copy for placement on the front of the vehicle only.

(1) Each Service and DLA will procure its own forms and installation and expiration tabs. For the Army, the basic decal may be ordered through publications channels. Army installations must procure their own installation and expiration tabs using installation funds.

(2) DD Form 2220 and installation and expiration tabs will be removed from POVs when the registration expires or is terminated.

(3) The normal expiration term for registration on Army installations will be 4 years.

(b) *Specifications.* (1) DD Form 2220 will consist of international blue borders and printing on a white background. Printer information will include the following:

(i) Form title (Department of Defense Registered Vehicle).

(ii) Alphanumeric individual form identification number.

(iii) DOD seal.

(2) Name of the installation will be specified on a separate tab abutting the decal. Each Service or DLA may choose optional color codes of the registrant. Army installations having vehicle registration programs will use the following standard color scheme for the installation tab:

(i) Blue-officers.

(ii) Red-enlisted.

(iii) Green-DA civilian employees (including NAF employees).

(iv) Black-Contractor personnel and other civilians employed on the installation.

(3) An expiration tab identifying the month and year ("6–97") or simply the year ("97") will be abutted to the decal. For identification purposes, the date of expiration will be shown in bold block numbers on a lighter contrasting background such as traffic yellow, lime, or orange.

(4) The decal, installation tab, and expiration tab will be theft resistant when applied to glass, metal, painted, or rubberized surfaces after full adhesion had developed and will be manufactured to "tear" or "self destruct" when any attempt to remove it is made with a sharp instrument or chemical.

(5) On Army installations, a single decal with tabs will be prominently affixed to the front windshield or bumper of registered vehicles. Local policy will specify the exact placement. Some States prohibit or restrict placement of decals on windshields. In such cases, State law will be complied with.

§ 634.22 Termination or denial of registration.

Installation commanders or their designated representatives will terminate POV registration or deny initial registration under the following conditions (decal and tabs will be removed from the vehicle when registration is terminated):

(a) The owner fails to comply with the registration requirements. (See § 634.20)

(b) The owner sells or disposes of the POV, is released from active duty, is separated from the Service, is transferred to a new duty station, or terminates civilian employment with a military Service or DOD agency.

(c) The owner is other than an active duty military or civilian employee and discontinues regular operation of the POV on the installation.

(d) The owner's State, overseas command, or host nation driver's license has been suspended or revoked, or the installation driving privilege has been revoked. Where vehicle registration is terminated in conjunction with the revocation of installation driving privileges, the affected person must apply to re-register the POV after the revocation expires. Registration should not be terminated if other family members having installation driving privileges require use of the vehicle.

§ 634.23 Specified consent to impoundment.

Personnel registering POVs on Service or DLA installations must consent to the impoundment policy. POV registration forms will contain or have appended to them a certificate with the following statement:

I am aware that (insert number and title of separate Service or DLA directive) and the installation traffic code provide for the removal and temporary impoundment of privately owned motor vehicles that are either parked illegally for unreasonable periods, interfering with military operations, creating a safety hazard, disabled by incident, left unattended in a restricted or controlled area, or abandoned. I agree to reimburse the United States for the cost of towing and storage should my motor vehicle(s), because of such circumstances, be removed and impounded.

Subpart D—Traffic Supervision

Section I—Traffic Planning and Codes

§ 634.24 Traffic planning.

(a) Safe and efficient movement of traffic on an installation requires traffic supervision. A traffic supervision program includes traffic circulation planning, supervision, and control of motor vehicle traffic; publication and enforcement of traffic laws and regulations; and investigation of motor vehicle accidents.

(b) Installation commanders will develop traffic circulation plans that provide for the safest and most efficient use of primary and secondary roads. Circulation planning should be a major part of all long-range master planning at installations. The traffic circulation plan is developed by the installation law enforcement officer, engineer, safety officer, and other concerned staff agencies. Highway engineering representatives from adjacent civil communities must be consulted to ensure the installation plan is compatible with the current and future circulation plan of the community. The plan should include the following:

(1) Normal and peak load routing based on traffic control studies.

(2) Effective control of traffic using planned direction, including measures for special events and adverse road or weather conditions.

(3) Point control at congested locations by law enforcement personnel or designated traffic directors or wardens, including trained school-crossing guards.

(4) Use of traffic control signs and devices.

(5) Efficient use of available parking facilities.

(6) Efficient use of mass transportation.

(c) Traffic control studies will provide factual data on existing roads, traffic density and flow patterns, and points of congestion. The installation law enforcement officer and traffic engineer usually conduct coordinated traffic control studies to obtain the data. Accurate data will help determine major and minor routes, location of traffic control devices, and conditions requiring engineering or enforcement services.

(d) The Military Traffic Management Command Transportation Engineering Agency (MTMCTEA) will help installation commanders solve complex highway traffic engineering problems. MTMCTEA traffic engineering services include—

(1) Traffic studies of limited areas and situations.

(2) Complete studies of traffic operations of entire installations. (This can include long-range planning for future development of installation roads, public highways, and related facilities.)

(3) Assistance in complying with established traffic engineering standards.

(e) Installation commanders should submit requests for traffic engineering services in accordance with AR 55–80/OPNAVINST 11210.1B/AFR 75–88/MCO 11210.2C/DLAR 4500.19.

§ 634.25 Installation traffic codes.

(a) Installation or activity commanders will establish a traffic code for operation of motor vehicles on the installation. Commanders in overseas areas will establish a traffic code, under provisions of this regulation, to the extent military authority is empowered to regulate traffic on the installation under the applicable SOFA. Traffic codes will contain the rules of the road (parking violations, towing instructions, safety equipment, and other key provisions). These codes will, where possible, conform to the code of the State or host nation in which the installation is located. In addition, the development and publication of installation traffic codes will be based on the following:

(1) Highway Safety Program Standards (23 CFR part 1230).

(2) Applicable portions of the Uniform Vehicle Code and Model Traffic Ordinance published by the National Committee on Uniform Traffic Laws and Ordinances (23 CFR part 1204).

(b) The installation traffic code will contain policy and procedures for the towing, searching, impounding, and inventorying of POVs. These provisions should be well publicized and contain the following:

(1) Specific violations and conditions under which the POV will be impounded and towed.

(2) Procedures to immediately notify the vehicle owner.

(3) Procedures for towing and storing impounded vehicles.

(4) Actions to dispose of the vehicle after lawful impoundment.

(c) Installation traffic codes will also contain the provisions discussed below. (Army users, see AR 385–55.)

(1) Motorcycles and mopeds. For motorcycles and other self-propelled, open, two-wheel, three-wheel, and four-wheel vehicles powered by a

motorcycle-type engine, the following traffic rules apply:

(i) Headlights will be on at all times when in operation.

(ii) A rear view mirror will be attached to each side of the handle bars.

(iii) Approved protective helmets, eye protection, and highly reflective clothing or vests will be worn by operators and passengers when in operation.

(2) Restraint systems.

(i) Restraint systems (seat belts) will be worn by all operators and passengers of U.S. Government vehicles on or off the installation.

(ii) Restraint systems will be worn by all civilian personnel (family members, guests, and visitors) driving or riding in a POV on the installation.

(iii) Restraint systems will be worn by all military service members and Reserve Component members on active Federal service driving or riding in a POV whether on or off the installation.

(iv) Infant/child restraint devices (car seats) will be required in POVs for children 4 years old or under and not exceeding 45 pounds in weight.

(iv) Restraint systems are required only in cars manufactured after model year 1968.

(3) Headphones and earphones. The wearing of headphones or earphones is prohibited while driving a U.S. Government vehicle, POV, motorcycle, or other self-propelled two-wheel, three-wheel, and four-wheel vehicles powered by a motorcycle-type engine. This does not negate the requirement for wearing hearing protection when conditions or good judgment dictate use of such protection.

(d) Only administrative actions (reprimand, assessment of points, loss of on-post driving privileges, or other actions) will be initiated against service members for off-post violations of the installation traffic code.

(e) In States where traffic law violations are State criminal offenses, such laws are made applicable under the provisions of 18 U.S.C. 13 to military installations having concurrent or exclusive Federal jurisdiction.

(f) In those States where violations of traffic law are not considered criminal offenses and cannot be assimilated under 18 USC, DODD 5525.4, in Appendix C to part 634 expressly adopts the vehicular and pedestrian traffic laws of such States and makes these laws applicable to military installations having concurrent or exclusive Federal jurisdiction. It also delegates authority to installation commanders to establish additional vehicular and pedestrian traffic rules and regulations for their installations. Persons found guilty of violating the vehicular and pedestrian traffic laws made applicable on the installation under provisions of that directive are subject to a fine of not more than $50.00 or imprisonment for not more than 30 days, or both, for each violation (40 U.S.C. 318c). In those States where traffic laws cannot be assimilated, an extract copy of this paragraph and a copy of DODD 5525.4 in Appendix C, will be posted in a prominent place accessible to persons assigned, living, or working on the installation.

(g) In those States where violations of traffic laws cannot be assimilated because the Federal Government's jurisdictional authority on the installation or parts of the installation is only proprietary, neither 18 U.S.C. 13 nor the delegation in Appendix C to part 634 will permit enforcement of the State's traffic laws in Federal courts. Law enforcement authorities on those military installations must rely on either administrative sanctions related to the installation driving privilege or enforcement of traffic laws by State law enforcement authorities.

Section II—Traffic Law Enforcement

§ 634.26 Traffic law enforcement principles.

(a) Traffic law enforcement should motivate drivers to operate vehicles safely within traffic laws and regulations and maintain an effective and efficient flow of traffic. Effective enforcement should emphasize voluntary compliance by drivers and can be achieved by the following actions:

(1) Publishing a realistic traffic code well known by all personnel.

(2) Adopting standard signs, markings, and signals in accordance with NHSPS and the Manual on Uniform Traffic Control Devices for Streets and Highways.

(3) Ensuring enforcement personnel establish courteous, personal contact with drivers and act promptly when driving behavior is improper or a defective vehicle is observed in operation.

(4) Maintaining an aggressive program to detect and apprehend persons who drive while privileges are suspended or revoked.

(5) Using sound discretion and judgment in deciding when to apprehend, issue citations, or warn the offender.

(b) Selective enforcement will be used when practical. Selective enforcement deters traffic violations and reduces accidents by the presence or suggested presence of law enforcement personnel at places where violations, congestion, or accidents frequently occur. Selective enforcement applies proper enforcement measures to traffic congestion and focuses on selected time periods, conditions, and violations that cause accidents. The military services use selective enforcement because that practice is the most effective use of resources.

(c) Enforcement activities against intoxicated driving will include—

(1) Detecting, apprehending, and testing persons suspected of driving under the influence of alcohol or drugs.

(2) Training law enforcement personnel in special enforcement techniques.

(3) Enforcing blood-alcohol concentration standards. (See § 634.34.)

(4) Denying installation driving privileges to persons whose use of alcohol or other drugs prevents safe operation of a motor vehicle.

(d) Installation officials will formally evaluate traffic enforcement at least once a year. That evaluation will examine procedures to determine if the following elements of the program are effective in reducing traffic accidents and deaths:

(1) Selective enforcement measures.

(2) Suspension and revocation actions.

(3) Chemical breath-testing programs.

§ 634.27 Speed-measuring devices.

Speed-measuring devices will be used in traffic control studies and enforcement programs. Signs may be posted to indicate speed-measuring devices are being used.

(a) Equipment purchases. Installations located in States having a formal training and certification program will purchase the same brand and model of equipment used by the State and will ensure operators attend an appropriate training program. Otherwise, equipment in appropriate Service or DLA tables of allowances will be used.

(b) Training and certification standards.

(1) The commander of each installation using traffic radar will ensure that personnel selected as operators of such devices meet training and certification requirements prescribed by the States in which the installation is located. Specific information on course dates, costs, and prerequisites for attending may be obtained by contacting the State agency responsible for police traffic radar training.

(2) Installation commanders located in States or overseas areas where no formal training program exists, or where the military personnel are unable or ineligible to participate in police traffic

radar training programs, may implement their own training program or use a selected civilian institution or manufacturer's course.

(3) The objective of the civilian or manufacturer-sponsored course is to improve the effectiveness of speed enforcement through the proper and efficient use of speed-measurement radar. On successful completion, the course graduate must be able to—

(i) Describe the association between excessive speed and accidents, deaths, and injuries, and describe the traffic safety benefits of effective speed control.

(ii) Describe the basic principles of radar speed measurement.

(iii) Identify and describe the Service's policy and procedures affecting radar speed measurement and speed enforcement.

(iv) Identify the specific radar instrument used and describe the instrument's major components and functions.

(v) Demonstrate basic skills in calibrating and operating the specific radar instrument(s).

(vi) Demonstrate basic skills in preparing and presenting records and courtroom testimony relating to radar speed measurement and enforcement.

(c) Recertification. Recertification of operators will occur every 3 years.

§ 634.28 Traffic accident investigation.

Installation law enforcement personnel must make detailed investigations of accidents described below:

(a) Accidents involving Government vehicles or Government property on the installation involving a fatality, personal injury, or estimated property damage in the amount established by separate Service/DLA policy. (Minimum damage limits are: Army and Air Force, $1,000; Navy and Marine Corps, $500.) The installation motor pool will provide current estimates of the cost of repairs. Investigations of off-installation accidents involving Government vehicles will be made in cooperation with the civilian law enforcement agency.

(b) POV accidents on the installation involving a fatality, personal injury, or estimated property damage to a POV in excess of $1,000 or the amount established by Service/DLA policy.

§ 634.29 Traffic accident investigation reports.

(a) Accidents requiring immediate reports. The driver or owner of any vehicle involved in an accident, as described in § 634.28, on the installation, must immediately notify the installation law enforcement office. The operator of any Government vehicle involved in a similar accident off the installation must immediately notify the local civilian law enforcement agency having jurisdiction, as well as law enforcement personnel of the nearest military installation.

(b) Investigation records. Installation law enforcement officials will record traffic accident investigations on Service/DLA forms. Information will be released according to Service/DLA policy, the Privacy Act, and the Freedom of Information Act.

(c) Army law enforcement officers. These officers provide the local Safety Office copies of traffic accident investigation reports pertaining to accidents investigated by military police that resulted in a fatality, personal injury, or estimated damage to Government vehicles or property in excess of $1,000.

(d) POV accidents not addressed in § 638.28. Guidance for reporting these cases is provided below:

(1) Drivers or owners of POVs will be required to submit a written report to the installation law enforcement office within 72 hours of an accident in the following cases:

(i) The accident occurs on the installation.

(ii) The accident involves no personal injury.

(iii) The accident involves only minor damage to the POV and the vehicle can be safely and normally driven from the scene.

(2) Information in the written report cannot be used in criminal proceedings against the person submitting it. Within the United States, the installation law enforcement official may require such reporting on Service forms or forms of the State jurisdiction.

(3) Reports required in paragraph (d)(1) of this section will include the following about the accident:

(i) Location, date, and time.

(ii) Identification of all drivers, pedestrians, and passengers involved.

(iii) Identification of vehicles involved.

(iv) Speed and direction of travel of each vehicle involved, including a sketch of the collision and roadway with street names and north arrow.

(v) Property damage involved.

(vi) Environmental conditions at the time of the incident (weather, visibility, road surface condition, and other factors).

(vii) Narrative description of the events and circumstances concerning the accident.

§ 634.30 Traffic accident investigation report data.

(a) Data derived from traffic accident investigation reports and from vehicle owner accident reports will be analyzed to determine probable causes of accidents. When frequent accidents occur at a location, the conditions at the location and the types of accidents (collision diagram) will be examined.

(b) Law enforcement personnel and others who prepare traffic accident investigation reports will indicate whether or not seat restraint devices were being used at the time of the accident.

(c) When accidents warrant, an installation commander may establisah a traffic accident review board. The board will consist of law enforcement, engineer, safety, medical, and legal personnel. The board will determine principal factors leading to the accident and recommend measures to reduce the number and severity of accidents on and off the installation. (The Air Force will use Traffic Safety Coordinating Groups. The Navy will use Traffic Safety Councils per OPNAVINST 5100.12D.)

(d) Data will be shared with the installation legal, engineer, safety, and transportation officers. The data will be used to inform and educate drivers and to conduct traffic engineering studies.

(e) Army traffic accident investigation reports will be provided to Army Centralized Accident Investigation of Ground Accidents (CAIG) boards on request. The CAIG boards are under the control of the Commander, U.S. Army Safety Center, Fort Rucker, Alabama 36362–5363. These boards investigate Class A, on-duty, non-POV accidents and other selected accidents Army-wide. (See AR 385–40.) Local commanders provide additional board members as required to complete a timely and accurate investigation. Normally, additional board members are senior equipment operators, maintenance officer, and medical officers. However, specific qualifications of the additional board members may be dictated by the nature of the accident.

(f) The CAIG program is not intended to interfere with, impede, or delay law enforcement agencies in the execution of regulatory responsibilities that apply to the investigation of accidents for a determination of criminal intent or criminal acts. Criminal investigations have priority.

(g) Army law enforcement agencies will maintain close liaison and cooperation with CAIG boards. Such cooperation, particularly with respect to interviews of victims and witnesses and

in collection and preservation of physical evidence, should support both the CAIG and law enforcement collateral investigations.

§ 634.31 Parking.

(a) The most efficient use of existing on- and off-street parking space would be stressed on a nonreserved (first-come, first-served) basis.

(b) Reserved parking facilities should be designated as parking by permit or numerically by category of eligible parkers. Designation of parking spaces by name, grade, rank, or title should be avoided.

(c) Illegal parking contributes to congestion and slows traffic flow on an installation. Strong enforcement of parking restrictions results in better use of available parking facilities and eliminates conditions causing traffic accidents.

(d) The "Denver boot" device is authorized for use as a technique to assist in the enforcement of parking violations where immobilization of the POV is necessary for safety. Under no circumstances should the device be used to punish or "teach a lesson" to violators. Booting should not be used if other reasonably effective but less restrictive means of enforcement (such as warnings, ticketing, reprimands, revocations, or suspensions of on-post driving privileges) are available. Procedures for booting must be developed as listed below.

(1) Local standing operating procedures (SOPs) must be developed to control the discretion of enforcers and limit booting to specific offenses. SOPs should focus on specific reasons for booting, such as immobilization of unsafe, uninspected, or unregistered vehicles or compelling the presence of repeat offenders. All parking violations must be clearly outlined in the installation traffic code.

(2) Drivers should be placed on notice that particular violations or multiple violations may result in booting. Also, drivers must be provided with a prompt hearing and an opportunity to obtain the release of their property.

(3) To limit liability, drivers must be warned when a boot is attached to their vehicle and instructed how to have the boot removed without damaging the vehicle.

§ 634.32 Traffic violation reports.

(a) Most traffic violations occurring on DOD installations (within the UNITED STATES or its territories) should be referred to the proper U.S. Magistrate. (Army, see AR 190–29; DLA, see DLAR 5720.4; and Air Force, see AFR 110–15.) However, violations are not referred when—

(1) The operator is driving a Government vehicle at the time of the violation.

(2) A Federal Magistrate is either not available or lacks jurisdiction to hear the matter because the violation occurred in an area where the Federal Government has only proprietary legislative jurisdiction.

(3) Mission requirements make referral of offenders impractical.

(4) A U.S. Magistrate is available but the accused refuses to consent to the jurisdiction of the court and the U.S. Attorney refuses to process the case before a U.S. District Court.

(b) Installation commanders will establish administrative procedures for processing traffic violations.

(1) All traffic violators on military installations will be issued either a DD Form 1408 (Armed Forces Traffic Ticket) or a DD Form 1805 (United States District Court Violation Notice), as appropriate. Unless specified otherwise by separate Service/DLA policy, only on-duty law enforcement personnel (including game wardens) designated by the installation law enforcement officer may issue these forms.

(2) A copy of all violation reports on military personnel and DOD civilian employees apprehended for intoxicated driving will be forwarded to the installation alcohol and drug abuse facility.

(c) Installation commanders will establish procedures used for disposing of traffic violation cases through administrative or judicial action consistent with the Uniform Code of Military Justice (UCMJ) and Federal law.

(d) DD Form 1805 will be used to refer violations of State traffic laws made applicable to the installation (Assimilative Crimes Act (18 U.S.C. 13) and app C and other violations of Federal law) to the U.S. Magistrate. (Army users, see AR 190–29.)

(1) A copy of DD Form 1805 and any traffic violation reports on military personnel and DOD civilian employees will be forwarded to the commander or supervisor of the violator.

(2) Detailed instructions for properly completing DD Form 1805 and contained in separate Service policy directives.

(3) The assimilation of State traffic laws as Federal offenses should be identified by a specific State code reference in the CODE SECTION block of the DD Form 1805 (or in a complaint filed with the U.S. Magistrate).

(4) The Statement of Probable Cause on the DD Form 1805 will be used according to local staff judge advocate and U.S. Magistrate court policy. The Statement of Probable Cause is required by the Federal misdemeanor rules to support the issuance of a summons or arrest warrant.

(5) For cases referred to U.S. Magistrates, normal distribution of DD Form 1805 will be as follows:

(i) The installation law enforcement official will forward copy 1 (white) and copy 2 (yellow) to the U.S. District Court (Central Violation Bureau).

(ii) The installation law enforcement office will file copy 3 (pink).

(iii) Law enforcement personnel will provide copy 4 (envelope) to the violator.

(e) When DD Form 1408 is used, one copy (including written warnings) will be forwarded through command channels to the service members's commander, to the commander of the military family member's sponsor, or to the civilian's supervisor or employer as the installation commander may establish.

(1) Previous traffic violations committed by the offender and points assessed may be shown.

(2) For violations that require a report of action taken, the DD Form 1408 will be returned to the office of record through the reviewing authority as the installation commander may establish.

(3) When the report is received by the office of record, that office will enter the action on the violator's driving record.

Section III—Standards and Procedures for Processing Drunk Drivers

§ 634.33 Training of law enforcement personnel.

(a) As a minimum, installation law enforcement personnel will be trained to do the following:

(1) Recognize signs of alcohol and other drug impairment in persons operating motor vehicles.

(2) Prepare DD Form 1920 (Alcohol Influence Report).

(3) Perform the three field tests of the improved sobriety testing techniques (§ 634.36(b).)

(4) Determine when a person appears intoxicated but is actually physically or mentally ill and requires prompt medical attention.

(5) Understand the operation of breath-testing devices.

(b) Each installation using breath-testing devices will ensure that operators of these devices—

(1) Are chosen for integrity, maturity, and sound judgment.

(2) Meet certification requirements of the State where the installation is located.

(c) Breath-testing devices must be listed on the approved NHTSA

conforming products list published in the **Federal Register**. All tests must be administered by trained personnel as specified in § 634.36 and must adhere to the procedures described in §§ 634.37 and 634.38 relating to voluntary and involuntary testing.

(d) Installations located in States or overseas areas having a formal breath-testing and certification program should ensure operators attend that training.

(e) Installations located in States or overseas areas with no formal training program will train personnel at courses offered by selected civilian institutions or manufacturers of the equipment.

(f) Operators must maintain proficiency through refresher training every 18 months or as required by the State.

§ 634.34 Blood alcohol concentration standards.

(a) Administrative revocation of driving privileges and other enforcement measures will be applied uniformly to offenders driving under the influence of alcohol or drugs. When a person is tested per § 634.8, the results of the test will be evaluated as follows:

(1) If the percentage of alcohol in the person's blood is less than 0.05 percent, presume the person is not under the influence of alcohol.

(2) If the percentage is 0.05 but less than 0.10, presume the person is impaired. This standard may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(3) If the percentage is 0.10 or more, or if tests reflect the presence of illegal drugs, the person was driving while intoxicated.

(b) Percentages in (a) above are percent of weight by volume of alcohol in the blood based on grams of alcohol per 100 milliliters of blood.

(c) The standards in (a) above may be modified locally to agree with those established by the State or host nation.

(d) These presumptions will be considered with other evidence in determining intoxication.

§ 634.35 Chemical testing policies and procedures.

(a) Validity of chemical testing. Results of chemical testing are valid under this regulation only under the following circumstances:

(1) Blood, urine, or other bodily substances are tested using generally accepted scientific and medical methods and standards.

(2) Breath tests are administered by qualified personnel (§ 634.33(c)).

(3) A non-portable breath-testing device approved by the State or host nation is used. For Army and Marine Corps, the device must also be listed on the NHTSA conforming products list published in the **Federal Register**. (See § 634.33.)

(4) Procedures established by the State or host nation or as prescribed in paragraph (b) of this section are followed.

(b) Breath-testing device operational procedures. If the State or host nation has not established procedures for use of breath-testing devices, the following procedures will apply:

(1) Portable breath-testing devices will be used—

(i) During the initial traffic stop as a field sobriety testing technique, along with other field sobriety testing techniques, to determine if further testing is needed on a non-portable evidentiary breath-testing device.

(ii) According to manufacturer operating instructions. (For Army and Marine Corps, the portable breath-testing device must also be listed on the NHTSA conforming products list published in the **Federal Register**.)

(2) Non-portable evidentiary breath-testing devices will be used as follows:

(i) Observe the person to be tested for at least 15 minutes before collecting the breath specimen. During this time, the person must not drink alcoholic beverages or other fluids, eat, smoke, chew tobacco, or ingest any substance.

(ii) Verify calibration and proper operation of the instrument by using a control sample immediately before the test.

(iii) Comply with operational procedures in the manufacturer's current instruction manual.

(iv) Perform preventive maintenance as required by the instruction manual.

(c) Chemical tests of personnel involved in fatal accidents.

(1) Installation medical authorities will immediately notify the installation law enforcement officer of—

(i) The death of any person involved in a motor vehicle accident.

(ii) The circumstances surrounding such an accident, based on information available at the time of admission or receipt of the body of the victim.

(2) Medical authorities will examine the bodies of those persons killed in a motor vehicle accident to include drivers, passengers, and pedestrians subject to military jurisdiction, and other pedestrians (16 years or older with sponsor's consent only). Tests for the presence and concentration of alcohol or other drugs in the person's blood, bodily fluids, or tissues will be made as soon as possible and where practical within 8 hours of death. The test results will be included in the medical reports.

(3) As provided by law and medical conditions permitting, a blood or breath sample will be obtained from any surviving operator whose vehicle is involved in a fatal accident.

§ 634.36 Detection, apprehension, and testing of intoxicated drivers.

(a) Law enforcement personnel usually detect drivers under the influence of alcohol or other drugs by observing unusual or abnormal driving behavior. Drivers showing such behavior will be stopped immediately. The cause of the unusual driving behavior will be determined, and proper enforcement action will be taken.

(b) When a law enforcement officer reasonably concludes that the individual driving or in control of the vehicle is impaired, field sobriety tests should be conducted on the individual. The DD Form 1920 will be used by law enforcement agencies in examining, interpreting, and recording results of such tests. Law enforcement personnel should use a standard field sobriety test (such as one-leg stand or walk and turn) and portable breathalyzers to conduct field sobriety tests.

§ 634.37 Voluntary breath and bodily fluid testing based on implied consent.

(a) Implied consent policy is explained in § 634.8.

(b) Tests may be administered only if the following conditions are met:

(1) The person was lawfully stopped while driving, operating, or in actual physical control of a motor vehicle on the installation.

(2) Reasonable suspicion exists to believe that the person was driving under the influence of alcohol or drugs.

(3) A request was made to the person to consent to the tests combined with a warning that failure to voluntarily submit to or complete a chemical test of bodily fluids or breath will result in the revocation of driving privileges.

(c) As stated in paragraphs (a) and (b) of this section, the law enforcement official relying on implied consent will warn the person that driving privileges will be revoked if the person fails to voluntarily submit to or complete a requested chemical test. The person does not have the right to have an attorney present before stating whether he or she will submit to a test, or during the actual test. Installation commanders will prescribe the type or types of chemical tests to be used. Testing will follow policies and procedures in § 634.35. The results of chemical tests conducted under the implied consent

provisions of this regulation may be used as evidence in courts-martial, nonjudicial proceedings under Article 15 of the UCMJ, administrative actions, and civilian courts.

(d) Special rules exist for persons who have hemophilia, other blood-clotting disorders, or any medical or surgical disorder being treated with an anticoagulant. These persons—

(1) May refuse a blood extraction test without penalty.

(2) Will not be administered a blood extraction test to determine alcohol or other drug concentration or presence under this regulation.

(3) May be given breath or urine tests, or both.

(e) If a person suspected of intoxicated driving refuses to submit to a chemical test, a test will not be administered except as specified in § 634.38.

§ 634.38 Involuntary extraction of bodily fluids in traffic cases.

(a) *General.* The procedures outlined herein pertain only to the investigation of individuals stopped, apprehended, or cited on a military installation for any offense related to driving a motor vehicle and for whom probable cause exists to believe that such individual is intoxicated. Extractions of body fluids in furtherance of other kinds of investigations are governed by Rule 312(d), Military Rules of Evidence, and regulatory rules concerning requesting and granting authorizations for searches.

(1) Air Force policy on nonconsensual extraction of blood samples is addressed in AFR 160–12.

(2) Marine Corps personnel should not undertake the nonconsensual extraction of body fluids for reasons other than a valid medical purpose without first obtaining the advice and concurrence of the installation staff judge advocate or his or her designee.

(3) DLA policy on nonconsensual taking of blood samples is contained in DLAR 5700.7.

(b) *Rule.* Involuntary bodily fluid extraction is based on valid search and seizure authorization. An individual subject to the UCMJ who does not consent to chemical testing, as described above, may nonetheless be subjected to an involuntary extraction of bodily fluids, including blood and urine, only in accordance with the following procedures:

(1) An individual subject to the UCMJ who was driving a motor vehicle involved in an accident resulting in death, personal injury, or serious property damage may be subjected to a nonconsensual bodily fluid extraction to test for the presence of intoxicants only when there is a probable cause to believe that such an individual was driving or in control of a vehicle while under the influence of an intoxicant.

(i) A search authorization by an appropriate commander or military magistrate obtained pursuant to Rule 315, Military Rules of Evidence (Manual for Courts-Martial, chapter XXVII), is required prior to such nonconsensual extraction.

(ii) A search authorization is not required under such circumstances when there is a clear indication that evidence of intoxication will be found and there is reason to believe that the delay necessary to obtain a search authorization would result in the loss or destruction of the evidence sought.

(iii) Because warrantless searches are subject to close scrutiny by the courts, obtaining an authorization is highly preferable. Warrantless searches generally should be conducted only after coordination with the servicing staff judge advocate or legal officer, and attempts to obtain authorization from an appropriate official prove unsuccessful due to the unavailability of a commander or military magistrate.

(2) If authorization from the military magistrate or commander proves unsuccessful due to the unavailability of such officials, the commander of a medical facility is empowered by Rule 315(d), Military Rules of Evidence, to authorize such extraction from an individual located in the facility at the time the authorization is sought.

(i) Before authorizing the involuntary extraction, the commander of the medical facility should, if circumstances permit, coordinate with the servicing staff judge advocate or legal officer.

(ii) The medical facility commander authorizing the extraction under Rule 315(d) need not be on duty as the attending physician at the facility where the extraction is to be performed and the actual extraction may be accomplished by other qualified medical personnel.

(iii) The authorizing official may consider his or her own observations of the individual in determining probable cause.

(c) *Role of medical personnel.* Authorization for the nonconsensual extraction of blood samples for evidentiary purposes by qualified medical personnel is independent of, and not limited by, provisions defining medical care, such as the provision for nonconsensual medical care pursuant to AR 600–20, section IV.

(1) Extraction of blood will be accomplished by qualified medical personnel. (See Military Rules of Evidence 312(g).)

(i) In performing this duty, medical personnel are expected to use only that amount of force that is reasonable and necessary to administer the extraction.

(ii) Any force necessary to overcome an individual's resistance to the extraction normally will be provided by law enforcement personnel or by personnel acting under orders from the member's unit commander.

(iii) Life endangering force will not be used in an attempt to effect nonconsensual extractions.

(iv) All law enforcement and medical personnel will keep in mind the possibility that the individual may require medical attention for possible disease or injury.

(2) Nonconsensual extractions of blood will be done in a manner that will not interfere with or delay proper medical attention. Medical personnel will determine the priority to be given involuntary blood extractions when other medical treatment is required.

§ 634.39 Testing at the request of the apprehended person.

(a) A person subject to tests under § 634.8 may request that an additional test be done privately. The person may choose a doctor, qualified technician, chemist, registered nurse, or other qualified person to do the test. The person must pay the cost of the test. The test must be a chemical test approved by the State or host nation in an overseas command. All tests will be completed as soon as possible, with any delay being noted on the results.

(b) If the person requests this test, the apprehending police official may assist the suspect in making arrangements. If the police official fails to or cannot obtain the additional test, the results of the tests done at the direction of a law enforcement official are not invalid and may still be used to support actions under separate Service regulations, UCMJ, and the U.S. Magistrate Court.

§ 634.40 Preparation of sworn statement.

For an example of a property prepared sworn statement on an intoxicated driver, see Army Form 2823.

Section IV—Off-Installation Traffic Activities

§ 634.41 General.

In areas not under military control, civil authorities enforce traffic laws. Law enforcement authorities will establish a system to exchange information with civil authorities. Off-installation traffic activities in overseas areas are governed by formal

agreements with the host nation government. Procedures should be established to process reports received from civil authorities on serious traffic violations, accidents, and intoxicated driving incidents involving persons subject to this regulation.

§ 634.42 Compliance with State laws.

(a) Installation commanders will inform service members and DOD civilian employees to comply with State and local traffic laws when operating military motor vehicles.

(b) Commanders will coordinate with the proper civil law enforcement agency before moving Government vehicles that exceed legal limits or regulations or that may subject highway users to unusual hazards. (See AR–162/OPNAVINST 4600.11D/AFR 75–24/MCO 4643.5C/ DLAR 4580.8.)

(c) Installation commanders will maintain liaison with civil enforcement agencies and encourage the following:

(1) Release of a Government vehicle operator to military authorities unless one of the conditions below exists.

(i) The offense warrants detention.

(ii) The person's condition is such that further operation of a motor vehicle could result in injury to the person or others.

(2) Prompt notice to military authorities when military personnel or drivers of Government motor vehicles have—

(i) Committed serious violations of civil traffic laws.

(ii) Been involved in traffic accidents.

(3) Prompt notice of actions by a State or host nation to suspend, revoke, or restrict the State or host nation driver's license (vehicle operation privilege) of persons who—

(i) Operate Government motor vehicles.

(ii) Regularly operate a POV on the installation. (See also § 634.18.)

§ 634.43 Civil-military cooperative programs.

(a) *State-Armed Forces Traffic Workshop Program.* This program is an organized effort to coordinate military and civil traffic safety activities throughout a State or area. Installation commanders will cooperate with State and local officials in this program and provide proper support and participation.

(b) *Community-Installation Traffic Workshop Program.* Installation commanders should establish a local workshop program to coordinate the installation traffic efforts with those of local communities. Sound and practical traffic planning depends on a balanced program of traffic enforcement, engineering, and education. Civilian and military legal and law enforcement officers, traffic engineers, safety officials, and public affairs officers should take part.

Subpart E—Driving Records and the Traffic Point System

§ 634.44 Driving records.

Each Service and DLA will use its own form to record vehicle traffic accidents, moving violations, suspension or revocation actions, and traffic point assessments involving military and DOD civilian personnel, their family members, and other personnel operating motor vehicles on a military installation. Army installations will use DA Form 3626 (Vehicle Registration/Driver Record) for this purpose. Table 5–1 prescribes mandatory minimum or maximum suspension or revocation periods. Traffic points are not assessed for suspension or revocation actions.

TABLE 634.44—SUSPENSION/ REVOCATION OF DRIVING PRIVILEGES (SEE NOTES 1 AND 2.)

Assessment 1: Two-year revocation is mandatory on determination of facts by installation commander. (For Army, 5-year revocation is mandatory.)
Violation: Driving while driver's license or installation driving privileges are under suspension or revocation.
Assessment 2: One-year revocation is mandatory on determination of facts by installation commander.
Violation: Refusal to submit to or failure to complete chemical tests (implied consent).
Assessment 3: One-year revocation is mandatory on conviction.
Violation: Manslaughter (or negligent homicide by vehicle) resulting from the operation of a motor vehicle.

Driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor (0.10% or greater on DOD installations; violation of civil law off post).

Driving a motor vehicle while under the influence of any narcotic, or while under the influence of any other drug (including alcohol) to the degree rendered incapable of safe vehicle operation.

Use of a motor vehicle in the commission of a felony. Fleeing the scene of an accident involving death or personal injury (hit and run).

Perjury or making a false statement or affidavit under oath to responsible officials relating to the ownership or operation of motor vehicles.

Unauthorized use of a motor vehicle belonging to another, when the act does not amount to a felony.

Assessment 4: Suspension for a period of 6 months or less or revocation for a period not to exceed 1 year is discretionary.
Violation: Mental or physical impairment (not including alcohol or other drug use) to the degree rendered incompetent to drive.

Commission of an offense in another State which, if committed on the installation, would be grounds for suspension or revocation.

Permitting an unlawful or fraudulent use of an official driver's license.

Conviction of fleeing, or attempting to elude, a police officer.

Conviction of racing on the highway.

Assessment 5: Loss of OF 46 for minimum of 6 months is discretionary.
Violation: Receiving a second 1-year suspension or revocation of driving privileges within 5 years.

Notes:

1. When imposing a suspension or revocation because of an off-installation offense, the effective date should be the same as the date of civil conviction, or the date that State or host-nation driving privileges are suspended or revoked. This effective date can be retroactive.

2. No points are assessed for revocation or suspension actions. Except for implied consent violations, revocations must be based on a conviction by a civilian court or courts-martial, nonjudicial punishment under Article 15, UCMJ, or a separate hearing as addressed in this regulation. If revocation for implied consent is combined with another revocation, such as 1 year for intoxicated driving, revocations may run consecutively (total or 24 months) or concurrently (total of 12 months). The installation commander's policy should be applied systematically and not on a case-by-case basis.

§ 634.45 The traffic point system.

The traffic point system provides a uniform administrative device to impartially judge driving performance of Service and DLA personnel. This system is not a disciplinary measure or a substitute for punitive action. Further, this system is not intended to interfere in any way with the reasonable exercise of an installation commander's prerogative to issue, suspend, rovoke, deny, or reinstate installation driving privileges.

§ 634.46 Point system application.

(a) The Services and DLA are required to use the point system and procedures prescribed herein without change.

(b) The point system in table 634.46 applies to all operators of U.S. Government motor vehicles, on or off Federal property. The system also applies to violators reported to installation officials in accordance with § 634.32.

(c) Points will be assessed when the person is found to have committed a violation and the finding is by either the unit commander, civilian supervisor, a military or civilian court (including a U.S. Magistrate), or by payment of fine, forfeiture of pay of allowances, or posted bond, or collateral.

TABLE 634.46—POINT ASSESSMENT FOR MOVING TRAFFIC VIOLATIONS (SEE NOTE 1.)

Violation: Reckless driving (willful and wanton disregard for the safety of persons or property).
Points assessed: 6
Violation: Owner knowingly and willfully permitting a physically impaired person to operate the owner's motor vehicle.
Points assessed: 6
Violation: Fleeing the scene (hit and run)-property damage only.
Points assessed: 6
Violation: Driving vehicle while impaired (blood-alcohol content more than 0.05 percent and less than 0.10 percent).
Points assessed: 6
Violation: Speed contests.
Points assessed: 6
Violation: Speed too fast for conditions.
Points assessed: 2
Violation: Speed too slow, causing potential safety hazard.
Points assessed: 2
Violation: Failure of operator or occupants to use available restraint system devices while moving (operator assessed points).
Points assessed: 2
Violation: Failure to property restrain children in a child restraint system while moving (when child is 4 years of age or younger or the weight of child does not exceed 45 pounds).
Points assessed: 2
Violation: One to 10 miles per hour over posted speed limit.
Points assessed: 3
Violation: Over 10 but not more than 15 miles per hour above posted speed limit.
Points assessed: 4
Violation: Over 15 but not more than 20 miles per hour above posted speed limit.
Points assessed: 5
Violation: Over 20 miles per hour above posted speed limit.
Points assessed: 6
Violation: Following too close.
Points assessed: 4
Violation: Failure to yield right of way to emergency vehicle.
Points assessed: 4
Violation: Failure to stop for school bus or school-crossing signals.
Points assessed: 4
Violation: Failure to obey traffic signals or traffic instructions of an enforcement officer or traffic warden; or any official regulatory traffic sign or device requiring a full stop or yield of right of way; denying entry; or requiring direction of traffic.
Points assessed: 4
Violation: Improper passing.
Points assessed: 4
Violation: Failure to yield (no official sign involved).
Points assessed: 4
Violation: Improper turning movements (no official sign involved).
Points assessed: 3
Violation: Wearing of headphones/earphones while driving motor vehicles (two or more wheels).
Points assessed: 3
Violation: Failure to wear an approved helmet and/or reflectorized vest while operating or riding on a motorcycle, MOPED, or a three or four-wheel vehicle powered by a motorcycle-like engine.
Points assessed: 3
Violation: Improper overtaking.
Points assessed: 3
Violation: Other moving violations (involving driver behavior only).
Points assessed: 3
Violation: Operating an unsafe vehicle. (See Note 2.)
Points assessed: 2
Violation: Driver involved in accident is deemed responsible (only added to points assessed for specific offenses).
Points assessed: 1

Notes:

1. When two or more violations are committed on a single occasion, the points assessed will be for the offense having the greater value.

2. This measure should be used for other than minor vehicle safety defects or when a driver or registrant fails to correct a minor defect (for example, a burned out headlight not replaced within the grace period on a warning ticket).

§ 634.47 Point system procedures.

(a) Reports of moving traffic violations recorded on DD From 1408 or DD From 1805 will serve as a basis for determining point assessment. For DD Form 1408, return endorsements will be required from commanders or supervisors.

(b) On receipt of DD Form 1408 or other military law enforcement report of a moving violation, the unit commander, designated supervisor, or person otherwise designated by the installation commander will conduct an inquiry. The commander will take or recommend proper disciplinary or administrative action. If a case involves judicial or nonjudicial actions, the final report of action taken will not be forwarded until final adjudication.

(c) On receipt of the report of action taken (including action by a U.S. Magistrate Court on DD Form 1805), the installation law enforcement officer will assess the number of points appropriate or the offense, and record the traffic points or the suspension or revocation of driving privileges on the person's driving record. Except as specified otherwise in this and other vice/DLA regulations, points will not be assessed or driving privileges suspended or revoked when the report of action taken indicates that neither disciplinary nor administrative action was taken.

(d) Installation commanders may require the following driver improvement measures as appropriate:

(1) Advisory letter through the unit commander or supervisor to any person who has acquired six traffic points within a 6-month period.

(2) Counseling or driver improvement interview, by the unit commander, of any person who has acquired more than six but less than 12 traffic points within a 6-month period. This counseling or interview should produce recommendations to improve driver performance.

(3) Referral for medical evaluation when a driver, based on reasonable belief, appears to have mental or physical limits that have had or may have an adverse affect on driving performance.

(4) Attendance at remedial driver training to improve driving performance.

(5) Referral to an alcohol or drug treatment or rehabilitation facility for evaluation, counseling, or treatment. This action is required for active military personnel in all cases in which alcohol or other drugs are a contributing factor to a traffic citation, incident, or accident.

(e) An individual's driving privileges may be suspended or revoked as provided by this regulation regardless of whether these improvement measures are accomplished.

(f) Persons whose driving privileges are suspended or revoked (for one violation or an accumulation of 12 traffic points within 12 consecutive months, or 18 traffic points within 24 consecutive months) will be notified in writing through official channels (§ 634.11). Except for the mandatory minimum or maximum suspension or revocation periods prescribed by table 634.44, the installation commander will establish periods of suspension or revocation. Any revocation based on traffic points must be no less than 6 months. A longer period may be imposed on the basis of a person's overall driving record considering the frequency, flagrancy, severity of moving violations, and the response to previous driver improvement measures. In all cases, military members must successfully complete a prescribed course in remedial driver training before driving privileges are reinstated.

(g) Points assessed against a person will remain in effect for point accumulation purposes for 24 consecutive months. The review of driver records to delete traffic points should be done routinely during records update while recording new offenses and forwarding records to new duty stations. Completion of a revocation based on points requires removal from the driver record of all points assessed before the revocation.

(h) Removal of points does not authorize removal of driving record entries for moving violations, chargeable accidents, suspensions, or revocations. Record entries will remain posted on individual driving records for the period of time indicated below.

(1) Chargeable nonfatal traffic accidents or moving violations—3 years.

(2) Nonmandatory suspensions or revocations—5 years.

(3) Mandatory revocations—7 years.

§ 634.48 Disposition of driving records.

Procedures will be established to ensure prompt notice to the installation law enforcement officer when a person assigned to or employed on the installation is being transferred to another installation, being released from military service, or ending employment.

(a) If persons being transferred to a new installation have valid points or other entries on the driving records, the law enforcement officer will forward the records to the law enforcement officer of the gaining installation. Gaining installation law enforcement officers must coordinate with applicable commanders and continue any existing suspension or revocation based on intoxicated driving or accumulation of traffic points. Traffic points for persons being transferred will continue to accumulate as specified in § 634.47(g).

(b) Driving records of military personnel being discharged or released from active duty will be retained on file for 2 years and then destroyed. In cases of immediate reenlistment, change of officer component or military or civilian retirement when vehicle registration is continued, the record will remain active.

(c) Driving records of civilian personnel terminating employment will be retained on file for 2 years and then destroyed.

(d) Driving records of military family members containing point assessments or other entries will be forwarded to the sponsor's gaining installation in the same manner as for service members. At the new installation, records will be analyzed and made available temporarily to the sponsor's unit commander or supervisor for review.

(e) Driving records of retirees electing to retain installation driving privileges will be retained. Points accumulated or entries on the driver record regarding suspensions, revocations, moving violations, or chargeable accidents will not be deleted from driver records except per § 634.47 (g) and (h).

(f) Army users will comply with § 634.47 (g) and (h) by mailing the individual's DA Form 3626 to the gaining installation provost marshal.

Subpart F—Impounding Privately Owned Vehicles

§ 634.49 General.

This chapter provides the standards and procedures for law enforcement personnel when towing, inventorying, searching, impounding, and disposing of POVs. This policy is based on:

(a) The interests of the Services and DLA in crime prevention, traffic safety, and the orderly flow of vehicle traffic movement.

(b) The vehicle owner's constitutional rights to due process, freedom from unreasonable search and seizure, and freedom from deprivation of private property.

§ 634.50 Standards for impoundment.

(a) POVs should not be impounded unless the vehicles clearly interfere with ongoing operations or movement of traffic, threaten public safety or convenience, are involved in criminal activity, contain evidence of criminal activity, or are stolen or abandoned.

(b) The impoundment of a POV would be inappropriate when reasonable alternatives to impoundment exist.

(1) Attempts should be made to locate the owner of the POV and have the vehicle removed.

(2) The vehicle may be moved a short distance to a legal parking area and temporarily secured until the owner is found.

(3) Another responsible person may be allowed to drive or tow the POV with permission from the owner, operator, or person empowered to control the vehicle. In this case, the owner, operator, or person empowered to control the vehicle will be informed that law enforcement personnel are not responsible for safeguarding the POV.

(c) Impounding of POVs is justified when any of the following conditions exist:

(1) The POV is illegally parked—

(i) On a street or bridge, in a tunnel, or is double parked, and interferes with the orderly flow of traffic.

(ii) On a sidewalk, within an intersection, on a cross-walk, on a railroad track, in a fire lane, or is blocking a driveway, so that the vehicle interferes with operations or creates a safety hazard to other roadway users or the general public. An example would be a vehicle parked within 15 feet of a fire hydrant or blocking a properly marked driveway of a fire station or aircraft-alert crew facility.

(iii) When blocking an emergency exit door or any public place (installation theater, club, dining hall, hospital, and other facility).

(iv) In a "tow-away" zone that is so marked with proper signs.

(2) The POV interferes with—

(i) Street cleaning or snow removal operations and attempts to contact the owner have been unsuccessful.

(ii) Emergency operations during a natural disaster or fire or must be removed from the disaster area during cleanup operations.

(3) The POV has been used in a crime or contains evidence of criminal activity.

(4) The owner or person in charge has been apprehended and is unable or unwilling to arrange for custody or removal.

(5) The POV is mechanically defective and is a menace to others using the public roadways.

(6) The POV is disabled by a traffic incident and the operator is either unavailable or physically incapable of having the vehicle towed to a place of safety for storage or safekeeping.

(7) Law enforcement personnel reasonably believe the vehicle is abandoned.

§ 634.51 Towing and storage.

(a) Impounded POVs may be towed and stored by either the Services and DLA or a contracted wrecker service depending on availability of towing services and the local commander's preference.

(b) The installation commander will designate an enclosed area on the installation that can be secured by lock and key for an impound lot to be used by the military or civilian wrecker service. An approved impoundment area belonging to the contracted wrecker service may also be used provided the area assures adequate accountability and security of towed vehicles. One set of keys to the enclosed area will be maintained by the installation law enforcement officer or designated individual.

(c) Temporary impoundment and towing of POVs for violations of the installation traffic code or involvement in criminal activities will be accomplished under the direct supervision of law enforcement personnel.

§ 634.52 Procedures for impoundment.

(a) *Unattended POVs.* (1) DD Form 2504 (Abandoned Vehicle Notice) will be conspicuously placed on POVs considered unattended. This action will be documented by an entry in the installation law enforcement desk journal.

(2) The owner will be allowed 3 days from the date the POV is tagged to

remove the vehicle before impoundment action is initiated. If the vehicle has not been removed after 3 days, it will be removed by the installation towing service or the contracted wrecker service. If a contracted wrecker service is used, a DD Form 2505 (Abandoned Vehicle Removal Authorization) will be completed and issued to the contractor by the installation law enforcement office.

(3) After the vehicle has been removed, the installation law enforcement officer or the contractor will complete DD Form 2506 (Vehicle Impoundment Report) as a record of the actions taken.

(i) An inventory listing personal property will be done to protect the owner, law enforcement personnel, the contractor, and the commander.

(ii) The contents of a closed container such as a suitcase inside the vehicle need not be inventoried. Such articles should be opened only if necessary to identify the owner of the vehicle or if the container might contain explosives or otherwise present a danger to the public. Merely listing the container and sealing it with security tape will suffice.

(iii) Personal property must be placed in a secure area for safekeeping.

(4) DD Form 2507 (Notice of Vehicle Impoundment) will be forwarded by certified mail to the address of the last known owner of the vehicle to advise the owner of the impoundment action, and request information concerning the owner's intentions pertaining to the disposition of the vehicle.

(b) *Stolen POVs or vehicles involved in criminal activity.* (1) When the POV is to be held for evidentiary purposes, the vehicle should remain in the custody of the applicable Service or DLA until law enforcement purposes are served.

(2) Recovered stolen POVs will be released to the registered owner, unless held for evidentiary purposes, or to the law enforcement agency reporting the vehicle stolen, as appropriate.

(3) A POV held on request of other authorities will be retained in the custody of the applicable Service or DLA until the vehicle can be released to such authorities.

§ 634.53 Search incident to impoundment based on criminal activity.

Search of a POV in conjunction with impoundment based on criminal activity will likely occur in one of the following general situations:

(a) The owner or operator is not present. This situation could arise during traffic and crime-related impoundments and abandoned vehicle seizures. A property search related to an investigation of criminal activity should not be conducted without search authority unless the item to be seized is in plain view or is readily discernible on the outside as evidence of criminal activity. When in doubt, proper search authority should be obtained before searching.

(b) The owner or operator is present. This situation can occur during either a traffic or criminal incident, or if the operator is apprehended for a crime or serious traffic violation and sufficient probable cause exists to seize the vehicle. This situation could also arise during cases of intoxicated driving or traffic accidents in which the operator is present but incapacitated or otherwise unable to make adequate arrangements to safeguard the vehicle. If danger exists to the police or public or if there is risk of loss or destruction of evidence, an investigative type search of the vehicle may be conducted without search authority. (Army, see AR 190–22; and Air Force, see AFP 125–2.)

§ 634.54 Disposition of vehicles after impoundment.

(a) If a POV is impounded for evidentiary purposes, the vehicle can be held for as long as the evidentiary or law enforcement purpose exists. The vehicle must then be returned to the owner without delay unless directed otherwise by competent authority.

(b) If the vehicle is unclaimed after 120 days from the date notification was mailed to the last known owner or the owner released the vehicle by properly completing DD Form 2505, the vehicle will be disposed of by one of the following procedures:

(1) Release to the lienholder, if known.

(2) Processed as abandoned property in accordance with DOD 4160.21–M.

Appendix A to Part 634—References

Publications and forms referenced in this part may be viewed at the Office of Provost Marshal at any Army installation. Department of Defense publications are also available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; telephone (703) 487–4684.

Section I

Required Publications

AFP 125–2. Technical Guide for Police Traffic Operations. (Cited in § 634.53.)

AFR 30–2. Social Action Program. (Cited in § 634.13.)

AFR 75–24/AR 55–162/DLAR 4580.8/MCO 4643.5C/OPNAVINST 4600.11D. Permits for Oversize, Overweight, or Other Special Military Movements on Public Highways in the U.S. (Cited in § 634.42.)

AFR 75–88/AR 55–80/DLAR 4500.19/MCO 11210.2C/OPNAVINST 11210.1B. Highways for National Defense. (Cited in § 634.32.)

AFR 110–15. Use of U.S. Magistrates for Trial of Misdemeanors Committed by Civilians. (Cited in § 634.32.)

AFR 125–15. Motor Vehicle Registration and Related Requirements. (Cited in § 634.19.)

AFR 160–12. Professional Policies and Procedures. (Cited in § 634.38.)

AR 190–22. Searches, Seizures, and Disposition of Property. (Cited in § 634.53.)

AR 190–29. Minor Offenses and Uniform Violation Notices Referred to U.S. District Courts. (Cited in § 634.32.)

AR 210–10. Administration. (Cited in § 634.7.)

AR–385–40. Accident Reporting and Records. (Cited in § 634.30.)

AR 385–55. Prevention of Motor Vehicle Accidents. (Cited in § 634.25.)

AR 600–20. Army Command Policies and Procedures. (Cited in § 634.38.)

AR 600–85. Alcohol and Drug Abuse Prevention and Control Program. (Cited in § 634.14.)

AR 601–280. Total Army Retention Program. (Cited in § 634.12.)

DLAR 5700.7. Search and Seizure. (Cited in §§ 634.7 and 634.38.)

DLAR 5720.4. Preparing and Processing Minor Offenses and Violation Notices Referred to U.S. District Court. (Cited in § 634.32.)

DOD 4160.21–M, September 1982. Defense Disposal Manual. (Cited in § 634.54.)

DODD 5530.3, June 1987. International Arguments. (Cited in § 634.18.)

FPM Supp 792–2. Alcohol and Drug Abuse Programs. (Cited in § 634.14.)

MCO 5100.19C. Marine Corps Traffic Safety Program. (Cited in § 634.13.)

MCO P5300.12. USMC Substance Abuse Program. (Cited in §§ 634.13 and 634.30.)

OPNAVINST 5100–12D. Navy Traffic Safety Program. (Cited in §§ 634.13 and 634.30.)

Section II

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 600–37. Unfavorable Information.

AR 600–200. Enlisted Personnel Management System.

AR 635–20. Enlisted Personnel.

Section III

Prescribed Forms

DA Form 3626. Vehicle Registration/Driver Record. (Prescribed in § 634.44.)

DD Form 1920. Alcohol Influence Report. (Prescribed in § 634.33.)

DD Form 2220. DOD Registered Vehicle. (Prescribed in § 634.19.)

DD Form 2504. Abandoned Vehicle Notice. (Prescribed in § 634.52.)

DD Form 2505. Abandoned Vehicle Removal Authorization. (Prescribed in § 634.52.)

DD Form 2506. Vehicle Impoundment Report. (Prescribed in § 634.52.)

DD Form 2507. Notice of Vehicle Impoundment. (Prescribed in § 634.52.)

Appendix B to Part 634—Notification of State Driver's License Agencies

The installation commander will notify the State driver's license agency of those personnel whose installation driving privileges are revoked for 1 year or more,

following final adjudication of the intoxicated driving offense or for refusing to submit to a lawful blood-alcohol content test in accordance with § 634.8. This notification will include the basis for the suspension and the blood-alcohol level. The notification will be sent to the State in which the driver's license was issued. A sample letter format is provided at figure B–1. State driver's license agencies are listed below:

Alabama

Motor Vehicle Division, 2721 Gunter Park Drive, Montgomery, Al 36101, (205) 271–3250

Alaska

Motor Vehicle Division, P.O. Box 100960, Anchorage, AK 99510, (907) 269–5572

Arizona

Motor Vehicle Division, 1801 West Jefferson Street, Phoenix, AZ 85007, (602) 255–7295

Arkansas

Motor Vehicle Division, Joel & Ledbetter Bldg., 7th and Wolfe Streets, Little Rock, AR 72203, (501) 371–1886

California

Department of Motor Vehicles, P.O. Box 932340, Sacramento, CA 94232, (916) 445–0898

Colorado

Motor Vehicle Division, 140 West Sixth Avenue, Denver, CO 80204, (303) 866–3158

Connecticut

Department of Motor Vehicles, 60 State Street, Wethersfield, CT 06109, (203) 566–5904

Delaware

Motor Vehicle Director, State Highway Administration Bldg., P.O. Box 698, Dover, DE 19903, (302) 736–4421

District of Columbia

Department of Transportation, Bureau of Motor Vehicles, 301 C Street, NW., Washington, DC 20001, (202) 727–5409

Florida

Division of Motor Vehicles, Neil Kirkman Building, Tallahassee, FL 32301, (904) 488–6921

Georgia

Motor Vehicle Division, Trinity-Washington Bldg., Room 114, Atlanta, GA 30334, (404) 656–4149

Hawaii

Division of Motor Vehicle and Licensing, 1455 S. Benetania Street, Honolulu, HI 96814, (808) 943–3221

Idaho

Transportation Department, 3311 State Street, P.O. Box 34, Boise, ID 83731, (208) 334–3650

Illinois

Secretary of State, Centennial Building, Springfield, IL 62756, (217) 782–4815

Indiana

Bureau of Motor Vehicles, State Office Building, Room 901, Indianapolis, IN 46204, (317) 232–2701

Iowa

Department of Transportation, Office of Operating Authority, Lucas Office Bldg., Des Moines, IA 50319, (515) 281–5664

Kansas

Department of Revenue, Division of Vehicles, Interstate Registration Bureau, State Office Bldg. Topeka, KS 66612, (913) 296–3681

Kentucky

Department of Transportation, New State Office Building, Frankfort, KY 40622, (502) 564–4540

Louisiana

Motor Vehicle Administrator, S. Foster Drive, Baton Rouge, LA 70800, (504) 925–6304

Maine

Department of State, Motor Vehicle Division, Augusta, ME 04333, (207) 289–5440

Maryland

Motor Vehicle Administration, 6601 Ritchie Highway, NE., Glen Burnie, MD 21062, (301) 768–7000

Massachusetts

Registry of Motor Vehicles, 100 Nashua Street, Boston, MA 02114, (617) 727–3780

Michigan

Department of State, Division of Driver Licenses and Vehicle Records, Lansing, MI 48918, (517) 322–1486

Minnesota

Department of Public Safety, 108 Transportation Building, St. Paul, MN 55155, (612) 296–2138

Mississippi

Office of State Tax Commission, Woolfolk Building, Jackson, MS 39205, (601) 982–1248

Missouri

Department of Revenue, Motor Vehicles Bureau, Harry S Truman Bldg., 301 W. High Street, Jefferson City, MO 65105, (314) 751–3234

Montana

Highway Commission, Box 4639, Helena, MT 59604, (406) 449–2476

Nebraska

Department of Motor Vehicles, P.O. Box 94789, Lincoln, NE 68509, (402) 471–3891

Nevada

Department of Motor Vehicles, Carson City, NV 89711, (702) 885–5370

New Hampshire

Department of Safety, Division of Motor Vehicles, James H. Haynes Bldg., Concord, NH 03305, (603) 271–2764

New Jersey

Motor Vehicle Division, 25 S. Montgomery Street, Trenton, NJ 08666, (609) 292–2368

New Mexico

Motor Transportation Division, Joseph M. Montoya Building, Santa Fe, NM 87503, (505) 827–0392

New York

Division of Motor Vehicles, Empire State Plaza, Albany, NY 12228, (518) 474–2121

North Carolina

Division of Motor Vehicles, Motor Vehicles Bldg., Raleigh, NC 27697, (919) 733–2403

North Dakota

Motor Vehicle Department, Capitol Grounds, Bismarck, ND 58505, (701) 224–2619

Ohio

Bureau of Motor Vehicles, P.O. Box 16520, Columbus, OH 43216, (614) 466–4095

Oklahoma

Oklahoma Tax Commission, Motor Vehicle Division, 2501 Lincoln Boulevard, Oklahoma City, OK 73194, (405) 521–3036

Oregon

Motor Vehicles Division, 1905 Lana Avenue, NE., Salem, OR 97314, (503) 378–6903

Pennsylvania

Department of Transportation, Bureau of Motor Vehicles, Transportation and Safety Bldg., Harrisburg, PA 17122, (717) 787–3130

Rhode Island

Department of Motor Vehicles, State Office Building, Providence, RI 02903, (401) 277–6900

South Carolina

Motor Vehicle Division, P.O. Drawer 1498, Columbia, SC 29216, (803) 758–5821

South Dakota

Division of Motor Vehicles, 118 W. Capitol, Pierre, SD 57501, (605) 773–3501

Tennessee

Department of Revenue, Motor Vehicle Division, 500 Deaderick Street, Nashville, TN 37242, (615) 741–1786

Texas

Department of Highways and Public Transportation, Motor Vehicle Division, 40th and Jackson Avenue, Austin, TX 78779, (512) 475–7686

Utah

Motor Vehicle Division, State Fairgrounds, 1095 Motor Avenue, Salt Lake City, UT 84116, (801) 533–5311

Vermont

Department of Motor Vehicles, State Street, Montpelier, VT 05603, (802) 828–2014

Virginia

Department of Motor Vehicles, 2300 W. Broad Street, Richmond, VA 23220, (804) 257–1855

Washington

Department of Licensing, Highways-Licenses Building, Olympia, WA 98504, (206) 753–6975

West Virginia

Department of Motor Vehicles, 1800 Washington Street, East, Charleston, WV 25317, (304) 348–2719

Wisconsin

Department of Transportation, Reciprocity and Permits, P.O Box 7908, Madison, WI 53707, (608) 266–2585

Wyoming

Department of Revenue, Policy Division, 122 W. 25th Street, Cheyenne, WY 82002, (307) 777–5273

Guam

Deputy Director, Revenue and Taxation, Government of Guam, Agana, Guam 96910, (no phone number available)

Puerto Rico

Department of Transportation and Public Works, Bureau of Motor Vehicles, P.O. Box 41243, Minillas Station, Santurce, Puerto Rico 00940, (809) 722–2823

Figure B–1—Sample Letter to State Driver's License Authority

Department of the Army

39th Infantry Division, Fort Collins, Colorado 81079–9906

Office of the Provost Marshal,
Motor Vehicle Division, 140 West Sixth Avenue, Denver, Colorado 80204.

This letter is your notification that on 15 May 1996, ROE, Richard L., PFC 000–00–0000, a member of the U.S. Army, 39th Infantry Division, Fort Collins, Colorado was found guilty of intoxicated driving in a trial by court-martial.

He holds a Colorado driver's license, number X94U28, issued 1 June 1995, and expiring on 1 June 1999. He was arrested on 15 May 1996 at Fort Collins, Colorado by Military Police while driving a 1989 Chevrolet Nova, blue in color, bearing Colorado license plate number 359–143.

PFC Roe refused to submit to a chemical test to determine his blood alcohol content after being advised of the implied consent provisions of the Fort Collins installation traffic code.

Based on the above information, PFC Roe's installation driving privileges have been revoked for one year.

PFC Roe's current address is 1511 Mountain View Road, Denver, Colorado 80206.

Sincerely,

Max R. Smith,

CPT, MPC, AR 19 Administrative Officer.

Appendix C to Part 634—DOD Directive 5525.4, Enforcement of State Laws on DOD Installations

Department of Defense Directive

November 2, 1981

Number 5525.4, ASD (MRA&L)

Subject: Enforcement of State Traffic Laws on DoD Installations.

References: (a) DoD Instruction 6055.4, "Department of Defense Traffic Safety Program," November 7, 1978.

(b) Delegation of Authority to the Secretary of Defense by the Administrator, General Services Administration, March 20, 1981 (enclosure 1).

(c) Title 18, United States Code, Section 13.

(d) Title 40, United States Code, Section 318c.

A. Purpose

This Directive establishes policies pursuant to the requirements of reference (a) and to authority delegated to the Secretary of Defense under reference (b) for the enforcement, on DoD military installations, of those state vehicular and pedestrian traffic laws that cannot be assimilated under reference (c).

B. Applicability and Scope

1. The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies.

2. The provisions encompass all persons who operate or control a motor vehicle or otherwise use the streets of a military installation over which the United States exercises exclusive or concurrent legislative jurisdiction.

3. The provisions govern only vehicular and traffic offenses or infractions that cannot be assimilated under reference (c), thereby precluding application of state laws to traffic offenses committed on military installations.

C. Policy

1. It is the policy of the Department of Defense that an effective, comprehensive traffic safety program be established and maintained at all military installations as prescribed in reference (a).

2. State vehicular and pedestrian traffic laws that are now or may hereafter be in effect shall be expressly adopted and made applicable on military installations to the extent provided by this Directive. All persons on a military installation shall comply with the vehicular and pedestrian traffic laws of the state in which the installation is located.

3. Pursuant to the authority established in enclosure 1, installation commanders of all DoD installations in the United States and over which the United States has exclusive or concurrent legislative jurisdiction are delegated the authority to establish additional vehicular and pedestrian traffic rules and regulations for their installations. All persons on a military installation shall comply with locally established vehicular and pedestrian traffic rules and regulations. (Amendment 1, Ch 1 (10/31/86))

4. A person found guilty of violating, on a military installation, any state vehicular or pedestrian traffic law or local installation vehicular or pedestrian traffic rule or regulation made applicable to the installation under the provisions of this Directive is subject to a fine of not more than $50 or imprisonment for not more than 30 days, or both, for each violation (40 U.S.C. 318c (reference (d)). (Amendment 1, Ch 1 (10/31/86))

5. This Directive does not limit the application of any Federal law or regulation or, under 18 U.S.C. 13 (reference (c)), any state law made applicable to offenses committed on military installations.

6. A copy of this Directive shall be posted in an appropriate place on the DOD installation concerned.

D. Responsibilities

1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall modify this Directive, as appropriate.

2. Secretaries of the Military Departments shall comply with this Directive.

E. Effective Date and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

William H. Taft, IV,

Deputy Secretary of Defense.

Enclosure—1

1. Delegation of Authority: Nov 2, 81, 5525.4 (Encl 1).

Enclosure 1–Delegation of Authority

GENERAL SERVICES ADMINISTRATION

(D–81–____ 6820–22

Delegation of Authority to the Secretary of Defense

1. Purpose. This delegation authorizes the Secretary of Defense to assist in controlling vehicular and pedestrian traffic on military installations in the United States.

2. Effective date. This delegation became effective on March 20, 1961.

3. Delegation.

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the Act of June 1, 1948 (62 Stat. 281), as amended, authority is hereby delegated to the Secretary of Defense to make all needful rules and regulations, and to attach to these rules and regulations such reasonable penalties, not to exceed those prescribed in 40 U.S.C. 318c, as will ensure their enforcement for governing vehicular and predestrian traffic on military installations of the Department of Defense, as defined in 40 U.S.C. 612, in the United States and over which the United States has exclusive or concurrent legislative jurisdiction.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the limitations and requirements of the above-cited acts, and the policies, procedures, and controls prescribed by the General Services Administration.

4. Effect on other directives. FPMR Temporary Regulation D–28 is revoked.

Dated: June 24, 1981.

(Signed) Gerald P. Carmen,

Administrator.

Appendix D to Part 634–Glossary

Section I

Abbreviations

ADAPCP

Alcohol and Drug Abuse Prevention and Control Program
ADCO
Alcohol and Drug Control Officer
ASAP
Alcohol Safety Action Projects
BAC
blood alcohol content
CAAC
Counseling and Assistance Center
CAIG
centralized accident investigation, ground
CFR
Code of Federal Regulations
CG
commanding general
CONUS
continental United States
DA
Department of the Army
DLA
Defense Logistics Agency
DOD
Department of Defense
DOT
Department of Transportation
HQDA
Headquarters, Department of the Army
MPMIS
Miliatry Police Management Information System
MTMCTEA
Military Traffic Management Command Transportation Engineering Agency
NADSAP
Navy Alcohol and Drug Safety Action Program
NAF
nonappropriated fund
NHSPS
National Highway Safety Program Standards
NHTSA
National Highway Traffic Safety Administration
POV
privately owned vehicle
SOFA
status of forces agreement
SOP
standing operating procedure
STAMIS
Standard Army Management Information System
TRADOC
U.S. Army Training and Doctrine Command
UCMJ
Uniform Code of Military Justice
USAF
United States Air Force
USC
United States Code
USMC
United States Marine Corps
USN
United States Navy

Section II

Terms

Active duty personnel

Military personnel, whether Active Army, U.S. Army Reserve, or Army National Guard of the United States, who are on active duty under Title 10, United States Code.

Alcohol Safety Action Program (ASAP)

A program sponsored by a State, in cooperation with the NHTSA, to reduce highway deaths, injuries, and property damage resulting from traffic accidents in which alcohol is a major contributing factor.

Army Drug and Alcohol Prevention and Control Program (ADAPCP)

An Army program that provides for alcohol and drug problems (appropriate education or treatment).

Chemical breath-testing device

An instrument using photoelectric or other physical or chemical means to quantitatively determine blood-alcohol concentrations.

Collision diagram

A plan of an intersection or section of roadway on which reported accidents are diagrammed by means of arrows showing manner of collision.

Condition diagram

A scale drawing of an intersection or section of roadway that shows all objects and physical conditions that bear on traffic movement and safety.

Conviction

A final adjudication that may include one or more of the following:

a. An unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance-in-court.

b. Pleas of nolo contendere accepted by a court.

c. Payment of a fine.

d. Pleas of guilty or finding of guilty on a charge of violating.

State, Federal, or host nation civil law; or the UCMJ.

e. Judicial or nonjudicial punishment imposed under the UCMJ.

Driver

Any person who drives or is in physical control of a motor vehicle. A driver is in physical control when in position to control the motor vehicle, whether to regulate or restrain its operation or movement. For example, sitting in a parked car behind the steering wheel, keeping it in restraint or in a position to control its movement. The word "driver" is interchangeable with the word "operator."

Driver's license

A license to operate a motor vehicle under the laws of a State, the District of Columbia, a U.S. territory or possession, a host country, or under international agreements (international driver's license). Also, a vehicle operator's permit issued by an agency of the U.S. Government, or an overseas command.

Driving privilege

The privilege extended by an installation commander to a person permitting the operation of a motor vehicle within the limits of the installation.

General Officer

A term used to describe officers in the military grade of 0–7 or above, including officers frocked to the grade of, in the Army, Air Force, Marine Corps, or Navy.

General officer letter of reprimand

A memorandum or letter of reprimand, administrative in nature, prepared in accordance with AR 600–37 and signed by any officer serving in the grade of 0–7 or above in the Army, Air Force, Marine Corps, or Navy.

Government motor vehicle

A motor vehicle owned, rented, or leased by DOD. This includes vehicles owned, rented, or leased by NAF activities of the military departments and DOD.

High accident frequency location

A location, intersection, or length of roadway, normally not more than one-half mile in length, where an unusually high number of accidents have occurred.

Host nation

Any foreign country or possession in which an installation is located.

Installation or activity commander

A term applied equally to CONUS installation commanders and overseas community commanders.

Intoxicated driving

Includes one or more of the following:

a. Driving, operating, or being in actual physical control of a motor vehicle under any intoxication caused by alcohol or drugs in violation of Article 111 of the UCMJ or a similar law of the jurisdiction in which the vehicle is being operated.

b. Driving, operating, or being in actual physical control of a motor vehicle with a BAC of 0.10 or higher on a military installation or in an area where traffic operations are under military supervision.

c. Driving, operating, or being in actual physical control of a motor vehicle with a BAC of 0.10 or higher in violation of the law of the jurisdiction in which the vehicle is being operated.

d. Driving, operating, or being in actual physical control of a motor vehicle with a BAC of 0.05 but less than 0.10 in violation of the law of the jurisdiction in which the vehicle is being operated if the jurisdiction imposes a suspension or revocation solely on the basis of the BAC level.

Law enforcement personnel (officials)

Persons under supervision of the installation law enforcement officer who are authorized to direct, regulate, and control traffic, and to apprehend or arrest violators of laws or regulations. They are usually identified as military police, security police, civilian guards, or DOD police.

Major command/major commanders

The level of command between the base, installation, or community commander and the Service headquarters.

Moped

Any two or three-wheel device having operative capability by—

a. Human propulsion power (or no pedals if powered solely by electrical energy).

b. An automatic transmission.

c. A motor that produces less than two gross brake horsepower, and—

(1) Propels the device at a maximum speed of not more than 30 miles per hour on level ground.

(2) Has a maximum engine size of 50 cubic centimeters.

Motorcycle

Every motor vehicle that has a seat or saddle for use of the rider and is designed to travel on not more than three wheels in contact with the ground. Tractors and Mopeds are excluded.

Motor vehicle

Any vehicle driven or drawn by mechanical power, and manufactured primarily for use on public streets, roads, and highways.

(Vehicles operated only on a rail or rails are excluded.)

Motor vehicle registration

The process of issuing registration certificate and registration plates for a motor vehicle under the law of a State (State registration). The term also applies to the registration form and identification media issued by a host nation or overseas command, or per this regulation for a motor vehicle authorized to operate on a military installation in the United States or its territories.

Motor vehicle traffic accident

An unintended event causing injury or damage, and involving one or more motor vehicles on a highway, road, or street that is publicly maintained and open for public vehicular travel. Motor vehicle traffic accident classification. The classification of traffic accidents according to severity of injuries or property damage sustained. Major classifications include the following:

a. Severity of injury.

(1) Fatal accident. A motor vehicle accident that results in fatal injuries to one or more personnel. A fatal injury is one that results in death within 12 months of the accident causing the injury.

(2) Incapacitating injury. An injury, other than fatal, that prevents the injured person from walking, driving, or normally continuing the activities that he or she was capable of performing before the accident. Examples are severe lacerations, broken or distorted limb, skull fracture, crushed chest, internal injury, unconsciousness when taken from the accident scene, or inability to leave the accident scene without help.

(3) Nonincapacitating evident injury. An injury, other than fatal and incapacitating, that is evident to any person at the scene of the accident. Examples are lump on head, abrasions, or minor lacerations.

(4) Possible injury. An injury reported or claimed that is not a fatal, incapacitating, or nonincapacitating evident injury. Examples are momentary unconsciousness, claim of injuries that are not evident, limping, or complaint of pain, nausea, or hysteria.

b. Severity of vehicle damage.

(1) Disabling damage. Any damage to a vehicle such that it cannot be driven (or towed in the case of trailers) from the scene of the accident in the usual manner by daylight after simple repairs, and without further damage or hazard to itself, other traffic elements, or the roadway.

(2) Functional damage. Any nondisabling damage to a vehicle that affects operation of the vehicle or its parts. Examples are doors, windows, hood, and trunk lids that will not operate properly; broken glass that obscures vision; or any damage that could prevent the motor vehicle from passing an official motor vehicle inspection.

(3) Other motor vehicle damage. Any damage to a vehicle that is neither disabling nor functional damage. Such damage usually affects only the load on the vehicle or the appearance of the motor vehicle. Examples are damage to hubcaps, trim, or grill; glass cracks that do not interfere with vision; dents; scratches; body punctures; or damage to load.

Moving violation

A violation of any traffic law, ordinance, or regulation while operating a vehicle. Moving violations typically involve one or both of the following:

a. Unsafe act. An act or omission in traffic that is hazardous.

b. Unsafe condition. Causing or permitting an illegal and possibly hazardous condition of—

(1) Highways, roads, or streets used by traffic.

(2) Vehicles used in traffic.

(3) A pedestrian or driver in traffic.

Navy Alcohol and Drug Safety Action Program (NADSAP)

A Navy program that provides a means to identify Navy personnel involved in alcohol-related situations, within the legal and medical systems, at the earliest indication of alcohol misuse or alcoholism.

Pedicycle

A vehicle operated solely by pedals and propelled by human power.

Pedestrian

Any person not in or on a motor vehicle or other road vehicle.

Reciprocity

Reciprocal action between State or host nation and military authorities to suspend or revoke a person's OF 46, installation driving privilege, or State, host nation, or overseas command driver's license based on action initiated by either authority.

Revocation of driver's license

The termination by formal action of State, host nation, or overseas command authority of a person's license or privilege to operate a motor vehicle on the public roadways. This termination is not subject to renewal or restoration except that application may be presented and acted on by the State, host nation, or overseas command authority after the expiration of the period set by State or host nation law or overseas command regulation.

Revocation of driving privileges

Action taken by an installation commander to terminate a privilege to operate a motor vehicle on a military installation. State One of the U.S. States, the District of Columbia, the Commonwealth of Puerto Rico, and the territory of Guam.

Suspension of driver's license

The temporary withdrawal by formal action of State, host nation, or overseas command authority of a person's license or privilege to operate a motor vehicle on the public highways.

Suspension of driving privileges

The temporary withdrawal by an installation commander of a person's privilege to operate a motor vehicle on a military installation for up to 12 months. Privileges normally are automatically restored on the day after the date the suspension ends.

Traffic

Pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances, either singly or together, using any roadway.

Traffic control devices

Signs, signals, markings, lights, and devices placed by a proper official to regulate, warn, or guide traffic.

Traffic engineering

Planning and geometric design of streets, highways, and abutting lands, and matters concerned with traffic operations on them related to the safe, convenient, and economical transportation of persons and goods.

Traffic laws

All laws, ordinances, and regulations concerning roadway traffic, including regulations on weight, size, and type of vehicles and vehicle cargo.

[FR Doc. 91-1911 Filed 1-30-91; 8:45am]

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federal register

Thursday
January 31, 1991

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 36 and 52
Federal Acquisition Regulation (FAR); Construction Contracting; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 36 and 52

Federal Acquisition Regulation (FAR); Construction Contracting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 36.5 by revising 36.521 and adding provisions at 36.522 and 36.523. These proposed changes are intended to include in the FAR two clauses and one provision appropriate for use in fixed price construction contracts, and in contracts for dismantling, demolition, or removal of improvements, which were found to be beneficial to both contractors and the Department of Defense, and which will similarly benefit civilian agencies and their contractors.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 1, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR Case 90–62 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie A. Frazier, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 90–62.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the new clauses and provision merely provide uniformity for several practices already required by individual Government agencies' supplemental regulations. Comments from small entities concerning the affected FAR subsection will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–62) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 36 and 52

Government procurement.

Dated: January 24, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 36 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 36 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

2. The title in subpart 36.5 is revised to read as follows:

Subpart 36.5—Solicitation Provision and Contract Clauses

3. Section 36.521 is amended by adding a sentence at the end of the introductory paragraph; and sections 36.522 and 36.523 are added to read as follows:

36.521 Specifications and drawings for construction.

* * * If "as built" record drawings are required, use the clause with its Alternate III, which may be revised to meet the requirements of the contract.

36.522 Preconstruction conference.

The contracting officer shall insert the clause at 52.236–26, Preconstruction Conference, in solicitations and Fixed Price contracts for Construction or for Dismantling, Demolition or Removal of Improvements, to notify the contractor of the decision to hold a preconstruction conference, and to establish the means by which the conference will be arranged. If applicable, the Labor Standards of Subpart 22.4 must be a conference agenda item for discussion. The contracting officer may also include Alternate I with the basic clause.

36.523 Site visit.

The contracting officer shall insert the provision of 52.236–27, Site Visit (Construction), in solicitations for fixed price construction or for dismantling, demolition or removal of improvements Alternate I may be used when an organized site visit will be conducted.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.236–21 is amended by adding an Alternate III at the end of the clause to read as follows:

52.236–21 Specifications and Drawings for Construction.

* * * * *

Alternate III (NOV 1990). When "as built" record drawings are required, add the following as paragraph (h) of the basic clause, and renumber the existing (h) as (i);

(h) *Record drawings.* The Contractor shall maintain at the jobsite two sets of full-size prints of the contract drawings, accurately marked in red with adequate dimensions, to show all variations between the construction actually provided and that indicated or specified in the contract documents, including buried or concealed construction.

(1) Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the contract drawings. Existing utility lines and features revealed during the course of construction, shall also be accurately located and dimensioned. Variations in the interior utility systems shall be clearly defined and dimensioned; and coordinated with exterior utility connections at the building five-foot line, where applicable.

(2) Existing topographical features which differ from those shown on the contract drawings shall also be accurately located and recorded.

(3) Where a choice of materials or methods is permitted herein, or where variations in scope or character of work from that of the original contract are authorized, the drawings shall be marked to define the construction actually provided. The representations of such changes shall conform to standard drafting practice and shall include such supplementary notes, legends, and details as necessary to clearly portray the as-built construction. These drawings shall be available for review by the Contracting Officer at all times.

(4) Upon completion of the work, both sets of the marked-up prints shall be certified as correct, signed by the Contractor and delivered to the Contracting Officer for his approval before final acceptance of the project. Requests for progress payments will not be approved if the marked prints are not kept current, and request for final payment will not be approved until the marked prints are delivered to the Contracting Officer.

5. Sections 52.236–26 and 52–236–27 are added to read as follows:

52.236–26 Preconstruction conference.

As prescribed in 36.522, insert the following clause:

PRECONSTRUCTION CONFERENCE (DEC 1990)

The Contracting Officer or representative shall notify the successful offeror of the date, time, and location of the preconstruction conference, which the successful offeror is required to attend. The conference must be held before issuance of a notice to proceed, or before commencement of work. The purpose of the conference is to ensure that both parties understand all contractual obligations and the roles each party serves.

(End of clause)

If the Contracting Officer determines it is desirable to provide specific details about the conference, number the existing paragraph as (a), and add the following Alternate:

Alternate I (DEC 1990)

(b) The notice will suggest a date or alternate dates for the conference and the planned conference location. It will also include such information as agenda items, any need for attendance by subcontractors, and procedures for completing conference arrangements.

(c) The Contracting Officer or representative will conduct the conference. Construction activity representatives and the project sponsor may participate to cover matters of significant interest such as Governmental procedures, who has authority to decide matters such as contractual, administrative (security, safety, and fire and environmental protection), labor, and construction responsibilities.

(d) The Contractor will have the opportunity at the conference to ask questions concerning any contractual requirements such as Government supervision of work, and inspection and acceptance procedures:

(End of clause)

§ 52.236–27 Site Visit.

As prescribed in 36.523, insert the following provision:

SITE VISIT (CONSTRUCTION) (DEC 1990)

(a) Offerors or quoters are urged and expected to inspect the site where the work will be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(b) Site visits may be arranged during normal duty hours by contacting:

Name: _____

Address: _____

Telephone _____

(End of provision)

(R 7–2003.39 1089 OCT)

Alternate I (NOV 1990). If an organized site visit will be conducted, substitute the following for subparagraph (b) of the basic clause:

(b) A site visit and pre-solicitation conference have been scheduled for

_____

(Insert date and time).

Participants will meet at

_____

(Insert location).

No other site visits will be authorized.

(End of provision)

[FR Doc. 91–2253 Filed 1–30–91; 8:45 am]

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federal register

Thursday
January 31, 1991

Part V

Department of the Interior

Bureau of Indian Affairs

Small Tribes Grant Program; Announcement of Availability of Discretionary Grant Funds

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Tribal Services; Small Tribes Grant Program

January 25, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Announcement of availability of discretionary grant funds for small Federally recognized Indian tribes.

SUMMARY: The Bureau of Indian Affairs invites submission of grant applications from small, Federally recognized Indian tribes within the contiguous 48 States with an Indian population of 1500 or less who reside on or near the applicant's reservation. Separate arrangements will be made for providing support to small Alaska Native villages. The purpose of the program is to permit small tribes to improve their capabilities to manage and administer tribal governmental affairs as well as Federal and tribal programs. Grant awards will be made on a competitive basis under criteria, terms, and conditions set forth later in this announcement. Grants awarded under this announcement are authorized by section 103 of the Indian Self-Determination Education and Assistance Act of 1975, Public Law 93–638, as amended by Public Law 100–472. This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM8.

DATES: The closing date for submission of applications under this announcement is April 1, 1991.

FOR FURTHER INFORMATION CONTACT: George Clark (202) 208–1708 or Mitchell L. Parks (202) 208–1705, Department of the Interior, Bureau of Indian Affairs, Office of Tribal Services, MS–4627–MIB, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

A. Purpose of the Grant Program

The purpose of this grant program is to: (1) Enable small tribes to establish or maintain sound management and administrative practices, (2) allow such tribes to overcome problems associated with governmental operations and/or the administration of tribal and Federal programs, with particular emphasis on financial accountability, and (3) to contribute to the stability of tribal governments and set a climate for community and economic development and other activity designed to reduce tribal dependence and promote small tribes' exercise of self-determination.

To accomplish the purpose, the Bureau of Indian Affairs announces the availability of $1,750,000 to allow tribal applicants to meet their respective management needs in a variety of ways, as follows.

(1) Employ an overall program administrator and necessary support staff if applicant operates several Federal programs and lacks financial resources to employ such personnel.

(2) Employ a bookkeeper when a tribe operating several Federal programs experiences problems because of untrained bookkeeping staff.

(3) Hire a "circuit rider" accountant to establish and maintain a financial management system for each member tribe of a multi-tribal organization. A large multi-tribal organization may establish a "circuit rider office" staffed by an accountant and necessary support staff.

(4) Employ a tribal planner or economic development specialist if the tribe has substantial, identifiably undeveloped resources and does not have funds to plan for the development of such resources.

(5) Employ staff to address specific and/or identifiable managerial problems under a one time only grant.

(6) Retain an accountant to prepare for the conduct of annual independent audits and/or to correct or resolve audit deficiencies.

B. Eligibility Criteria

The governing body of any small tribe or multi-tribal organization may apply for a grant under this announcement provided that:

(1) Individual small tribes may receive a grant as a small tribe provided that the tribe has a population of at least 400 and not more than 1500 Indian people residing on or near its reservation and meets the additional criteria cited herein;

(2) Tribes with populations of less than 400 may receive a grant under a multi-tribal or consortia grant arrangement and other criteria contained in this announcement;

(3) Exceptions—Exceptions to (1) and (2) above may be made based on any one of the following:

(a) A tribe with a population of less than 400 which presently administers three or more Federal grants or contracts may apply for a grant as an individual grantee.

(b) An existing multi-tribal organization, a majority of whose members are small tribes currently receiving Federal support for a program, is eligible to apply for a grant under this Subpart regardless of the population of any of its member tribes.

(c) A tribe with a population of less than 400 which is geographically isolated, thereby making a multi-tribal funding arrangement impractical, may apply for a grant as an individual grantee.

(4) As to specific criteria, a tribe or multi-tribal organization must demonstrate or document that it experiences five or more of the following problems or has needs in at least five of the areas cited below:

(a) A lack of financial resources to meet its core administrative or management needs.

(b) Audit reports indicate serious financial management problems.

(c) Delinquency in making progress or financial status reports.

(d) Failure to close out program grants or contracts which are no longer in operation.

(e) Problems in achieving current or past contract or grant program goals and objectives.

(f) Inability to plan and develop identifiable reservation resources.

(g) Inability to develop acceptable grant or contract applications.

(h) Largely dependent on Federal grants or contracts for programs, services, income, and job opportunities.

C. Other Conditions

(1) Support and assistance for Alaska Native villages will be provided through the Bureau of Indian Affairs' Juneau Area Office under a similar arrangement to that as has been done in the past for the Core Management Program.

(2) Grant awards under this announcement for small, federally recognized tribes in the 48 contiguous states will range in amounts of $27,500 to $35,000 for individual grants and from $32,500 to $42,500 for multi-tribal or consortium grants.

(3) No elected tribal official may receive a salary or any other form of compensation from a grant under this announcement.

(4) If a tribe's application is prepared by an outside consultant, not a tribal official or staff person, the proposal must indicate the role of the grant preparer to the tribe during the grant period; e.g., will the preparer be funded through the proceeds of the grant as a consultant, full time employee, part-time employee, etc.

(5) Appeals from administrative decisions made by the Bureau of Indian Affairs shall be made under provisions as set forth in the 25 CFR, part 2.

(6) Incomplete and/or unresponsive applications will not be reviewed or rated, and there shall be no appeal rights for non-funding of such

applications. An incomplete and/or unresponsive application may be an application without a current tribal council or governing body resolution; an applicant requests a grant in excess of the range cited in item (2) above; anticipated grant outcomes have no relationship to the purposes of these grants; e.g., to fund and/or augment the funding of a wildlife and parks program grant, etc.

(7) Tribal grantees shall agree to submit quarterly financial status and progress reports. Progress reports will be used for rating of follow-on year grant applications, appropriations permitting, since subsequent grants will include performance as a criteria for grant renewal.

D. Content of Application

(1) Applications for a grant in response to this announcement shall follow the application requirements set forth in Office of Management and Budget Circular A–102, Uniform Requirements for Assistance to State and Local Governments, and attachments prescribed by such circular. Under Part IV of Standard Form 424, Program Narrative Statement, applicants shall provide the following:

(a) A statement of specific needs and/or problems to be addressed under the proposed grant as provided in section B.4., items a through h above.

(b) A description of how the grant funds will be used to overcome the problems or meet the needs which have been identified.

(c) A schedule for the start and projected completion dates for actions or efforts to be taken to resolve problems or meet needs identified under the grant.

(d) A description of the personnel required, if any, to carry out grant activities and/or objectives; also provide position descriptions which include qualifications for education and experience.

(e) A detailed description of how grant funds will be used in coordination with, or to supplement, self-determination grants and/or contracts or funds from other agencies.

(f) A budget justification which indicates how grant funds will be used to carry out the actions or efforts and achieve the goals and objectives of the proposed application.

(2) The applicant must indicate how other available resources such as tribal income, self-determination grants or capacity building grants from other agencies will be committed to complement or support this effort.

(3) The applicant must make a written commitment, incorporated as a part of its tribal resolution, to incorporate and maintain the positive results expected from the grant and to establish and maintain sound management systems.

E. Application Review and Rating Process

Applications submitted in response to this announcement will be received and rated at the Bureau of Indian Affairs Central Office by review panels composed of Bureau field and Central Office personnel.

(1) Application review:

(a) Applications will be reviewed by a four person panel composed of Area or Agency program staff and Central Office personnel.

(b) Grant awards will be made on a highly competitive basis. Satisfying need criteria does not mean an applicant will receive a grant as the need of any one tribe is measured against all other tribes. Further, the program narrative must indicate the needs or problems that are to be addressed in a manner likely to meet the need or resolve the problem contained in the "need" section of the application.

(2) Rating of applications—Applications will be rated based on the criteria and conditions set forth in Sections A., B., C. and D. of this announcement as follows:

	Points
(a) Purpose—applications most consistent with the purpose of the program will receive higher ratings than those which are for the purpose of purchasing professional expertise or equipment. An application for staff with a sound position description would rate higher than one used to hire a consultant since a good staff person will enable the grantee to meet the grant objectives on a more permanent basis.	(0–15)
(b) Need/problem statement—the applicant can document or demonstrate it has 5 or more of the needs contained in Section B. above.	(0–20)
(c) Work statement—the application work plan describes in detail how it will meet the needs or overcome problems cited in (a) above. The plan contains a schedule of activities, which if executed properly will accomplish the objectives and/or goals of the applicant.	(0–35)
(d) Budget justification—the application contains a line item budget with a separate narrative explaining each cost item and how such costs are reasonable to the government.	(0–15)
(e) Management or self-monitoring system—the application indicates how the grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary. This should include a commitment to request and use technical assistance from Bureau Area or Agency staff if needed to achieve grant objectives.	(0–15)

F. Submission of Applications

Applications submitted in response to this announcement must:

(1) Be postmarked no later than midnight, April 1, 1991, if mailed;

(2) Be received in the Division of Self-Determination Services no later than the close of business, April 1, 1991, if hand delivered.

(3) Consist of an original grant application and two (2) copies. Applications shall be mailed or hand delivered to: Department of the Interior, Bureau of Indian Affairs, Attention: Division of Self-Determination Services, MS–4627–MIB, 1849 C Streets, NW., Washington, DC 20240

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–2261 Filed 1–30–91; 8:45 am]

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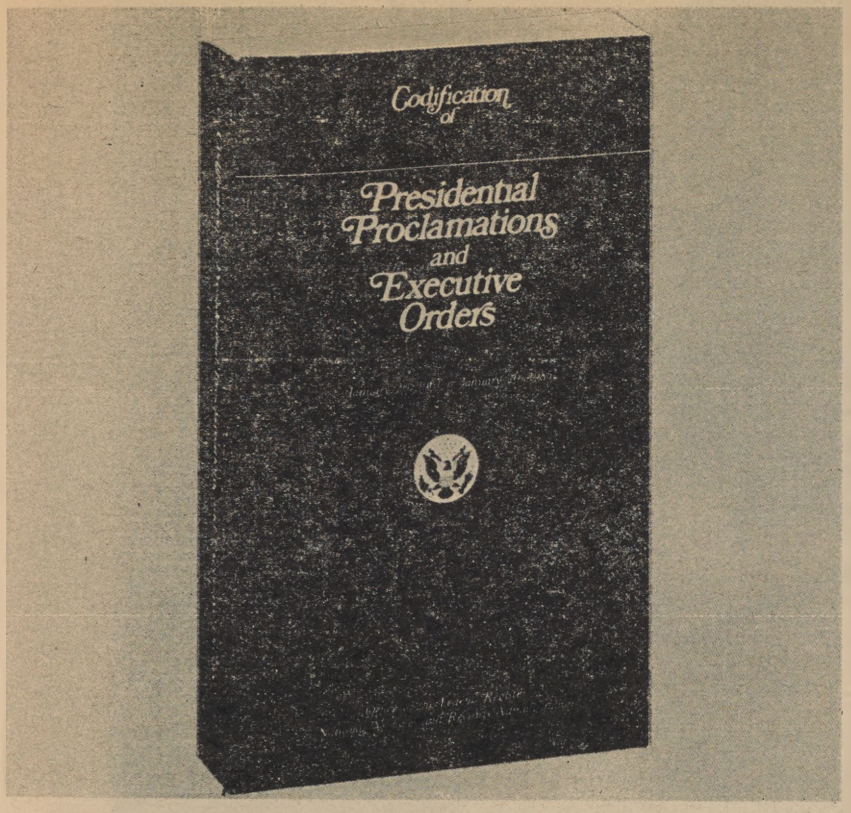
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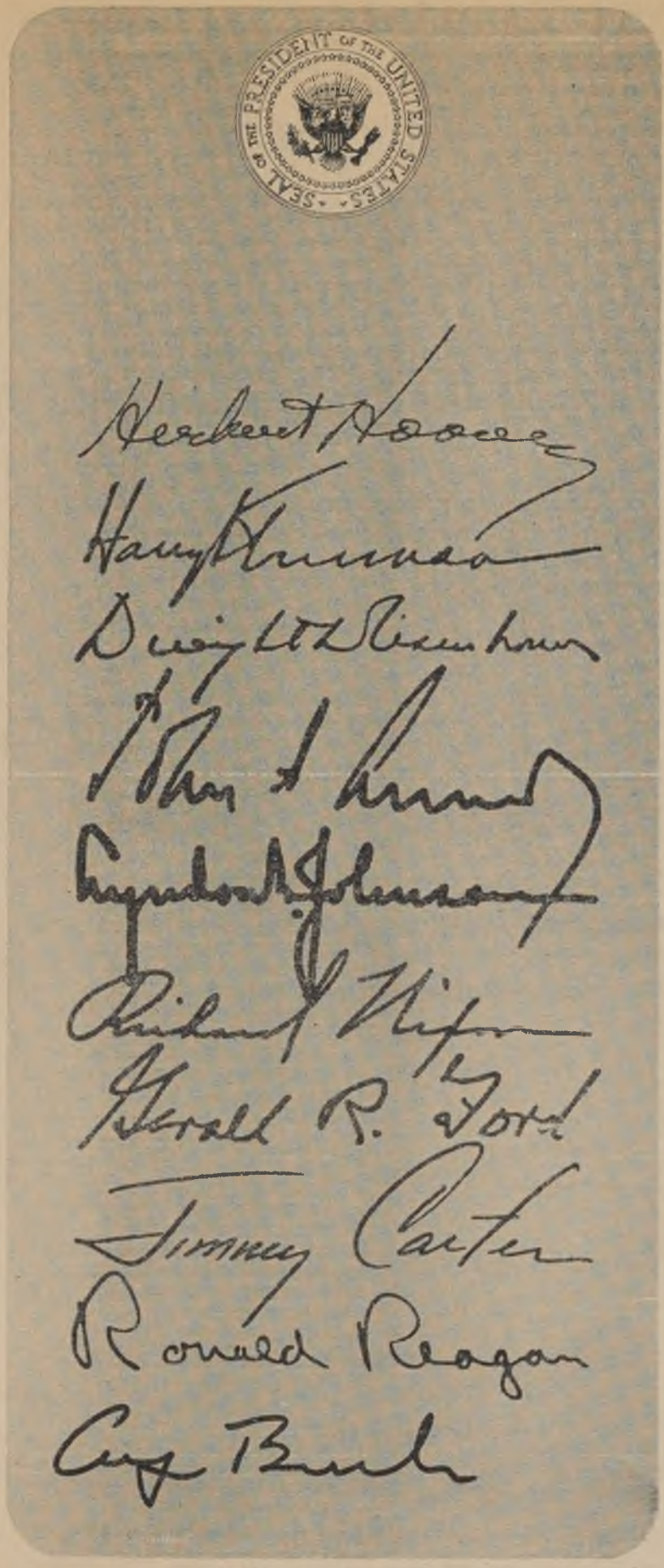
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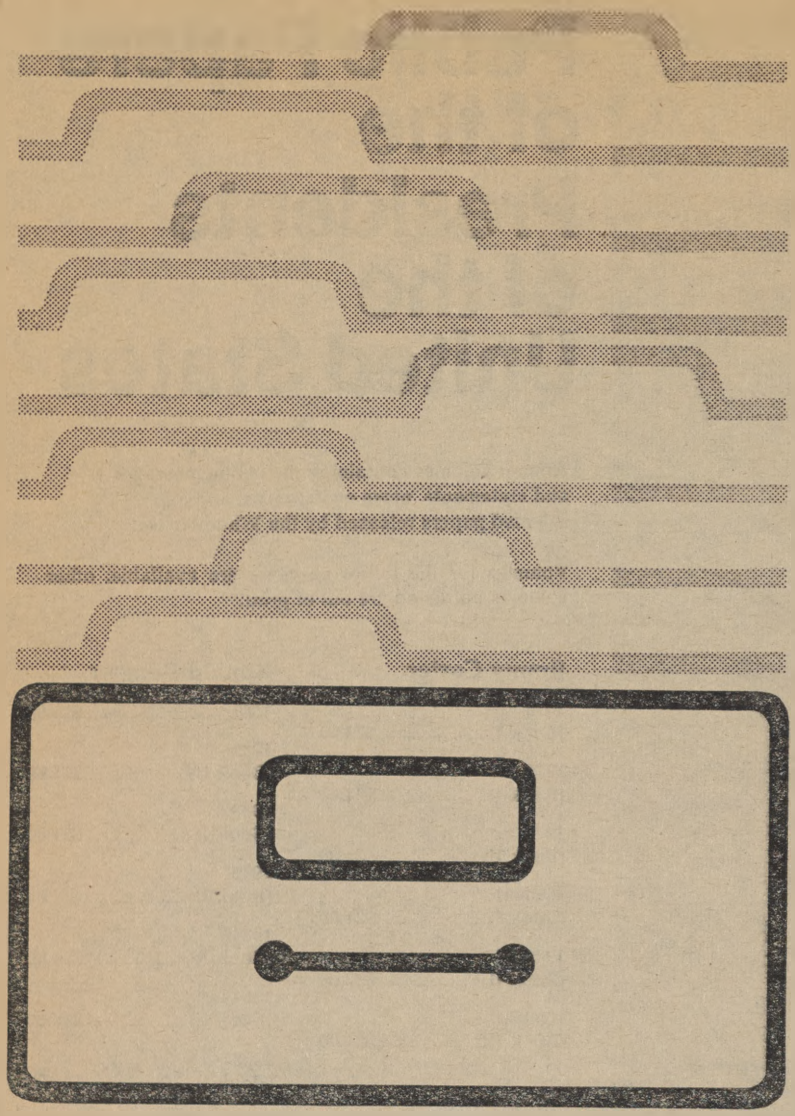
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in the Code of Federal Regulations (CFR)

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SUPPLEMENT: Revised January 1, 1990

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