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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

DENVER, CO

WHEN: September 26, at 9:00 am
WHERE: Denver Federal Center, Building 20
(E8 entrance on 2nd Street)
Conference Room B1409, Denver, CO
RESERVATIONS: Federal Information Center
1–800–359–3997

WASHINGTON, DC

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

Contents

Federal Register

Vol. 56, No. 184

Monday, September 23, 1991

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
890 47899

12 CFR
Proposed Rules:
584 47919

13 CFR
Proposed Rules:
121 47920

14 CFR
21 47900
23 47900
39 47901
71 (2 documents) 47902, 47903
91 48088
93 48092

25 CFR
Proposed Rules:
101 48082
103 48082

26 CFR
1 47904
35a 47904
Proposed Rules:
1 (4 documents) 47921–47928
31 47929
602 47928

30 CFR
917 47907
Proposed Rules:
934 47929

33 CFR
100 47911
Proposed Rules:
64 47930
117 47932

40 CFR
265 47912
799 47912
Proposed Rules:
261 48000
266 48000

43 CFR
5400 47915
5420 47915
5450 47915
5460 47915
9230 47915

44 CFR
64 47916

45 CFR
1801 48076

50 CFR
285 47918

Rules and Regulations

Federal Register
Vol. 56, No. 184
Monday, September 23, 1991

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program: Disputed Claims Procedures

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations that clarify the conditions under which OPM may make a determination concerning a disputed health benefits claim under the Federal Employees Health Benefits (FEHB) Program. Under these regulations, OPM may make a determination concerning a claimant who asks OPM to review a health benefits plan's denial of a claim if the plan has either (1) affirmed its denial when the claimant requested reconsideration of (2) failed to respond to the claimant's request for reconsideration as provided by OPM's regulations. These regulations also clarify that OPM may make a determination without requesting information beyond that supplied with the claimant's request for reconsideration or without additional information from the health plan when the health plan fails to supply information within the regulatory timeframe. The purpose of these regulations is to avoid unnecessary delays in making determinations in order to reduce the potential for severe financial hardship for claimants.

EFFECTIVE DATE: October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0780, extension 207.

SUPPLEMENTARY INFORMATION: On April 23, 1991, OPM issued interim regulations in the **Federal Register** (56 FR 18495) that amended part 890 to clarify the circumstance under which OPM may make a determination concerning a disputed health benefits claim under the FEHB Program.

OPM received seven written comments, including two from fee-for-service plans, three from health maintenance organizations, one from the underwriter for a fee-for-service plan, and one from an association of health maintenance organizations.

All seven commenters opposed the provisions giving OPM the authority to make a determination concerning a disputed claim without consulting the plan or providing for the reopening of the disputed claim at a later date.

The purpose of OPM's review is to determine whether a disputed claim should be paid under the terms of OPM's contract with the health plan. The claimant's first step in disputing a plan's denial of a claim is to request the plan to reconsider its denial. OPM does not accept requests for review from claimants who have not first requested reconsideration from the plan. OPM's regulations (5 CFR 890.102(c)(3)) require that the carrier, in its reconsideration decision, give the claimant a full and complete explanation of its denial of the claim.

If the plan affirms its denial, the claimant may request that OPM review the plan's decision. If the carrier gave the claimant the required explanation of why the claim was denied, the claimant will generally forward it to OPM with the request for review of the plan's decision. Generally, when the plan gives the claimant a full explanation of its decision, the plan's explanation provides adequate information for OPM to determine whether or not the claim should be paid. However, the regulations also provide that OPM may ask for more information from the claimant or the carrier if it is needed to make the determination.

It is possible, of course, that a plan's explanation of the denial of the claim may not adequately support its decision to deny the claim. In such cases, OPM may render a determination based on the plan's failure to support its decision. Contrary to the commenters' assertion that the plan do not have sufficient opportunity to explain their denial of the claim, the regulations specifically require them to give the claimant a full explanation when he or she asks for reconsideration. Therefore, OPM must assume, when reviewing the plan's explanation to the claimant, that it is the plan's full and complete explanation of its position.

If a plan has provided to the enrollee the complete response at the reconsideration level as required by regulation, then OPM could determine if an enrollee submitted new information with the request for review. Should OPM have information that the plan has not seen, it would, of course, make that information known to the plan. Also, if OPM had questions or concerns about a claim, these regulations do not preclude getting a response from the plan on those issues.

In practice, the plan, having once denied the claim, has no real incentive to provide the required explanation, or to respond in a timely fashion to OPM's request for additional information. Therefore, claimant's requests for review could be unreasonably delayed if OPM were required to ask the plan for information, whether needed or not, and wait until the plan finds it convenient to respond.

The commenters offered a variety of alternatives to the interim regulations. However, these alternatives would result in insuring the very delays that the regulations were intended to avoid. We see no justification for delaying a response to a claimant while we request information that we do not need and wait for a reply that will not affect the outcome of the determination.

One commenter was under the impression that only "officials" could see the evidence submitted by the claimant and the plan in connection with its review of the disputed claim. This commenter suggested that we amend the regulations to state that the claimant and the plan could review the evidence. In fact, such a statement would be redundant. The claimant and the plan are among the "persons having official need to see it" as set forth in current regulations. In most cases, the evidence consists primarily of documentation the claimant has already submitted to the plan and the plan's explanation of why it denied the claim. Therefore, there is usually no evidence other than that which the plan has already seen or produced itself. However, under existing regulations, the plan and claimant can review any evidence OPM uses in making its determination.

One commenter suggested that we create a process for reopening the claim

after OPM has made a determination in favor of the claimant in case the plan later discovers information to support its original denial of the claim. When OPM makes a determination in favor of the claimant, OPM intends that decision to be final. To do otherwise would leave the claimant forever in jeopardy of having to return money to the plan that he or she claimed in good faith and had been awarded by OPM. (Evidence of fraud, of course, would be another matter and would be dealt with under the appropriate provisions of law.) Therefore, we are not accepting this suggestion.

Clearly, under these regulations, it behooves the plans to comply totally with the regulatory requirement to fully explain to the claimant the reasons for their denial of the claim. The explanation may become the primary element in OPM's determination regarding a disputed claim.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect administrative procedures used by OPM and the FEHB plans.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Claims, Government employees, Health insurance.

Accordingly, OPM is adopting its interim regulations under 5 CFR part 890 published on April 23, 1991, (56 FR 18495) as final rules without change.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-22759 Filed 9-20-91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 091CE, Special Conditions 23-ACE-59]

Special Conditions; The King's Engineering Fellowship Model 44 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued for The King's Engineering Fellowship (TKEF) Model 44 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features are the installation of pusher propellers for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

The King's Engineering Fellowship, Municipal Airport, Orange City, Iowa 51041, made initial application in 1972, for type certification in the normal category for its Model 44 airplane. TKEF Model 44 is an eight-place monoplane powered by twin reciprocating engines. Construction and configuration are conventional except for pusher propellers.

Type Certification Basis

The type certification basis for the Model 44 airplane is: part 23 of the FAR, effective February 1, 1965, through amendment 23-34, effective February 17, 1987; FAR 36, effective December 1, 1969, through the amendment effective on the date of type certification; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

TKEF plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features are the installation of pusher propellers that were not envisaged by the existing regulations. 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 § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. 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 become part of the type certification basis as provided by § 21.17(a)(2).

Propeller Ice and Exhaust Gas Impingement Protection.

Because of the aft propeller location, ice shed from the wing leading edges, engine air inlet, and other parts of the airplane may impact the propeller blades. Impact of these shed ice fragments may have an adverse effect on the strength and fatigue characteristics of the propeller. Additionally, because the propeller is located aft of the engine, if exhaust gases are discharged into the propeller disc, they may adversely effect the strength and fatigue characteristics of the propeller material. Special conditions are adopted to provide the requisite level of safety.

Propeller Ground Clearance

The FAA has determined that § 23.925 is not adequate to address propeller clearance for TKEF Model 44 because of the aft location of the propellers. Existing § 23.925 requires at least seven inches of clearance between the propeller and the ground in the normal takeoff attitude and a positive clearance with the critical tire deflated and the strut bottomed. In addition to those requirements, these special conditions require that a positive clearance exist between the propeller and the ground when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings.

Propeller Marking

Because of the aft propeller location, passengers and ground personnel may be less aware of the proximity of the propeller blades. Therefore, in the absence of specific regulations, a special condition is adopted to require that the propeller blades be marked so that both sides of the propeller discs are conspicuous under normal daylight ground conditions.

Discussion of Comments

Notice of Proposed Special Conditions, Docket No. 091CE, Notice No. 23-ACE-59 (56 FR 22123, May 14, 1991) proposed special conditions for the King's Engineering Fellowship Model 44 airplane. The comment period closed June 13, 1991.

No comments pertaining to the notice were received. Therefore, the special conditions as proposed by Notice No. 23–ACE–59 are adopted without change.

Conclusion

In view of the design features discussed above, the following special conditions are adopted for TKEF Model 44 airplanes under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the applicable regulations. This action is not a rule of general applicability and affects only the model of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

Citation

The authority citation for these special conditions is as follows:

Authority: Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for TKEF Model 44 airplane:

1. Propeller Ice and Exhaust Gas Impingement Protection

(a) All areas of the airplane forward of the propellers that are likely to accumulate and shed ice into the propeller disc during any operating condition must be suitably protected to prevent ice formation, or it must be shown that any ice shed into the propeller disc will not create a hazardous condition.

(b) If the engine exhaust gases are discharged into the propeller disc, it must be shown by tests, or analysis supported by tests, that the propeller material is capable of continuous safe operation.

2. Propeller Ground Clearance

In addition to the propeller clearance requirements of § 23.925, the following apply:

(a) The airplane must be designed such that the propellers will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings; and

(b) If a tail bumper or an energy absorption device is provided to show compliance with paragraph (a) of this special condition, the following apply:

(1) Suitable design loads must be established for the tail bumper or energy absorption device; and

(2) The supporting structure of the tail bumper or energy absorption device must be designed to withstand the loads established in subparagraph (b)(1) of this special condition. Inspection/replacement criteria must be established for the tail bumper or energy absorption device and provided as part of the information required by § 23.1529.

3. Propeller Marking

Each pusher propeller must be marked so that both sides of the disc are conspicuous under normal daylight ground conditions.

Issued in Kansas City, Missouri on September 11, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–22799 Filed 9–20–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–184–AD; Amendment 39–8046; AD 91–20–12]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Model DHC–8–100 series airplanes, which currently requires a one-time inspection of the main landing gear (MLG) actuator attachment bolts. This amendment adds Model DHC–8–300 series airplanes to the applicability of the rule; requires repetitive inspections to detect loose bolts at the MLG retract actuator support fitting; and, if necessary, requires a magnetic particle inspection, replacement of loose bolts, and replacement of cracked fittings. This amendment is prompted by a recent report of loose actuator supporting bolts and cracks in the relief radius of the boss at the forward surface of the fittings. This condition, if not corrected, could result in complete loss of the hydraulic systems and severely reduced controllability of the airplane.

EFFECTIVE DATE: October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Airframe Branch, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 2002, Valley Stream, New York 11581; telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION: On August 12, 1991, the FAA issued airworthiness directive (AD) 91–15–51, Amendment 39–8016 (56 FR 41928, August 26, 1991), applicable to de Havilland Model DHC–8–100 series airplanes, to require a one-time inspection of the MLG actuator attachment bolts to detect loose bolts, and replacement of the bolts, if necessary. That action was prompted by a report of in-flight loss of all hydraulic power on a de Havilland Model DHC–8–100 series airplane. This condition, if not corrected, could result in complete loss of the hydraulic systems and severely reduced controllability of the airplane.

Since issuance of that AD, one operator of a Model DHC–8–100 series airplane reported finding several loose actuator support fitting bolts and cracks in the relief radius of the boss at the forward surface of the fittings. This condition, if not corrected, could result in complete loss of the hydraulic systems and severely reduced controllability of the airplane.

Since the MLG retract actuator support fittings on the Model DHC–8–300 are configured similarly to those of the Model DHC–8–100, they also may be subject to the same unsafe condition.

Transport Canada, which is the airworthiness authority for Canada, has issued emergency airworthiness directive CF–91–25 which requires repetitive inspections to detect loose bolts on the MLG retract actuator support fitting, and, if necessary, a magnetic particle inspection of the fitting and replacement of loose bolts and cracked fittings. The intent of these actions is to detect loose bolts and/or cracked fittings in a timely manner in order to prevent the detachment of the main landing gear retraction actuator and consequential damage to the hydraulic lines.

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

Since this situation is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 91–15–51 to add the Model DHC–8–300 to the applicability; require repetitive inspections to detect loose bolts at the MLG retract actuator support fitting; and, if necessary, require a magnetic particle inspection, replacement of loose

bolts, and replacement of cracked fittings.

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

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

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

List of subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8016 and by adding the following new airworthiness directive:

90–20–12. Boeing of Canada, Ltd., De Havilland Division: Amendment 39–8046. Docket No. 91–NM–184–AD. Supersedes AD 91–15–51.

Applicability: All Model DHC–8–100 and DHC–8–300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent loss of hydraulic systems and reduced controllability of the airplane, accomplish the following:

(a) For Model DHC–8–100 series airplanes: Within 24 hours after September 9, 1991 (the effective date of AD 91–15–51, Amendment 39–8016), inspect the three actuator attachment fitting bolts on each of the right-hand and left-hand main landing gears to detect loose bolts by applying a torque of not less than 10 foot-pounds to each bolt.

(1) If no loose bolts are found as a result of the inspection required by paragraph (a) of this AD, repeat this inspection thereafter at intervals not to exceed 500 landings.

(2) If loose bolts are found as a result of the inspection required by paragraph (a) of this AD, accomplish the following:

(i) Prior to further flight, replace loose bolts with new bolts of the same part number.

(ii) Within 250 landings after the effective date of this AD, accomplish the following:

(A) Remove the associated support fitting (P/N 85410084 for Model DHC–8–100 series airplanes).

(B) Perform a magnetic particle inspection to detect cracks throughout the fitting, paying particular attention to the relief radius at the forward surface boss. If cracks are detected as a result of this inspection, prior to further flight, replace the fitting with a serviceable part.

(iii) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 500 landings.

(b) For Model DHC–8–300 series airplanes: Within 250 landings after the effective date of this AD, inspect the three actuator attachment fitting bolts on each of the right-hand and left-hand main landing gears to detect loose bolts by applying a torque of not less than 10 foot-pounds to each bolt.

(1) If no loose bolts are found as a result of the inspection required by paragraph (b) of this AD, repeat this inspection thereafter at intervals not to exceed 500 landings.

(2) If loose bolts are found as a result of the inspection required by paragraph (b) of this AD, accomplish the following:

(i) Prior to further flight, replace loose bolts with new bolts of the same part number.

(ii) Within 250 landings after the effective date of this AD, accomplish the following:

(A) Remove the associated support fitting (P/N 85410084 for Model DHC–8–301 airplanes and P/N 85411701 for Model DHC–8–311 airplanes).

(B) Perform a magnetic particle inspection to detect cracks throughout the fitting, paying particular attention to the relief radius at the forward surface boss. If cracks are detected as a result of this inspection, prior to further flight, replace the fitting with a serviceable part.

(iii) Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 500 landings.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA, Engine and Propeller Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then sent it to the Manager, New York Aircraft Certification office, ANE–170.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD. Any loose bolts found as a result of the inspections required by paragraph (a) or (b) of this AD, must be retorqued prior to application for a special flight permit. The upper bolt (P/N 81812–7–22) must be retorqued to 36–39 foot-pounds; the lower two bolts (P/N 81812–6–22) must be retorqued to 22–25 foot-pounds.

This amendment supersedes Amendment 39–8016, AD 91–15–51.

This amendment (39–8046, AD 91–20–12) becomes effective October 7, 1991.

Issued in Renton, Washington, on September 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–22800 Filed 9–20–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASO–17]

Establishment of Transition Area, Port Gibson, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes the Port Gibson, MS, Transition Area. A Special Instrument Approach Procedure has been developed to serve the Grand Gulf Heliport. This action will lower the base of controlled airspace from 1200 to 700 feet above the surface along the final approach and missed approach segments of the instrument approach procedure. This action is necessary in order to provide additional controlled airspace protection of instrument flight rules (IFR) helicopters executing the instrument approach procedure in instrument meteorological conditions.

EFFECTIVE DATE: 0901 u.t.c., January 9, 1992.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation

Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On July 8, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Port Gibson, MS, Transition Area (56 FR 30883). This notice contained an erroneous Airspace Docket Number (91–ASO–14) which was subsequently corrected to Airspace Docket Number 91–ASO–17 on July 26, 1991. The proposed action would lower the base of controlled airspace from 1200 to 700 feet above the surface along the final approach and missed approach segments of a Special Instrument Approach Procedure recently developed to serve the Grand Gulf Heliport. This proposed action was necessary in order to provide additional controlled airspace protection for IFR helicopters executing the instrument approach procedure during instrument meteorological conditions. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes the Port Gibson, MS, Transition Area. The floor of controlled airspace is lowered from 1200 to 700 feet above the surface along the final approach and missed approach segments of the instrument approach procedure in order to provide controlled airspace protection of IFR helicopters executing the instrument approach procedure during instrument meteorological conditions.

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Port Gibson, MS [New]

That airspace extending upward from 700 feet above the surface within 2.5 miles each side of the Natchez VOR/DME 027° radial extending from 20.9 to 27.2 miles northeast of the VOR/DME.

Issued in East Point, Georgia, on September 11, 1991.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–22801 Filed 9–20–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANM–1]

Establishment of Transition Area, Anaconda, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action provides controlled airspace for aircraft executing a new instrument approach procedure to the Anaconda, Montana, Airport. The airspace will be depicted on aeronautical charts for pilot reference. This controlled airspace is intended to ensure segregation of aircraft operating under Instrument Flight Rules from aircraft operating under Visual Flight Rules.

EFFECTIVE DATE: 0901 u.t.c., October 31, 1991.

FOR FURTHER INFORMATION CONTACT: James E. Riley, ANM–537, Federal Aviation Administration, Docket No. 91–ANM–1, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On June 10, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing the Anaconda, Montana Transition Area (56 FR 111). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a 700-foot transition area to provide controlled airspace for aircraft executing a new instrument approach procedure to the Anaconda, Montana Airport. The intended effect is to ensure segregation of aircraft operating under Instrument Flight Rules and aircraft operating under Visual Flight Rules.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Anaconda, Montana 700-Foot Transition Area [New]

Starting at—
lat. 46°20'30" long. 112°48'30"
to lat. 46°10'30" long. 113°07'00"
to lat. 45°57'05" long. 112°47'40"
to lat. 45°51'20" long. 112°27'30"
to lat. 46°03'20" long. 112°20'00"
to lat. 46°05'00" long. 112°25'45"
to lat. 46°18'30" long. 112°30'30"
to lat. 46°17'10" long. 112°41'40"

Thence to point of beginning, excluding that portion within the Butte, Montana 700-foot Transition Area.

Issued in Seattle, Washington, on August 26, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91–22802 Filed 9–20–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8358]

RIN 1545–AH75

Treatment of Certain Stripped Bonds and Stripped Coupons; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to Treasury Decision 8358, which was published in the **Federal Register** on August 13, 1991 (56 FR 38339). The temporary regulations apply to taxpayers holding stripped bonds and stripped coupons under section 1286 of the Internal Revenue Code.

EFFECTIVE DATE: August 13, 1991.

FOR FURTHER INFORMATION CONTACT: Mark S. Smith, (202) 566–3297 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction provide that a stripped bond or stripped coupon purchased after July 1, 1982, is treated by the purchaser as a bond originally issued on the purchase date and having OID equal to the excess of (1) the stated redemption price at maturity (or, in the case of a coupon, the amount payable on the due date of the coupon), over (2) the bond's or coupon's ratable share of the purchase price. In addition, if a debt instrument has only a de minimis amount of OID, then the OID shall be treated as zero.

Need for Correction

As published, T.D. 8358 contains an omission which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of temporary regulations (T.D. 8358), which was the subject of FR Doc. 91–19229, is corrected as follows:

§ 1.1286–1T [Corrected]

1. On page 38340, column 2, the section heading "*§ 1.1286–1T Tax treatment of certain stripped bonds and stripped coupons.*" is corrected to read "*§ 1.1286–1T Tax treatment of certain stripped bonds and stripped coupons (Temporary).*"

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–22573 Filed 9–20–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 35a

[TD 8365]

RIN 1545–AQ13

Imposition of Backup Withholding Due to Notification of an Incorrect Taxpayer Identification Number

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to § 35a.3406–1 of the Temporary Income Tax Regulations under section 3406 of the Internal Revenue Code of 1986. The amendments relate to the requirement for payors to backup withhold under section 3406(a)(1)(B) on certain reportable payments due to notification of an incorrect taxpayer identification number. These amendments affect payors, brokers, and payees of certain reportable payments and provide guidance necessary to comply with the law. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: The amendments are effective on and after September 1, 1990.

FOR FURTHER INFORMATION CONTACT: John M. Coulter, Jr. (202–566–3928, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to part 35a of title 26 of the Code of Federal Regulations (CFR). The amendments provide guidance relating to the requirement under section 3406(a)(1)(B) of the Internal Revenue Code of 1986 (the "Code") that a payor backup withhold 20 percent from reportable payments due to an incorrect taxpayer identification number (TIN). This provision was added to the Code by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369, 371). On November 23, 1987, the Internal Revenue Service published in the **Federal Register** temporary regulations (26 CFR part 35a.3406–1, T.D. 8163, 52 FR 44861) concerning the requirement for payors to backup withhold under section 3406(a)(1)(B) on accounts of a payee when notified by the Service that the payee has provided an incorrect TIN (the "B notice rules"). Amendments to these temporary regulations were published in the **Federal Register** on April 22, 1989 (T.D. 8248, 54 FR 14341), and on September 27, 1990 (T.D. 8309, 55 FR 39399).

Explanation of Provisions

On September 27, 1990, the Service published in the **Federal Register** proposed regulations (55 FR 39427) that incorporated the substance of the B notice rules. The Service has received many comments concerning the B notice rules. The changes in the B notice rules made by this Treasury decision are, in large part, being made in response to those comments. In the process of finalizing the proposed regulations, the Service is also considering other comments concerning the B notice rules.

Prior to amendment by this Treasury decision, the B notice rules provided that, if a payor has been notified twice within 3 calendar years that a payee has furnished an incorrect TIN on the account with the payor, the payor is required to backup withhold unless the payee provides the Service with a new TIN under a procedure to be specified by revenue procedure and the Service notifies the payor that the newly provided TIN is correct (the ⅔ rule). Pursuant to an agreement reached with

the Social Security Administration (SSA), however, the Service is issuing a revenue procedure (Rev. Proc. 91–58) that provides that, in these circumstances, the payee must contact the SSA with respect to an incorrect social security number (SSN) or contact the Service with respect to an incorrect employer identification number (EIN). The SSA or the Service will, in turn, provide the required notification to the payor. This Treasury decision conforms the temporary and proposed regulations to the procedures agreed to by SSA and the Service.

Prior to amendment by this Treasury decision, the temporary and proposed regulations provided that a sole proprietor is required to furnish his individual name and his SSN. This rule is revised by this Treasury decision to permit a sole proprietor to furnish his individual name and either his SSN or the EIN for his sole proprietorship. In addition to his individual name, a sole proprietor may also furnish the business name for the sole proprietorship provided that his individual name is listed before the business name. A sole proprietor may not furnish only the business name.

This Treasury decision makes a minor change to the substitute B notice that payors may send to payees. Previously, the B notice rules required that the substitute B notice inform payees that they are required to contact the SSA or the Service to resolve problems with their TINs and must complete and return to the payor a statement affirming that the payee in fact made the required contact. This Treasury decision gives payors the option to choose not to request payees to complete and return that statement.

This Treasury decision also makes a technical correction to the effective date of the "B" notice rules of the temporary and proposed regulations so that the rules apply only to notices of an incorrect TIN received by payors and brokers on and after September 1, 1990. This change is made to clarify that informational B notices received prior to September 1, 1990, are not treated as first notices for purposes of the ⅔ rule.

Special Analyses

These rules are not major rules as defined in Executive Order 12291 because the economic or other consequences are a direct result of a statute. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

There is a need for immediate guidance with respect to the amendments made in this Treasury decision. For this reason, it is found impracticable and contrary to the public interest to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Drafting Information

The principal author of these regulations is John M. Coulter, Jr., of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 35a

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 35a is amended as follows:

PART 35A—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Paragraph 1. The authority citation for part 35a continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

§ 35a.3406–1 [Amended]

Par. 2. Section 35a.3406–1 is amended as follows:

1. Paragraph (a)(1) is amended by removing the words ", after December 31, 1988,".

2. Paragraph (c)(3) is amended by:

a. Revising paragraph (c)(3)(iii);

b. Redesignating paragraphs (c)(3)(iv) through (viii) as paragraphs (c)(3)(v) through (ix), respectively;

c. Adding a new paragraph (c)(3)(iv); and

d. Revising newly redesignated paragraph (c)(3)(ix).

3. Paragraph (e) is amended by removing the second sentence.

4. Paragraph (f) is amended by revising paragraphs (f)(2)(iii), (iv), (v), (f)(3), and (f)(4)(ii).

5. Paragraph (h) is revised.

6. Paragraph (j), *Example 4* is amended by removing the second-to-last sentence and adding the following sentence in its place: "R must continue to backup withhold on the money market account until R receives notification from the Social Security Administration as described in paragraph (h) of this section."

7. A new paragraph (k) is added.

8. The text in the appendix following the paragraph entitled "*What to Do*" is revised.

9. The revised and added provisions read as follows:

§ 35a.3406–1 Imposition of backup withholding due to notification of an incorrect taxpayer identification number.

* * * * *

(c) * * *

(3) * * *

(iii) Informs the payee that—

(A) The payee must on the enclosed Form W–9 (or acceptable substitute form)—

(*1*) Correct the surname (or business name) or taxpayer identification number (or both) and certify, under penalties of perjury, that the newly provided taxpayer identification number is correct, or

(*2*) Certify, under penalties of perjury, that the taxpayer identification number originally furnished to the payor is correct and provide that number and the corresponding surname (or business name),

(B) If the taxpayer identification number originally furnished to the payor is correct, the payee must contact the Social Security Administration (or, in the case of an incorrect employer identification number, the Internal Revenue Service Center where the payee is required to file his income tax return) to resolve the problem giving rise to the notification of an incorrect taxpayer identification number, and

(C) If the notification of an incorrect taxpayer identification number is due to a name change by the payee that the payee has not communicated to the Social Security Administration (or, in the case of a change in a business name, to the Internal Revenue Service Center where the payee is required to file his income tax return), the payee must consistently with respect to all accounts with the payor either—

(*1*) Contact the Social Security Administration (or the Internal Revenue Service Center) to reassign the taxpayer identification number to the new surname (or business name), or

(*2*) If the payee is unable to contact the Social Security Administration (or

the Internal Revenue Service Center) at this time, use both the old and new surnames (or business names) on the enclosed Form W–9 (or acceptable substitute form);

(iv) At the payor's option, inform the payee that, if paragraph (c)(3)(iii)(B) or (C)(*1*) of this section applies, the payee must provide a statement to the payor that the payee has contacted the Social Security Administration (or the Internal Revenue Service);

* * * * *

(ix) States that the payee must complete and return the enclosed Form W–9 (or acceptable substitute form), and, if necessary, other documents of the payor as described in paragraph (c)(3)(v) of this section, before the time described in paragraph (c)(3)(vii) of this section in order to prevent backup withholding under section 3406(a)(1)(B) from starting, or after the time described in paragraph (c)(3)(vii) of this section to stop backup withholding once it has begun and to avoid the imposition of the penalty for failure to provide a correct taxpayer identification number.

* * * * *

(f) * * *

(2) * * *

(iii) The payor is required to disregard any future taxpayer identification numbers, whether or not certified under penalties of perjury, received from the payee with respect to the account unless the Social Security Administration (or the Internal Revenue Service in the case of an employer identification number) has notified the payor that such taxpayer identification number is correct;

(iv) As a result of providing an incorrect taxpayer identification number, the payor is required under section 3406(a)(1)(B) to begin backup withholding 20 percent of reportable payments made to the account of the payee no later than after the close of the day 30 business days after the date that the payor is notified of the incorrect taxpayer identification number if the Social Security Administration (or the Internal Revenue Service in the case of an employer identification number) has not notified the payor that the Social Security Administration (or the Internal Revenue Service) has validated the taxpayer identification number of the payee as described in paragraph (h) of this section; and

(v) The payee must contact the Social Security Administration (or, in the case of an incorrect employer identification number, the Internal Revenue Service Center where the payee is required to file his income tax return) in order to prevent backup withholding under section 3406(a)(1)(B) from starting or to stop it once it has begun.

(3) *Period during which backup withholding is required due to a second notification of an incorrect number within 3 years.* Upon receiving the second notice of an incorrect taxpayer identification number from the Internal Revenue Service or a broker as described in paragraph (f)(1) of this section, the payor must backup withhold on all reportable payments subject to backup withholding made to the account of the payee after the close of the 30th business day after the day on which the payor receives a notice described in paragraph (b) (1) or (2) of this section and until the payor receives the notification from the Social Security Administration (or the Internal Revenue Service in the case of an incorrect employer identification number) as described in paragraph (h) of this section.

(4) * * *

(ii) *Stopping backup withholding.* Pursuant to section 3406(e)(5)(B), the payor may, on a payee-by-payee basis or in general, treat the notification from the Social Security Administration (or the Internal Revenue Service in the case of an employer identification number) as described in paragraph (h) of this section as having been received at any time within 30 calendar days after such notification is received. The payor is permitted to stop backup withholding at the time the notice is treated, pursuant to this paragraph (f)(4)(ii), as having been received.

* * * * *

(h) *Notice from the Social Security Administration (or the Internal Revenue Service) to stop backup withholding.* A payor who received a notice pursuant to paragraph (f) of this section will be notified by the Social Security Administration (or the Internal Revenue Service in the case of an employer identification number) to stop backup withholding after the Social Security Administration (or the Internal Revenue Service) has validated the taxpayer identification number of the payee. A broker who received a notice pursuant to paragraph (b) of this section will be notified by the Social Security Administration (or the Internal Revenue Service in the case of an employer identification number) that the payee is no longer subject to backup withholding under section 3406(a)(1)(B) and that the broker is no longer required to provide notices to payors under paragraph (b)(2) of this section. A broker who receives a notice under this paragraph (h) from the Social Security Administration (or the Internal Revenue Service) is not required to provide the notice to any payor to which the broker has previously provided the notice required under paragraph (b)(2) of this section. The Social Security Administration (or the Internal Revenue Service) will notify a payor or a broker pursuant to this paragraph by providing an official form which verifies that the payee's taxpayer identification number is correct as associated with the listed surname or business name.

* * * * *

(k) *Effective date.* The provisions of this section apply with respect to notices described under paragraph (b) (1) or (2) of this section received by payors or brokers on or after September 1, 1990.

Appendix to § 35a.3406–1

* * * * *

If	Then
1. The last name and SSN on your account agree with the last name and SSN on your social security card	1. Contact your local SSA office to ascertain whether the information on SSA's records is different from that on your social security card and to resolve any problem. Also, put your name and SSN on the enclosed Form W–9 according to its instructions. Sign the Form W–9 and send it to us. (*Optional language:* Sign the statement below that you contacted SSA and send it to us.)
2. The SSN on your account is different from the SSN on your social security card, but the last name is the same	2. Put your name and SSN, as shown on your social security card, on the enclosed Form W–9 according to its instructions, sign it, and send it to us. No contact with SSA is necessary.

3. The last name on your account is different from the last name on your social security card, but the SSN is the same on both	3. Take one of the following steps (but not all): (a) If the last name on your account is correct, contact SSA to correct the name on your social security card. Put your SSN and name shown on your account on the enclosed Form W–9 according to its instructions, sign it, and send it to us. (*Optional language:* Sign the statement that you contacted SSA and send it to us.) (b) If the last name on your account is correct, but you are not able to contact SSA at this time, you can provide us with both last names. Put your SSN and the name shown on your social security card plus the last name shown on your account (in that order) on the enclosed Form W–9 according to its instructions, sign it, and return it to us. For example, if your social security card lists your maiden name, you can provide us with your SSN and your name in the following order: First/maiden/married name. Please note, however, that you should contact SSA as soon as possible. (c) If the last name on your social security card is correct, put that name and your SSN on the enclosed Form W–9 according to its instructions, sign it, and return it to us. No contact with SSA is necessary.
4. Both the last name and SSN on your account are different from the last name and SSN on your social security card	4. (a) If the last name and SSN on your social security card are correct, put that name and SSN on the enclosed Form W–9 according to its instructions, sign it, and send it to us. No contact with SSA is necessary. (b) If the last name on your account and the SSN on your social security card are correct, follow the procedures in section 3 (a) or (b) above. Be sure to put the name shown on your social security card on the Form W–9.

You must be consistent with the name and number (SSN) that you furnish (1) to us for all of your accounts and (2) to your other payors in order to avoid a problem in the future. If you must visit SSA, take this notice, your social security card, and other relevant documents with you. You should call SSA first so they can explain to you what other documents you need to bring to the SSA office.

Instructions for Nonindividuals

For most nonindividuals (such as trusts, estates, partnerships, and similar entities), the taxpayer identification number is the employer identification number (EIN). The EIN on your account may be incorrect because it does not contain the number of the actual owner of the account. For example, an account of an investment club or bowling league should reflect the organization's own EIN and name, rather than the SSN of a member. Please put the name and EIN on the enclosed Form W–9, sign it, and send it to us.

Instructions for Sole Proprietors

A sole proprietor must furnish his *individual* name and either his SSN or the EIN for his sole proprietorship. In addition to his individual name, the sole proprietor may also furnish the business name for the sole proprietorship provided that his individual name is listed before the business name. In no event may a sole proprietor furnish only the business name. Please put the individual name and SSN or EIN on the enclosed Form W–9, sign it, and send it to us.

Remember

You Must Send us a Signed Form W–9 Within 30 Calendar Days from the Date Shown at the Top of Page 1 even if the name and number (SSN or EIN) on your account with us match the name and number (SSN or EIN) on your social security card or the document issuing you an EIN. If we do not receive your Form W–9 and any other documents that are necessary for us to change the name or TIN (or both) on your account to reflect the name and number on the newly provided Form W–9, we may be required to withhold 20 percent from any reportable payment that we pay to your account until we receive the necessary documents.

(*Optional language:* Please complete the form below if you are required to contact SSA or the IRS).

Statement of SSA or IRS Contact

I hereby state that I have contacted the Social Security Administration concerning my social security number (SSN) or the Internal Revenue Service concerning my employer identification number (EIN) to resolve the problem with my name or number which resulted in my being notified of an incorrect taxpayer identification number.

(Print name)

(Signature)

By

(For Nonindividuals and Agents Only)

Date

(The portion below may be completed by the payor)

Account Number

Current TIN on Account

Current Name on Account

Dated: September 11, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon.,

Assistant Secretary of the Treasury.

[FR Doc. 91–22845 Filed 9–18–91; 1:58 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Ownership and Control, Improvidently Issued Permits, and Permit Rescission Procedures

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of a proposed amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed modifications to Kentucky Administrative Regulations (KAR) at 405 KAR 7:020 definitions, 405 KAR 8:010 general provisions for permits, 405 KAR 8:030 surface coal mining permits, 405 KAR 8:040 underground coal mining permits, and 405 KAR 12:020 enforcement. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

EFFECTIVE DATE: September 23, 1991.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Lexington, Kentucky 40504, Telephone (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and

amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Amendment

By a letter dated January 24, 1991, Kentucky submitted a program amendment to OSM containing proposed changes to 405 KAR 7:020 definitions, 405 KAR 8:010 general provisions for permits, 405 KAR 8:030 surface coal mining permits, 405 KAR 8:040 underground coal mining permits, and 405 KAR 12:020 enforcement (Administrative Record Number KY–1021). The proposed amendment is in response to OSM's 732 letter dated May 11, 1989 (Administrative Record Number KY–885) and Director Harry M. Snyder's letter of November 19, 1990 to Secretary Carl H. Bradley (Administrative Record Number KY–1016). OSM announced receipt of the proposed amendment in the February 19, 1991, **Federal Register** (56 FR 6594), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on March 21, 1991.

By letter dated June 3, 1991 (Administrative Record No. KY–1054), Kentucky submitted a revised proposed amendment. The revision was submitted in response to an issue letter dated March 25, 1991, from OSM (Administrative Record No. KY–1046). OSM announced receipt of the revisions to the previously proposed amendment in the July 5, 1991 **Federal Register** (56 FR 30722), and in the same notice, reopened the public comment period. The comment period closed on July 22, 1991.

III. Director's Findings

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

A. Revisions to Kentucky's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

405 KAR	Subject	Federal counterpart
7:020 sec. 1(71)	Definition: "Notice of Violation"	30 CFR 701.5
7:020 sec. 1(79)	Definition: "Owned or Controlled" and "Owns or Controls"	30 CFR 773.5
8:010 sec. 13(4) (a) and (b)	Review of Violations	30 CFR 773.15(b)
8:010 sec. 13(5)	Final Compliance Review	30 CFR 773.15(e)
8:010 sec. 18(5)	Updating Permit Information	30 CFR 773.17(i)
8:010 sec. 25(1)	Improvidently Issued Permits: Permit Review	30 CFR 773.20(a)
8:010 sec. 25(2)	Improvidently Issued Permits: Review Criteria	30 CFR 773.20(b)
8:010 sec. 25(3)	Improvidently Issued Permits: Remedial Measures	30 CFR 773.20(c)
8:010 sec. 25(4)	Improvidently Issued Permits: Rescission Procedures	30 CFR 773.21
8:030 sec. 2 (1) through (11)	Identification of Interests	30 CFR 778.13
8:040 sec. 2 (1) through (11)		
8:030 sec. 3 and 8:040 sec. 3	Violation Information	30 CFR 778.14
12:020 sec. 3(6)	Order for Cessation and Immediate Compliance: Notification	30 CFR 843.11(g)

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Kentucky's proposed rules are no less effective than the Federal rules, except as discussed below.

Proposed 405 KAR 8:010 section 13(4)(a) provides in part, "(I)n the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation . . .". This proposed language is identical to the Federal provisions at 30 CFR 773.15(b)(1). However, the Secretary, in the matter of *National Wildlife Federation* v. *Lujan*, Civ. No. 88–3117 Consolidated, has expressed his intention to reconsider the issue of whether, in the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation has been or is being corrected, as set forth in the Federal rule 'Memorandum of Points and Authorities In Support of the Federal Defendants' Cross-Motion For Summary Judgment and In Opposition to Plaintiffs' Motions For Summary Judgment, pp. 89–90).

Therefore, pending final resolution of the rulemaking currently being pursued by the Secretary regarding the Federal rule at 30 CFR 773.15(b)(1), action on that portion of proposed 405 KAR 8:010 section 13(4)(a) dealing with the presumption discussed above, is being deferred by the Director, and the State is advised that the presumption provisions can not be enforced by the State.

Similarly, action on proposed 405 KAR 8:010 section 25(2)(a)2 is being deferred, and the State is advised that the proposed rule can not be enforced, since that subsection relates to the same presumption issue discussed above, and the Secretary has indicated his intention to reconsider the corresponding Federal rule found at 30 CFR 773.20(b)(1)(ii), in the same proposed rulemaking relating to 30 CFR 773.15(b)(1) (Memorandum, p. 124).

B. Revisions to Kentucky's Regulations That Are Not Substantively Identical to the Corresponding Federal Regulations

(1) Kentucky is proposing to add 405 KAR 8:010 section 13(4)(c) which prohibits the issuance of a permit if the applicant, operator or anyone who owns or controls the applicant, controls or has controlled any surface coal mining and reclamation operation with a demonstrated pattern of willful violations of Kentucky Revised Statute (KRS) chapter 350 and regulations adopted pursuant thereto, of such nature and duration, and with resulting irreparable damage to the environment which indicates an intent not to comply with those laws and regulations. The proposal also affords the applicant or operator an opportunity for an adjudicatory hearing before the finding becomes final. The proposal is substantively identical to the Federal regulations at 30 CFR 773.15(b)(3) except to the extent that the proposed rule only provides for violations of the Kentucky statute and regulations adopted pursuant thereto. The Federal rule prohibits the issuance of a permit because of a demonstrated pattern of violations of SMCRA which indicates an intent not to comply with the Act. As explained in the preamble to 30 CFR 778.14(c) at 48 FR 44389 (September 28, 1983) and Finding 3(d)(iii) at 45 FR 82223 (December 15, 1980), the reference to

"the Act" in section 510(c) of SMCRA, on which this Federal regulation is based, includes all State and Federal regulatory programs approved under SMCRA. Therefore, the Director finds proposed 405 KAR 8:010 section 13(4)(c) to be less effective than its Federal counterpart at 30 CFR 773.15(b)(3) to the extent the proposal does not include violations of Federal regulatory programs and other State regulatory programs.

(2) Kentucky is proposing to add 405 KAR 8:030 section 2(12) and 405 KAR 8:040 section 2(12) which provide that a permit applicant shall submit information required by sections 2 and 3 of 405 KAR 8:030 and 8:040, on appropriate forms, which are incorporated by reference in 405 KAR 8:030 section 1(4) and 405 KAR 8:040 section 1(3). The Federal rule at 30 CFR 778.13(j) requires that a permit applicant submit the required information in a format prescribed by OSM. As discussed in the March 2, 1989 **Federal Register** (54 FR 8985), OSM will be operating the Applicant/ Violator System (AVS), and to ensure data accuracy and consistency, this information must be supplied in the format specified by OSM, regardless of the permit application forms required by the regulatory authority.

Therefore, to the extent that the proposed rule does not require the use of any format prescribed by OSM, the Director finds it to be less effective than the Federal counterpart.

C. Revisions to Kentucky's Regulations With No Corresponding Federal Regulations

(1) Kentucky is proposing to add at 405 KAR 7:020 section 1(16), a definition of "Cessation Order." As proposed, cessation order means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA. There is no counterpart for this definition in the Federal program. However, since the inclusion of the definition in the State program does not render any parts of the program less effective than the Federal regulations, the Director finds the definition to be not inconsistent with the requirements of SMCRA and the Federal regulations.

(2) Kentucky is proposing to add 405 KAR 8:030 section 1(4) (a) and (b), and 8:040 section 1(3) (a) and (b) which identify and incorporate by reference, eight (8) State forms which are required to be submitted by permit applicants. In addition, the proposals identify the locations and times at which the forms may be reviewed or obtained. There are no direct Federal counterparts to these proposed additions. The Director finds that the identification of specific State forms required in the State's permit application process is not inconsistent with the minimum requirements for permit applications found in the Federal regulations at 30 CFR part 778.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing was announced in the February 19, 1991, **Federal Register** (56 FR 6594). The comment period closed on March 21, 1991. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. The Kentucky Resources Council (KRC) filed comments in response to the proposed rule, and on May 10, 1991 resubmitted those comments in response to rulemaking action undertaken by the Kentucky Department for Surface Mining Reclamation and Enforcement (DSMRE). The nature and disposition of those comments are summarized below. Following Kentucky's submission of a revised proposed amendment on June 3, 1991 (Administrative Record No. KY–1054), the Director reopened the public comment period in the July 5, 1991 **Federal Register** (56 FR 30722). The comment period closed on July 22, 1991. The KRC filed comments on July 18, 1991 in response to Kentucky's revised proposed amendment. The nature and disposition of those comments are included in the following summary.

405 KAR 7:020

The KRC commented that Kentucky's definition of Cessation Order, as originally submitted, was ambiguous to the extent that the phrase "any similar order" could be construed to limit Kentucky's obligation to block permits to cessation orders issued by OSM for violations of the Kentucky program. The Director agrees that the definition could be misunderstood and, on March 26, 1991, requested that Kentucky amend the definition by adding "under SMCRA" following the phrase "any similar order issued by OSM." (Administrative Record No. KY–1046). In the revised amendment submitted on June 3, 1991, Kentucky made the suggested change (Administrative Record No. KY–1054). The Director feels that this change satisfies the concerns raised by KRC.

405 KAR 8:010

1. The KRC recommended that the State delete from section 13(4)(a), the presumption-of-correction provision.

As submitted by the State, this rule provides that, in the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation has been or is being corrected. This provision is consistent with the Federal rule contained in 30 CFR 773.15(b)(1). As pointed out by KRC, this Federal rule, along with other issues, is being addressed to the U.S. District Court for the District of Columbia in the consolidated cases of *National Wildlife Federation et al.* v. *Lujan*, Civ. No. 88–3117 Consolidated, and the KRC is a party-plaintiff to that litigation. KRC is basing its recommendation for deletion of the presumption on the fact that the Secretary, in the cited litigation, indicated a willingness to reconsider the rule, and is currently in the process of initiating further rulemaking on this subject. Therefore, as discussed in detail elsewhere herein, the Director is deferring further action on the presumption rule pending resolution of the rulemaking process. The KRC has raised the same concerns regarding the proposed addition at 405 KAR 8:010 section 25(2)(a)2 since it relates to the presumption-of-correction rule discussed above. For the same reasons, the Director is deferring further action on the proposed amendment to section 25(2)(a)2 as submitted by the State.

2. The KRC commented that the proposed language of section 13(4)(c) is inconsistent with section 510(c) of SMCRA and contrary to the Federal rule at 30 CFR 773.15(b)(3) to the extent that it limits violations to be considered for the purpose of a pattern of willful violations to those of state law and regulations alone. The Director agrees with KRC's comments and has determined that the State's proposed rule at section 13(4)(c) is less effective than the Federal regulations as discussed herein in Finding B(1).

405 KAR 8:030/8:040

The KRC expressed its concern regarding revisions made to the language of section 2 which addresses the identification of interests. In particular, the KRC objects to the deletion of subsections 2 (1)(e), (2), and (3) which require disclosure of the operator, principal shareholders, officers and directors of the applicant, and other information components mandated by section 507 of SMCRA.

As submitted by the State, the identification of interests rule contained in section 2 (1) through (4) is identical to the Federal rule at 30 CFR 778.13 (a) through (d). Those sections deleted by the State have simply been reworded

and relocated within the revised section 2. The old subsection (1)(e) referred to identification of the operator who will conduct the mining activities. Under the proposed rule, the operator is included under section 2(3) which references the definition of "owned or controlled" and "owns or controls" in 405 KAR 7:020 section 1(79). Subsection 1(79)(b)(2) refers to the operator of a surface coal mining operation. The same is true of the other two deleted subsections cited by the commenter. Both are now included in 405 KAR 8:030/8:040 section 2(3), which in turn references 405 KAR 7:020. The Director disagrees that the revisions proposed by the State remove any information requirements mandated by section 507 of the Act. The proposed rule is identical to the Federal rule and all information required under the old rule is still required. Since the proposed rule is no less effective than its Federal counterpart, the Director will not require Kentucky to may any further revisions.

405 KAR 12:020

KRC agrees that the notification requirements of section 3(6) conform to the Federal counterpart at 30 CFR 843.11(g).

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Kentucky program. The Bureau of Land Management, Soil Conservation Service, Mine Safety and Health Administration, U.S. Fish and Wildlife Service, Environmental Protection Agency, U.S. Bureau of Mines, Tennessee Valley Authority, and the Kentucky Heritage Council generally considered the amendment to be acceptable or submitted an acknowledgment with no comment.

V. Director's Decision

Based on the findings discussed above, the Director is approving, with certain exceptions, the proposed amendment as submitted to OSM by Kentucky on January 24, 1991 and revised on June 3, 1991. The Federal regulations at 30 CFR part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision. The Director is approving these State rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

As discussed in the findings listed below, the Director is not approving proposed provisions in the cited sections of the Kentucky program which have been found to be less effective than the counterpart Federal regulations and he is requiring Kentucky to further amend its program to correct the deficiencies identified.

Finding No.	405 KAR
B(1)	8:010 section 13(4)(c).
B(2)	8:030 section 2(12). 8:040 section 2(12).

In addition, the Director is deferring action on 405 KAR 8:010 section 13(4)(a) and 405 KAR 8:010 section 25(2)(a)2 to the extent that those sections provide for a presumption that a notice of violation has been or is being corrected, in the absence of a failure-to-abate cessation order. The Secretary is in the process of initiating rulemaking regarding the presumption issue and the State cannot enforce these provisions until the rulemaking process is completed, and the Director has advised the State of the action to be taken.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clear Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Kentucky program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA (30 U.S.C. 1292(d)), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 11, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 917.15, is amended by adding a new paragraph (ii) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(ii) The following amendments to the Kentucky Administrative Regulations (KAR) as submitted to OSM on January 24, 1991, and revised on June 3, 1991, are approved, with the exceptions noted, effective September 23, 1991. The approved amendments consist of modifications to the following Kentucky regulations (405 KAR):

7:020 section 1	Definitions.
8:010 section 13(4)	Review of Violations —Except for provisions of subsection (4)(a) relating to the "presumption of correctness" issue on which action is being deferred pending final resolution of the rulemaking regarding the Federal rule at 30 CFR 773.15(b)(1). —Except for subsection (4)(c) regarding basis for permit denial.
8:010 section 13(5)	Final Compliance Review.
8:010 section 18(5)	Updating Permit Information.
8:010 section 25(1)	Improvidently Issued Permits: Permit Review.
8:010 section 25(2)	Improvidently Issued Permits: Review Criteria —Except for provisions of subsection (2)(a)2 relating to the "presumption of correctness" issue on which action is being deferred pending final resolution of the rulemaking regarding the Federal rule at 30 CFR 773.20(b)(1)(ii).
8:010 section 25(3)	Improvidently Issued Permits: Remedial Measures.
8:010 section 25(4)	Improvidently Issued Permits: Rescission Procedures.
8:030 section 1(4) and	Surface & Underground Coal.
8:040 section 1(3)	Mining Permit Application Forms.
8:030 section 2 and 8:040 section 2	Identification of Interests. —Except for subsections (12) regarding the format for information submitted by permit applicant.
8:030 section 3 and 8:040 section 3.	Violation Information.
12:020 section 3(6)	Order for Cessation and Immediate Compliance: Notification.

3. 30 CFR 917.16, is amended by adding new paragraphs (e) and (f) to read as follows:

§ 917.16 Required program amendments.

* * * * *

(e) By March 23, 1992, Kentucky shall amend its rules at 405 KAR 8:010 section 13(4)(c) to include violations of Federal regulatory programs and other State regulatory programs, not just violations of KRS chapter 350 and regulations adopted pursuant thereto.

(f) By March 23, 1992, Kentucky shall amend its rules at 405 KAR 8:030 section 2(12) and 405 KAR 8:040 section 2(12) to require that information required by sections 2 and 3 of 405 KAR 8:030 and 8:040 shall be submitted on any format prescribed by OSM as well as any format prescribed by the Cabinet.

[FR Doc. 91–22698 Filed 9–20–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–91–12]

Special Local Regulations; San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.1105.

SUMMARY: This notice implements 33 CFR 100.1105 for the Navy Fleetweek Parade of Ships and Blue Angels Demonstration, San Francisco Bay, California. This Fleetweek event features a parade of ships sailing into the Bay and low level air shows performed by the Navy's Blue Angels and other aircraft along the San Francisco waterfront. The regulations in 33 CFR 100.1105 are needed to restrict vessel traffic in the regulated areas during Fleetweek 1991 to ensure the safety of participants and spectators.

EFFECTIVE DATE: The regulations in 33 CFR 100.1105 become effective on October 10th and 11th, 1991, at 11 a.m., and on October 12th, 1991, at 10:30 a.m. and terminate at 4 p.m. each day. In case of inclement weather on October 12, 1991, these regulations will become effective on October 13, 1991 at 11:30 a.m., and terminate on October 13, 1991, at 4 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant P.L. Newman, Operations Officer, U.S. Coast Guard Group San Francisco, California. Tel: (415) 399–3445, FAX (415) 399–3521.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are QM2 Julie Moe, Coast Guard Group San Francisco, and Lieutenant Commander Allen Lotz, Project Attorney, Eleventh Coast Guard District Legal Office, Long Beach, California.

Discussion of Notice

The U.S. Navy/City of San Francisco Fleetweek Navy Parade of Ships and the Navy Blue Angels Aerial Show will be held on Saturday, October 12, 1991. Regulated area "Alpha" will ensure unobstructed waters for safe navigation for the Parade of Navy Ships proceeding inbound via the Eastbound San Francisco Bay Traffic Lane. Following the ship parade, regulated area "Bravo" for the aerial demonstration by the U.S. Navy Blue Angels and other aircraft will ensure the safety of the aircraft, vessels, and persons onboard. An aerial demonstration may be scheduled on Sunday, October 13, 1991, if weather prevents the Saturday performance. The regulated area for the performance by the Blue Angels and other aircraft will restrict vessel access to some marinas and commercial docks. The short duration and minimal size of the regulated area will minimize any inconvenience.

Persons and vessels shall not enter or remain within the stated distances from the naval parade vessels in regulated area "Alpha," or enter or remain within regulated area "Bravo," unless authorized by the Coast Guard Patrol Commander. Fleetweek activities have traditionally attracted a sizable fleet of vessels, and large vessel operators

needing to transit near Fleetweek activities are encouraged to make such transits well before or after the regulated areas are in effect.

Dated: September 13, 1991.

M.E. Gilbert,

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

[FR Doc. 91-22809 Filed 9-20-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage

CFR Correction

In title 40 of the Code of Federal Regulations, parts 260 to 299, revised as of July 1, 1990, on page 360, in the second column, § 265.147(a)(1)(i) and (ii) were inadvertently omitted and should appear after § 265.147(a)(1) introductory text as follows:

§ 265.147 Liability requirements.

(a) * * *

(1) * * *

(i) Each insurance policy must be amended by attachment of the Hazardous Waste Facility Liability Endorsement, or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in § 264.151(i). The wording of the certificate of insurance must be identical to the wording specified in § 264.151(j). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Regional Administrator, or Regional Administrator if facilities are located in more than one Region. If requested by a Regional Administrator, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

* * * * *

BILLING CODE 1505-01-D

40 CFR Part 799

[OPTS-42116; FRL 3800-7]

RIN 2070-AB94

Testing Consent Order for 4-vinylcyclohexene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This final rule announces that EPA has signed an enforceable Testing Consent Order for 4-vinylcyclohexene (4-VCH, butadiene dimer, CAS No. 100-40-3), with nine manufacturers, who have agreed to perform subchronic effects, mutagenicity, pharmacokinetics, and aqueous volatilization rate testing on 4-VCH. This rule adds 4-VCH to the list of Testing Consent Orders in 40 CFR 799.5000 for which the export notification requirements of 40 CFR part 707 apply. This rule constitutes EPA's response to the Interagency Testing Committee's (ITC) recommendation that EPA consider health effects and chemical fate testing of 4-VCH.

EFFECTIVE DATE: September 23, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 260-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR part 790, nine manufacturers have entered into a Testing Consent Order with EPA in which they have agreed to perform subchronic effects, mutagenicity, pharmacokinetics (*in vitro* partition coefficient study and *in vitro* metabolism study), and aqueous volatilization rate testing for 4-VCH. This rule amends 40 CFR 799.5000 by adding 4-VCH to the list of chemical substances and mixtures subject to Testing Consent Orders.

I. ITC Recommendation

In its Twenty-Fifth Report to EPA, published in the **Federal Register** of December 12, 1989 (54 FR 51114), the ITC recommended 4-VCH for health effects and chemical fate testing. The health effects tests recommended were pharmacokinetics and oncogenicity by inhalation. The ITC recommended testing by inhalation because inhalation is likely to be the major route of exposure. The chemical fate test recommended was the aqueous volatilization rate test.

II. Testing Consent Order Negotiations

In the **Federal Register** of December 12, 1989 (54 FR 51114), and in accordance with the procedures established in 40 CFR 790.28, EPA requested persons interested in participating in or monitoring testing negotiations for 4-VCH to contact EPA. EPA held public meetings with interested parties (the nine manufacturers, the Synthetic Organic Chemical Manufacturers Association, and the International Institute of Synthetic Rubber Processors) on May 3, May 22, June 7, June 28, and October 23, 1990, to discuss the testing appropriate for 4-VCH. EPA and nine manufacturers signed a Testing Consent Order for 4-VCH. Under the Testing Consent Order, the nine manufacturers have agreed to conduct or to provide for the conduct of the following:

(1) An *in vivo* mammalian cytogenetics micronucleus assay in rats and mice.

(2) An *in vivo* testicular alkaline elution assay, if triggered.

(3) A pharmacokinetics study (*in vitro* partition coefficient and *in vitro* metabolism).

(4) Subchronic studies in rats in mice.

(5) An aqueous volatilization rate test.

EPA believes that on the basis of existing data and ongoing testing, EPA will be able to reasonably predict the potential oncogenicity of 4-VCH and is not recommending oncogenicity testing at this time. The specific test standards to be followed and the testing schedule for each test are included in the Testing Consent Order. Procedures for submitting study plans, modifying the Testing Consent Order, monitoring the testing, and other provisions are also included in the Testing Consent Order.

III. Production, Use, Exposure and Release

A. Physicochemical Properties

The substance 4-VCH is a colorless liquid with a water solubility of 5 ppm (Ref. 1). It has an estimated vapor pressure of 10.2 torr at 25° C and has a calculated log P of 3.38 (Ref. 1).

B. Production

Information submitted by the Butadiene Panel of the Chemical Manufacturers Association (the Panel) indicates that, in 1989, a total of approximately 8 million pounds of 4-VCH (butadiene dimer) was present in all streams leaving the crude or refined butadiene process. Approximately 350,000 pounds of 4-VCH was present in butadiene products leaving the production site (Ref. 2).

Approximately 4,630,000 pounds (58 percent) of the total 4-VCH in butadiene purge streams was destroyed. Approximately 3,300,000 pounds (42 percent) was blended into motor gasoline or fuel oil (Ref. 2).

Approximately 3 million to 4.5 million additional pounds of 4-VCH was generated in non-butadiene processes. Virtually all of that material was reacted or otherwise destroyed by the producer. The only exception was less than 500,000 pounds of 4-VCH which was sold as a product. This 4-VCH was then consumed by a small number of customers in industrial settings (Ref. 2).

In addition to being produced as a by-product in the butadiene and other processes, 4-VCH may be generated in processing butadiene into polymers and synthetic rubber and in processing synthetic rubber into other products such as tires.

C. Uses

4-VCH may be used as an intermediate in the manufacture of 4-vinylcyclohexene mono- and diepoxides, which are used to make epoxy resins, polyesters, coatings, and plastics; and may also be used in the manufacture of flame retardants, insecticides, plasticizers, and antioxidants (Refs. 3 and 4).

D. Occupational Exposure

Approximately 1,300 employees are potentially exposed to 4-VCH at 17 sites that produce crude or refined butadiene, or generate and isolate 4-VCH for use in other processes (Ref. 2). Because 4-VCH is almost always present with butadiene in crude or refined butadiene units, most of these employees are also exposed to butadiene. EPA believes that controls in place to protect workers from exposure to butadiene at butadiene manufacturing facilities will tend to limit worker exposure to 4-VCH at these facilities. At butadiene manufacturing facilities levels of 4-VCH in the workplace should be less than butadiene levels because 4-VCH's concentration of butadiene tends to be low, and in addition its vapor pressure is much lower than that of butadiene. Monitoring of personnel (short-term and time-weighted-average) has been conducted at one butadiene site and at two non-butadiene sites where 4-VCH is generated and isolated. Personnel samples for current plant operations averaged under 1 ppm (Ref. 2).

In addition, occupational exposure to 4-VCH may occur from its use as an intermediate, in the production of polymers made from butadiene, in the production of synthetic rubber, and in the use of synthetic rubber to make other products such as tires. The Panel has agreed to provide EPA with monitoring data from butadiene manufacturers, on-purpose producers of 4-VCH, and domestic 4-VCH customers. The International Institute of Synthetic Rubber Processors (IISRP) has agreed to provide EPA with monitoring data from the synthetic rubber processors and possibly from some downstream users of synthetic rubber, e.g., manufacturers of tires. However, the exposure monitoring program is voluntary and outside the framework of the Testing Consent Order.

E. Environmental Release and Exposure

Approximately 31,000 pounds per year of 4-VCH fugitive air emissions is released by 12 companies (17 sites), ranging from 0 to 15,000 pounds per year per site. Four of these companies (7 sites) reported a total of less than 100 pounds per year of air emissions from other sources. A total of approximately 6,000 pounds of 4-VCH at 13 sites (range: 0 to 3,500 pounds per site) is discharged each year into plant sewers and sent to plant waste treatment units (Ref. 2).

In a comprehensive survey sponsored by EPA's Office of Water, 4-VCH was detected in the following categories of waste water facilities (occurrence frequency; median and maximum concentrations in μg/L): organics and plastics (2; 227, 446.7), rubber processing (6; 78.8, 681.7), publicly owned treatment works (7; 4.9, 8.5) (Ref. 1).

F. Health Effects

1. *Metabolism and pharmacokinetics.* The metabolism of 4-VCH, studied *in vitro*, indicated that it is oxidized at either of its two double bonds to produce the corresponding diol compounds via intermediate epoxides (Refs. 5 and 6). Under the sponsorship of the National Toxicology Program (NTP), the chemical disposition of 4-VCH in rats has been studied by the oral route (Ref. 7).

2. *Acute and subchronic effects.* Acute effects have been reported by Striegel and Carpenter (Ref. 8), Bykov (Ref. 9) and Smyth et al. (Ref. 10). Prechronic (14-day) and subchronic (11-week) studies, sponsored by NTP on 4-VCH, were conducted in rats and mice by gavage (Ref. 11). There was a high incidence of mortality in both NTP studies.

In the 13-week NTP study, the major finding under histologic examination was a reduction in the number of primary follicles and mature graafian follicles of the ovaries of all 10 high-dose female mice, whether they died before or at the end of the study. (The ovaries of female mice receiving lower doses were not similarly examined.) Administration of 4-VCH by inhalation (1 g/m3 for 6 hours/day, over a period of 4 months) inhibited body weight increase and caused leucocytosis, leucopenia and impairment of hemodynamics in rats and mice (Ref. 9).

3. *Genotoxicity.* 4-VCH was non-mutagenic in Salmonella typhimurium strains TA98, TA100, TA1535, and TA1537 with or without metabolic activation (Ref. 12). 4-VCH gave a negative response in the cytogenetic (chromosomal aberration/sister chromatid exchange) assays and a positive response in the mouse lymphoma assay (Ref. 13).

4. *Oncogenicity.* NTP studied the carcinogenic effect of 4-VCH in rats and mice and found clear evidence of carcinogenicity in female mice, on the basis of a significant increase in the incidence of uncommon ovarian neoplasms. The results were inconclusive in male mice and both sexes of rats because of extensive early mortality (Refs. 13 and 14).

5. *Reproductive and developmental effects.* As discussed in Unit III.F.2. of this preamble in the 13-week subchronic study, 4-VCH caused a reduction in the number of primary follicles and mature graafian follicles in the ovary. 4-VCH was selected for a continuous breeding study by NTP. The exposure phase of this study has been completed; however, the final report is not yet available.

6. *Chronic (long-term) effects.* No information was found.

IV. Testing Program Under The Testing Consent Order

On May 29, 1990, the Panel presented a testing proposal for 4-VCH to EPA (Ref. 15). EPA believes that, with minor modifications, the testing outlined in that proposal along with existing data address EPA's data needs for 4-VCH and should also provide information on the relative potencies of butadiene and 4-VCH (butadiene dimer). Specifically, the nine signatory companies of the Testing Consent Order have agreed to conduct or sponsor, through the Panel, the health effects and chemical fate tests discussed in Units IV.A. and IV.B. of this preamble and summarized in the following Table 1:

TABLE 1.—TESTING PLAN FOR 4-VCH

Test	Report Date[1]
1. Aqueous Volatilization	10
2. Micronucleus, 2-day	12
3. Pharmacokinetics:	
(a) *In vitro* partition coefficient in rat and mouse tissue	18

TABLE 1.—TESTING PLAN FOR 4-VCH—Continued

Test	Report Date[1]
(b) *In vitro* metabolism in rat and mouse tissue	18
4. Micronucleus, 13-week (to be conducted only if the 2-day micronucleus test is negative or equivocalin both rats and mice)	24
5. 90-day subchronic tests in rats and mice	30
6. In vivo testicular alkaline elution assay (to be conducted onlyif the 13-week micronucleus test is negative or equivocal in both rat and mouse)	42

[1] Number of months after the effective date of the Testing Consent Order when the final report must be submitted to EPA.

A. Health Effects Testing Under the Consent Order

1. *Subchronic study by the inhalation route.* This study will be carried out in both sexes of mice and rats using three groups exposed to 4-VCH, an unexposed group, and a group exposed to butadiene. The study will last for 90 days. The design of this study will provide a direct comparison between 4-VCH and butadiene in terms of systemic toxicity and target organs (e.g., lung).

2. *Cytogenetic study.* A micronucleus assay will be conducted in the bone marrow of both rats and mice. Rats and mice will be assessed for increased micronuclei formation following two 6-hour exposures. If the response is negative or equivocal following these exposures, the bone marrow of exposed and control animals will be examined following 13 weeks of exposure. The experimental design should allow for direct comparison of 4-VCH with butadiene, which does cause an increase in micronucleus induction and bone marrow toxicity in mice following two 6-hour exposures to 1,000 ppm butadiene in air. In the event the 13-week micronucleus test is negative or equivocal in both rats and mice, the Panel will conduct an *in vivo* testicular alkaline elution assay.

3. *Partition coefficient and in vitro* metabolism testing. To examine the pharmacokinetics and acquire data for development of a physiologically based pharmacokinetic (PBPK) model for 4-VCH, the Panel has agreed to:

(a) Determine the *in vitro* partition coefficients for 4-VCH, 4-VCH-1,2-epoxide, 4-VCH-7,8-epoxide, and 4-VCH-diepoxide in blood, lung, liver, and ovaries of rats and mice.

(b) Determine *in vitro* metabolic rate constants in the lung, liver, and ovaries of rats and mice for the conversion of 4-VCH to its monoepoxide metabolites, and for the monoepoxides to the diepoxide.

(c) Determine the rates of hydrolysis of the epoxides in the lung, liver and ovaries of rats and mice (Ref. 16).

B. Chemical Fate Testing Under the Testing Consent Order

Aqueous volatilization rate. The Panel has agreed to conduct the aqueous volatilization rate test recommended by the ITC. The results of this test will give EPA information on the persistence of 4-VCH in the environment.

C. Chemical Substance to be Tested

The substance 4-VCH will be tested and shall be as pure as can be reasonably attained but shall be at least 98 percent pure.

V. Standards and Methodologies for Conducting Testing

Testing shall be conducted in accordance with the protocols, guidelines, and methodologies set forth in the Appendices to the Testing Consent Order (collectively "Test Standards"). The Companies, through the Panel, and EPA will consult in a good faith effort to determine if test standard modifications are necessary. Modifications to this order shall be governed by 40 CFR 790.68.

VI. Reporting Requirements

All final Study reports must be submitted to EPA by the times specified in Table 1 (See Unit IV of this preamble), unless otherwise authorized by EPA. In addition, interim status reports for testing shall be submitted to EPA every 6 months beginning 6 months after the effective date of the Testing Consent Order until the last final report is submitted.

VII. Export Notification

The issuance of the Testing Consent Order subjects any person who exports or intends to export 4-VCH to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR part 707. A listing of Testing Consent Orders issued by EPA is published at 40 CFR 799.5000. This listing serves as notification to persons, who export or intend to export chemical substances or mixtures which are the subject of Testing Consent Orders, that 40 CFR part 707 applies.

VIII. Rulemaking Record

EPA has established a record for this Rule and the Testing Consent Order (docket number OPTS-42116). This record contains the basic information considered by EPA in developing this Rule and the Testing Consent Order.

This record includes the following information:

A. Supporting Documentation

(1) Testing Consent Order for 4-Vinylcyclohexene.

(2) **Federal Register** notices pertaining to this final rule and the Testing Consent Order consisting of:

(a) Notice of Interim Final Rule on procedures governing Testing Consent Agreements and Test Rules and Exemption Procedures (51 FR 23706; June 30, 1986).

(b) Notice of Interim Final Rule on procedures governing Testing Consent Agreements and Test Rules (54 FR 36311, September 1, 1989).

(c) Toxic Substances Control Act Test Guidelines; Final Rules (50 FR 39252, September 27, 1985).

(d) Notice of Final Rule revising the Toxic Substances Control Act Test Guidelines (52 FR 19056, May 20, 1987).

(e) Notice of Final Rule requiring section 8(a) and 8(d) reports on 4-vinylcyclohexene (54 FR 51131, December 12, 1989).

(f) TSCA Section 8(a) Confidential Business Information (CBI) data submitted in response to final rule requiring TSCA section 8(a) reporting on 4-vinylcyclohexene (54 FR 51131, December 12, 1989).

(3) Communications consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

B. References

(1) USEPA. Notice containing the ITC recommendation of 4-VCH to the Priority List and soliciting interested parties for developing a consent order for 4-VCH (54 FR 51114, December 12, 1989).

(2) CMA. Chemical Manufacturers Association. Report on the Survey of the Butadiene Panel of the Chemical Manufacturers Association. Submitted to the U. S. Environmental Protection Agency, Office of Toxic Substances, Washington, DC (May 3, 1990).

(3) IARC. International Agency for Research on Cancer. "4-Vinylcyclohexene." IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Humans. 11:277–81 (1976).

(4) IARC. International Agency for Research on Cancer. "4-Vinylcyclohexene." IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Humans. 39:181–192 (1986).

(5) P.G. Gervasi, A. Abbondandolo, L. Citti and G. Turchi. "Microsomal 4-vinylcyclohexene mono oxygenase and mutagenic activity of metabolic intermediates." *Proceedings of the International Conference on Industrial and*

Environmental Xenobiotics, pp. 205–210 (1981).

(6) T. Watabe, A. Hiratsuka, N. Ozawa and M. Isobe. "A comparative study on the metabolism of Z-limonene and 4-vinylcyclohex-1-ene by hepatic microsomes." *Xenobiotica* 11:333–344 (1981).

(7) I.G. Sipes, D.E. Carter and B.J. Smith. "Chemical disposition in mammals: final report (investigations into the role of disposition and metabolism in 4-vinylcyclohexene (VCH) induced ovarian tumors) for the National Toxicology Program." (1989).

(8) J.A. Striegel and C.P. Carpenter. "Range finding tests on 4-vinyl-1- cyclohexene." Mellon Institute of Industrial Research Special Report. Report No. 24–78. Obtained from USEPA FYI-OTS–0785–0397 FLWP Sequence F. (August 28, 1961).

(9) L.A. Bykov. "Maximum permissible concentration of vinylcyclohexene in the air of industrial buildings." In: *Proceedings of a Conference on the Toxicology and Hygiene of Petrochemical Industrial Products*. Moscow, pp. 32–34 (1968).

(10) H.F. Smyth, Jr., C.P. Carpenter, C.S. Weil, U.C. Pozzani, J.A. Striegel and J.S. Nycum. "Range-finding toxicity data. VII." *American Industrial Hygiene Association Journal*. 30:470–476 (1969).

(11) J.J. Collins and A.G. Manus. "Toxicological evaluation of 4-vinylcyclohexene: I. Prechronic (14–day) and subchronic (13 week) gavage studies in Fischer 344 rats and B6C3F1 mice." *Journal of Toxicology and Environmental Health*. 21:493–506 (1987).

(12) E. Zeiger, B. Anderson, S. Haworth, T. Lawlor, K. Mortelmans and W. Speck. "Salmonella mutagenicity tests: III. Results from the testing of 255 chemicals." *Environmental Mutagenesis*. 9(9):1–110 (1987).

(13) NTP. National Toxicology program. "NTP CHEMTRACK. [data base]." Research Triangle Park, NC: National Toxicology Program/National Institute of Environmental Health Sciences. U.S. Department of Health and Human Services. Results report as of 10–30–89 (1989).

(14) NTP. National Toxicology Program. "Toxicology and carcinogenesis studies of 4-vinylcyclohexene (CAS No. 100–40–3) in F344/N rats and B6C3F1 mice (gavage studies)." NTP Technical Report Series No. 303, NIH PB No. 86–2559, U.S. Department of Health and Human Services, Public Health Service. National Institutes of Health (1986).

(15) CMA. Chemical Manufacturers Association, Washington, DC. Proposed Framework for Addressing the ITC's Testing Recommendations for 4-VCH with Addendum. Submitted to the U. S. Environmental Protection Agency, Office of Toxic Substances, Washington, DC (May 29, 1990; June 22, 1990).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, rm. NE–G004, 401 M St., SW., Washington, DC from 8 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

IX. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 445 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project, (2070–0033) Washington, DC 20503.

List of Subjects In 40 CFR Part 799

Chemical export, Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Testing.

Dated: September 13, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding the following chemical substance in Chemical Abstract Service (CAS) Registry Number order to the table, to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service numbers.

* * * * *

CAS Number	Substance or mixture name	Testing	FR Citation
•	•	•	•
100–40–3	4-vinylcyclohexene	Health effects Chemical fate	[Insert FR date] [Insert FR date]
•	•	•	•

[FR Doc. 91–22872 Filed 9–20–91; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5400, 5420, 5450, 5460, and 9230

[WO–230–4311–02–1A 24; Circular No. 2633]

RIN 1004-AB48

Sales of Forest Products; General; Preparation for Sale; Award of Contract; Sales Administration; Trespass

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction.

SUMMARY: The Bureau of Land Management is correcting an editorial error in the final rule on timber trespass published in the **Federal Register** on March 11, 1991 (56 FR 10173).

EFFECTIVE DATE: April 10, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653–8864.

The following corrections are made in the subject final rule:

1. On page 10174, first column, in line 3 of the last partial paragraph beginning

at the bottom of the column, change "§ 5450.1(c)" to "§ 5450.1(d)".

2. On page 10175, third column, in item 10, § 5450.1, correct the amendatory language by changing "paragraph (c)" to "paragraph (d)," and correct the regulatory text by redesignating paragraph (c) as paragraph (d).

Dated: September 13, 1991.

Richard Roldan,

Acting Assistant Secretary of the Interior.

[FR Doc. 91-22691 Filed 9-20-91; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7522]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt the administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and Floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry read as follows:

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Kentucky: Graves County, unincorporated areas	210282	Aug. 7, 1991	11-4-77.
Illinois: Ashland, village of, Cass County	171025	Aug. 12, 1991	—
Georgia: Braselton, town of, Jackson & Barrow Counties	130343	.....do	—
Illinois: Chatsworth, town of, Livingston County	171027	Aug. 13, 1991	—
Illinois: Elburn, village of, Kane County	171026	.....do	—
Nebraska: Holstein, village of, Adam County	310288	Aug. 14, 1991	7-18-75.
New Hampshire: Danville, town of, Rockingham County	330199	Aug. 15, 1991	1-17-75.
Ohio: Vinton County, unincorporated areas	390553	Aug. 22, 1991	1-9-81.
Tennessee: Saltillo, town of, Hardin County	470083	Aug. 29, 1991	8-6-76.
New Eligibles—Regular Program			
Texas: [1] Lowry Crossing, city of, Collin County	481631	Aug. 22, 1991	9-4-91.
California: [2] Temecula, city of, Riverside County	060742	Aug. 28, 1991	9-30-88.
Reinstatements—Regular Program			
West Virginia: Danville, town of, Boone County	540230	July 1, 1975, Emerg.; Apr. 16, 1991, Reg.; Apr. 16, 1991, Susp.; Aug. 2, 1991, Rein.	4-16-91.
Pennsylvania:			
Shelocta, borough of, Indiana County	420506	Oct. 7, 1975, Emerg.; Dec. 5, 1989, Reg.; Dec. 5, 1989, Susp.; Aug. 5, 1991, Rein.	12-5-89.
Canton, township of, Washington County	421201	May 20, 1975, Emerg.; Nov. 5, 1986, Reg.; Nov. 5, 1986, Susp.; Aug. 6, 1991, Rein.	11-5-86.
Ohio: Magnolia, village of, Carroll and Stark Counties	390051	Feb. 2, 1976, Emerg.; Sept. 1, 1986, Reg.; Apr. 2, 1990, Susp.; Aug. 13, 1991, Rein.	9-1-86.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Vermont: Lowell, town of, Orleans County	500254	July 16, 1976, Emerg.; Dec. 4, 1985, Reg.; Dec. 4, 1985, Susp.; Aug. 14, 1991, Rein.	12-4-76
Wisconsin: Evansville, city of, Rock County	550366	Feb. 5, 1975, Emerg.; Jan. 18, 1984, Reg.; Jan. 18, 1984, Susp.; Aug. 14, 1991, Rein.	1-18-84.
New Hampshire: Tamsworth, town of, Orleans County	330018	July 21, 1976, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.; Aug. 22, 1991, Rein.	7-16-91.
Florida: Liberty County, unincorporated areas	120148	May 19, 1978, Emerg.; July 16, 1991, Reg.; July 16, 1991, Susp.; Aug. 26, 1991, Rein.	7-16-91.
Pennsylvania: Hawley, borough of, Wayne County	420863	July 18, 1974, Emerg.; Aug. 19, 1991, Reg.; Aug. 19, 1991, Susp.; Aug. 28, 1991, Rein.	8-19-91.
Region I—Regular Program Conversions			
Massachusetts:			
Becket, town of, Berkshire County	250018	Aug. 5, 1991, suspension withdrawn.	Aug. 5, 1991.
Sandwich, town of, Barnstable County	250012	do.	Do.
Maine:			
Berkwick, town of, York County	230144	do.	Do.
Glenburn, town of, Penobscot County	230106	do.	Do.
Livermore Falls, town of, Androscoggin County	230006	do.	Do.
Vermont: Bethel, town of, Windsor County	200143	do.	Do.
Region II			
New Jersey: Dover, township of, Ocean County	345293	do.	Do.
New York:		do.	Do.
Harrison, town of, Westchester County	360912	do.	Do.
Southport, town of, Chemung County	360156		
Region III			
Pennsylvania:			
Scrubgrass, township of, Venango County	422542	Aug. 5, 1991	Aug. 5, 1991.
Shinglehouse, borough of, Potter County	420764	do.	Do.
Region VI			
Arkansas: Pulaski County, unincorporated areas	050179	do.	Aug. 5, 1991.
Region V—Regular Conversions			
Ohio:			
Delphos, city of, Allen County	390005	Aug. 19, 1991	Aug. 5, 1991.
Monroe, village of, Butler County	390042	do.	Do.
Pickerington, village of, Fairfield County	390162	do.	Do.
Salineville, village of, Columbiana County	390628	do.	Do.
Wisconsin:			
Rhinelander, town of, Oneida County	550301	do.	Do.
Sturgeon Bay, city of, Door County	550111	do.	Do.
Region VII—Regular Conversions			
Kansas: Cherokee County, unincorporated areas	200044	Aug. 19, 1991	Aug. 5, 1991
Region I			
Maine:			
Houlton, town of, Aroostook County	230021	do.	Aug. 19, 1991.
Granville, town of, Addison County	500003	do.	Do.
Hancock, town of, Addison County	500005	do.	Do.
Region II			
New York:			
Freedom, town of, Cattaraugus County	360074	do.	Aug. 19, 1991.
Mamakating, town of, Sullivan County	360826	do.	Do.
Region III			
Pennsylvania:			
Armash, township of, Mifflin County	421879	do.	Aug. 19, 1991
Austin, borough of, Potter County	420760	do.	Do.
Jackson, township of, Venango County	422535	do.	Do.
Region III—Regular Conversions			
Pennsylvania:			
Osceola, township of, Tioga County	421182	Aug. 19, 1991	Aug. 19, 1991.
Roulette, township of, Potter County	421986	do.	Do.
Sharon, township of, Potter County	421987	do.	Do.
Shippingport, borough of, Beaver County	420117	do.	Do.
Sterling, township of, Wayne County	422175	do.	Do.
Sweden, township of, Potter County	421989	do.	Do.
Valley, township of, Montour County	421924	do.	Do.
Virginia:			
Isle of Wight County, unincorporated areas	510303	do.	Do.
Page County, unincorporated areas	510109	do.	Do.
Region IV			
Alabama: Guntersville, city of, Marshall County	0311	do.	Aug. 19, 1991.
Region V			
Wisconsin: Arcadia, city of, Trempealeau County	550439	Aug. 19, 1991	Aug. 19, 1991.
Illinois: Pontoon Beach, Valley of, Madison County	170447	do.	Do.
Region VI			
Arkansas: Ashdown, city of, Little River County	050129	do.	Aug. 19, 1991.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Region IX			
California: Grass Velly, city of, Nevada County	060211	.....do.....	Aug. 19, 1991.

[1] The city of Lowry Crossing has adopted Collin County's FIRM dated 9-4-91, for floodplain management and flood insurance purposes.
[2] The city of Temceula has adopted Riverside County's FIRM dated 9-30-88, for floodplain management and flood insurance purposes.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: September 16, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-22830 Filed 9-20-91; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355-7127]

Atlantic Tuna Fisheries

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

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice to close the fishery for Atlantic bluefin tuna conducted by vessels angling for young school, school or medium-sized bluefin tuna. Closure of this segment of the fishery is necessary because it has been determined that the annual quota for this category has been attained. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: The closure is effective from 0001 hours local time October 8, 1991, through December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508-281-9324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 FR 43396).

Section 285.22(e) of the regulations provides for an annual quota of 126.1 metric tons (mt) of young school, school and medium-sized Atlantic bluefin tuna to be harvested from the Regulatory Area by anglers. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of gear subject to the quotas. The Assistant Administrator has determined that the quota of Atlantic bluefin tuna allocated for the Angling category for 1991 has been attained. Fishing for, and retention of, any young school, school or medium Atlantic bluefin tuna harvested under § 285.22(e) must cease at 0001 local time on October 8, 1991. Failure to close this category is likely to result in quota overages.

Other Matters

Because the Angling category fishery does not require permits, it is difficult to provide direct notification of this action to recreational fishermen. Therefore, notice of this action will be mailed to Atlantic bluefin tuna dealers and fishermen permitted in the other categories, several industry publications, associations and state agencies. These notices will be mailed several days prior to the effective date of the closure so that fishermen may become informed of the closure through one or more of these avenues. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: September 17, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-22878 Filed 9-20-91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 184
Monday, September 23, 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 THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[No. 91-305]

RIN 1550-AA38

Savings and Loan Holding Companies; Registration, Examination and Reports; Statements, Applications, Reports and Notices To Be Filed

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision ("Office") is proposing to amend its regulations pertaining to holding company reporting requirements. In updating existing forms to reflect changes necessitated by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, the Office proposes to combine several forms to streamline the reporting process and ease the burden on savings and loan holding companies. In particular, the current reporting requirements set forth in Forms H-(b)3, H-(b)4, H-(b)5 and H-(b)10 Registration Statements would be contained in one body of instructions for all Registrants, the H-(b)10. In addition, the H-(b)11 Annual Report and the H-(b)12 Current Report would be merged into one set of instructions requiring an annual filing with quarterly updates informing the Office of any changes. The H-(f) Dividend Notification would be rescinded since the requirements contained in the Capital Distributions Regulation exceed those contained in the current form.

DATES: Comments must be received on or before October 23, 1991.

ADDRESSES: Comments must be submitted to: Director, Information Services Division, Office of Communications, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Lori A. Kirschler, Program Analyst (202) 906-5651, Michael P. Scott, Program Manager, (202) 906-5748, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Office is proposing to amend its regulations pertaining to holding company reporting requirements. The proposed amendment would affect the registration, annual and current reporting requirements.

Registration Statements

As currently structured, four separate registration statements exist for holding companies. Separate statements were originally deemed necessary to accommodate special types of holding companies (i.e., companies that became a savings and loan holding company as a result of being a secured creditor, voting trusts, and corporate trustees).

The Office proposes that these forms be combined into one package to avoid the confusion that often results in determining the appropriate registration statement and having to obtain a separate set of instructions to meet regulatory reporting requirements. The reporting requirements may still vary depending on the type of entity registering as a savings and loan holding company, but instructions for all registrants would be contained in the body of one form, the H-(b)10 Registration Statement.

Annual/Current Reports

Section 10(b) of the Home Owners' Loan Act, as amended, and part 584 of the Regulations promulgated thereunder provide that each savings and loan holding company and each subsidiary thereof, other than a savings association, is required to file reports with the OTS as may be required by the Director. The Director has determined that the filing of annual and current reports fulfills this requirement.

The required information is currently gathered as part of two separate forms that set forth reporting requirements. The H-(b)11 Annual Report is required to be filed within 120 days of a savings and loan holding company's fiscal year end. In addition to the H-(b)11, all savings and loan holding companies are required to file H-(b)12 Current Reports within 15 days of the end of a month when certain specified events have occurred (primarily changes in information reported in the H-(b)11).

To streamline reporting requirements, the Office proposes that the H-(b)12 be eliminated and the H-(b)11 be modified to accommodate reporting on an annual and current basis. This change would eliminate duplicate information requests contained in the two separate forms and, thereby, ease the burden on respondents as well as regulatory staff.

The surviving form, the H-(b)11, would be used to collect information on an annual and quarterly basis. All savings and loan holding companies would be required to file an annual report within 90 days of its fiscal year end which will coincide with the submission of the holding company's 10-K filing with the Securities and Exchange Commission, provided that the holding company is required to file with the SEC. However, instead of the former monthly reporting requirements, holding companies would be required to notify the agency quarterly of any material changes in the information presented in its H-(b)11 Annual Report. The Form H-(b)11 would also be used to report quarterly updates.

Dividend Notification

Section 10(f) of the Act and part 584 of the Regulations promulgated thereunder provide that every subsidiary savings association of a savings and loan holding company is required to provide the OTS with not less than 30 days advance notice of a proposed dividend declaration. The H-(f) Dividend Notification has been used by subsidiary savings associations to fulfill this requirement.

Using its authority to issue regulations to provide for the safe and sound operation of savings associations under sections 3(b)(2), 3(e)(1) and 4 of the Act, the OTS issued the Capital Distributions Regulation (12 CFR 563.134), that became effective in August, 1990. As discussed below, the issuance of this regulation has resulted in the H-(f) Dividend Notification becoming obsolete.

Prior to the Capital Distributions Regulation, only savings associations in a holding company structure were required to provide the OTS with not less than 30 days advance notice of a proposed dividend. As previously

stated, such notification was provided to the OTS through submission of the H-(f) Dividend Notification. With the exception of recently converted savings associations wishing to exceed the limitations imposed by 12 CFR 563b.3(g), savings associations not in a holding company structure were not required to provide the OTS with prior or subsequent notice of a dividend payment.

12 CFR 563.134, the Capital Distributions Regulation, requires *all* savings associations to file a 30-day advance notice of all proposed capital distributions whether or not OTS approval is required. Capital distributions are defined in 12 CFR 563.134(a)(1) and include dividends, stock repurchases and cash-out mergers.

Since the provisions of 12 CFR 563.134 exceed the information requested in the H-(f) Dividend Notification, it is appropriate to rescind this form. A new form may be developed to capture the information required by 12 CFR 563.134. If developed, such form would be used by all savings associations in providing advance notice to the OTS of all proposed capital distributions.

Executive Order 12291

The Office has determined that this proposal does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

Regulatory Flexibility Act

It is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Consequently, a Regulatory Flexibility Analysis is not required.

List of Subjects in 12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 584, subchapter F, chapter V, title 12, Code of Federal Regulations as set forth below:

1. The authority citation for part 584 continues to read as follows;

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468).

2. Section 584.1 is amended by revising paragraph (a) to read as follows:

§ 584.1 Registration, examination and reports.

(a) *Filing of registration statement and other reports*—(1) *Filing of registration statement.* Not later than 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Office by filing a registration statement H-(b)10.

(2) *Filing of annual/current reports.* Each registered savings and loan holding company, including subsidiary savings and loan holding companies, shall file an annual/current report H-(b)11, except that such report need not be filed by a savings and loan holding company that is a trust (other than a business trust), secured creditor or corporate trustee. The H-(b)11 report must be filed no later than 90 days after the close of the fiscal year. Quarterly filings must also be submitted on the H-(b)11 report within 45 days of the end of each quarter (except for the fourth quarter of the holding company's fiscal year) and should describe any material changes from the most recently filed H-(b)11 report or should indicate that no such changes have occurred. However, if material changes have occurred during the fourth quarter with respect to certain items described in the form instructions, an H-(b)11 report for such quarter must be filed within 45 days of the end of such quarter.

(3) *General.* Registration statements and annual/current reports are to be filed with the Office in accordance with section 500.32(c)(6) of this chapter. In addition, multiple savings and loan holding companies must file conformed copies with any District that has supervisory authority over a subsidiary savings association. Copies of the forms to be used in submitting registration statements or annual/current reports may be obtained from any District Director, or designee.

* * * * *

§§ 584.5 and 584.10 [Removed]

3. Sections 584.5 and 584.10 are removed.

Dated: May 29, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91-22757 Filed 9-23-91; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the "Nonmanufacturer Rule" for canned apricots and canned tomato paste.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is considering a waiver of the "Nonmanufacturer Rule" for the classes of products listed below. An initial SBA survey could not identify any small business manufacturers or processors for these classes available to participate in the Federal procurement market. The effect of a waiver would be to allow an otherwise qualified small business regular dealer to supply the product of any domestic manufacturer or processor on a Federal contract set aside for small business or awarded through the SBA 8(a) program.

SIC *	PSC **	Class of product
2033	8915	Canned tomato paste.
2033	8915	Canned apricots.

* Standard Industrial Classification.
** Product and Service Code.

SBA therefore now proposes to waive the Nonmanufacturer Rule for the subject classes of products. The basis for a waiver is that no small business manufacturer or processor is available to participate in the Federal Government for that class of product. This notice is to solicit small manufacturing or processing sources from interested parties.

DATES: Comments must be submitted on or before October 8, 1991. If granted, the waivers will be effective immediately upon publication of the Final Notice.

ADDRESSES: Comments should be addressed to: Mr. Robert J. Moffitt, Chairman, Size Policy Board, Small Business Administration, 409 Third St., SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: James Fairbairn, Industrial Specialist, phone (202) 205–6465.

SUPPLEMENTARY INFORMATION: On November 15, 1988, section 303(h) of Public Law 100–656 incorporated into the Small Business Act the existing SBA policy that small businesses who are other than the actual manufacturers (nonmanufacturers) must supply products manufactured or processed by small businesses on set-aside or 8(a) contracts. This requirement is commonly known as the "Nonmanufacturer Rule". The SBA regulations imposing this requirement are found in 13 CFR 121.906(b) and 121.1106(b). The law also provided for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors "in the Federal market". Section 210 of Public Law 101–574 further amended the Small Business Act to allow that SBA may waive the rule if there are no small businesses "available to participate in the Federal procurement market". To be considered available to participate in the Federal procurement market, a small business must have been awarded a contract for that class of product by the Federal government, provided the product to the Government through a dealer, or offered on a solicitation for that class of product within the past twenty four months from the date of request for waiver. SBA has been requested to issue a waiver for each of the classes of products listed above because of an apparent lack of available small business manufacturers or processors within the Federal procurement market. SBA searched its Procurement Automated Source System (PASS) for small business manufacturers or processors available to participate in the Federal procurement market. Because no small business manufacturers or processors were identified as available to participate the Federal procurement market, we state by this notice to the public in the **Federal Register** our proposed intention to grant waivers for these products unless small business manufacturers or processors are identified. The public is invited to submit comments or supply information identifying small business manufacturers or processors for these classes of products.

Robert J. Moffitt,

Chairman, Size Policy Board.

[FR Doc. 91–22879 Filed 9–20–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–224–82]

RIN 1545–AE20

Imposition of Backup Withholding Due to Notification of an Incorrect Taxpayer Identification Number; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations that relate to the requirement for payors to backup withhold on certain reportable payments due to notification of an incorrect taxpayer identification number. These amendments affect payors, brokers, and payees of certain reportable payments and provide them with guidance necessary to comply with the law.

DATES: The public hearing will be held on Tuesday, November 19, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, November 5, 1991.

ADDRESSES: The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA–224–82), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9231 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations that amend and clarify the rules set forth in § 35a.3406–1 of the Temporary Income Tax Regulations under section 3406 of the Internal Revenue Code of 1986. The regulations propose that the substance of the amendments to the temporary regulations be adopted as final regulations under § 31.3406(d)–5.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, November 5, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–22847 Filed 9–18–91; 1:58 pm]

BILLING CODE 4830–01–M

26 CFR Part 1

[CO–045–91]

RIN 1545–AQ08

Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the income tax regulations (26 CFR part 1) under section 382 of the Internal Revenue Code of 1986. The amendments provide rules relating to the determination whether certain indebtedness qualifies under section 382(l)(5)(E). The rules are necessary to provide guidance to corporations reorganizing in title 11 or similar cases.

DATES: Written comments must be received by November 15, 1991. Requests to appear and outlines of oral comments to be presented at the hearing scheduled for 10 a.m., November 20, 1991, must be received by November 6, 1991. See the notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attention CC:CORP:T:R [CO–045–91], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Diana C. MacKeen of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention CC:CORP:T:R), or telephone (202) 566–3544 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collections of information in these proposed regulations are in §§ 1.382–3 (d)(2)(ii), (d)(3)(ii), and (d)(4)(iii). This information is required by the Internal Revenue Service to assure that a loss corporation that applies the rules and procedures of the proposed rules proposed rules properly determines the amount of its widely-held indebtedness that is owned by less-than-5-percent beneficial owners. The respondents will be loss corporations in title 11 or similar cases that have widely-held indebtedness outstanding and that may qualify for the special bankruptcy provision in section 382(l)(5) as well as certain persons who hold indebtedness of those corporations.

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances.

Estimated total annual reporting burden: 123 hours.

Estimated burden per respondent varies from 10 minutes to 1 hour, depending on individual circumstances, with an estimated average of 20 minutes.

Estimated number of respondents: 368.

Estimated frequency of responses: 1 per respondent.

Background

This document contains proposed amendments to the income tax regulations (26 CFR part 1) under section 382 of the Internal Revenue Code of 1986 ("Code"). The proposed regulations provide rules regarding indebtedness that qualifies for favorable treatment under section 382(l)(5)(E), in that stock transferred to a creditor in satisfaction of the indebtedness may be taken into account in determining whether the benefits of section 382(l)(5) are available to a loss corporation that has an ownership change in a title 11 or similar case. Section 382 was amended by section 621 of the Tax Reform Act of 1986 (Pub. L. No. 99–514, 100 Stat. 2085 (1986) and subsequent acts. T.D. 8149, setting forth temporary regulations regarding the determination of an ownership change, was published in the **Federal Register** on August 5, 1987 (52 FR 29668). Notices of proposed rulemaking under section 382(l)(5) were published in the **Federal Register** on August 14, 1990 (55 FR 33137), and September 5, 1990 (55 FR 36657).

Explanation of Provisions

Overview of Relevant Provisions of the Code and Regulations

Section 382(l)(5) of the Code provides that the limitation imposed by section 382(a) does not apply after an ownership change of a loss corporation if (1) the corporation is under the jurisdiction of a court in a title 11 or similar case immediately before the ownership change, and (2) the corporation's pre-change shareholders and qualified creditors (determined immediately before the ownership change) own at least 50 percent of the value and voting power of the loss corporation's stock (or stock of a controlling corporation if also in bankruptcy) immediately after the ownership change and as a result of being pre-change shareholders or qualified creditors immediately before the ownership change (the "50 percent test"). Section 382(l)(5) applies only to a transaction that is ordered by the court or is pursuant to a plan approved by the court. See H.R. Rep. 841, 99th Cong., 2d Sess. II–192 (1986), 1986–3 C.B. (Vol. 4) 192. Although the limitation imposed by section 382(a) does not apply, the loss corporation may be required to reduce a portion of its pre-change losses and credits following a transaction qualifying under section 382(l)(5).

The Proposed Regulations

The proposed regulations contain certain rules for determining whether stock of a loss corporation that has an ownership change in a title 11 or similar case is owned as a result of being a qualified creditor.

General Rules

A qualified creditor is the beneficial owner, immediately before the ownership change, of qualified indebtedness of the loss corporation. Beneficial ownership is determined without applying the attribution rules generally applicable under section 382 with respect to determining ownership of stock.

Indebtedness of the loss corporation is qualified indebtedness if it (1) has been owned by the same beneficial owner since the day that is 18 months before the date of the filing of the petition in the title 11 or similar case, or (2) arose in the ordinary course of the trade or business of the loss corporation and has been owned at all times by the same beneficial owner. Ordinary course indebtedness is indebtedness incurred by the loss corporation in connection with the normal, usual, or customary conduct of business, determined without regard to whether it funds ordinary or capital expenditures of the loss corporation. See H.R. Rep. No. 841 at II–192, 1986–3 C.B. (Vol. 4) at 192. The proposed regulations list examples of indebtedness that arise in the ordinary course of the loss corporation's trade or business.

Special Rule for Widely-held Indebtedness

Loss corporations ordinarily have limited knowledge of changes in the beneficial ownership of their widely-held indebtedness and tracking such changes can be costly and difficult because, for example, the indebtedness is held in street name. Even if a loss corporation can ascertain the beneficial owners of its widely-held indebtedness on one day or several days, continued trading of the indebtedness may greatly complicate or prevent effective planning with respect to potential qualification of a reorganization under section 382(l)(5). As a practical matter, therefore, interpreting section 382(l)(5)(E) to require that the loss corporation determine whether indebtedness was owned for the requisite period on a creditor-by-creditor basis would deny access to section 382(l)(5) to loss corporations with significant amounts of widely-held indebtedness. However, there is no indication that Congress intended to exclude these corporations from the benefits of section 382(l)(5). Accordingly, the proposed regulations provide special rules for determining whether widely-held indebtedness is qualified indebtedness.

Under the proposed regulations, a loss corporation may treat a portion of each

class of its "widely-held indebtedness" owned on the change date by "less-than-5-percent beneficial owners" as always having been owned by the same beneficial owners, regardless of how long those beneficial owners actually have owned the indebtedness. The amount of a class that may be so treated is the least of (1) the amount of the class owned on the "plan date" by less-than-5-percent beneficial owners, (2) the amount of the class owned on the change date by less-than-5-percent beneficial owners (reduced by the amount, if any, of the class so owned that is exchanged for stock owned by a 5-percent shareholder immediately after the ownership change), or (3) the least amount of the class that the loss corporation actually knows was owned by less-than-5-percent beneficial owners on any other day during the period beginning on the day 18 months before the filing of the title 11 or similar case (or the day the indebtedness was incurred, if later) and ending with the change date (the "continuity period"). In contrast, the loss corporation must determine on a creditor-by-creditor basis whether widely-held indebtedness not owned by less-than-5-percent beneficial owners on the change date has been owned for the requisite period to constitute qualified indebtedness.

For this purpose, "widely-held indebtedness" is any indebtedness in registered form (within the meaning of section 163(f)) if indebtedness of the same class is owned by more than 50 beneficial owners on any day. A "less-than-5-percent beneficial owner" on any particular day is a beneficial owner of indebtedness who owns less than 5 percent of the class on that day. The "plan date" is the earliest of (1) the day of the filing with the court of the first plan of reorganization of the loss corporation which is endorsed by a creditors' committee, (2) the day of the filing with the court of the first plan of reorganization for which a disclosure statement is approved by the court, or (3) the first day on which the loss corporation has sufficient acceptances to a plan of reorganization to assure acceptance of the plan under bankruptcy rules.

The loss corporation has an affirmative duty to determine the amount of a class owned by less-than-5-percent beneficial owners with respect to the plan date and the change date. The proposed regulations set forth optional procedures upon which the loss corporation may rely for making this determination, except to the extent that it has actual knowledge to the contrary. The optional procedures generally treat indebtedness held by record holders of less than 2 percent of the class as owned by less-than-5-percent beneficial owners and provide that a loss corporation may solicit and rely on statements from 1 or more record holders of 2 percent or more of the class as to ownership of indebtedness by or through them. The loss corporation, however, may choose to obtain and may rely on information as to ownership of indebtedness by or through record holders through other, equally reliable means. For example, the loss corporation may obtain the requisite information from statements signed under penalties of perjury by the beneficial owners.

For purposes of determining the amount of a class owned by less-than-5-percent beneficial owners on any day during the continuity period (other than the plan date and change date), the loss corporation may treat indebtedness as being owned by a less-than-5-percent beneficial owner except to the extent that the loss corporation has actual knowledge that the beneficial owner of the indebtedness on that day is not a less-than-5-percent beneficial owner or a special presumption applies. Under this special presumption, which applies solely for purposes of this rule, if the loss corporation has actual knowledge that a beneficial owner owns 5 percent or more of the class on any day during the continuity period (other than the plan date or the change date), it must treat the beneficial owner as owning at least that much indebtedness until any later day with respect to which it has actual knowledge (or, in the case of the plan date, with respect to which it determines under the optional procedures or otherwise) that the beneficial owner owns a different amount of the class. Also, if the loss corporation determines under the optional procedures or otherwise that a beneficial owner owns 5 percent or more of the class with respect to the plan date, it must treat the beneficial owner as owning at least that much indebtedness until any later day with respect to which it has actual knowledge that the beneficial owner owns a different amount of the class. The reason for generally limiting the amount of a class of widely-held indebtedness that may be treated under the special rules as always having been owned by the same less-than-5-percent beneficial owners to the lesser of the amount owned with respect to the plan date or the change date is to address the possibility that large investors may traffic in the losses of the loss corporation by accumulating indebtedness shortly before or during bankruptcy and selling that indebtedness to smaller investors before the change date. The Service believes that the plan date and change date generally mark the beginning and the end of the period during which investors may have the greatest opportunity to sell previously accumulated indebtedness at a profit because, during that period, the value of the indebtedness may reflect the expectations of increased loss utilization by a reorganized loss corporation. The rules set forth in the proposed regulations are much simpler and more practical than a continuing determination of the beneficial ownership of the loss corporation's widely-held indebtedness, and are intended to facilitate planning and reduce the costs of compliance for both taxpayers and the Service. Although the Service believes that bankruptcy court rules and procedures generally should aid the loss corporation in making the determinations as to ownership of indebtedness with respect to the plan date and the change date, it requests comments as to the extent to which those procedures in fact will be helpful.

Because pre-petition solicitation of acceptances to a plan of reorganization may cause the plan date to occur prior to the filing of the title 11 or similar case, the loss corporation may not have recourse to bankruptcy court rules and procedures as of that day. The Service requests comments on whether a loss corporation in such a case can effectively use the optional procedures and whether the loss corporation should be permitted to rely on an alternative method for determining ownership.

The special widely-held indebtedness rules do not apply to bearer indebtedness because a determination of ownership cannot be made through inquiries of record holders. The Service requests comments on possible alternative procedures that might be available to the loss corporation for the purpose of determining ownership of bearer indebtedness.

The Service is concerned that continued trading after approval of a plan of reorganization may prevent qualification under section 382(l)(5) even under the special widely-held indebtedness rule. Accordingly, the Service requests comments on whether loss corporations should be able to elect to treat as the change date a day earlier than the effective date of the plan (*e.g.*, the record date for the vote on the plan). See section 1.382–2T(h)(4)(x)(J) of the proposed income tax regulations.

Special Rule if Indebtedness Is a Large Portion of a Beneficial Owner's Assets

Although changes in the ownership of a creditor are generally disregarded under the proposed regulations, qualified indebtedness does not include indebtedness owned by a beneficial owner that has an ownership change (under the principles of section 382 and § 1.382–2T) during the continuity period and the indebtedness represents more than 25 percent of the beneficial owner's gross assets on the beneficial owner's change date (excluding cash and cash equivalents). This special rule generally does not apply if, immediately before the loss corporation's ownership change, the beneficial owner owns less than $100,000 of the loss corporation's indebtedness, or, in the case of widely-held indebtedness, the beneficial owner owns less than 5 percent of the class. Except to the extent that the loss corporation has actual knowledge to the contrary, a loss corporation may rely on a statement signed, under penalties of perjury, by the beneficial owner of the indebtedness on the change date certifying that the special rule is inapplicable. The special rule is needed to prevent the creation of special purpose entities to hold corporate indebtedness so that, if the debtor becomes troubled, ultimate economic ownership of the indebtedness can be transferred by selling interests in the entity without adversely affecting the debtor's ability to qualify under section 382(l)(5).

Tacking of Ownership Periods

The Service requests comments on the circumstances, if any, under which, for purposes of section 382(l)(5)(E), the ownership period of transferees of indebtedness of the loss corporation should include the ownership period of their transferors.

Proposed Effective Date

The proposed rules apply to ownership changes occurring on or after September 20, 1991. For the period ending before that day, a loss corporation may seek permission by letter ruling to apply principles substantially similar to the proposed rules in determining the amount of widely-held indebtedness that the loss corporation may treat as having been owned by the same beneficial owners throughout the continuity period. See, *e.g.*, section 5 of Rev. Proc. 91–1, 91–1 I.R.B. 14 (January 7, 1991).

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held at 10 a.m. on November 20, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Diana C. MacKeen, Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Service and the Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects in 26 CFR 1.381(a)–1 through 1.383–3

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *.

Par. 2. Proposed § 1.382–3 (published in the **Federal Register** on August 14, 1990 (55 FR 33137), and amended on September 5, 1990 (55 FR 36657)) is amended as set forth below:

(1) Paragraph (d) is redesignated as paragraph (e);

(2) A new paragraph (d) is added to read as set forth below; and

(3) Paragraph (e)(2), as redesignated, is removed.

§ 1.382–3 Special rules under section 382 for corporations under the jurisdiction of a court in a title 11 or similar case.

* * * * *

(d) *Rules for determining whether stock of the loss corporation is owned as a result of being a qualified creditor*—(1) *Qualified creditor.* A qualified creditor is the beneficial owner, immediately before the ownership change, of qualified indebtedness of the loss corporation. A qualified creditor owns stock of the loss corporation as a result of being a qualified creditor only to the extent that the qualified creditor receives stock in full or partial satisfaction of qualified indebtedness in a transaction that is ordered by the court or is pursuant to a plan approved by the court in a title 11 or similar case. For purposes of this paragraph (d)(1), ownership of stock immediately after the ownership change by a qualified creditor is determined without applying the attribution rules generally applicable under § 1.382–2T(h) with respect to determining ownership of stock.

(2) *General rules for determining whether indebtedness is qualified indebtedness*—(i) *Definition.* Indebtedness of the loss corporation is qualified indebtedness if it:

(A) Has been owned by the same beneficial owner since the date that is 18 months before the date of the filing of the title 11 or similar case; or

(B) Arose in the ordinary course of the trade or business of the loss corporation and has been owned at all times by the same beneficial owner.

Beneficial ownership is determined without applying the attribution rules generally applicable under § 1.382–2T(h) with respect to determining ownership of stock. See paragraph (d)(4) of this section for a special rule if indebtedness is a large portion of a beneficial owner's assets.

(ii) *Duty of inquiry.* The loss corporation must determine that indebtedness that the loss corporation treats as qualified indebtedness has been owned for the requisite period by the same beneficial owner who owns the indebtedness immediately before the ownership change. Except to the extent the loss corporation has actual knowledge to the contrary, the loss corporation may rely on a statement, signed under penalties of perjury, by a beneficial owner regarding the amount of indebtedness the beneficial owner

owns and the length of time that the beneficial owner has owned the indebtedness. See paragraph (d)(3) of this section for special rules for determining whether widely-held indebtedness held by a less-than-5-percent beneficial owner is qualified indebtedness.

(iii) *Ordinary course indebtedness.* For purposes of this paragraph (d)(2), indebtedness arises in the ordinary course of the loss corporation's trade or business only if the indebtedness is incurred by the loss corporation in connection with the normal, usual, or customary conduct of business, determined without regard to whether the indebtedness funds ordinary or capital expenditures of the loss corporation. For example, indebtedness (other than indebtedness incurred in anticipation of being exchanged for stock) arises in the ordinary course of the loss corporation's trade or business if it is trade debt; a tax liability; a liability arising from a past or present employment relationship, tort, breach of warranty, or breach of statutory duty; or indebtedness incurred to pay an expense deductible under section 162 or included in the cost of goods sold.

(3) *Special rules concerning widely-held indebtedness*—(i) *In general.* For purposes of paragraph (d)(2) of this section, a loss corporation may treat a portion of each class of its widely-held indebtedness, if any, owned on the change date by less-than-5-percent beneficial owners as always having been owned by the same beneficial owners. The portion of a class that may be so treated is the least of:

(A) The amount of the class owned with respect to the plan date by less-than-5-percent beneficial owners;

(B) The amount of the class owned with respect to the change date by less-than-5-percent beneficial owners (reduced by the amount, if any, of the class so owned that is exchanged for stock owned by a 5-percent shareholder immediately after the ownership change); or

(C) The least amount of the class that the loss corporation actually knows was owned by less-than-5-percent beneficial owners on any other day during the continuity period, determined under paragraph (d)(3)(iii) of this section.

The loss corporation may determine ownership of the class with respect to the plan date and the change date under the optional procedures of paragraph (d)(3)(ii) of this section. The general rules of paragraph (d)(2) of this section apply to determine whether the beneficial owner of widely-held indebtedness on the change date has owned the indebtedness for the requisite period if the beneficial owner is not a less-than-5-percent beneficial owner or if the indebtedness is exchanged for stock owned by a 5-percent shareholder immediately after the ownership change.

(ii) *Optional procedures for determining ownership on the plan date and the change date*—(A) *Scope.* The optional procedures for determining the ownership of widely-held indebtedness with respect to the plan date and the change date contained in this paragraph (d)(3)(ii) generally treat indebtedness held by record holders of less than 2 percent of the class as owned by less-than-5-percent beneficial owners and provide that a loss corporation may solicit and rely on statements from 1 or more record holders of 2 percent or more of the class as to ownership of indebtedness by or through them.

(B) *Record ownership.* Except to the extent that a loss corporation has actual knowledge to the contrary as to beneficial ownership of indebtedness with respect to the plan date or the change date, the loss corporation may treat the following widely-held indebtedness of the class as owned on that date by less-than-5-percent beneficial owners:

(*1*) Indebtedness held by a record holder of less than 2 percent of the class;

(*2*) The portion of the indebtedness held by a record holder of at least 2 percent of the class that the record holder states, under paragraph (d)(3)(ii)(C)(*1*) of this section, is owned by beneficial owners that own less than 2 percent of the class through the record holder; and

(*3*) Indebtedness identified as owned by a beneficial owner on statements from 1 or more record holders of at least 2 percent of the class under paragraph (d)(3)(ii)(C)(*2*) of this section if the total amount of indebtedness identified as owned by that beneficial owner is less than 5 percent of the class.

The loss corporation must treat any other indebtedness of the class as owned by a beneficial owner of 5 percent or more of the class except to the extent the loss corporation otherwise establishes that the indebtedness is owned by a less-than-5-percent beneficial owner.

(C) *Statements from record holders*—(*1*) *Statements regarding indebtedness owned by beneficial owners of less than 2 percent of the class through the record holder.* In making a statement under this paragraph (d)(3)(ii)(C)(*1*), a record holder may assume that indebtedness owned by or through any person holding on the record holder's books and records less than 2 percent of the class is owned by a beneficial owner of less than 2 percent of the class. As to any other indebtedness, the record holder may rely on a statement made by the person holding the indebtedness on the record holder's books and records as to the portion of the indebtedness owned by beneficial owners of less than 2 percent of the class through that person.

(*2*) *Statements regarding indebtedness owned by beneficial owners of at least 2 percent of the class through the record holder.* A statement under this paragraph (d)(3)(ii)(C)(*2*) must identify the beneficial owner by name and taxpayer identification number (if applicable), and the amount of the class owned by the beneficial owner through the record holder. If the record holder is the beneficial owner, the record holder may identify itself as the beneficial owner and the amount of the class it owns. In making the statement, a record holder may rely on statements, regarding the identity of beneficial owners and the amount of the class owned by each of them, made by the persons holding indebtedness on the record holder's books and records.

(*3*) *Ownership chains.* If a person holding the indebtedness on the record holder's books and records is not the beneficial owner of the indebtedness, the rules of this paragraph (d)(3)(ii)(C) relating to the record holder are applied successively to each intermediate holder between the record holder and the beneficial owner.

(*4*) *Aggregation of certain ownership.* In making statements under this paragraph (d)(3)(ii)(C), a record holder (or intermediate holder) must aggregate amounts that it actually knows are owned through it by the same beneficial owner. A record holder (or intermediate holder) must also aggregate amounts that it actually knows are owned through it by members of the same family (as defined in section 267(c)(4)) or by organizations under common control if it actually knows that the members or organizations have an understanding among themselves to make a coordinated acquisition of indebtedness of the loss corporation. However, a record holder (or intermediate holder) may assume that a beneficial owner of indebtedness through it does not own indebtedness of the same class other than through it.

(*5*) *Statements under penalties of perjury.* Any person providing a statement under this paragraph (d)(3)(ii)(C) must sign it under penalties of perjury.

(D) *5-percent shareholders.* For purposes of determining the amount of widely-held indebtedness of a class

owned on the change date by less-than-5-percent beneficial owners that is exchanged for stock owned by a 5-percent shareholder immediately after the ownership change, the loss corporation may rely on a statement signed under penalties of perjury by the 5-percent shareholder as to the amount, if any, of the indebtedness so exchanged for stock.

(E) *Other procedures for determining ownership.* For purposes of paragraph (d)(3)(ii) of this section, the procedures set forth in paragraphs (d)(3)(ii) (B) and (C) of this section are not the exclusive methods for determining ownership of widely-held indebtedness by or through record holders. A loss corporation may use another, equally reliable method. For example, the loss corporation may obtain the requisite information from statements signed under penalties of perjury by the beneficial owners.

(iii) *Determination of the amount of the class owned on any other day*—(A) *In general.* On any day during the continuity period (other than the plan date and the change date), the loss corporation may treat widely-held indebtedness as being owned by a less-than-5-percent beneficial owner except to the extent:

(*1*) The loss corporation has actual knowledge that the beneficial owner of the indebtedness on that day is not a less-than-5-percent beneficial owner; or

(*2*) Paragraph (d)(3)(iii)(B) of this section applies.

The loss corporation must take into account all information it actually knows, including any filing with the court in the title 11 or similar case (such as a proof of claim) or any information regarding ownership of its indebtedness that it obtains from a creditors' committee appointed under 11 U.S.C. section 1102 (or similar provision).

(B) *Period of ownership.* Solely for purposes of this paragraph (d)(3)(iii):

(*1*) If the loss corporation has actual knowledge that a beneficial owner owns 5 percent or more of the class on any day during the continuity period (other than the plan date or the change date), the loss corporation must treat the beneficial owner as owning at least that much indebtedness until any later day with respect to which the loss corporation has actual knowledge (or, in the case of the plan date, with respect to which the loss corporation determines under the optional procedures of paragraph (d)(3)(ii) of this section or otherwise) that the beneficial owner owns a different amount of the class; and

(*2*) If the loss corporation determines under the optional procedures of paragraph (d)(3)(ii) of this section or otherwise that a beneficial owner owns 5 percent or more of the class with respect to the plan date, the loss corporation must treat the beneficial owner as owning at least that much indebtedness until any later day with respect to which the loss corporation has actual knowledge that the beneficial owner owns a different amount of the class.

If the loss corporation determines the ownership of the class with respect to the plan date under the optional procedures of paragraph (d)(3)(ii) of this section, the loss corporation may rely, for purposes of this paragraph (d)(3)(iii)(B), on a statement received from a record holder to establish the identity of a beneficial owner of at least 2 percent of the class through the record holder, and the amount of indebtedness of the class owned through the record holder by that beneficial owner with respect to the plan date. See *Examples 2* and *3* in paragraph (d)(6) of this section illustrating the operation of this paragraph (d)(3)(iii)(B).

(iv) *Allocation rules.* This paragraph (d)(3)(iv) applies to a loss corporation that transfers stock in exchange for widely-held indebtedness and that treats only part of the indebtedness owned on the change date by less-than-5-percent beneficial owners as always having been owned by the same beneficial owners under paragraph (d)(3)(i) of this section. In that case, the portion of the stock consideration that is treated as satisfying indebtedness considered to have always been owned by those beneficial owners is determined by multiplying the total amount of stock received by less-than-5-percent beneficial owners on the change date by a fraction, the numerator of which is the amount of the class treated as always having been owned by the same beneficial owners under paragraph (d)(3)(i) of this section, and the denominator of which is the amount of the class determined to have been owned by less-than-5-percent beneficial owners on the change date.

(4) *Special rule if indebtedness is a large portion of a beneficial owner's assets*—(i) *In general.* This paragraph (d)(4)(i) applies to indebtedness other than indebtedness described in paragraphs (d)(4) (ii) or (iii) of this section. Indebtedness to which this paragraph (d)(4)(i) applies is not qualified indebtedness if, on any day during the continuity period:

(A) The beneficial owner of the indebtedness has an ownership change; and

(B) The indebtedness represents more than 25 percent of the fair market value of the total gross assets of the beneficial owner on the beneficial owner's change date (excluding any cash or cash equivalents).

For purposes of this paragraph (d)(4)(i), the determination of whether a beneficial owner of indebtedness has an ownership change is made under the principles of § 1.382–2T, without regard to whether the beneficial owner is a loss corporation and by beginning the testing period no earlier than the latest of the day three years before the change date, the day 18 months before the filing of the title 11 or similar case, or the day on which the beneficial owner acquired the indebtedness.

(ii) *Exception for indebtedness owned by a beneficial owner of less than $100,000 of indebtedness.* Indebtedness is described in this paragraph (d)(4)(ii) if:

(A) Immediately before the ownership change of the loss corporation, the beneficial owner of the indebtedness owns, in aggregate, indebtedness of the loss corporation with a face amount of less than $100,000; and

(B) The loss corporation does not have actual knowledge that paragraph (d)(4)(i) of this section otherwise would apply to the indebtedness.

(iii) *Exception for widely-held indebtedness owned by certain less-than-5-percent beneficial owners.* Indebtedness is described in this paragraph (d)(4)(iii) if it is widely-held indebtedness owned immediately before the ownership change of the loss corporation by a less-than-5-percent beneficial owner that is not exchanged for stock owned by a 5-percent shareholder immediately after the ownership change (determined under paragraph (d)(3)(i)(B) of this section).

(iv) *Statement fulfilling the duty of inquiry.* Paragraph (d)(4)(i) of this section does not apply to indebtedness if the loss corporation obtains a statement signed under penalties of perjury by the beneficial owner stating that such paragraph does not apply to the beneficial owner and the loss corporation does not have actual knowledge to the contrary.

(5) *Certain definitions and operating rules.* For purposes of this paragraph (d):

(i) *Class.* The term *class* means all indebtedness having identical or substantially similar terms.

(ii) *Continuity period.* The term *continuity period* means the period beginning on the day 18 months before the filing of the title 11 or similar case (or the day the indebtedness was

incurred, if later) and ending with the change date.

(iii) *Indebtedness exchanged for stock owned by a 5-percent shareholder immediately after the ownership change.* Whether stock exchanged for indebtedness is owned by a 5-percent shareholder immediately after the ownership change is determined under the rules § 1.382–2T, except that stock is not treated as owned by a 5-percent shareholder merely because the beneficial owner of the stock is a member of a public group that is treated as a 5-percent shareholder.

(iv) *Less-than-5-percent beneficial owner.* The term *less-than-5-percent beneficial owner* means, on any particular day, a beneficial owner of a class of widely-held indebtedness who owns less than 5 percent of the class on that day. The loss corporation must treat as a single beneficial owner all beneficial owners that the loss corporation actually knows to be members of the same family (as defined in section 267(c)(4)) or organizations under common control.

(v) *Organizations under common control.* The term *organizations under common control* means any group of organizations (as defined in § 1.52–1(b)) that would be treated as a group of trades or businesses under common control for purposes of § 1.52–1 if the rules of § 1.52–1 were applied without regard to whether the organization conducts a trade or business and the phrase "more than 50 percent" were substituted for the phrase "at least 80 percent" each place it appears in § 1.52–1(d)(2).

(vi) *Plan date.* The term *plan date* means the earliest of:

(A) the day of the filing with the court of the first plan of reorganization which is endorsed by a creditors' committee appointed under 11 U.S.C. section 1102 (or similar provision);

(B) the day of the filing with the court of the first plan of reorganization for which a disclosure statement is approved by the court under 11 U.S.C. section 1125 (or similar provision); or

(C) the first day on which the loss corporation has sufficient acceptances to a plan of reorganization to assure acceptance of the plan under 11 U.S.C. section 1126 (or similar provision).

(vii) *Time of day when ownership is measured.* Ownership of indebtedness is measured at the close of any particular day (or, in the case of the change date, immediately before the ownership change).

(viii) *Transitory ownership.* The transitory ownership of newly incurred indebtedness by 1 or more underwriters pursuant to a firm commitment underwriting is disregarded.

(ix) *Widely-held indebtedness.* The term *widely-held indebtedness* means any indebtedness in registered form (within the meaning of section 163(f)) if indebtedness of the same class is owned by more than 50 beneficial owners on any day.

(6) *Examples.* For purposes of the following examples, assume that L is a loss corporation that files a petition in a title 11 case on August 26, 1992. In the loss corporation's reorganization in bankruptcy, no beneficial owner of indebtedness becomes a 5-percent shareholder (other than as a member of a public group). L has 1 class of widely-held indebtedness outstanding, and the total amount of indebtedness of the class outstanding remains the same throughout the continuity period.

Example 1. Basic rule. (i) Having no other actual knowledge as to ownership of the class during the continuity period, L determines, under the optional procedures of paragraph (d)(3)(ii) of this section and based on statements which account for all beneficial ownership of indebtedness, that all of the beneficial owners of at least 5 percent of the class on June 26, 1993, the plan date, and March 12, 1994, the change date are as follows:

	Plan date (percent)	Change date (percent)
A	10	8
B	5	5
C	12	—
	27	13

(ii) Under paragraph (d)(3)(i) of this section, L may treat the lesser of the amount of the class owned by less-than-5-percent beneficial owners on the plan date or the amount so owned on the change date as always having been owned by the same beneficial owners. Less-than-5-percent beneficial owners own 73 percent of the class on the plan date and 87 percent on the change date. Accordingly, L may treat 73 percent of the class as always owned by the same less-than-5-percent beneficial owners for purposes of paragraph (d)(2) of this section. Whether A, B, and C have owned the indebtedness for the requisite period is determined under the general rules of paragraph (d)(2) of this section.

Example 2. Effect of actual knowledge prior to the Plan date. (i) The facts are the same as in Example 1, except that D claims beneficial ownership of 15 percent of the class in a filing with the court on May 26, 1993.

(ii) Paragraph (d)(3)(i) of this section requires L to compare the amount of the class owned by less-than-5-percent beneficial owners on the plan date, the change date, and any other day during the continuity period. Paragraph (d)(3)(iii) of this section requires L to take into account its actual knowledge (obtained through the court filing) that D owns 15 percent of the class on a day during the continuity period in determining the least amount of the class owned on any day during the continuity period (other than the plan date and the change date). L must assume that D owns at least 15 percent of the class after May 26, 1993, until any later date with respect to which L has actual knowledge (or, in the case of the plan date, with respect to which L determines under the optional procedures of paragraph (d)(3)(ii) of this section or otherwise) that D owns a different amount of the class. See paragraph (d)(3)(iii)(B) of this section.

(iii) On May 26, 1993, L may treat 85 percent of the class as owned by less-than-5-percent beneficial owners because L actually knows that D owns 15 percent of the class but has no other actual knowledge of any other beneficial owner of at least 5 percent of the class. Between May 26, 2993, and the plan date, L must assume that D owns 15 percent of the class because L does not have actual knowledge to the contrary. L determines that D owns none of the class on the plan date under the optional procedures of paragraph (d)(3)(ii) of this section, and L may therefore assume that D is not a beneficial owner of indebtedness on or after the plan date. See paragraph (d)(3)(iii)(B) of this section. Because the 73 percent of the class owned by less-than-5-percent beneficial owners on the plan date is less than the 85 percent owned on May 26, 1993, and the 87 percent owned on the change date, L may treat 73 percent of the class as always having been owned by the same less-than-5-percent beneficial owners for purposes of paragraph (d)(2) of this section.

Example 3. Effect of actual knowledge between plan date and chance date. (i) The facts are the same as in *Example 2*, except that D claims beneficial ownership of 15 percent of the class in a filing with the court having jurisdiction of the title 11 case on October 7, 1993.

(ii) Under paragraph (d)(3)(iii) of this section, L must take into account D's filing with the court in determining the least amount of the class owned by less-than-5-percent beneficial owners. Under paragraph (d)(3)(iii)(B) of this section, absent actual knowledge to the contrary, L must treat A, B, C, and D as owning 10 percent, 5 percent, 12 percent and 15 percent of the class on October 7, 1993. Thus, L must treat 58 percent of the class as owned by less-than-5-percent beneficial owners on October 7, 1993. L determines that D owns none of the class on the change date under the optional procedures of paragraph (d)(3)(ii) of this section. Because the 58 percent of the class owned by the less-than-5-percent beneficial owners on October 7, 1993, is less than the 73 percent of the class owned on the plan date, and the 87 percent owned on the change date, L may treat 58 percent of the class as always having been owned by the same less-than-5-percent beneficial owners for purposes of paragraph (d)(2) of this section.

(iii) If L inquires of A, B, and C regarding their beneficial ownership on October 7, 1993, and obtains actual knowledge that they own

10 percent, 5 percent, and 0 percent of the class on that day, it may take such actual knowledge, including D's filing, into account in determining the amount of the class owned by less-than-5-percent beneficial owners on that day. In that case, L may treat the less-than-5-percent beneficial owners as owning 70 percent on that day. Because 70 percent is less than the 73 percent owned by less-than-5-percent beneficial owners on the plan date, and the 87 percent on the change date, L may treat 70 percent of the class as always having been owned by the same less-than-5-percent beneficial owners for purposes of paragraph (d)(2) of this section.

Example 4. Reliance on statements. (i) All of L's widely-held indebtedness is held by a single record holder. To identify the beneficial owners of at least 5 percent of the class on the plan date, L uses the optional procedures under paragraph (d)(3)(ii) of this section and asks the record holder for the information set forth in that paragraph. The record holder provides a statement stating that, as of the close of the plan date:

(A) A is a beneficial owner of 40 percent of the class;

(B) B is a beneficial owner of 25 percent of the class; and

(C) There is no other beneficial owner that owns at least 2 percent of the class.

(ii) Except to the extent L has actual knowledge to the contrary, L may treat 35 percent of the class as owned on the plan date by less-than-5-percent beneficial owners.

(iii) Assume the same facts except that, as to B, the record holder states that B holds 25 percent of the class on its books and records but provides no other information as to the ownership of that 25 percent. L must treat the indebtedness held by B as not owned by less-than-5-percent beneficial owners except to the extent L otherwise can establish that some or all of that 25 percent of the class is owned by less-than-5-percent beneficial owners. L may still treat 35 percent of the indebtedness held by the record holder as owned by less-than-5-percent beneficial owners.

(7) *Effective date.* This paragraph (d) applies to ownership changes occurring on or after September 20, 1991. For the period ending before that day, a loss corporation may seek permission by letter ruling to apply principles substantially similar to the proposed rules in determining the amount of widely-held indebtedness that the loss corporation may treat as having been owned by the same beneficial owners throughout the continuity period.

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–22649 Filed 9–20–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[CO–045–91]

RIN 1545–AQ08

Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains proposed amendments to income tax regulations (26 CFR parts 1 and 301) under section 382 of the Internal Revenue Code of 1986.

DATES: The public hearing will be held on Wednesday, November 20, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by November 6, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Building, room 2615, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (CO–045–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 382 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, November 6, 1991, and outlines of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restriction, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:15 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of the Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–22648 Filed 9–20–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[PS–229–84]

RIN 1545–AP75

Treatment of Partnership Liabilities; Allocations Attributable to Nonrecourse Liabilities; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to the treatment of partnership liabilities and the allocation of deductions attributable to nonrecourse debt.

DATES: The public hearing will be held on Wednesday, October 30, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, October 16, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (PS–229–84), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9236 or (202) 566–3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 704(b) of the Internal Revenue Code of 1986. The proposed regulations appeared in the

Federal Register for Friday, December 30, 1988, at page 53174 (53 FR 53174).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, October 16, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-22647 Filed 9-20-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 31

[IA-224-82]

RIN 1545-AE20

Imposition of Backup Withholding Due to Notification of an Incorrect Taxpayer Identification Number

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that relate to the requirement for payors to backup withhold on certain reportable payments due to notification of an incorrect taxpayer identification number. These amendments affect payors, brokers, and payees of certain reportable payments and provide them with guidance necessary to comply with the law. The text of the temporary regulations also serves as the comment document for this notice or proposed rulemaking.

DATES: The regulations are proposed to be effective on and after September 1, 1990. Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for November 19, 1991, at 10 a.m., must be received by October 23, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R(IA-224-82), Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John M. Coulter, Jr., at (202) 566-3928 (not a toll-free number). Concerning the hearing, Robert Boyer, Regulations Unit, at (202) 377-9231 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1990, the Internal Revenue Service published in the **Federal Register** (55 FR 39427, 39464) proposed amendments to the Employment Taxes and Collection of Income Tax at Source Regulations (26 CFR part 31) relating to the requirement under section 3406(a)(1)(B) of the Internal Revenue Code of 1986 for payors to backup withhold on certain reportable payments due to notification of an incorrect taxpayer identification number. Those regulations, published as proposed § 31.3406(d)-5, were issued as part of a comprehensive set of regulations under section 3406 relating to backup withholding, published as proposed §§ 31.3406-0 through 31.3406(i)-1. Section 31.3406(d)-5 was proposed to provide as final regulations the substance of the rules contained in § 35a.3406-1 of the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983.

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend and clarify the rules set forth in § 35a.3406-1. This document proposes that the substance of those amendments to the temporary regulations be adopted as final regulations under § 31.3406(d)-5. For the text of the amendments to the temporary regulations, see T.D. 8365 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the amendments.

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the regulations proposed herein are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing has been scheduled. See notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is John M. Coulter, Jr., of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the Internal Revenue Service and the Treasury Department participated in their development

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-22846 Filed 9-18-91; 1:58 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing receipt of newly-proposed amendment language pertaining to a June 12, 1991, proposed amendment to the North Dakota permanent regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The newly-proposed language for North Dakota's rules pertains to environmental data gathering activities for coal exploration permits on lands designated as unsuitable for surface mining and is intended to revise the State program to be consistent with the corresponding Federal regulations. This notice sets forth the times and locations that the proposed amendment to North Dakota's program is available for public inspection and the extended comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.d.t., October 8, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below. Copies of the North Dakota program, the proposed amendment, the newly revised language to the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the newly revised amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776;

Edward J. Englerth, Director, Reclamation Division, Public Service Commission, Capitol Building, Bismarck, North Dakota 58505–0165, Telephone: (701) 224–4096.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior approved the North Dakota program. General background information on the North Dakota program including the Secretary's findings and the disposition of comments can be found in the December 15, 1980 **Federal Register** (45 FR 82246). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, 934.15, 934.16 and 934.30.

II. Proposed Amendment

By letter dated June 12, 1991 (Administrative Record No. ND–M–01), North Dakota submitted a proposed amendment to its program pursuant to SMCRA. North Dakota submitted the proposed amendment to the North Dakota Century Code (NDCC) and the North Dakota Administrative Code (NDAC) in response to OSM's 30 CFR 732.17 notifications of November 17, 1989 and February 7, 1990 (Administrative Record Nos. ND–J–01 and ND–K–01, respectively).

The sections of the program that North Dakota proposed to add or amend that were subject to review are: NDCC 38–12.1, Exploration Data; NDAC 43–02–01, Coal Exploration; NDCC 38–14.1, Surface Mining and Reclamation Operations; and NDAC 69–05.2, Termination of Jurisdiction.

OSM published a notice in the June 28, 1991 **Federal Register** (56 FR 29606) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. ND–M–10). The public comment period ended July 29, 1991. During its review of the amendment, OSM identified some concerns relating to the rule changes at NDAC 43–02–01–18.1 concerning environmental data gathering activities for coal exploration permits on lands designated as unsuitable for surface mining. OSM notified North Dakota of the concerns by letter dated August 29, 1991 (Administrative Record No. ND–M–12). North Dakota responded in a letter dated September 11, 1991 by submitting new language for the proposed amendment (Administrative Record No. ND–M–13).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed North Dakota program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the new language submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 13, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91–22764 Filed 9–20–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 64

[CGD 91–031]

RIN 2115–AD83

Hazards to Navigation

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Recent statutory amendments mandate the establishment of standards for what constitutes a hazard to navigation. The Coast Guard proposes to satisfy the Congressional mandate by revising 33 CFR part 64 to include a list of factors which are to be considered when determining whether any obstruction constitutes a hazard to navigation and a definition for such a hazard. Providing a list of factors and a definition supplies the owners of obstructions with guidelines to consider when evaluating whether an obstruction is a hazard to navigation which requires marking.

DATES: Comments must be received on or before November 7, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA–2/3406) (CGD 91–031), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Parker Navigation Rules and

Information Branch, U.S. Coast Guard (202) 267–0357.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91–031) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Frank Parker, Project Manager, and Lieutenant Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Background and Purpose

On two separate occasions, fishing vessels operating in the shallow near-shore waters of the Gulf of Mexico have struck submerged pipelines. In each of the accidents, the product in the pipeline was released and ignited resulting in an explosion and the deaths of several of the crew members. Investigations into the accidents found the previously buried pipelines to be exposed above the ocean bottom.

Congressional concern for offshore pipeline safety was first expressed in a February 26, 1990 hearing of the House Subcommittee on Coast Guard and Navigation of the Committee on Merchant Marine and Fisheries. A second hearing regarding pipeline safety in the marine environment was held by the Subcommittee on May 16, 1990. A third hearing on this subject was held on September 11, 1990, by the joint House Subcommittee on Energy and Power and the Subcommittee on Surface Transportation. This legislative interest culminated on October 27, 1990, with the passage of H.R. 4888 amending the Natural Gas Pipeline Act of 1968, the Hazardous Liquid Pipeline Act of 1979, and the Ports and Waterways Safety Act of 1972. These amendments were signed into law on November 16, 1990 (Pub. L. 101–599).

Title 33 CFR part 64 establishes the requirements for marking and reporting structures, sunken vessels, and other obstructions. However, part 64 does not include a definition of a hazard to navigation even though § 64.10–1 states that sunken vessels or other obstructions should be marked whenever they constitute a hazard to navigation. Pub. L. 101–599 mandates the establishment of standards for the purposes of each subsection of the Natural Gas Pipeline Act of 1968, the Hazardous Liquid Pipeline Act of 1979, and the Ports and Waterways Safety Act of 1972, as amended, for what constitutes a hazard to navigation. The Coast Guard proposes to satisfy part of this Congressional mandate by revising 33 CFR part 64 to include a list of factors which are to be considered when determining whether any obstruction constitutes a hazard to navigation, in general.

Under the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 409 *et seq.* (hereinafter Wreck Act), and its implementing regulations with respect to marking (33 CFR part 64), the term "hazard to navigation" has not been defined. However, § 64.30–1 does identify factors to consider in determining whether to mark a sunken vessel or obstruction. Although the term "hazard to navigation" is never precisely defined, the same considerations apply equally to defining hazard or determining whether to mark a sunken vessel or obstruction as a hazard.

In the Wreck Act's implementing regulations with respect to marking, removal, or redefinition of a designated waterway because of obstructions to navigation (33 CFR part 245), general definitions have been provided for both hazard to navigation and obstruction. Section 245.20 identifies ten factors that the Corps of Engineers considers jointly with the Coast Guard in determining whether an obstruction poses a hazard to navigation. Those factors include but are not limited to, the location of the obstruction in relation to the navigable channel and associated traffic patterns, the navigational difficulties in the vicinity of the obstruction, the depth of water over the obstruction, the type and density of both commercial and recreational vessel traffic, the physical characteristics of the obstruction, whether the obstruction may move, the location of the obstruction in relation to existing aids to navigation, prevailing and historical weather conditions, the length of time the obstruction has been in existence, and the history of vessel accidents involving the obstruction.

With regard to the Wreck Act, the term "hazard to navigation" has been construed broadly. This broad construction has developed because the statutory purpose of the Wreck Act is to promote safety of navigation by the removal of wrecks; to prevent unmarked obstructions in the navigable waters of the United States; and to prevent any kind of obstruction which is a hazard to navigation in navigable channels.

Development of a definition of a hazard to navigation for regulations to implement Public Law 101–599 should be consistent with the Wreck Act and its underlying purpose of promoting safe navigation. A specific definition of a hazard to navigation, for the purpose of this Act, offers the advantage of predictability. Congress, through Public Law 101–599 has now exercised a legislative judgement that a similar specificity is also required in determining whether a marine pipeline is a hazard to navigation.

Title 33 CFR part 64, implementing the provisions of the Wreck Act, requires the reporting and marking of sunken vessels, rafts and other craft that sink in the navigable waters of the United States. Part 64 does not require the marking and reporting of other obstructions, but in the past has merely recommended that owners report such obstructions and mark them "whenever they constitute a hazard to navigation."

Discussion of Proposed Amendments

The proposed amendments will remove some surplus or dated information, amend § 64.01–6 by adding the definitions of "hazard to navigation" and "obstruction", make marking sunken vessels or rafts clearly mandatory by changing "should" to "shall" in § 64.10–1(a), make marking of submerged pipelines that are hazards to navigation mandatory by adding a new § 64.10–1(d), and add a list of considerations for determining whether an object is a hazard to navigation.

The goal is to ensure that Part 64 is consistent with Public Law 101–599 and properly implements the amendments to the Ports and Waterways Safety Act. These provisions are consistent with other regulations (33 CFR part 245), and will provide the waterway user and pipeline owner with guidelines to consider when evaluating whether an obstruction is a hazard to navigation which requires marking. Statutory requirements already require the

marking of hazards and therefore no new costs are incurred.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and non-significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The proposal provides guidelines to consider when evaluating whether an object is a hazard to navigation which requires marking. These guidelines merely clarify existing policy and the Coast Guard anticipates that few, if any, additional markings will be required. Therefore, the Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that this action is being performed as part of Coast Guard operations to carry out its statutory authority in the area of maritime safety in establishing procedures for floating and minor fixed aids to navigation. Under section 2.b.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **"ADDRESSES."**

List of Subjects in 33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 64 as follows:

PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS

1. The authority citation for part 64 is revised to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; 49 CFR 1.46.

2. Section 64.01–6 is amended by adding the following definitions in alphabetical order to read as follows:

§ 64.01–6 Definition of terms.

* * * * *

Hazard to navigation means an obstruction, usually sunken, that presents sufficient danger to navigation so as to require expeditious, affirmative action such as marking, removal, or redefinition of a designated waterway to provide for navigational safety.

* * * * *

Obstruction means anything that restricts, endangers, or interferes with navigation.

* * * * *

3. Section 64.10–1 is amended by revising paragraph (a) and adding a new paragraph (d) before the note to read as follows:

§ 64.10–1 Marking and notification requirements.

(a) The owner of a vessel, raft, or other craft wrecked and sunk in a navigable channel shall mark it immediately with a buoy or daymark during the day and with a light at night. The owner of a sunken vessel, raft, or other obstruction that otherwise constitutes a hazard to navigation shall mark it in accordance with this subchapter.

* * * * *

(d) Owners of marine pipelines that are determined to be hazards to navigation shall report and mark the hazardous portion of those pipelines in accordance with this section.

* * * * *

4. Section 64.30–1 is revised to read as follows:

§ 64.30–1 Determination of hazard to navigation.

In determining whether an obstruction is a hazard to navigation for the purposes of marking, the District Commander considers, but is not limited to, the following factors:

(a) Location of the obstruction in relation to the navigable channel and other navigational traffic patterns;

(b) Navigational difficulty in the vicinity of the obstruction;

(c) Depth of water over the obstruction, fluctuation of the water level, and other hydrologic characteristics in the area;

(d) Draft, type, and density of vessel traffic or other marine activity in the vicinity of the obstruction;

(e) Physical characteristics of the obstruction;

(f) Possible movement of the obstruction;

(g) Location of the obstruction in relation to other obstructions or aids to navigation;

(h) Prevailing and historical weather conditions;

(i) Length of time that the obstruction has been in existence;

(j) History of vessel incidents involving the obstruction; and

(k) Whether the obstruction is defined as a hazard to navigation under other statutes or regulations.

Dated: August 6, 1991.

J.W. Lockwood,

Captain, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91–22807 Filed 9–20–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD13 91–06]

Drawbridge Operation Regulations; Umpqua River, OR

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Oregon Department of Transportation (ORDOT), the Coast Guard is considering a change to the regulations governing the U.S. 101 highway bridge across the Umpqua River, mile 11.1, at Reedsport, Oregon. This change would require that at least two hour's advance notice be given for opening the drawspan of this bridge at all times. This proposal is being made because of a marked decrease in requests for bridge openings. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and should

still provide for the reasonable needs of navigation.

DATES: Comments should be received on or before November 7, 1991.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and any other materials referenced in this notice will be available for inspection and photocopying at 915 Second Avenue, room 3410. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section Aids to Navigation and Waterways Management Branch (Telephone: (206) 553–5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are: Austin Pratt, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of the Proposed Regulations

The Oregon Department of Transportation has asked the Coast Guard to approve a change to the operating regulations which would require that vessel operators request openings at least two hours in advance of the time that they desire to pass the bridge. The records of the bridge owner show that the bridge has opened on an average once per week for the past five years. If approved, these regulations would reduce operational costs for the Oregon Department of Transportation and still provide for the reasonable needs of navigation.

Existing regulations provide that the drawspan shall open on signal from 8 a.m. to 4 p.m. Monday through Friday and at all other times it shall open if four hours notice is given.

Federalism

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

Economic Assessment and Certification

The proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 CFR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Navigation and marine-related businesses would not be significantly affected by the proposed action because the present trend of infrequent drawspan openings is expected to continue into the future. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.893 is amended by revising paragraph (a) to read as follows:

§ 117.893 Umpqua River.

(a) The draw of the US 101 Bridge, mile 11.1, at Reedsport, Oregon, shall open on signal if at least two hours notice is given.

* * * * *

Dated: September 3, 1991.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 91–22808 Filed 9–20–91; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register
Vol. 56, No. 184
Monday, September 23, 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

Public Hearings of the President's Council on Rural America

AGENCY: Department of Agriculture.

ACTION: Notice of public hearings.

SUMMARY: The Under Secretary for Small Community and Rural Development, Department of Agriculture, is announcing a series of public hearings to be held by the President's Council on Rural America. These hearings are open to all interested parties.

DATES: The first hearing will be Tuesday, October 8, 1991, from 9 a.m. to 5 p.m. The second will be Wednesday, October 16, 1991, from 9 a.m. to 5 p.m. Additional hearings will be announced in future publications of the **Federal Register.**

ADDRESSES: The October 8 meeting will be held at: Civic Center, 300 Bibb Street, Montgomery, Alabama.

The October 16 meeting will be held at: Holiday Inn—Airport, 1301 West Russell Street, Sioux Falls, South Dakota, (605) 336–1020.

FOR FURTHER INFORMATION CONTACT: Jennifer Pratt, Special Assistant to the Council, Office of Small Community and Rural Development, room 5405 South Building, USDA, Washington, DC 20250, (202) 382–0394.

SUPPLEMENTARY INFORMATION: The President's Council on Rural America was established by Executive Order on July 16, 1990. Members are appointed by the President and include representatives from the private sector and from State and local governments. The Council is reviewing and assessing the Federal Government's rural economic development policy and will advise the President and the Economic Policy Council on how the Federal Government can improve its rural development policy. The purpose of the hearings is to seek information from both development experts and the public-at-large which will help the Council develop rural policy, as is their mandate.

The Council will hear from invited experts during the morning sessions, but will open the microphone in the afternoons to all interested parties, on a first come, first served basis. All speakers should be prepared to leave 5 copies of an executive summary of their presentation with the Council. Written materials may be submitted in person or by mail to the attention of Jennifer Pratt.

The Council is seeking input on the following issues:

- The Complexity of Rural Development: Integration of Human and Physical Services.
- Policy Development and Management.
- Intergovernmental Relations.
- The Issue of Attitudes Which Inhibit Development.
- Lack of Information and Knowledge Regarding Rural Problems.
- High-Tech Industry.
- Business Financing.
- Infrastructure.
- Traditional (eg, roads) and Advanced (eg., telecommunications).
- Human Services (eg., health, education, etc.).
- Role of Community Leadership.
- Urban/Rural Linkages.
- Environmental Issues.
- Technology Transfers.
- Global Market Development and Linkages.

Dated: September 17, 1991.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 91–22844 Filed 9–20–91; 8:45 am]

BILLING CODE 3410–07–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

September 17, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 17, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 369–S is being increased by application of swing, reducing the limit for Categories 613/614 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 53322, published on December 28, 1990; and 56 FR 7837, published on February 26, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 17, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1990, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began

on January 1, 1991 and extends through December 31, 1991.

Effective on September 17, 1991, you are directed to amend further the directive dated December 24, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
369–S [2]	433,960 kilograms.
613/614	14,533,123 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.
[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–22882 Filed 9–20–91; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Philippines

September 17, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and the Philippines is being amended to include coverage of cotton and man-made fiber textile products in Categories 359–C/659–C, 669–P, and 669–O.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 56 FR 41831, published on August 23, 1991 and 52 FR 11308, published on April 8, 1987.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 17, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 3, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry and withdrawal from warehouse for consumption in the United States of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines for which the Government of the Philippines has not issued an appropriate export visa.

Effective on October 1, 1991, you are directed to amend further the April 3, 1987 directive to include coverage of cotton and man-made fiber textile products in Categories 359–C/659–C [1], 669–P [2], and 669–O [3], produced or manufactured in the Philippines and exported on and after October 1, 1991. Consequently, coverage of Categories 359–O/659–O [4] is amended to exclude cotton and man-made fiber textile products in 359–C/659–C and 359–S/659–S [5] and 659–H [6].

Textile products in Categories 359–C/659–C, 669–P and 669–O which are produced or manufactured in the Philippines and exported from the Philippines on and after October 1, 1991 must be accompanied by the correct merged category or the correct part category corresponding to the actual shipment.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–22883 Filed 9–20–91; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[3] Category 669–O: all HTS numbers except those in Category 669–P.

[4] Categories 359–O: all HTS numbers except those in Categories 359–C and 359–S; Category 659–O: all HTS numbers except those in Categories 659–C, 659–H and 659–S.

[5] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[6] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

Request for Public Comments on Bilateral Textile Consultations with the Government of India on Certain Cotton and Man-Made Fiber Textile Products

September 17, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: September 24, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 31, 1991 and August 9, 1991, under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, between the Governments of the United States

and India, the United States Government requested consultations with the Government of India with respect to Categories 359–C/659–C (overalls and coveralls) and Categories 351/651 (pajamas and other nightwear), respectively.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Categories 359–C/659–C and 351/651, the Government of the United States has decided to control imports during the ninety-day periods which began on July 31, 1991 and extends through October 28, 1991 for Categories 359–C/659–C and August 9, 1991 through November 6, 1991 for Categories 351/651.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish specific limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 359–C/659–C and 351/651, produced or manufactured in India and exported during the periods beginning on July 31, 1991, in the case of Categories 359–C/659–C; and August 9, 1991, in the case of Categories 351/651, and extending through December 31, 1991, of not less than 202,356 kilograms (Categories 359–C/659–C) and 44,515 dozen (Categories 351/651).

Summary market statements concerning Categories 359–C/659–C and 351/651 follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 359–C/659–C and 351/651, under the agreement with India, or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 359–C/659–C and 351/651. Should such a solution be reached in consultations with the Government of India, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—India

Category 359–C/659–C—Overalls and Coveralls

July 1991

Import Situation and Conclusion

U.S. imports of cotton and man-made fiber overalls and coveralls, Category 359–C/659–C, from India, reached 112,109 dozen (415,375 kilograms) during the year ending in April 1991, two and one-half times the 44,697 dozen (180,087 kilograms) imported a year earlier. During the first four months of 1991, imports from India reached 65,938 dozen, (233,994 kilograms) over two and one-half times the 25,149 dozen (101,900 kilograms) imported during the same period a year earlier, and 92 percent of their total calendar year 1990 category 359–C/659–C imports.

The sharp and substantial increase in 359–C/659–C imports from India is causing a real risk of disruption in the U.S. market for cotton and man-made fiber overalls and coveralls.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber overalls and coveralls, Category 359–C/659–C, declined to 1,628 thousand dozen in 1990. This represents a decline of 31 percent from the 1987 level. The domestic manufacturers' share of the market fell from 59 percent in 1987, to 49 percent in 1990.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber overalls and coveralls, Category 359–C/659–C, declined from 1,658 thousand dozen in 1987 to 1,453 thousand dozen in 1989, then surged in 1990 to 1,728 thousand dozen, 19 percent above the 1989 level and four percent above the 1987 level. Imports continue to surge in 1991, up 54 percent in the first four months of 1991 over the January-April 1990 level. The ratio of imports to domestic production nearly doubled increasing from 58 percent in 1989 to 106 percent in 1990.

Duty-Paid Value and U.S. Producers' Price

Approximately 82 percent of category 359–C/659–C imports from India enter the U.S. under HTS numbers: 6211.42.0010—womens' cotton coveralls, jumpsuits, and similar apparel, and 6211.43.0010—womens' man-made fiber coveralls, jumpsuits and similar apparel. These garments entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable garments.

Market Statement—India

Category 351/651—Men's and Boys' and Women's and Girls' Cotton and Man-Made Fiber Pajamas and Other Nightwear

August 1991

Import Situation and Conclusion

U.S. imports of men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear Category 351/651, from India reached 96,909 dozen in the year ending May 1991, 83 percent above the 52,836 dozen imported a year earlier. During January-May 1991 imports of Category 351/651 from India reached 66,277 dozen, 68 percent above their January-May 1990 level and 95 percent of their total calendar year 1990 level.

The sharp and substantial increase in Category 351/651 imports from India is causing a real risk of disruption in the U.S. market for men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear.

U.S. Production and Market Share

U.S. production of men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear, Category 351/651, declined from 16,173 thousand dozen in 1987 to 11,458 thousand dozen in 1990, a 29 percent decline. The domestic manufacturers' share of this market fell from 75 percent in 1987 to 60 percent in 1990, a drop of 15 percentage points.

U.S. Imports and Import Penetration

U.S. imports of men's and boys' and women's and girls' cotton and man-made fiber pajamas and other nightwear, Category 351/651, increased from 5,360 thousand dozen in 1987 to 7,726 thousand dozen in 1990, an increase of 44 percent. Imports continue to increase in 1991, up 3 percent in the first five months of 1991 over the January-May 1990 level. The ratio of imports to domestic production doubled

increasing from 33 percent in 1987 to 67 percent in 1990.

Duty-Paid Value and U.S. Producers' Price

Approximately 92 percent of Category 351/651 imports from India during the first five months of 1991 entered under HTSUSA number 6208.21.0020—women's cotton nightdresses and pajamas other than of yarn dyed fabrics. These nightdresses and pajamas entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable nightwear.

Committee for the Implementation of Textile Agreements

September 17, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 24, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in India and exported during the ninety-day periods beginning on July 31, 1991 and extending through October 28, 1991, in the case of Categories 359–C/659–C, and August 9, 1991 through November 6, 1991, in the case of Categories 351/651, in excess of the following limits:

Category	Ninety-day limit [1]
351/651	33,918 dozen.
359–C/659–C [2]	145,381 kilograms.

[1] The limits have not been adjusted to account for any imports exported after July 30, 1991 (Categories 359–C/659–C); and August 8, 1991 (Categories 351/651).

[2] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

Textile products in Categories 356–C/659–C and 351/651 which have been exported to the United States on and after January 1, 1991 shall remain subject to the Group II limit established for the period January 1, 1991 through December 31, 1991.

Textile products which have been exported to the United States prior to July 31, 1991, in the case of Categories 359–C/659–C; and August 9, 1991, in the case of Categories 351/651, shall not be subject to the ninety-day limits established in this directive.

The conversion factors are 10.10 for Categories 359–C/659–C and 43.5 for Categories 351/651.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–22884 Filed 9–20–91; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of Pakistan on Certain Cotton and Man-Made Fiber Textile Products

September 17, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: September 24, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6497. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On August 6, 1991, under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan, the United States Government requested consultations with the Government of Pakistan with respect to cotton and man-made fiber playsuits and sunsuits in Category 237.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Category 237, the Government of the United States has decided to control imports during the ninety-day period which began on August 6, 1991 and extends through November 3, 1991.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 237, produced or manufactured in Pakistan and exported during the prorated period beginning on November 4, 1991 and extending through December 31, 1991, of not less than 13,183 dozen.

A summary market statement concerning Category 237 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 237, under the agreement with the Government of Pakistan, or to comment on domestic production or availability of products included in Category 237, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 237. Should such a solution be reached in consultations with the Government of Pakistan, further notice

will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Pakistan

Category 237—Playsuits

August 1991

Import Situation and Conclusion

U.S. imports of playsuits, sunsuits, washsuits, and similar apparel, Category 237, from Pakistan reached 69,135 dozen during the year ending in May 1991, almost two and one half times the 28,381 dozen imported a year earlier. In the first five months of 1991, Pakistan shipped 60,014 dozen, two and one half times the 23,249 dozen shipped during the same period a year earlier, and 85 percent above their total calendar year 1990 level.

The sharp and substantial increase of Category 237 imports from Pakistan is causing a real risk of disruption in the U.S. market for playsuits, sunsuits, washsuits and similar apparel.

U.S. Production and Market Share

U.S. production of playsuits, sunsuits, washsuits, and similar apparel, Category 237, declined to 1,497 thousand dozen in 1990. This represents a decline of 39 percent from the 1989 level, and a 42 percent decline from the 1987 level. The domestic manufacturers' share of this market fell from 34 percent in 1987, to 23 percent in 1990, a decline of 11 percentage points.

U.S. Imports and Import Penetration

U.S. imports of playsuits, sunsuits, washsuits and similar apparel, Category 237, declined from 4,892 thousand dozen in 1987 to 3,835 thousand dozen in 1989, then surged to 4,909 thousand dozen in 1990, 28 percent above the 1989 level and 0.3 percent above the 1987 level. Category 237 imports continue to increase in 1991, increasing eight percent in the first five months of 1991 over the January-May 1990 level. The ratio of imports to domestic production, more than doubled increasing from 157 percent in 1989 to 328 percent in 1990.

Duty-Paid Value and U.S. Producers' Price

Approximately 95 percent of Category 237 imports from Pakistan during the first five months of 1991 entered the U.S. under HTS numbers: 6114.20.0040—women's and girls' knit cotton washsuits, sunsuits, one-piece playsuits and similar apparel, and 6211.42.0025—women's and girls' woven cotton washsuits, sunsuits, one-piece playsuits and similar apparel. These garments entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable garments.

Committee for the Implementation of Textile Agreements

September 17, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 24, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Category 237, produced or manufactured in Pakistan and exported during the ninety-day period beginning on August 6, 1991 and extending through November 3, 1991, in excess of 24,197 dozen [1].

Textile products in Category 237 which have been exported to the United States prior to August 6, 1991 shall not be subject to the limit established in this directive.

Textile products in Category 237 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-22881 Filed 9-20-91; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after August 5, 1991.

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange Proposed World Cotton "A" Index Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The New York Cotton Exchange (NYCE or Exchange) has applied for designation as a contract market in world cotton "A" index futures and as a contract market in world cotton "A" index futures options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before October 23, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYCE world cotton "A" index futures contract or the world cotton "A" index option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: The proposed futures contract provides for cash settlement based on a five-day average value of the "A" index. The "A" index is published by Cotlook, Ltd., and it is designed to reflect the value of cotton in northern Europe representing 12 specified growths with a base quality of middling 1 3/32". Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the same address, or by telephone at 202-254-6314.

The materials submitted by the NYCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment.

Any person interested in submitting written data, views, or arguments on the application for designation should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 17, 1991.

Gerald Gay,

Director.

[FR Doc. 91–22756 Filed 9–20–91; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Inland Waterways Users Board Meetings

AGENCY: Department of the Army, DOD.

SUBAGENCY: Corps of Engineers.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. (92–463), announcement is made of the following committee meeting:

Name of Committee: Inland Waterways Users Board.

Date of Meeting: October 22, 1991.

Place: Portland Marriott Hotel, 1401 SW. Front Avenue, Portland, Oregon 97201, (Tel. (800)–288–9290).

Time: 8:30 am to 5 pm.

Proposed Agenda:

AM Session

8:30 Registration.

Business Session.

9—Administrative Announcements.

—Chairman's Call to Order.

—Executive Director's Comments.

—Approval of Prior Meeting Minutes

9:30 Trust Fund Analysis.

10 Report on Corps Investment Needs Survey.

10:30 Break.

11 Discussion on Investment Needs.

12 Lunch.

PM Session

Presentation of Information to the Board

1:30 Columbia/Snake Rivers—Future Needs.

2 Winfield L&D—Hazardous and Toxic Waste Update.

2:30 Break.

3 Annual Report Recommendations.

4 Public Comment Period.

5 Instructions to Board Staff/Adjourn.

This meeting is 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.

For further information, contact: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW–P, Washington, DC 220314–1000 at (202) 272–0146.

Hugh F. Boyd III,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 91–22818 Filed 9–20–91; 8:45 am]

BILLING CODE 3710–92–M

Department of the Army

MTMC Policy for Fuel Related Carrier Rate Changes

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Proposed policy for acquiring fuel related carrier rate adjustments.

SUMMARY: The Military Traffic Management Command (MTMC), on behalf of the Department of Defense (DOD) intends to establish a policy for fuel related carrier rate data changes on solicited and unsolicited line-haul tenders of freight and household goods in all participating modes pursuant to DOD Regulation 5160.53 and 5 USC (b)(2).

Written provision will be made in MTMC regulations and solicited tender agreements for fuel related rate adjustment increases during periods of fuel price shocks. Fuel price shocks will be categorized as either (1) Phase I (Brief/Moderate) during which fuel prices rise significantly but return to normal range in twelve weeks or less or (2) Phase II (Protracted Extreme) during which fuel prices increase significantly or remain at high levels for more than twelve weeks. Price fluctuations will be measured by changes in the ICC diesel fuel price survey or other appropriate survey.

The policy will apply to all domestic line-haul portions of carrier tenders, whether a shipment is domestic (interstate or intrastate) or international in nature.

The primary objective of this policy is to obtain the quality and quantity of service to DOD while permitting avenues of relief for carriers faced with an unforeseeable and substantial increase in fuel cast subsequent to their rate filing.

DATES: Comments must be received on or before October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Wright, MTIN–NG, Domestic Freight (703) 756–1585, Mr. Henry Spieler, MTPP–CD, Domestic Personal Property (703) 756–1190, or Mr. Melvin Williams, MTPP–CI, International Personal Property (703) 756–2383, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

Policy

Written provision will be made in MTMC regulations and solicited tender agreements for fuel related rate adjustment increases during periods of fuel price shocks (sudden, unexpected and sharp increases in fuel prices). The policy will apply to the unsolicited and solicited line-haul tenders of freight and household goods carriers by all participating modes. Unsolicited tenders are submitted by freight carriers to MTMC under the voluntary Tender Program for freight; solicited tenders are requested by MTMC and include tenders submitted under the Freight Guaranteed Traffic program and the Domestic Household Goods program. The policy applies to all domestic line-haul portions of carrier tenders, whether a shipment is domestic (interstate or intrastate) or international in nature. It does not apply to passenger carriers. Rate adjustments will be allowed according to the following general guidelines:

1. A two-phased approach would be used. Phase I applies to brief/moderate fuel price shock situations lasting up to 12 weeks in duration. Phase II applies to protracted shock situations exceeding 12 weeks in duration or shocks of extreme severity.

2. Phase I (Brief/Moderate Shock): MTMC will consider implementation of Phase I policies when fuel prices increase 15 percent or more (as measured by changes in the ICC diesel fuel prices survey or other appropriate survey) during a fuel shock lasting up to 12 weeks in duration.

a. Unsolicited Tender Programs: MTMC will allow reduced notification time for carriers to file temporary fuel related rate adjustments on unsolicited tenders. MTMC will specify notice requirements, rate adjustment frequency and termination dates and extended or cancel termination dates as it deems necessary. Carriers making adjustments will be required to issue blanket tenders for fuel related adjustments instead of submitting supplemental tenders on a per tender basis. Retroactive effective dates will not be permitted. Rate adjustments will apply to shipments picked up on or after the effective date

of the adjustment and remain in effect until cancelled.

b. Solicited Tender Programs: Fuel rate adjustments on solicited rate programs will not be permitted during Phase I brief/moderate fuel price shocks.

3. Phase II (Protracted/Extreme): If the fuel price shock exceeds 25 percent (as measured by changes in the ICC diesel fuel survey or other appropriate survey), or if a fuel price shock of at least 15 percent, but less than 25 percent, exceeds 12 weeks in duration, MTMC will consider implementation of Phase II policies.

a. Unsolicited Tender Programs: As under Phase I, MTMC will continue to consider allowing periodic carrier fuel related rate adjustments, MTMC will extend or cancel rate adjustment termination dates as it deems necessary.

b. Solicited Tender Programs: Upon implementation of Phase II, MTMC will consider prescribing fuel rate adjustments on solicited tenders. Prescribed rate adjustments will be established for different modes and, where necessary, types of rates, e.g. less than a truckload (LTL), truckload (TL), etc., using a methodology developed by MTMC and the best information available. There will be no change in existing carrier rankings.

4. Termination: MTMC will consider termination of fuel rate adjustments allowed under Phase I when fuel prices (as measured by changes in the ICC diesel fuel price survey or other appropriate survey) fall below the 15 percent level. Termination of Phase II will be considered: (1) When fuel prices fall below the 25 percent level during shocks lasting 12 weeks or less, (2) when fuel prices fall below 15 percent during shocks exceeding 12 weeks in duration. For newly solicited rate arrangements or cycles, MTMC will retain the option of allowing or not allowing existing fuel adjustments to be applied.

5. Advance Notification: Whenever possible, MTMC will provide advance notification to the Defense Logistics Agency and the Services of fuel rate adjustments for both solicited and unsolicited rates. Advance notification may not be feasible in some emergency situations.

Discussion

Fuel price shocks are emergency situations characterized by sudden, unexpected and sharp increases in fuel prices requiring consideration of temporary rate relief for carriers. For the purposes of this policy, shocks are either: (1) Brief/Moderate Shocks during which fuel prices rise significantly, but return to their normal range within a period of twelve weeks or less, or (2) Protracted/Extreme Shocks in which fuel prices increase significantly or remain at high levels for more than twelve weeks. The primary objective of this policy is to maintain the quantity and quality of service to DOD while permitting avenues of relief for carriers faced with an unforeseeable and substantial increase in fuel cost subsequent to their rate filing. The intention is to provide the flexibility needed to accommodate both types of fuel price shocks, provide individual carriers reasonable relief from unforeseeable and sudden increases in fuel costs and minimize additional administrative workload. Unsolicited rates, which normally can be cancelled on 30-days notice, are similar to "spot bids" for onetime requirements and reflect short term cost considerations. Carriers that provide unsolicited rates normally have not built any significant cushion into their rates to absorb fuel shocks. The reduction in the notice requirements will allow carriers to adjust their individually determined competitive rates to maintain compensatory rate levels. They may be allowed relief under both brief/moderate and protracted/extreme shock situations. Carriers that provide raters under solicited rate programs, which include MTMC's Guaranteed Traffic and Personal Property programs, are established for periods from six to eighteen months or more. Carriers participating in these programs are presumed to have submitted long-term rates that consider the risk of brief/moderate shock situations. It is deemed reasonable to limit relief to carriers under solicited tender programs to protracted/extreme shock situations. MTMC prescription of fuel rate adjustments for solicited tender programs will help maintain stability in these programs. The policy also clarifies when termination of fuel rate adjustments would be considered by MTMC. This policy does not apply to passenger carriers since they are at minimum financial risk because of the nature of the MTMC passenger traffic programs. These programs rely primarily on separate "spot bids" for each movement or Contact City Pair program that allows one-time price adjustment after the first six months of the one-year contract.

John O. Roach, II,

Department Liaison Officer with the Federal Register.

[FR Doc. 91-22819 Filed 9-20-91; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the United States Postal Service and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the United States Postal Service (USPS) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between OPM and DoD that their records are being matched by computer. The purpose of the match is to identify regular officer military retirees who are USPS employees subject to a limitation on the amount of military retired pay they can receive.

DATES: This proposed action will become effective October 23, 1991, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and USPS has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies to identify regular officer military retirees who are USPS employees and improperly receiving amounts of military retired pay beyond the limitation provided for by law.

The parties to this agreement have determined that a computer matching program is the most efficient, effective and expeditious method of obtaining and processing the information needed to determine whether employees are receiving compensation in excess of that permitted under the dual compensation

and pay cap restrictions. The principal alternative to using a computer matching program for identifying such employees would be a manual comparison of all records of retired regular military officers with the records of all USPS employees.

Periodic matches of this type have been accomplished since 1984. The results for 1988 identified $300,000 in overpaid benefits involving dual compensation and pay cap restrictions.

By comparing the data received through this matching program on a recurring basis, USPS and DoD will be able to make timely and accurate adjustments in benefits. The matching program will prevent or correct overpayment, fraud and abuse, thus assuring proper benefit payments.

Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between USPS and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Records Officer, United States Postal Service, Washington, DC 20260–5010.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on July 15, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: September 18, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the United States Postal Service and the Department of Defense for Verification and Continuing Compliance With Statutory Requirements (Pay Cap/Dual Compensation)

A. *Participating agencies:* Participants in this computer matching program are: United States Postal Service (USPS) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The USPS is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the matching agreement is to identify regular officer military retirees who are USPS employees subject to a limitation on the amount of military retired pay they can receive.

DoD has responsibility for ensuring that regular military officer retirees who are also civilian employees of the Federal government do not receive compensation in excess of the legislated maximum amounts and ensuring that the correct amount of dual compensation is subtracted from retired pay.

Based on experience and a cost benefit analysis, USPS and DMDC expect a computer matching program is the most effective and expedient way to identify individuals who are receiving more retirement pay than permitted under dual compensation and pay cap restrictions. Yearly savings of $300,000 in military retired pay are anticipated by the DoD.

DMDC expects to continue to find individuals who are receiving overpayment beyond dual compensation and pay cap restrictions.

By comparing the data received through this matching program on a recurring basis, DoD will be able to make timely and accurate adjustments in military retirement pay. The matching program will prevent or correct overpayment, fraud and abuse, thus assuring proper benefit payments.

Periodic matches conducted since 1984 have resulted in the identification of numerous improper payments and recovery of millions of dollars. Without a matching program, both agencies would have to rely on voluntary reporting by their beneficiaries. This would be an inadequate means of keeping records accurately updated to prevent overpayment.

The computer matching program is an efficient and nonobtrusive method of determining if individuals are receiving prohibited or erroneous military retirement pay from the DoD.

C. *Authority for conducting the match:* It is DoD's responsibility to monitor regular officer military retirees who are civilian Federal employees as to their military retirement entitlements under title 5 U.S.C. 5532.

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. This match will involve the USPS record system identified as USPS 050.020, "Finance Records—Payroll System", last published in the **Federal Register** at 54 FR 43667 on October 26, 1989, and amended at 55 FR 20554 on May 17, 1990. The notice contains an appropriate routine use for the release of these records for this purpose. The USPS file contains information on approximately 850,000 current USPS employees.

2. The DoD system of records is S322.10 DLA–LZ, "Defense Manpower Data Center Data Base", published at 56 FR 19838 (April 30, 1991). Information obtained as a result of the match will be disclosed internally within the DoD to the military finance centers. The DMDC files contain information on 1.6 million retired military members.

E. *Description of computer matching program:* DMDC will compare information from the USPS file with retired military pay files concerning individuals potentially subject to dual compensation and/or pay cap limitations.

The USPS file extract contains the name, Social Security Number, annual salary rate (but not actual earnings), occupational title, work address, and work schedule (full time, part time, intermittent).

The data elements to be used from the DMDC files are Social Security Number, name, fan code, date of retirement, VA offset, combat-related injury flag, service, monthly retired pay amount and pay status.

Records matching on the Social Security Number where the combined income exceeds the maximum allowed by law will be sent to the applicable Defense Finance and Accounting Service centers to determine, based on a review of hard copy records, if further action is needed.

The finance center will screen the initial data to rule out matched

individuals who are properly receiving monies. The parties agree that the occurrence of a match (when a name appears on DMDC's files and USPS's files) is not conclusive evidence that any illegality has occurred; rather the match is an indication that further examination in the matter is warranted. The finance center will verify the match results by reviewing the information in the actual case file before any adverse action is taken.

Each individual identified as receiving unjustified benefits will be afforded all applicable due process standards including, but not limited to, being given an opportunity to contest the findings and proposed actions. Benefits or payments will not be suspended or reduced pending expiration of a 35-day notification and response period.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and may be repeated no more than twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between USPS and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

[FR Doc. 91–22827 Filed 9–20–91; 8:45 am]

BILLING CODE 3810–01

Privacy Act of 1974; Computer Matching Program Between the United States Postal Service and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the United States Postal Service (USPS) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between USPS and DoD that their records are being matched by computer. The record subjects are delinquent debtors of the USPS who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by DoD so as to permit the DoD to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective October 23, 1991, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202-884. Telephone (703) 614–3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and USPS have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of obligations held by DoD under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the USPS so that DoD can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. The parties to this agreement have determined that a computer matching program is the most efficient, effective and expeditious method for accomplishing this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between USPS and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Records Office, United States Postal Service, Washington, DC 20260–5010.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on August 5, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: September 18, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the United States Postal Service and the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are: United States Postal Service (USPS) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The USPS is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments and indebted and delinquent in their repayment of debts owed to the United States Government under certain programs administered by DoD so as to permit DoD to pursue and collect the debt by voluntary

repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716–3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; Section 206 of Executive Order 11222; 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office—Department of Justice); DoD Instruction 7045.18, Collection of Indebtedness due the United States (32 CFR part 90).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. This match will involve the USPS record system identified as USPS 050.020, "Finance Records—Payroll System", last published in the **Federal Register** at 54 FR 43667 on October 26, 1989, and amended at 55 FR 20554 on May 17, 1990. The notice contains an appropriate routine use for the release of these records for this purpose. The USPS file contains information on approximately 850,000 current USPS employees.

2. The DoD system of records is S322.10 DLA–LZ, "Defense Manpower Data Center Data Base", published at 56 FR 19838 on April 30, 1991. Information obtained as a result of the match will be disclosed internally within the DoD to the military finance centers. The DMDC files contain information on approximately ten million active duty, retired, and Reserve military members, current and former Federal civilian employees, and debtors obligated to DoD.

E. *Description of computer matching program:* USPS will provide DMDC with a magnetic tape which contains the name, SSN, annual salary rate (not actual earnings), occupational title, work location, and work schedule designation (full time, part time, intermittent) of all USPS employees. Upon receipt of the computer tape file of the employees, DMDC will perform a computer match using all nine digits of the SSN of the USPS file against a DMDC computer database of debt records supplied by the DoD finance centers. Upon identifying hits (individuals common to both tapes), DoD will send a tape of the hit records to USPS and USPS will provide DoD a second tape containing the name, SSN, and home address of each hit. The finance centers will verify and determine that the hit data provided for the USPS are consistent with the debt file and will resolve any discrepancies or inconsistencies on an individual basis.

Each individual identified as indebted will be afforded all applicable due process standards including, but not limited to, being given an opportunity to contest the findings and proposed actions.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for the **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and may be repeated no more than twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between USPS and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

[FR Doc. 91–22828 Filed 9–20–91; 8:45 am]
BILLING CODE 3810–01

Privacy Act of 1974; Computer Matching Program Between the United States Postal Service and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the United States Postal Service (USPS) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between USPS and DoD that their records are being matched by computer. The purpose of the match is to identify individuals of the Reserve Forces who are also employed by the Federal Government in a civilian position, so that reserve status can be terminated if necessary. To accomplish an emergency mobilization, individuals occupying critical civilian positions cannot be mobilized as Reservists.

DATES: This proposed action will become effective October 23, 1991, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and USPS have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies to identify individuals of the Reserve Forces who are also employed in civilian positions of the Federal Government, who might need to be terminated from their reserve status because they fill critical positions and cannot be mobilized.

The parties to this agreement have determined that a computer matching program is the most efficient, effective and expeditious method of obtaining and processing the information needed to determine whether employees are both reservists and civilian employees holding critical positions and not able to be mobilized. The principle alternative

to using a computer matching program for identifying such employees would be a manual comparison of all records of Reserve Forces with the records of all civilian employees serving in critical positions.

This match is intended to allow full mobilization of the Reserve Forces without hindering civilian or military tasking due to dual status.

Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion on the personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best choice and least obtrusive manner for accomplishing this requirement.

A copy of the computer matching agreement between USPS and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Records Officer, United States Postal Service, Washington, DC 20260–5010.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on July 15, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: September 18, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the United States Postal Service and the Department of Defense for Reserve Screening

A. *Participating agencies:* Participants in this computer matching program are: United States Postal Service and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The USPS is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the matching agreement is to identify individuals of the Reserve Forces who are also employed by the Federal Government in a civilian position. Reservists who occupy critical civilian positions cannot be mobilized and may have their reserve status terminated if necessary.

DoD has responsibility for insuring that members of Reserve Forces who are also civilian employees of the Federal Government do not occupy critical civilian positions which could prevent their mobilization in an emergency. If a reservist does has such dual status, he/she may have to terminate either his/her reserve status or civilian position.

Based on experience, USPS and DMDC expect a computer matching program is the most effective and expedient way to identify individuals who are serving both in the Reserve Forces and a critical civilian position. No dollar savings are anticipated by the DoD as a result of this match. The match is intended to allow full mobilization without hindering civilian or military tasking due to dual status.

C. *Authority for conducting the match:* Executive Order 11190, Providing for the Screening of the Ready Reserve of the Armed Services, contains the legal authority for conducting the matching program.

D. *Records to be matched:* The Systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. The USPS will use the system of records identified as USPS 050.020, "Finance Register—Payroll System", last published in the **Federal Register** at 54 FR 43667 on October 26, 1989, and amended at the 55 FR 20554 on May 17, 1990. The system of records notice contains an appropriate routine use for disclosure for this purpose. The records contain information on approximately 850,000 current USPS employees.

2. The DoD system of records is S322.10 DMDC, Defense Manpower Data Center Data Base, published at 56 FR 19838 (April 30, 1991). The DMDC files contain information on 5 million active and retired reserve military members.

E. *Description of computer matching program.* DMDC will compare information from the USPS file with selected reserve files.

The files to be provided by USPS contain the name, Social Security Number, annual salary rate (but not actual earnings), work address, occupational title, and work schedule (full time, part time, intermittent).

The data elements to be used from the DMDC files are Social Security Number, name, branch of service, employment category, and address.

Records matching on the Social Security Number will be sent to USPS which will screen the initial data, verify that the matched data are consistent with the source file, and resolve any discrepancies or inconsistencies on an individual basis. UPSA will verify the match results by reviewing the information in the actual case file before an adverse action is taken.

Each individual identified as serving in the Reserve Forces and occupying a critical civilian position will be afforded all applicable due process standards including, but not limited to, being given an opportunity to contest the findings and proposed actions.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review of the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective. The respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between USPS and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

[FR Doc. 91–22829 Filed 9–20–91; 8:45 am]

BILLING CODE 3810–01

DEPARTMENT OF ENERGY

[Dockets PP-78 and PP-78EA]

Application To Amend Presidential Permit and Electricity Export Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: Minnesota Power & Light Company (MP&L) has applied to the Department of Energy (DOE) to amend Presidential Permit PP-78 and the electricity export authorization contained in PP-78EA in order to add phase shifting and other transmission facilities to the permitted facility, and to increase the capability to export electricity to Canada over these facilities.

DATES: Comments, protests or requests to intervene must be submitted on or before October 23, 1991.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number PP-78 or PP-78EA should appear clearly on the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Officer) 202-586-9506 or Lise Howe (Program Attorney) 202-586-2900.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038. Exports of electricity from the United States to a foreign country also are regulated and require authorization under section 202(e) of the Federal Power Act.

On August 8, 1991, MP&L applied to amend the Presidential permit in Docket PP-78 issued on November 29, 1984. The facilities previously authorized by Presidential permit PP-78 consist of one 115-kV transmission line that crosses the U.S.-Canadian international border at International Falls, Minnesota. MP&L proposes to increase the electricity transfer capability of this transmission facility by constructing conventional phase shifting equipment and adding a second set of conductors to the existing 115-kV international transmission facility. The proposed phase shifting equipment would be installed at MP&L's existing International Falls substation. Approximately 2.3 acres would be added within the substation site to house the additional equipment. The second set of conductors would be installed on the vacant cross-arms contained on the existing double-circuit towers. The existing 115-kV international transmission facility already occupies one set of cross-arms on these existing towers. MP&L proposes to place the new phase shifting equipment in service at the International Falls substation on March 31, 1993, and to complete the addition of the second set of conductors by December 31, 1992.

Minnesota Power also has applied to amend the order in Docket No. PP-78EA authorizing the export of electrical energy to Canada. As a part of its application, MP&L supplied a copy of a proposed Interconnection Agreement between MP&L and Ontario Hydro. The Agreement will provide for diversity exchanges providing for the seasonal exchange of 150 megawatts (MW) of electrical power. Ontario Hydro will make 150 MW available to MP&L at all times during the summer season. MP&L will make the 150 MW available to Ontario Hydro at all times during the winter season. MP&L's need for these amendments is occasioned by this new Agreement.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with § 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with Steven W. Tyacke, Attorney, Minnesota Power, 30 West Superior Street, Duluth, Minnesota 55802.

Pursant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed actions (amendment of the Presidential permit and the electricity export authorization) will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before a Presidential permit or export authorization may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers, and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on September 16, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-22862 Filed 9-20-91; 8:45 am]

BILLING CODE 6450-01-M

Privacy Act of 1974: Proposed Amendment to Existing System of Records

AGENCY: Department of Energy.

ACTION: Proposed amendment to an existing system of records.

SUMMARY: The Department of Energy (DOE) is amending the DOE–54 Investigative Files of Inspector General and establishing a revised system of records entitled Investigative Files of the Office of Inspector General (IG). This proposed revision recognizes the change in the storage of investigative data to include storage on floppy and hard computer disks. By maintaining certain investigative material on computers, the IG can better track the status of investigative cases. In addition, computerization of this investigative data allows the IG to respond more efficiently to requests for statistical data from various Federal agencies including DOE, the Office of Management and Budget (OMB), and the Federal Bureau of Investigation (FBI). In the proposed revision, there is a clarification of the categories of individuals covered by the system; additional exemptions pursuant to sections (j)(2), (k)(1), (k)(2), and (k)(5) of the Privacy Act of 1974, 5 U.S.C. 552a, are applied to DOE–54; and the new statutory authority for the DOE's Office of Inspector General is cited. Finally, the routine uses have been expanded to more accurately reflect standard IG investigative procedures.

This report on a proposed revision to an existing system is submitted by DOE as required by the Privacy Act and paragraph 2a(2) of Transmittal Memorandum No. 1 to OMB Circular A–108.

DATE: If no comments are received to the contrary, 60 days after publication, this notice will become final.

ADDRESSES: Written comments: Mr. John H. Carter, Director, Reference and Information Management, U.S. Department of Energy, AD–234.1 FORRESTAL, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5955.

FOR FURTHER INFORMATION CONTACT:

Mr. Sanford J. Parnes, Counsel to the Inspector General, U.S. Department of Energy, IG–1 FORRESTAL, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4393.

Mr. John H. Carter, Director, Reference and Information Management, U.S. Department of Energy, AD–234.1 FORRESTAL, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5955.

Mr. Abel Lopez, Office of General Counsel, U.S. Department of Energy, GC–43 FORRESTAL, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION:

A. Background

This report amends the "DOE–54 Investigative Files of Inspector General" and establishes a revised system of records entitled Investigative Files of the Office of Inspector General. The revision recognizes the change in the storage of investigative data to include storage on magnetic media, as well as on paper records. Under the proposed revision, the description of individuals covered under the system is more specific, but the category of individuals covered is not expanded. Additional exemptions pursuant to sections (j)(2), (k)(1), (k)(2), and (k)(5) of the Privacy Act, 5 U.S.C. 552a, are applied to DOE–54, and the new statutory authority for the DOE's Office of Inspector General is cited. Finally, the routine uses have been expanded to more accurately reflect standard IG investigative procedures.

Exemptions to certain provisions of the Privacy Act are necessary. The disclosure of information contained in the criminal investigative files, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of IG investigations. Knowledge of such investigations could enable suspects to take actions to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their families, and could jeopardize the safety and well being of investigative and related personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified, or retained would significantly impede the effectiveness of IG investigatory activities, and in addition, could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

Information in these systems is maintained pursuant to official Federal law enforcement and criminal investigation functions of the IG. The exemptions are needed to accomplish the law enforcement function of the IG, to maintain the integrity and confidentiality of criminal investigations, to prevent disclosure of classified information, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel.

Although the routine uses have been expanded, they are compatible with the purpose for which the information was collected. The information that is exempted includes, but is not limited to, information compiled for the purpose of identifying criminal offenders and alleged offenders. This information consists of identifying data, information compiled for the purpose of a criminal investigation, including reports from informants and by investigators, and information that is associated with an identifiable individual.

The information is collected to determine if Federal criminal laws have been violated and to determine if there has been compliance with agency regulations and rules. The information will be used to fulfill the mission and law enforcement function of the IG, which is to refer evidence of violation of laws to appropriate law enforcement authorities and to refer evidence of administrative violations for appropriate administrative action.

By maintaining certain investigative material on computers, the IG can better track the status of investigative cases. In addition, computerization of certain investigative data allows the IG to respond more efficiently to requests for statistical data from various Federal agencies including DOE, OMB, FBI, and the President's Council on Integrity and Efficiency (PCIE). This management tool will assist in the expeditious completion of investigations. The investigative data will be protected and controlled in the same manner as other DOE unclassified sensitive data.

The information provided by the system is the date an investigation was opened, the nature of the investigation, the source of the investigative allegation, the investigative staff involved, the location of the investigation, the current status of the investigation, and the final disposition of the investigation.

Disclosure of the information will be accounted for through written records showing (1) record disclosed, (2) date of disclosure, and (3) name and address of the person or agency to whom the disclosure was made.

The files are maintained in a cipher and key-locked storage room. Classified information is maintained in locked General Services Administration approved class 6 security containers. Data maintained on personal computers can be accessed only by authorized staff using established procedures.

B. Authority

This system is established pursuant to the Inspector General Act of 1978, as

amended, 5 U.S.C. App. 3. This statute mandates that the Inspector General shall conduct investigative activities relating to the promotion of economy and efficiency in the administration of or the prevention or detection of fraud or abuse in DOE programs or operations.

C. Potential Consequences on Individual Privacy and Safeguards Against Unauthorized Use

DOE does not believe the maintenance of this system will have any substantial effect on privacy and other rights of individuals. The purpose of the system is to simplify the collection of information required to effectively manage the IG's Office of Investigations. While the description of individuals covered by the system is more specific, the category of individuals covered is not expanded. The increased specificity is a clarification for those on whom information in the system may pertain. Access to this information is restricted as noted above.

D. The text of the system notice is set forth below.

Issued in Washington, DC, this 18th day of September, 1991.

John J. Nettles, Jr.,

Director of Administration and Human Resource Management.

SYSTEM NAME:

Investigative Files of the Office of Inspector General.

SYSTEM CLASSIFICATION:

Generally unclassified. Classified material is sometimes maintained.

SYSTEM LOCATION:

Official case files and working files are located at:

U.S. Department of Energy, Office of Inspector General, Headquarters, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

U.S. Department of Energy, Office of Inspector General, PO Box 54000, Albuquerque, New Mexico 87115.

U.S. Department of Energy, Office of Inspector General, PO Box 1328, Oak Ridge, Tennessee 37831–1328.

U.S. Department of Energy, Office of Inspector General, PO Box 754, Richland, Washington 99352.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of an investigation, witnesses in an investigation, sources of investigative information, investigative personnel, and other individuals involved in an Office of Inspector General investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Criminal, civil, and administrative investigative records and files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3., the information contained in the investigative files is collected and maintained in carrying out the duties and responsibilities of the Inspector General to investigate, prevent and detect fraud and abuse in departmental programs and operations. Material gathered is used for prosecutive, civil or administrative actions.

If information contained in an investigative file indicates a violation or a potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, all information in the investigative file may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto. Records also may be disclosed in accordance with the routine uses 2 through 10 as listed in appendix B of 47 FR 14333, April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, micrographic and/or magnetic medium.

RETRIEVABILITY:

By name, case number, and title of investigative report.

SAFEGUARDS:

Files are maintained within a cipher and key-locked storage room. Classified information is maintained in locked General Services Administration approved class 6 security containers. Data maintain on personal computers can be accessed only by authorized staff using established procedures.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE Order 1324.2, RECORD DISPOSITION. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate. Automated files are erased through approved security processes.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General, for Investigations U.S. Department of Energy, Forrestal Building, Room 5B–250, 1000 Independence Avenue, SW. Washington, DC 20585.

NOTIFICATION PROCEDURE:

The Department of Energy has exempted the system from this requirement. See the Exemption section of this notice.

RECORD ACCESS PROCEDURE:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals; individuals and organizations that have pertinent knowledge about the subject; those authorized by the individual to furnish information; confidential informants; FBI; and other Federal, State, and local agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under subsection (j)(2) of the Privacy Act, this system has been exempted from the following subsections:

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

See DOE's Privacy Act regulation at 10 CFR 1008.12(a), 45 FR 61576, 61582, September 16, 1980. This section applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Under subsections (k)(1), (2), and (5) of the Act, this system has been exempted from the following subsections:

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4) and (G) and (H)
5 U.S.C. 552a(f)

See DOE's Privacy Act regulation at 10 CFR 1008.12(b). This section applies to information in the system that meets the criteria of the (k)(2) and (5) exemptions.

The detailed reasons for the exemptions under 5 U.S.C. 552a(j)(2) and (k)(2) as applicable follow:

(1) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation or that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(c)(4), (d), (e)(4)(G) and (H), (f) and (g) relate to the following: an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; agency procedures relating to access to records and the content of information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings, deprive co-defendants of a right to fair trial or other impartial adjudication, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, and reveal confidential information supplied by these sources and disclose investigative techniques and procedures. As for the civil remedies provisions of (g), since DOE is claiming that this system of records is exempt from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (3)(4)(G) and (H), (e)(5), and (8), (f) of the Act, the provisions of subsection (g) of the Act would be inapplicable and are exempted to the extent that this system of records will be exempted from those above-listed subsections of the Act.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

a. It is not always possible to detect relevance or necessity of specific information in the early stages of a criminal or other investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(4) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of the provision would impair investigations of illegal acts, violations of the rules of conduct, violations of the merit system and any other misconduct for the following reasons:

a. In certain instances the subject of an investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct must be obtained from other sources.

b. Most information collected about an individual under investigation is obtained from third parties such as witnesses and informers.It is not always feasible to rely upon the subject of the investigation as a source for information regarding his activities

c. The subject of an investigation will be alerted to the existence of an investigation if any attempt is made to obtain information from the subject. This could afford the individual the opportunity to conceal any criminal activities in order to avoid apprehension.

d. In an investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(5) 5 U.S.C. 552a(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

a. The authority under which the information is sought and whether disclosure of the information is mandatory or voluntary,

b. The purposes for which the information is intended to be used,

c. The routine uses which may be made of the information, and

d. The effects on the subject, if any, of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of the investigation as stated in b. above would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(ii) If the subject were informed of the information required by this provision, it could seriously interfere with undercover activities, require disclosure of undercover agents' identity and impair their safety, as well as impair the successful conclusion of the investigation.

(iii) Individuals may be contacted before the subject of an investigation during preliminary information gathering in investigations. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(6) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Because the law defines "maintain" to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation, it is not possible to

determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, or untimely, may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(7) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record of such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The notice requirement of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

Reasons for exemptions under 5 U.S.C. 552a(k)(1):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Such information, if known, might be harmful to national security.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to the following: An individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and agency procedures relating to access to records and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigations undertaken in connection with national security; or could disclose the identity of sources kept secret to protect national security or reveal confidential information supplied by these sources.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed when:

a. It is not always possible to detect relevance or necessity of specific information in the early stages of an investigation involving national security matters.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violators of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which also relates to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

Reasons for exemptions under 5 U.S.C. 552a(k)(5):

(1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(d), (e)(4) (G) and (H), and (f) relate to the following: An individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; could interfere with co-defendant's right to a fair trial; could constitute an unwarranted invasion of personal privacy of others; could disclose the identity of confidential sources and reveal confidential information supplied by these sources; and could disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed when:

a. It is not always possible to detect relevance or necessity of specific information in the early stages of an investigation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

c. In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation, but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

[FR Doc. 91-22865 Filed 9-20-91; 8:45 am]
BILLING CODE 6450-01

Bonneville Power Administration

Prepare an Environmental Impact Statement on Proposed Stanley Basin Project and Conduct Scoping Meetings

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS) and announcement of public scoping meetings.

SUMMARY: BPA announces its intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the potential environmental impacts of the proposed Stanley Basin Project, a project designed to conserve and restore annual adult returns of Snake River sockeye salmon (*Onchorynchus nerka*). The Snake River sockeye was proposed for listing as "endangered" by the National Marine Fisheries Service (NMFS) on April 2, 1991. At the request of the Shoshone-Bannock tribes (SBT) and the Idaho Department of Fish and Game (IDFG), the two agencies having management authority over the Snake River sockeye, BPA proposes to fund the Stanley Basin Project. Some of the tasks proposed by the SBT and IDFG have been categorically excluded from further NEPA review by BPA and are now being funded as part of the Stanley Basin Project. These tasks are research and data gathering in nature and, by themselves, have no potential for adverse environmental impact.

To ensure that the full range of issues related to this proposal are addressed, comments on the proposed scope and content of the EIS are invitied from all interested parties. Written comments should be postmarked by October 18, 1991. Agencies, organizations, and the general public will also be invited to present oral comments or suggestions pertinent to preparation of this EIS at public scoping meetings scheduled as indicated below. Comments and suggestions received during the scoping period will be considered in preparing the draft EIS. The draft EIS is expected to be completed in early 1992, at which time its availability will be announced in the **Federal Register**, and public comments will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS.

ADDRESSES: Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meetings, or questions concerning the Stanley Basin Project should be directed, as appropriate, to one of the following: Mr. John Rowan—PGA, U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, (503) 230–4238, or Ms. Nanci Tester—PGA, U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, (503) 230–3078.

Those persons who wish to receive a copy of the draft EIS should make their request to: Mr. Mark Danley—ALP, Public Involvement Office, U.S. Department of Energy, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, 1–800–841–5867 (Oregon), 1–800–624–9495 (Western States), or 503–230–3478.

Envelopes should be marked: "Stanley Basin Project EIS."

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process, please contact: Carol M. Borgstrom, Director, Office of NEPA oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

SUPPLEMENTARY INFORMATION: BPA is implementing the Northwest Power Planning Council's (Council) 1987 Columbia River Basin Fish and Wildlife Program (Program), as amended. The Program is designed to add approximately 2.5 million adult anadromous fish (salmon and steelhead) to the annual runs returning to the Columbia River Basin. BPA funds many of the projects in the Council's Program.

On April 2, 1991, NMFS proposed to list the Snake River sockeye salmon (*Onchorynchus nerka*) as endangered under the Endangered Species Act of 1973 (ESA). On May 3, 1991, the IDFG, in coordination with the SBT, requested BPA funding of an interim emergency effort to save Snake River sockeye salmon.

On May 9, 1991, BPA received approval from the Council on Environmental Quality (CEQ) to proceed with funding the emergency effort under alternative arrangements for NEPA compliance, pursuant to 40 CFR 1506.11 of the CEQ regulations. Documents prepared in support of alternative NEPA compliance arrangements covered the 1991 trapping and rearing of Redfish Lake (located in the Stanley Basin of Idaho) outmigrating smolts and the 1991 trapping, holding, and spawing of adult sockeye returning to Redfish Lake. While BPA is currently funding this emergency effort, additional work has been proposed for BPA funding by the IDFG and the SBT that continues the effort started in the spring of 1991 to rebuild the Snake River sockeye population.

A. Current Action

BPA is funding some of the preparatory research work to be done by the University of Idaho, the SBT, and IDFG in the Stanley Basin. This work includes: (1) Determination of genetic, morphological and behavioral characteristics of Snake River sockeye and Redfish Lake and Alturas Lake kokanee; (2) Determination of Redfish Lake and Alturas Lake kokanee capability to become anadromous; (3) Limnological and water quality studies in the Stanley Basin nursery lakes; (4) Preliminary studies of existing migratory blocks at outlets of nursery lakes in Stanley Basin; and, (5) Determination of *Onchorynchus nerka* population characteristics and densities in the Stanley Basin. These actions are categorically excluded, i.e., they normally do not require preparation of an Environmental Assessment or an EIS.

B. Proposed Action

The proposed action includes release of the first set of offspring smolts into the Snake River system that were derived from the spring 1991 trapping of the Redfish Lake outmigration; additional trapping and rearing of smolts migrating out of the Stanley Basin lakes in 1992 and beyond; annual trapping of any Snake River sockeye adults returning to Redfish Lake; removal and/or modification of barriers to fish migration; research on the genetic characteristics of anadromous fish in the Stanley Basin lakes; and, fertilization of selected Stanley Basin nursery lakes to improve production of sockeye salmon.

C. Alternatives Proposed for Consideration

The Stanley Basin Project EIS will examine alternative smolt acclimation and release sites, alternative means of controlling rough fish migration, alternative adult sockeye trapping locations, and alternative means of increasing the productivity of the Stanley Basin lakes. In analyzing the potential environmental effects of alternatives, the EIS will consider potential impacts to cultural or religious sites, floodplains, wetlands, water quality, and other sensitive resources that may be present.

D. Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. In accordance with CEQ NEPA regulations (40 CFR 1500.4 and 1502.21), other environmental documents, as appropriate, may be incorporated by reference, in whole or in part, into these impact analyses. This list is not all

inclusive nor does it imply any predetermination of potential impacts. Additions or deletions to this list may occur as the result of the scoping process.

1. How will nursery lake fertilization affect the natural environment of the Stanley Basin?
2. Can rough fish (suckers, squawfish) barriers be modified to allow migration of anadromous fish but not migration of rough fish throughout the Stanley Basin?
3. What is the best release strategy for smolts reared at the Eagle facility?
4. Where is the best location for trapping returning adults?
5. What kinds of interaction will there be between potentially increasing numbers of anadromous fish and existing resident fish in the Basin?
6. What effects are likely on the genetic character of existing natural/wild populations with implementation of an artificial production program? Annual trapping, rearing, and spawning of captive sockeye salmon could adversely affect the genetic integrity of any existing natural/wild sockeye. The IDFG and SBT-proposed Stanley Basin Project is designed to maintain the genetic character of the natural populations within the Stanley Basin by using accepted spawning, rearing, and release procedures. Changes in artificial production techniques may be made in the future when the Council's Gene Resource Conservation Policy is completed and implemented. Until this policy is implemented, production practices are designed to minimize genetic drift and inbreeding depression through stock selection, collection of adequate numbers of brood stock and spawning procedures that will randomize fertilization. When a large diverse gene pool is lost due to the use of only a few individuals of the breeding population for broodstock, genetic drift and inbreeding depression can have an adverse effect on the genetic character of resulting populations.

E. Scoping Meetings

In addition to receiving written comments, BPA will conduct public scoping meetings to assist BPA in determining the appropriate scope of the EIS and the significant environmental issues to be addressed. Public scoping meetings will be held at the following locations and times:

a. Red Lion Downtowner, 1800 Fairview, Boise, Idaho.
Date: October 9, 1991.
Time: 7 p.m. to 9 p.m.
b. Community Center, Stanley, Idaho.
Date: October 10, 1991.
Time: 7 p.m. to 9 p.m.

The purpose of the scoping meetings is to offer all interested persons the opportunity to voice their opinions on the proposed content and scope of the Stanley Basin EIS. The meetings will be informal. Speakers who wish to provide further information for the record should submit such information to the Public Involvement Office address listed above by October 18, 1991.

BPA will prepare transcripts of the scoping meetings. The public may review the transcripts and other NEPA documented at BPA's Public Information Office located at 905 NE. 11th Ave., Portland, Oregon.

Steven G. Hickok,
Acting Administrator.
[FR Doc. 91–22863 Filed 9–20–91; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 432, 2748]

Carolina Power & Light Co. and North Carolina Electric Membership Corp.; Availability of Final Environmental Assessment

September 16, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for major new license for the existing Walters/Waterville Project located on the Pigeon River in Haywood County, North Carolina and has prepared a Final Environmental Assessment for the project.

The Draft Environmental Assessment for this project was issued on July 1, 1991. The Notice of the Availability of the Draft Environmental Assessment described the procedure for filing informal comments and motions to intervene in this proceeding and established July 29, 1991, as the due date for such comments and motions.

The issues in this proceeding have been set for a trial-type hearing, which is scheduled to begin on October 1, 1991. 18 CFR 380.10.

For further information, please contact John Blair, Environmental Assessment Coordinator, at (202) 219–2845.

Lois D. Cashell,
Secretary.
[FR Doc. 91–22773 Filed 9–20–91; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP88–211–018]

CNG Transmission Corp.; Report of Refunds

September 16, 1991.

Take notice that CNG Transmission Corporation (CNG) on September 9, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Report of Refunds made in accordance with the provisions of Paragraph (Q) of the Commission's Order of May 7, 1991, in Docket No. RP88–211–000 *et al.* CNG states that it made the refunds in August 1991.

CNG states that a copy of the refund report has been sent to all parties.

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 Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before September 23, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 91–22782 Filed 9–20–91; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM92–1–21–001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 16, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 10, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1991:

Substitute Second Revised Sheet No. 26.1
Substitute Second Revised Sheet No. 26A.1
Substitute Third Revised Tenth Revised Sheet No. 26C
Substitute Third Revised First Revised Sheet No. 26D

Columbia states that the listed tariff sheets reflect the removal of the WACOG surcharge adjustment rate from Columbia's tariff rate sheets at the October 1, 1991 level and revise the ACA rate as previously filed August 30, 1991 pursuant to the Commission's Regulations as set forth in Order No. 472, *et seq.*

Columbia states that copies of the filing were served upon Columbia's 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 Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before September 23, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-22783 Filed 9-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-599-000]

Holyoke Water Power Co.; Filing

September 16, 1991.

Take notice that on August 22, 1991, Holyoke Water Power Company (HWP) tendered for filing a proposed amendment to a service agreement between HWP and Holyoke Power and Electric Company (HP&E), dated October 14, 1957.

HWP states that this amendment eliminates from the contract the buy back from HP&E of output from the Mt. Tom Power Plant in Holyoke, Massachusetts. The amendment does not change any other rates or terms to service.

HWP requests that the Commission waive its filing requirements to the extent necessary to permit the proposed amendment to become effective as of midnight on June 30, 1991.

HWP states that copies of the appropriate proposed amendment have been served on HP&E.

HWP further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 91-22775 Filed 9-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-22-006]

Natural Gas Pipeline Company of America; Filing of Report of Refund

September 16, 1991.

Take notice that Natural Gas Pipeline Company of America (Natural) on September 6, 1991, tendered for filing its Report of Distribution of Refunds distributed in compliance with the provisions of Article 13.3 of the Stipulation and Agreement on Transition Cost Recovery in Docket Nos. RP91-22-000, RP-31-000 and CP89-1281-000. *et al.*, filed June 3, 1991, and approved by the Commission on July 25, 1991.

Natural states that copies of the report has been mailed to each of Natural's jurisdictional customers, intervenors and interested state regulatory agencies.

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 rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before September 23, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-22776 Filed 9-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-2-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

September 16, 1991.

Take notice that on September 13, 1991, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective on October 15, 1991.

Fourth Revised Sheet Nos. 116-118
Third Revised Sheet Nos. 119-122
First Revised Sheet No. 123

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers and to be recovered by National by operation of section 20 of the General Terms and Conditions to National's FERC Gas Tariff, Second Revised Volume No. 1. National further states that its pipeline-suppliers which have received approval to bill revised take-or-pay charges, as reflected in National's filing herein, are: Columbia Gas Transmission Corporation, CNG Transmission Corporation, Texas Eastern Transmission Corporation, Tennessee Gas Pipeline Company, and Transcontinental Gas Pipeline Corporation.

National states that copies of the filing were served on National's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 23, 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. 91-22778 Filed 9-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-72-000]

Pelican Interstate Gas System; Proposed Change in FERC Gas Tariff

September 16, 1991.

Take notice that on September 12, 1991, Pelican Interstate Gas System (Pelican) tendered for filing Fifth Revised Sheet No. 2A and Fourth Revised Sheet No. 2B to be a part of its FERC Gas Tariff.

The proposed tariff sheet provides a revised Annual Charges Adjustment (ACA) that the Federal Energy Regulatory Commission ("Commission")

assesses Pelican under § 382.103 of the Commission's Regulations. Pelican states that the Commission has specified the ACA unit charge of $.0024/Mcf to be applied to rates in 1992 for recovery of 1991 annual charges and under recovered 1990 annual charges.

Pelican states that copies of the filing were served on Pelican's jurisdictional customers and interested state regulatory agencies.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 23, 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. 91-22777 Filed 9-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP88-81-000, RP88-221-000, RP90-119-001, RP91-4-000 and RP91-119-000 (Phase I/Rates)]

Texas Eastern Transmission; Informal Settlement Conference

September 16, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on October 29-30, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of discussing issues related to transition costs, comparability of service, rate design and cost allocation.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 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 (1991).

For additional information, contact Dennis H. Melvin at (202) 208-0042 or Arnold H. Meltz at (202) 208-0737.

Lois D. Cashell,

Secretary.

[FR Doc. 91-22774 Filed 9-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-115-000, RP90-104-000, and RP90-192-000]

Texas Gas Transmission Corp.; Informal Settlement Conference

September 16, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on October 9, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose 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 in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations 18 CFR 385.214.

For additional information, contact Donald A. Heydt at (202) 208-0740 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 91-22780 Filed 9-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-29-004]

Transcontinental Gas Pipe Line Corp., Tariff Filing

September 16, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on September 3, 1991 supporting information and written explanation in compliance with the Federal Energy Regulatory Commission's (Commission) data request issued August 8, 1991 in the referenced Docket.

Transco states that copies of the filing are being mailed to each of its customers and State Commissions.

In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of the filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

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 Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before September 23, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-22779 Filed 9-20-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-126-000, et al.]

United Gas Pipe Line Co.; Informal Settlement Conference

September 16, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on September 23, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations 18 CFR 385.214.

For additional information, contact Joanne Leveque at (202) 208-5705 or Donald A. Heydt at (202) 208-0740.

Lois D. Cashell,

Secretary.

[FR Doc. 91-22781 Filed 9-20-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

Notice of Meeting; Invitation for Public Views and Comments on the Conduct of the 1992 Clean Coal Technology Solicitation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of meetings to invite public views and comments on the conduct of the 1992 Clean Coal Technology (CCT) solicitation.

Introduction

Public Law Number (Pub. L. No.) 101-512, "An Act Making Appropriations for the Department of Interior and Related Agencies for the Fiscal Year Ending September 30, 1991, and for Other Purposes" (the "Act"), enacted January 23, 1990, provides among other things, that $600 million be made available for a fifth solicitation for CCT demonstration projects. Furthermore, the Act stipulates that "the request for proposals * * * shall be issued no later than March 1,

1992, and projects resulting from such a solicitation must be selected no later than eight months after the date of the request for proposals."

Background

The CCT Demonstration Program is a technology development effort jointly funded by the Government and industry. In this Program, the most promising of the advanced coal-based utilization technologies are being moved into the marketplace through demonstration. The demonstration effort is at a scale large enough to generate all of the data needed by the public sector to judge the commercial potential of the processes being developed. As a goal, the program will make available to the U.S. energy marketplace a number of advanced, more efficient, and environmentally responsive coal utilization technologies. These technologies will reduce or eliminate the economic and environmental impediments that limit the full use of coal.

The Program, currently funded at a level of $2.75 billion of federal funds, consists of five separate phases in each of which a Program Opportunity Notice (PON) is being used as the procurement vehicle to competitively select projects proposed by potential participants. Four of the five phases of the Program have been initiated. In this effort to date, 187 proposals have been received from which 42 projects are currently active. Thirty-two projects are proceeding under the terms of the cooperative agreements between the participants and the Government. Negotiations are in progress on the remaining 10, all but one of which were selected in the fourth phase of the Program. Although Congress requires that industrial participation be a minimum of fifty percent, the participants in the first four phases are sharing over sixty percent of the costs.

The fifth and final phase of the Program will be initiated as early as March 1, 1992, with a release of the next PON. This PON will make available approximately $600 million of federal funds to cost-share projects selected.

Purpose of the Meetings

Public meetings have been convened by the Department of Energy (DOE) prior to three of the previous four phases of the CCT Demonstration Program. These meetings have been held in selected cities across the United States to obtain views, comments, and recommendations of the public on proposed goals and objectives of each phase of the Program. This established and successful procedure also is being implemented for the fifth and final phase of the Program.

In general, the goal of the fifth CCT solicitation (CCT V) will be to significantly advance the development of coal conversion and utilization technologies to ensure that coal can be used to meet the Nation's future energy needs in the most efficient, economic, and environmentally responsive manner possible.

Achieving this goal will be responsive to the National Energy Strategy (NES) which states in part:

> If we as a nation are to benefit * * * from our enormous, low-cost coal reserves, a variety of efforts are necessary to develop and demonstrate new "clean coal" technologies * * *.
>
> New CCT's can substantially improve efficiency and reduce emissions from powerplants. until they are proven at a commercial scale, however, their use entails more risk for utilities than conventional technologies. This additional risk could make it difficult for these new technologies to enter the marketplace quickly, especially given the tight deadlines of the Clean Air Act Amendments of 1990. The CCT Program, the single largest technology development program in the Department of Energy, is designed to help overcome this risk by offering the Federal Government as a financial partner in demonstrating worthy projects.
>
> By promoting the export of CCT's the NES will also help other nations (especially in Eastern Europe and the developing world) to achieve common goals: a cleaner environment and less dependence on oil.

The CCT Program also will yield significant benefits to the United States by:

- Addressing global warming concerns by significantly increasing the efficiency of power generation,
- Improving the reliability, reducing the cost, and improving the environmental performance of existing and future electric power stations,
- Greatly enhancing U.S. technological leadership and international competitiveness,
- Benefiting both eastern and western states by making available more cost-effective, fuel flexible, power and industrial systems capable of using the full spectrum of U.S. coals,
- Improving our present position in international trade by providing advanced technology that would make American coal more attractive to foreign markets, and by reducing the cost of producing energy-intensive U.S. goods,
- Helping to ensure that the U.S. enters the 21st century with a broad array of sophisticated, cleaner, and more economical coal-based energy technologies through accelerating the development of more advanced and sophisticated technologies that promise significant improvements in economic and environmental performance.
- Providing for the development of competitive coal-based heating and transportation fuels technology.
- Enhancing the long-term energy security of the United States.

However, DOE is interested in exploring alternatives that may be available with regard to how the March 1, 1992, solicitation is structured. The purpose of the meetings is to provide a conduit of information from the public to DOE. Accordingly, DOE is issuing this Notice in order to invite the public to attend either one or two meetings, and to give interested persons the opportunity to present their views, comments, and recommendations with regard to the forthcoming solicitation.

Nothing in this Notice should be considered as definite, final, or binding on DOE with regard to the nature and/or content of the solicitation. The public is further advised that DOE cannot reimbursement those who attend the public meetings of otherwise submit views to DOE for any expenses that they may incur in responding to this Notice.

Proposed Outline of the Anticipated Solicitation

To establish a framework for discussion and comment, it is useful to outline generally the structure of the anticipated CCT solicitation.

The solicitation will be consistent with the Report guidance, which provides, among other things, that, projects selected "shall be subject to all provisions contained under this head in Public Laws 99–190, 100–202, 100–446, 101–121, and 101–512 as amended by any legislative action for Fiscal Year 1992.

DOE anticipates that the solicitation will invite applications for financial assistance awards and, accordingly, will be governed by DOE's Financial Assistance Rules, 10 CFR part 600 (the "Rules"). The Rules establish uniform policies and procedures for the award and administration of DOE grants and cooperative agreements. (All four previous PONs (1986, 1988, 1989, and 1991) specified that cooperative agreements would be awarded.)

Project sponsors would be required to share the costs of the projects, such that DOE would not finance more than fifty percent of the total project cost as of the date of award, and the solicitation may require, as was the case in four previous PONs, that the cost-sharing by the offeror be at least fifty percent in each

of the project phases (these were design, construction, and operation).

Costs would be shared between DOE and the offeror on an "as expended," dollar-for-dollar, basis. The solicitation may include Qualification Criteria, and provide the failure to meet any one, or more than one, of these criteria would result in rejection of the proposal and the cessation of its consideration of financial assistance.

It is also the policy of the DOE in the CCT Program to recover an amount up to (i.e., not to exceed) the Government's actual contribution to the project. Repayment will be derived from those projects which are successful and achieve commercial application. Individual Repayment Agreements for each project will be negotiated. The Qualification Criteria stipulated in the previous PON (CCT IV) were:

- The proposed demonstration project or facility must be located in the United States.
- The proposed demonstration project must be designed for and operated with coal(s). These coals must be from mines located in the United States.
- The proposer must agree to provide the cost-share of at least fifty percent of total allowable project cost, with at least fifty percent in each of the three project phases.
- The proposer must have access to, and use of, the proposed site and any proposed alternate site(s) for the duration of the project.
- The proposed project team must be identified and firmly committed to fulfilling its proposed role in the project.
- The offeror agrees that, if selected, it will submit a "Repayment Plan" consistent with the requirements stated in the PON.
- The proposal must be signed by a responsible official of the proposing organization authorized to contractually bind the organization to the performance of the Cooperative Agreement in its entirety.

If the Qualification Criteria are met, a proposal would undergo preliminary evaluation, if such a phase is included in the solicitation. As noted above for the Qualification Criteria, failure to meet one or more of the Preliminary Evaluation Requirements would result in rejection of the proposal and its elimination from further consideration for financial assistance. Preliminary Evaluation requirements were employed in the previous PON: Included were stipulations that the proposal must be consistent with the objectives of the PON; the proposal must contain sufficient business and management, technical, cost, and other information to enable Comprehensive Evaluation (discussed below); and, the proposal must include an explicit funding plan for the project.

Once a determination is made that a proposal meets both (as may be applicable) the Qualification Criteria and the Preliminary Evaluation requirements, it would then enter the Comprehensive Evaluation phase and be evaluated in accordance with the criteria stated in the solicitation. The solicitation would state the different Evaluation Criteria, and describe the relative weights assigned to the Technical, Business and Management, and Cost and Finance aspects of the proposal. The solicitation also would provide guidance and instructions to prospective offerors on how to prepare and submit the proposal.

Evaluation Criteria will be developed that are consistent with the guidance of the Appropriations Acts and the Conference Reports such that selected projects shall be subject to all of the provisions (relevant to the solicitation) that were provided in Public Law No. 99–190, which governed the 1986 PON; Public Law No. 100–202, which governed the 1988 PON; Public Law No. 100–446, which governed the 1989 PON; and in Public Law No. 101–121, which governed the 1991 PON as amended by the Act.

In developing the Evaluation Criteria, DOE will consider factors that would contribute to achieving the goals established by the Congress and by the Administration. Such considerations include reducing additional forms of pollution from coal combustion (that is, in addition to sulfur dioxide and oxides of nitrogen, the "greenhouse gases" such as carbon dioxide). Other factors under consideration would be the potential for reducing the cost of producing electric power and the expanded utilization of U.S. coals for economic competitiveness and security. The public is invited to comment on these factors, and to suggest others that might be used to evaluate proposed CCT projects.

The final consideration with regard to the selection of a proposal is the application of the Program Policy Factors. These factors are used to identify the proposals that, in the aggregate, will achieve best the CCT program objectives.

Subjects of Particular Interest

DOE wishes to receive public views, comments, and recommendations on any and all aspects of the forthcoming CCT V PON that will assist DOE with the preparation of a solicitation that optimally balances the needs of the prospective offerors and the goals and objectives of the CCT Program. In that regard, there are a number of specific issues and concerns that DOE is particularly interested in receiving public comments on, as listed and described below. Please note, however, that this is not an all-inclusive list of subjects of interest, and new or different topics may be introduced or added at the public meetings themselves, either by the public attendees or by DOE.

1. Modifications to the Amount of Requested Assistance

Based on the experience of the fourth solicitation, many projects were larger in scale (and amounts of assistance requested) and the scope of some projects included activities or equipment that was not of significant value to achieving the objective of the program. If there are clearly severable aspects of the project that are not important to the program goal and would improve the quality of the proposal if not included, should DOE be able to consider selection based on a project scope exclusive of these items? Should DOE be able to reduce the amount of the assistance requested based on the value of the information resulting from the demonstration towards furthering the commercialization of the technology?

2. Objective of the Fifth Solicitation

What level of importance should the criteria for the fifth solicitation be designed to provide to coal technologies for the following categories: Environmental performance at existing power generation facilities; economic and environmental performance at future power generation facilities; efficiency improvement; production of liquid fuels for transportation; reduction of carbon dioxide emissions from coal technologies; and environmental performance for coal processes?

3. Reduction of Toxic Emissions Criteria

Based upon Title III of the Clean Air Act Amendments of 1990, controls may be required, in the future, for certain toxic emissions from coal technologies. How should the fifth solicitation address toxic emissions? If the ability to reduce toxic emissions were a criteria under the fifth solicitation, how should such a criteria be evaluated and which emissions would be of primary importance?

4. Carbon Dioxide Emissions and Global Warming

How should the fifth solicitation address carbon dioxide emissions? The third and fourth solicitations acknowledge this concern by providing extra credit for technologies which reduce emissions of "greenhouse gases."

5. Financial Assistance Options

Currently the DOE provides funding on a "dollar-for-dollar" spent basis adjusted for the negotiated cost-share ratio. A number of other mechanisms are known to be available (e.g., use of revenues to the demonstration project; cash flow differential payments as an option to cost-share support; guaranteed lease payments, etc.). Should the DOE consider one of these or other options and what should they be?

6. DOE May Require Use of "Program Income" Prior to DOE Cost-Sharing

To maximize the prudent use of government funds and the possible number of projects selected, should the solicitation allow DOE to require the use of revenues to the demonstration project (if there are any projected) to be used for financing the variable costs, and the DOE would cost-share up to fifty percent of the variable costs not covered by revenue plus fifty percent of the fixed costs?

7. Commercial Performance Criteria Evaluation

There has been considerable controversy over the use of a computer model to evaluate the information submitted in appendix I of the prior solicitations. DOE would welcome suggestions for alternative methods of evaluating the future commercial performance of power generation, industrial process, or liquids production technologies.

8. Program Policy Factors

Should DOE make any changes or additions to the Program Policy Factors contained in section 4.5 of the fourth solicitation for use in the fifth solicitation (listed below)?

- The desirability of selecting projects that collectively represent a diversity of methods, technical approaches, and applications.
- The desirability of selecting projects in this solicitation that contribute to near term reductions in transboundary transport of pollutants by producing an aggregate net reduction in emissions of sulfur dioxide and/or the oxides of nitrogen.
- The desirability of selecting projects that collectively utilize a broad range of U.S. coals and are in locations which represent a diversity of EHSS, regulatory, and climatic conditions.
- The desirability of selecting projects in this solicitation that achieve the balance between (1) reducing emissions and (2) providing for future energy needs by the environmentally acceptable use of coal or coal-based fuels.
- The desirability of selecting projects that provide strategic and energy security benefits for remote, import—dependent sites, or that provide multiple fuel resource options for regions which are considerably dependent on one fuel for total energy requirements.

9. Evaluation and Development Activities

Proposed Congressional language for the fifth solicitation would allow DOE to cost-share development work to a maximum of ten percent of the government cost-share. Such government support is not expected to include construction of new facilities, although limited modification of existing facilities for explicit project related testing would be allowed. This testing would be to confirm assumptions used in designing the demonstration facility. How should DOE incorporate these allowable activities into the evaluation criteria for the solicitation? Regarding development activities, what issues could be addressed or clarified in the solicitation/model cooperative agreement to prevent misunderstandings during negotiations?

10. Relative Weight of Criteria

It is DOE's intent in the fifth solicitation to attract higher risk potentially higher payoff technologies that incorporate a limited amount of development activities. Should the relative weighing of the criteria remain the same or change from that used in the fourth solicitation?

11. Negotiation Issues

Are there any items that could be more clearly addressed in the solicitation or that should be added to the solicitation to better clarify the information requirements for the proposal and to prevent any misunderstandings regarding negotiations and fact finding.

Meetings, Locations and Dates

There will be two public meetings, at the locations and dates listed below:

1. Little America, Junction I–80 and I–25, Cheyenne, Wyoming 82001 (307–634–2771 or 800–445–6945), at 8:30 a.m., on Wednesday, October 30, 1991.
2. Galt House Hotel, 140 North 4th Avenue, Louisville, Kentucky 40202 (502–589–3300 or 800–843–4258, at 8:30 a.m., on Tuesday, November 12, 1991.

Format of Meeting

Both of the meetings will follow the same format, as described. Each meeting will commence with a brief plenary session that will include introductory remarks and program overviews by DOE officials. At about mid-morning, there will be a brief recess, after which there will be concurrent Working Groups led by panels of DOE officials. There will not be any formal presentations or statements in the Working Groups. Attendees will be asked to engage in informal, unstructured, discussions with the panelists on the subjects described earlier in this Notice, and on such other subjects as may be introduced by members of the audience or by the panelists. At the conclusions of the Working Groups, attendees will meet in a closing plenary session. The discussions that ensued in the various Working Groups, and the recommendations that resulted, will be reviewed and summarized. The meetings are expected to adjourn in the late afternoon.

Public Participation

Individuals may attend the meetings without notification in advance to DOE, and there is no registration fee or other charge for attendance. Attendees are responsible for making their own travel and lodging arrangements. DOE will not provide any meals or other refreshments at the meetings.

Written Comments

Written comments may be submitted by individuals who are not able to attend the public meetings, and also by persons who do attend one of the meetings and subsequently wish to provide written material to DOE. Written comments that address the "Subjects of Particular Interest" described above (please indicate which of the two meetings is of particular interest to you) will be considered if they are received by October 15, 1991. Written comments with suggestions for the possible March 1, 1992, CCT solicitation will be considered if they are received by January 20, 1992. In all instances, written comments should be submitted in triplicate (if possible) to the address noted below:

Address for Comments: All written comments should be submitted to: Ms. Jean Lerch, Fossil Energy, FE–20 (GTN), U.S. Department of Energy, Washington, DC 20545, (301) 353–3965.

Issued in Washington, DC, September 16, 1991.

Linda G. Stuntz,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 91–22867 Filed 9–20–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91-67-NG]

Kimball/Trippe Energy Associates; Application to Import and Export Natural Gas Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on August 20, 1991, of an application filed by Kimball/Trippe Energy Associates (KTEA) requesting blanket authorization to import and export up to a total of 50 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year period commencing with the date of first import or export. KTEA intends to use existing pipeline and LNG facilities for the processing and transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, October 23, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: KTEA, a full-service gas marketing company engaged in purchasing, aggregating and reselling natural gas, is a partnership organized and existing under the laws of the State of Texas, with its principal place of business in Traverse City, Michigan. KTEA intends to import and export natural gas and LNG from and to Canada, Mexico, and other countries as commercial circumstances warrant. KTEA requests authorization to import and export natural gas and LNG for its own account, as well as for the account of others.

In support of its application, KTEA states that the terms of each transaction will be determined by competitive factors in the natural gas market through arms length negotiations. In addition, KTEA anticipates that the price will generally be adjusted on a monthly or quarterly basis as required by market conditions.

The decision on the application for the import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing the proposed export application, domestic need for the gas will be considered, and any other issue determined to be appropriate. Parties that may oppose this application should comment in their responses on the issues of competitiveness as set forth in the policy guidelines for the requested import authority, and on the domestic need for gas the applicant proposes to export. The applicant asserts the proposed imports would be competitive and there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance.

The National Environmental Policy Act (NEPA), 42 U.S.c. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures.

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

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

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of KTEA's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, expect Federal holidays.

Issued in Washington, DC on September 17, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91–22866 Filed 9–20–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91-41-NG]

Tennessee Gas Pipeline Co.; Application to Extend Blanket Authorization to Import "Special Purchase Gas" from Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application to extend blanket authorization to import "Special Purchase Gas" from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on June 24, 1991, of an application filed by Tennessee Gas Pipeline Company (Tennessee) to extend its existing blanket authorization to import up to 75,000 Mcf per day of "special purchase gas" from its Canadian supplier, ProGas Ltd. (ProGas) over a two-year term beginning with the date of first import after December 12, 1991, the date the present authorization under DOE/ERA Opinion and Order 295 (Order 295) expires. Tennessee intends to continue using existing pipelines and states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, October 23, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7249.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Tennessee, a corporation organized under the laws of Delaware with its principal place of business in Houston, is a wholly-owned subsidiary of Tenneco, Inc. Tennessee is a natural gas transmission company primarily engaged in the business of purchasing, transporting, and selling natural gas.

Tennessee is currently authorized under DOE/ERA Opinion and Order No. 131 (Order 131), issued June 19, 1986, to import up to 75,000 Mcf per day of Canadian natural gas at Emerson, Manitoba, through October 31, 2000, in accordance with the provisions of its November 25, 1985, gas purchase agreement, as amended, with ProGas. Order 131 also permitted Tennessee to assign its rights and obligations with respect to the purchase, receipt, and payment for any and all of the gas designated as "special purchase gas" to third parties, under spot sales with ProGas, for a period of two years from the date of the first such sale. Special purchase gas is Canadian natural gas that ProGas may offer for sale to Tennessee under the gas purchase contract at a negotiated price that Tennessee claims will necessarily be less than the commodity charge otherwise in effect. Tennessee can buy that gas for its system supply or assign its right to purchase that as to a third party without forfeiting its rights to credit such volumes toward its take-or-pay obligation. This authorization was subsequently extended for a two-year period under Order 295, which will expire on December 12, 1991.

The decision on this import application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant contends that the extension of its import authorization is not inconsistent with the public interest because Tennessee has a need for the additional flexibility arising from "Special Purchase Gas" rights, and because the voluntary, short-term nature of these arrangements assures their competitiveness. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

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

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

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to

this notice, in accordance with 10 CFR 590.316.

A copy of Tennessee's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on September 17, 1991.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91–22864 Filed 9–20–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4011–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Burning of Hazardous Waste in Boilers and Industrial Frances, (EPA No. 1361.03). This information collection request is associated with the technical amendments to the final rule for boilers and industrial furnaces burning hazardous waste (see 56 FR 43504–42517, August 27, 1991). It amends a previously approved ICR (OMB Clearance No. 2050–0073) and imposes additional burden hours as a result. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

Abstract: The revision to the ICR requires facilities to retain records until facility closure in conference with the requirements for other treatment, storage, and disposal facilities as provided in 40 CFR 264.73(b) and 40 CFR 265.73(b). It also contains provisions for about 25 facilities to claim exemption from the requirements imposed by the BIF rule. These facilities will be required to conduct sampling and analysis of waste feedstock, provide a one-time notification to EPA, and maintain records to document that they qualify for exemption from the BIF rule emission standards.

Burden Statement: The incremental annual public reporting burden for this collection of information is about 16 hours per facility. This estimate includes all aspects of the information collection. The incremental annual recordkeeping burden is estimated to vary from 6 to 20 hours per facility.

Respondents: Owners and operators of boilers and industrial furnaces burning hazardous waste.

Estimated Number of Respondents: 225.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Additional Burden on Respondents: 3730 hours.

Frequency of Collection: One-time notification.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460, and

Ron Minsk, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: September 16, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–22869 Filed 9–20–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140155; FRL–3947–7]

Planning Research Corporation; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Planning Research Corporation, and their subcontractor, Sycom, Incorporated of Chantilly, VA, for access to information submitted to EPA pursuant to sections 303, 311, 312, 313, and 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Some of the information may be claimed or determined to be trade secret information.

DATES: This notice is effective September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Steven D. Newburg-Rinn, Chief, Public Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, rm. NE–G008, Mail Stop TS–793, 401 M St., SW., Washington DC 20460, Telephone: 202–260–3757.

SUPPLEMENTARY INFORMATION: Under EPCRA, industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA. Under section 322 of EPCRA, facilities must send trade secrecy claims regarding their section 303, 311, 312, and 313 submittals to EPA.

Under contract number 68–01–7361, Sycom, Incorporated (Sycom), 14523 Lee Road, Chantilly, VA 22021, as subcontractor to Planning Research Corporation, assists the Office of Toxic Substances, Information Management Division in design, development, implementation, and maintenance of the Toxic Chemical Release Inventory data base in response to the requirements of sections 303, 311, 312, and 313 of EPCRA. Specifically, Sycom maintains a data base, called the Toxic Chemical Release Inventory, and an associated document tracking system for the purpose of electronically storing data collected by the EPA in accordance with requirements of EPCRA section 313.

EPA has determined that Sycom requires access to trade secret information under EPCRA to carry out their contractual duties, and in doing so, Sycom personnel will sign nondisclosure agreements and follow all required security procedures.

EPA is issuing this notice to inform all submitters of trade secret information under the aforementioned EPCRA sections that EPA will provide Sycom personnel access to trade secret information on a need-to-know basis. All access to EPCRA trade secret information will take place at the EPCRA Reporting Center. Upon termination of their contract, or prior to termination of their contract at EPA's request, Sycom will return all material to EPA.

EPA announced clearance to access to EPCRA trade secret information by Planning Research Corporation and Sycom in the **Federal Register** of June 10, 1988 (53 FR 21916). That previous notice indicated that clearance to access under this contract was expected to expire September 30, 1991. Pursuant to this notice, clearance to access to EPCRA

trade secret information under this contract is extended and is expected to expire on December 31, 1991.

Dated: September 13, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-22874 Filed 9-20-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-140156; FRL-3947-8]

American Association of Retired Persons; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the American Association of Retired Persons [grantees under the Senior Environmental Employment Program] for access to information submitted to EPA pursuant to sections 303, 311, 312, 313, and 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Some of the information may be claimed or determined to be trade secret information.

DATES: This notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Steven D. Newburg-Rinn, Chief, Public Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G008, Mail Stop TS-793, 401 M St., SW., Washington DC 20460, Telephone: 202-260-3757.

SUPPLEMENTARY INFORMATION: Under section 322 of EPCRA, facilities may assert trade secrecy claims regarding the chemical identities reported in their section 303, 311, 312, and 313 submittals to EPA.

Under grant number CQ-815474, the American Association of Retired Persons (AARP), 601 E St., NW., Washington, DC, as an enrollee in the Senior Environmental Program, will assist EPA in enforcement of EPCRA, including conducting inspections of facilities on behalf of EPA for purposes of determining compliance with EPCRA. EPA has determined that in order to successfully carry out their duties under the grant AARP may be required to review or receive information on behalf of EPA that is claimed or determined to be trade secret. Therefore, EPA has determined that AARP requires access to trade secret information under EPCRA. AARP employees will sign nondisclosure agreements and follow all required security procedures.

EPA is issuing this notice to inform all submitters of trade secret information under the aforementioned EPCRA sections that EPA will provide AARP employees access to trade secret information on a need-to-know basis. Access to EPCRA trade secret information may take place at facility sites, EPA Regions or headquarters offices, or the EPCRA Reporting Center. Upon termination of their grant, or prior to termination of their grant at EPA's request, AARP will return all material to EPA.

Clearance to access to EPCRA trade secret information under this grant is scheduled to expire October 24, 1992.

Dated: September 13, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-22875 Filed 9-20-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-140157; FRL-3947-9]

International Technology Environmental Programs; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized International Technology Environmental Programs, Washington, DC, for access to information submitted to EPA pursuant to sections 303, 311, 312, 313, and 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Some of the information may be claimed or determined to be trade secret information.

DATES: This notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Steven D. Newburg-Rinn, Chief, Public Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, rm. NE-G008, Mail Stop TS-793, 401 M St., SW., Washington DC 20460, Telephone: 202-260-3757.

SUPPLEMENTARY INFORMATION: Under EPCRA, industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA. Under section 322 of EPCRA, facilities must send trade secrecy claims regarding their section 303, 311, 312, and 313 submittals to EPA.

Under contract number 68-D8-0112, International Technology Environmental Programs (ITEP), 1133 21st St., NW., Suite 401, Washington, DC, assists the Office of Toxic Substances in processing the information submitted by industry in response to the requirements of sections 303, 311, 312, 313, and 322 of EPCRA. ITEP staff conduct reviews of EPCRA submissions at the EPCRA Reporting Center where submissions are received and processed. ITEP reviews selected submissions for technical accuracy and contacts submitters regarding potential discrepancies.

EPA has determined that ITEP requires access to trade secret information under EPCRA to perform their contractual duties, and in doing so, ITEP personnel will sign nondisclosure agreements and follow all required security procedures.

EPA is issuing this notice to inform all submitters of trade secret information under the aforementioned EPCRA sections that EPA will provide ITEP personnel access to trade secret information on a need-to-know basis. All access to EPCRA trade secret information will take place at the EPCRA Reporting Center. Upon termination of their contract, or prior to termination of their contract at EPA's request, ITEP will return all material to EPA.

Clearance to access to EPCRA trade secret information under this contract is scheduled to expire on September 30, 1991. Clearance to access under this notice will be extended for so long as ITEP continues to perform the duties described above pursuant to any contract renewal or other existing contract.

Dated: September 13, 1991.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-22876 Filed 9-20-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

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

September 16, 1991.

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

Copies of this submission may be purchased from the Commission's copy

contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.

Title: Section 73.687, Transmission system requirements.

Action: New collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 6 responses; 1 hour average burden per response; 6 hours total annual burden.

Needs and Uses: The Commission adopted Report and Order, MM Docket No. 87–465, which amends § 73.687 by including new paragraphs (e)(3) and (e)(4), incorporating into the rules a specific statement of responsibility for TV stations on Channels 14 and 69 to protect adjacent spectrum land mobile operations from interference. This requirement will apply to all new Channel 14 and 69 TV broadcast stations and those authorized to change channel, increase effective radiated power (ERP), change directional antenna characteristics such that ERP increases in any azimuth direction or change location, involving an existing or proposed channel 14 or 69 assignment. These stations will also be required to submit evidence to the FCC that no interference is being caused before they will be permitted to transmit programming on the new facilities. The data will be used by the FCC to ensure proper precautions have been taken to protect land mobile stations from interference. It will also increase and improve service to the public by broadcasters and land mobile services operating in certain parts of the spectrum.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–22805 Filed 9–20–91; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 91–143; DA 91-1139]

Private Land Mobile Radio Services; Arizona Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Arizona (Region 3). As a result of accepting the Plan for Region 3, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 4, 1991.
Released: September 12, 1991.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On March 12, 1991, Region 3 (Arizona) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region. On May 6, 1991, Arizona filed revisions to the plan, based on conversations with the Commission's staff.

2. The Arizona plan was placed on Public Notice for comments on May 16, 1991, 56 FR 23707 (May 23, 1991). On June 24, 1991, the American Private Radio Association (APRA) filed a motion requesting an extension of the deadlines for comments and reply comments. The request was granted on July 5, 1991. The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Arizona and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Arizona. We note, however, that the channel allotments contained in the Arizona Plan may need to be modified to conform to the Memorandum of Understanding between the United States and Mexico concerning use of the 821–824/866–869 MHz bands.

4. Therefore, we accept the Arizona Public Safety Plan, subject to the provisions of paragraph 3. Furthermore, licensing of the 821–824/866–869 MHz band in Arizona may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 91–22806 Filed 9–20–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–0914–DR]

Massachusetts; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Massachusetts (FEMA–0914–DR), dated August 26, 1991, and related determinations.

DATES: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the Commonwealth of Massachusetts, dated August 26, 1991, is hereby amended to include the following areas among those previously determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 26, 1991:

The counties of Nantucket, Norfolk, Suffolk and Worcester for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–22832 Filed 9–20–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–917–DR]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–917–DR), dated September 9, 1991, and related determinations.

DATES: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance

Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated September 9, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93–288, as amended by Public Law 100–707), as follows:.

I have determined that the damage in certain areas of the State of New Hampshire, resulting from Hurricane Bob and severe storms on August 18–20, 1991, is a sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Individual Assistance may be provided at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of Section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard H. Strome of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared major disaster.

The counties of Carroll, Hillsborough, Rockingham, and Stafford for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Jerry D. Jennings,

Deputy Director, Federal Emergency Management Agency.

[FR Doc. 91–22833 Filed 9–20–91; 8:45 am]

BILLING CODE 6718–02–M

Fire Administration Board of Visitors for the National Fire Academy; 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: Board of Visitors for the National Fire Academy.

Date of Meeting: October 13–14, 1991.

Place: National Emergency Training Center, National Fire Academy, G Building, Conference Room, Emmitsburg, Maryland.

Time: October 13 2 p.m.—5 p.m. (Quarterly Meeting), October 14 9 a.m.—Agenda Completion.

Proposed Agenda: Old Business, New Business, Preparation of Annual Report.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1362) on or before October 10, 1991.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Administrator's Office, U.S. Fire Administration, Federal Emergency Management Agency, 16825 South Seton Avenue, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 6, 1991.

Edward M. Wall,

Deputy Administrator, U.S. Fire Administration.

[FR Doc. 91–22834 Filed 9–20–91; 8:45 am]

BILLING CODE 6718–21–M

[Docket No.: FEMA–REP–2–NJ–2]

New Jersey Radiological Emergency Response Plan Site-Specific to the Oyster Creek Nuclear Generating Station

ACTION: Certification of finding and determination.

In accordance with the Federal Emergency Management Agency (FEMA) Rule, title 44 CFR, part 350, the State of New Jersey originally submitted the offsite radiological emergency response plans site-specific to the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey, to the Regional Director of FEMA Region II on June 16, 1983, for FEMA review and approval. On June 29, 1989, the Region II Acting Director submitted his evaluation and recommendation for formal approval to the Associate Director for State and local Programs and Support in accordance with § 350.11 of the FEMA Rule. However, before the Headquarters review process could proceed, the Regional Director's evaluation required several clarifications.

The Regional Director's evaluation was changed accordingly and subsequently resubmitted to FEMA Headquarters on April 30, 1990. Included in this evaluation was a review of the full participation exercise conducted on June 6–7, 1989, in accordance with § 350.9 of the FEMA Rule, and a transcript of the public meeting held on March 21, 1984, in accordance with § 350.10 of the FEMA Rule.

Based on the evaluation and recommendation for approval by the FEMA Region II Acting Director, the review by the Federal Radiological Preparedness Coordinating Committee (FRPCC), and the review by the FEMA Headquarters staff in accordance with § 350.12 of the FEMA Rule, I find and determine that the New Jersey State and local offsite radiological emergency response plans and preparedness site-specific to the Oyster Creek Nuclear Generating Station are adequate to protect the health and safety of the public living in the vicinity of the plant. The offsite radiological emergency response plans and preparedness are assessed as adequate in that there is reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and that the plans are capable of being implemented.

The prompt alert and notification system installed and operational around the Oyster Creek Nuclear Generating Station was previously approved by FEMA on December 18, 1986, in accordance with the criteria of NUREG–0654/FEMA–REP–1, Rev. 1, appendix 3, and FEMA REP–10, "Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants."

Accordingly, I approve the New Jersey State and local offsite radiological emergency response plans and preparedness, site-specific to the Oyster Creek Nuclear Generating Station. FEMA will continue to review the status of offsite plans and preparedness site-specific to the Oyster Creek Nuclear Generating Station in accordance with § 350.13 of the FEMA Rule.

For further details with respect to this action, refer to Docket File No. FEMA–REP–2–NJ–2 maintained by the Regional Director, FEMA Region II, 26 Federal Plaza, room 1337, New York, New York 10278–0002.

Dated: September 10, 1991.

For the Federal Emergency Management Agency.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 91-22835 Filed 9-20-91; 8:45 am]

BILLING CODE 6718-20-M

FEDERAL MARITIME COMMISSION

U.S. Atlantic Coast/Brazil, et al.; Agreement(s) Filed

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

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

Agreement No.: 203-011141-017.

Title: Gulfway.

Parties: Deppe Linie GmbH & Co., Euro-Gulf International, Inc., Lykes Bros. Steamship Co., Inc., Transportation Maritime Mexicana S.A. de C.V. (TMM), Hapag Lloyd AG, Sea-Land Service, Inc., P&O Containers Limited, Compagnie Generale Maritime (CGM), Nedlloyd Lijnen, BV, Atlantic Container Line AB.

Synopsis: The proposed amendment would add Star Shipping A/S (dba Atlanticargo) as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 212-009847-026.

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

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar, Companhia Maritima Nacional, American Transport Lines, Inc.

Synopsis: The proposed amendment would extend the 98 percent carrying rate through December 31, 1991. The parties have requested a shortened review period.

Agreement No.: 203-011038-011.

Title: Southeastern Caribbean Discussion Agreement.

Parties: United States Atlantic and Gulf/Southeastern Caribbean Conference, West Indies Shipping Corporation, Seaboard Marine, Ltd., Tecmarine Lines, Inc., Bernuth Lines, North American Caribbean Line Ltd., Blue Caribe Line.

Synopsis: The proposed amendment would delete Bernuth Lines, Blue Caribe Line, Seaboard Marine, Ltd. and North American Caribbean Line Ltd. as independent carrier parties to the Agreement.

Agreement No.: 224-200567.

Title: Maryland Port Administration/EAC Bulk, Transport (North America), Inc., Terminal Agreement.

Parties: Maryland Port Administration ("MPA"), EAC Bulk Transport (North America), Inc., ("EAC").

Synopsis: The proposed Agreement, filed September 12, 1991, provides that MPA will lease appxominately 7 acres at its North Locust Point Marine Terminal to EAC for an eight month period. Thereafter, the parties may extend the Agreement on a month-to-month basis.

Dated: September 17, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-22768 Filed 9-20-91; 8:45 am]

BILLING CODE 6730-01-M

Port of San Diego/Metropolitan Stevedore Company Terminal Operator, Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a coy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200564.

Title: Port of San Diego/Metropolitan Stevedore Company Terminal Operator Agreement.

Parties: San Diego Unified Port District ("Port of San Diego"), Metropolitan Stevedore Co. ("Metropolitan").

Filing Party: Stanley R. Westover, Manager, Marine Operations, Port of San Diego, P.O. Box 488, San Diego, California 92112-0488.

Synopsis: The Agreement, filed September 9, 1991, allows Metropolitan to provide terminal operator services at berths owned by the Port of San Diego.

Dated: September 17, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-22769 Filed 9-20-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 13, 1991.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before October 4, 1991.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not

yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. 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).

Proposal to approve under OMB delegated authority the extension, with revisions, of the following reports:

1. Report title: Weekly Report of Assets and Liabilities of Large U.S. Branches and Agencies of Foreign Banks.

Agency form number: FR 2069.

OMB Docket Number: 7100–0030.

Frequency: Weekly.

Reporters: Large U.S. branches and agencies of foreign banks.

Annual reporting hours: 12,376.

Estimated average hours per response: 3.5.

Number of respondents: 68.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 3105) and is given confidential treatment (5 U.S.C. 552(b) (4) and (b) (8)).

This report collects current balance sheet information from large U.S. branches and agencies of foreign banks. The proposed revisions include making minor adjustments to the reporting panel to improve the representativeness of the sample and adding a new memorandum item on highly leveraged transactions (HLTs) to be collected once a month. The data are used together with similar data collected from domestically chartered banks for construction of weekly estimates of bank credit, sources and uses of bank funds, and a balance sheet for the banking system as a whole. The data also are used for analyzing banking and monetary conditions.

2. Report title: Monthly Survey of Selected Deposits and the Annual Supplement to the Monthly Survey of Selected Deposits.

Agency form number: FR 2042 and FR 2042a.

OMB Docket Number: 7100–0066.

Frequency: Monthly and annually.

Reporters: Commercial and savings banks.

Annual reporting hours: 28,175.

Estimated average hours per response: 1.00 to 4.00.

Number of respondents: 575.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a) (2) and is given confidential treatment (5 U.S.C. 552(b) (4)).

The reports collect detailed information on amounts, offering rates, and fees on various types of retail deposits from a stratified sample of BIF-insured commercial and savings banks. The proposed revisions are designed in part to make the reports compatible with recent changes in Regulation D and the corresponding reduction in item detail on the Report of Transaction Accounts, Other Deposits, and Vault Cash (FR 2900). In addition, other changes are proposed to strengthen the Federal Reserve's ability to interpret the reported interest rate data. The Federal Reserve uses data from the FR 2042 and FR 2042a in a number of ways, including construction and interpretation of the monetary aggregates, measuring elasticities in money demand equations, and assessing the changing behavior of banks in pricing deposit accounts.

Board of Governors of the Federal Reserve System, September 13, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–22813 Filed 9–20–91; 8:45 am]

BILLING CODE 6210–01–M

Juan Esteban Borja, 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 October 11, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Juan Esteban Borja, Quito, Ecuador; to acquire 15 percent of the voting shares of Gulf Bank, Miami, Florida.

2. Fidel Dario Egas Grijalva, Quito, Ecuador; to acquire 38 percent of the voting shares of Gulf Bank, Miami, Florida.

Board of Governors of the Federal Reserve System, September 16, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–22814 Filed 9–20–91; 8:45 am]

BILLING CODE 6210–01–F

Fidelity BancShares (N.C.), Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

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

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

Unless otherwise noted, comments regarding each of these applications must be received not later than October 11, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Fidelity BancShares (N.C.), Inc., Fuquay-Varina, North Carolina; to engage *de novo* through its subsidiary, Fidelity Interim Savings and Loan Association, Inc., Fuquay-Varina, North Carolina, in owning and operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

2. Matewan BancShares, Inc., Matewan, West Virginia; to engage *de novo* through its subsidiary, Hampden Venture Limited Partnership, Gilbert, West Virginia, in making loans and equity investments of less than 5 percent in growth companies and new enterprises througout the State of West Virginia pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 16, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-22815 Filed 9-20-91; 8:45 am]

BILLING CODE 6210-01-F

Logan County BancShares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 11, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Logan County BancShares, Inc., Logan, West Virginia; to acquire Flying Eagle No. 1 Limited Partnership, Lewisburg, West Virginia, and thereby engage in making loans and equity investments of less than 5 percent in growth companies and new enterprises throughout the State of West Virginia pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

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

1. Norwest Corporation, Minneapolis, Minnesota; to acquire MIG Insurance Brokers, Inc., and thereby engage in operating a general insurance agency pursuant to § 4(c)(8)(G) of the Bank Holding Company Act of 1956, as amended. **Comments on this application must be received by October 4, 1991.**

Board of Governors of the Federal Reserve System, September 16, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-22816 Filed 9-20-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegation of Authority; Office of the General Counsel

Part A of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services covers the Office of the Secretary. Chapter AG of Part A, which was published at 38 FR 17032 on June 28, 1973, and most recently amended at 55 FR 17499 on April 25, 1990, is amended to reflect a name change in the Office of the General Counsel. The change is to the Family Support and Human Development Division, whose name is changed to the Children, Families and Aging Division.

The following changes to Chapter AG reflect the change. Amend section AG.18 to read:

Section AG.18 Divisions in the Office of the General Counsel. The Divisions of the Office of the General Counsel are: Business and Administrative Law Division, Civil Rights Division, Inspector General Division, Food and Drug Division, Legislation Division, Public Health Division, Health Care Financing Division, Social Security Division, Children, Families and Aging Division.

Amend Paragraph AG.22A 9 to read:

9. Children, Families and Aging Division. The Children, Families and Aging Division shall provide legal services for programs administered by the Administration for Children and Families and the Administration on Aging.

Dated: September 13, 1991.

Kevin E. Moley,

Assistant Secretary for Management and Budget.

[FR Doc. 91-22755 Filed 9-20-91; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service; Statement of Organization, Functions and Delegations of Authority

Notice is hereby given that I have approved the transfer of the Public Health Service Supply Service Center located at Perry Point, Maryland, from the Health Resources and Services Administration to the Indian Health Service. This transfer will become effective October 1, 1991.

Dated: September 12, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-22754 Filed 9-20-91; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(WY-920-01-4120-14); WYW124648]

Coal Leases, Green River-Hams Fork Region, WY

AGENCY: Bureau of Land Management, Cheyenne, Wyoming 82003, Interior.

ACTION: Public notice.

SUMMARY: In accordance with the Operational Procedures for Coal Leasing by Application in the Green River-Hams Fork Region, the Bureau of Land Management is announcing that a lease application has been received in the Wyoming portion of the Green River-Hams Fork Region. Input and issues concerning this application should be identified within the next 30 days.

FOR FURTHER INFORMATION CONTACT: Eugene Jonart, Coal Coordinator, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003; telephone (307) 775–6250 or FTS 329–6250.

SUPPLEMENTARY INFORMATION: A coal lease application has been filed in the Wyoming portion of the decertified Green River—Hams Fork Coal Region. This application from Bridger Coal Company, assigned serial number WYW124648, encompasses the following lands in Sweetwater County:

T. 21 N., R. 101 W., 6th P.M., Wyoming
Sec. 4: Lots 1 thru 4, S2N2, S2;
Sec. 8: NE, E2NW, NESW, N2SE;
Sec. 10: W2, SE;
T. 22 N., R. 101 W., 6th P.M., Wyoming
Sec. 28: S2;
Sec. 32: E2.
Containing 2,121.32 acres

This case file, number WYW124648, may be viewed in the 4th floor public room of the Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming. The Bureau is interested in comments concerning environmental factors and any alternative tract delineations that would facilitate competition and coal resource recovery. Although other opportunities for public input will follow in the processing of this application, it is most appropriate that public concerns are addressed at this early stage. Therefore, public input is now encouraged.

Dated: September 13, 1991.

Ray Brubaker,

State Director.

[FR Doc. 91–22696 Filed 9–20–91; 8:45 am]

BILLING CODE 4310-22-M

[UT080–01–4331–13]

Utah Vernal District; John Jarvic Historical Property, Brown Park, UT; Proposed Construction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed construction at the John Jarvie Historical Property located in Browns Park in Northeastern Utah..

SUMMARY: The Vernal District of the Bureau of Land Management is planning two (2) construction projects on the John Jarvie Historical Property, which is listed on the Federal Register of Historic Places. One project is the construction of a concrete walkway which meets the Federal Code of Handicapped Accessibility Standards. The second project is the construction of a seventeen foot working waterwheel with raceway. The waterwheel will supply water to irrigate the property's lawn and a ten-acre field. Part of the wheel (the buckets and paddles) are replicas of the property's original waterwheel.

Construction plans are under review in the Utah State Historical Preservation Office.

Anyone interested in commenting on the projects or in viewing the schematic drawings and plan may do so at the Vernal District Office located at 170 South 500 East, Vernal, Utah. Comments will be accepted on or before October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Blaine Phillips, Cultural Resource Specialist. Telephone (801) 789–1362.

Dated: September 12, 1991.

David E. Little,

Vernal District Manager.

[FR Doc. 91–22820 Filed 9–20–91; 8:45 am]

BILLING CODE 4319-DQ-M

[NV–040–91–4320–10]

Ely District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Ely District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Ely District Grazing Advisory Board.

DATES: The meeting will be held on Wednesday, October 23, 1991 at 10 a.m. at the Ely District Office, Bureau of Land Management Conference Room, 702 North Industrial Way, Ely, Nevada.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92–463. The meeting is open to the public; public comments will be accepted from 10:30 to 11 a.m. Anyone wishing to make oral statement should notify the District Manager, Bureau of Land Management, 702 North Industrial Way, HC33, Box 150, Ely, Nevada 89301–9408 by October 21, 1991. The main agenda items will include discussion of FY91 Rangeland Improvement Project accomplishments, projects planned for construction or feasibility and survey and design priorities for FY92, an update and progress report of Allotment Evaluations and other pertinent business.

Minutes of the meeting will be maintained in the Ely District Office and will be available for public inspection and reproduction during regular office hours within 30 days following the meeting.

For further information contact: Chris Mayer (702) 289–4865.

Dated: August 29, 1991.

Timothy Reuwsaat,

Acting District Manager.

[FR Doc. 91–22166 Filed 9–20–91; 8:45 am]

BILLING CODE 4310-HC-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–314]

Rules of Origin Issues Related to NAFTA and the North American Automotive Industry

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a letter from the Committee on Ways and Means of the U.S. House of Representatives on August 27, 1991, the Commission has instituted investigation No. 332–314, Rules of Origin Issues Related to NAFTA and the North American Automotive Industry, under section 332(g) of the Tariff Act of 1930. The Committee has requested that the Commission's report of the results of this investigation be transmitted to it by November 25, 1991.

As requested by the Committee in its letter, the Commission will analyze various rule-of-origin proposals being considered in the context of negotiations on a North American Free-Trade Agreement (NAFTA). More specifically, as requested by the Committee in its letter, the Commission will—

(1) Analyze existing customs treatment of automotive products under the value-added standard and the change-of-tariff-heading criterion, if applicable;

(2) provide illustrative examples, to the extent available information permits, that may explain how non-U.S. and non-Canadian imported components are utilized in either major assemblies/subassemblies or in completed automobiles which are then classified as U.S.-origin or Canadian-origin goods eligible for duty-free entry; (In this connection, the letter requests

that particular attention be given to the impact of concepts such as "internal roll-up", "direct costs of processing" (DCP), and "substantial transformation" on value-content determinations. The Committee also noted its particular interest in the definition of DCP, problems encountered in administering that concept, and the factors included in origin determinations based on DCP under the U.S.-Canada Free-Trade Agreement.)

(3) seek to evaluate other origin standards used in the automotive sector, such as those employed in making origin determinations for purposes of the Corporate Average Fuel Economy (CAFE) program; and

(4) identify and describe any alternative origin standards that it becomes aware of that might be applied to the automotive sector in NAFTA.

EFFECTIVE DATE: September 16, 1991.

FOR FURTHER INFORMATION CONTACT: For information on aspects of the investigation related to the automotive industry, contact Mr. Dennis Rapkins, (202–205–3406). For information on aspects of the investigation related to customs, tariff, or origin matters, contact Mr. Leo Webb (202–205–2599) or Ms. Janis Summers (202–205–2605).

Public Hearing

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC 20436, beginning at 9:30 a.m. on October 22, 1991. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file pre-hearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than the close of business on October 16, 1991. Post-hearing briefs (original and 14 copies) must be filed by October 25, 1991.

Written Submissions

In lieu of, or in addition to, appearances at the public hearing, interested persons are invited to submit written statements concerning this investigation. Written statements are encouraged early in the investigative process, but should be received at the Commission by the close of business on October 25, 1991, in order to be considered. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submission, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: September 17, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–22817 Filed 9–20–91; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub-No. 5) (91–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved the fourth quarter 1991 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter RCAF (unadjusted) is 1.174. The fourth quarter RCAF (Adjusted) is 1.057, an increase of 1.1 percent from the third quarter 1991 RCAF (Adjusted) of 1.045. Maximum fourth quarter 1991 RCAF rate levels may not exceed 101.1 percent of maximum third quarter 1991 RCAF rate levels.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275–7354, Robert C. Hasek (202) 275–0938, TDD for hearing impaired (202) 275–1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, or call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: September 16, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–22840 Filed 9–20–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 396X)]

CSX Transportation, Inc.—Abandonment Exemption—in Harrison County, WV

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 4.93-mile line of railroad between milepost 303.50, at Clarksburg, and milepost 308.43, at Wilsonburg, in Harrison County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 23, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 3, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by October 15, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Karen Anne Koster, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by September 27, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 11, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–22841 Filed 9–20–91; 8:45 am]

BILLING CODE 7035–01–M

notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Conference of State Juvenile Justice Advisory Groups

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

A meeting of the National Coalition of State Juvenile Justice Advisory Groups will take place in Santa Fe, New Mexico, beginning at 1 p.m., m.d.t. on September 28, 1991, and ending at noon on September 30, 1991. This advisory committee, chartered as the National Conference of State Juvenile Justice Advisory Groups, will meet at the Picacho Plaza Hotel, 750 North St. Francis Drive, Santa Fe, New Mexico, 87501. The purpose of this meeting is to discuss and adopt recommendations from members with regard to the committee's responsibility to advise the Administrator, the President and the Congress concerning State perspectives on the operation of the Office of Juvenile Justice and Delinquency Prevention and Federal legislation pertaining to juvenile justice and delinquency prevention. This meeting will be open to the public. Less than 15 days' notice is being given for this meeting to accommodate finalization of the agenda.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 91–22794 Filed 9–20–91; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Environmental Assessment for Training Facility

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability.

SUMMARY: In accordance with part 11 of title 29 of the Code of Federal Regulations and the National Environmental Policy Act of 1969, the Mine Safety and Health Administration has prepared this environmental assessment for the demonstration mine and fire training facility at the National Mine Health and Safety Academy in Beckley, West Virginia. Review of the proposed environmental effects indicate that there will be no significant environmental impact. For that reason, it is not necessary to prepare an environmental impact statement.

ADDRESSES: The results of the environmental assessment may be obtained from the Business Office of the National Mine and Safety Academy, P.O. Box 1166, Beckley, West Virginia, 25802–1166. Phone (304) 256–3206.

FOR FURTHER INFORMATION CONTACT: Douglas C. Altizer, Jr., Acting Chief, Division of Policy and Program Coordination, Educational Policy and Development, MSHA, (703) 234–1400.

SUPPLEMENTARY INFORMATION: The projects consists of construction of a simulated underground mine and several above-ground concrete burn pads. Fires will be set in these two areas and put out as part of a training program for fighting mine fires. This facility expands and updates the existing facility located at the National Mine Health and Safety Academy in a rural and mostly wooded area of Raleigh County outside of Beckley, West Virginia. Ground water protection measures including containment dikes, gutters, a drainage pond and quadruple redundant water/fuel separators will be more than sufficient to protect the ground water. Coordination with the West Virginia Air Pollution Control Commission will assure that air pollution remains minimal and at acceptable limits. Even without these measures, considering the small size of the facility, the potential impact on natural systems and resources would not be considered significant. Given the precautions taken the Agency has determined that the facility will have no significant environmental impact.

Dated: September 16, 1991.

Richard L. Brechbiel,

Director, Educational Policy and Development.

[FR Doc. 91–22877 Filed 9–20–91; 8:45 am]

BILLING CODE 4510–43–M

LEGAL SERVICES CORPORATION

Grant Award for Assessment of Civil Legal Services Needs of Migrant Farmworkers

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant award.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a grant to conduct an assessment of the civil legal assistance needs of LSC-eligible migrant farmworker clients in Alabama. Pursuant to the Corporation's announcement of funding availability in Volume 6, No. 49, pages 10577 and 10578 of the **Federal Register** of March 13,

1991, a total of $12,580 will be awarded to Legal Services Corporation of Alabama.

This one-time grant is awarded pursuant to authority conferred by section 1006(a)(1)(B) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATES: All comments and recommendations must be received on or before the close of business on October 23, 1991, at the Office of Field Services, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants & Budget Division, Office of Field Services, (202) 863–1837.

DATE ISSUED: September 18, 1991.

Dated: September 18, 1991.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 91–22879 Filed 9–20–91; 8:45 am]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Power Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–35 and NPF–52 issued to the Duke Power Company (the licensee) for operation of the Catawba Nuclear Station Units 1 and 2 located in York County, South Carolina.

The proposed amendment would change the minimum allowed air flow through the Control Room Area Ventilation System filter unit from 5400 cubic feet per minute (cfm) to 4000 cfm. The change to the Technical Specifications would support a plant modification to eliminate a possible flow path between trains in the event that a return air damper fails to open.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed TS amendment will not increase the probability or consequences of an accident which has been previously evaluated. The probability of an accident will not be increased because the Control Room Area Ventilation System does not initiate an accident. This system is used to mitigate the consequences of an accident by ensuring that operator doses are within GDC 19 limits. Lowering the minimum allowed flow for the system to 4,000 cfm will allow the recirculation duct to be blocked off. This flow represents the minimum flow required for the operation of the fan motor. This modification will eliminate the concern about the possible failure of the control room return air damper impacting the ability of the VC system to pressurize the control room. Blocking off the recirculation duct eliminates the possible flow path between the two trains that would exist in the event the return air damper failed to open. This modification will cause an increase in the calculated operator thyroid doses (5.3 rem to 8.4 rem), however the calculated thyroid dose is well below the GDC 19 thyroid dose equivalent limit of 30 rem. The upper flow limit of 6,600 remains unchanged because this limit is based on carbon residence time in the filter bed and not mechanical limitations of the system. For the above reasons, this change will not significantly increase the probability or consequences of an accident previously evaluated.

This proposed revision will not create the possibility of a new or different accident from any previously evaluated. The Control Room Area Ventilation System is not an accident initiator, it is used to mitigate the consequences of an accident on control room personnel. Since this system does not have the potential to initiate an accident, no new or different accidents from any previously evaluated are created.

This proposed change does not involve a significant reduction in the margin of safety. Reducing the minimum required system flow will allow a modification to the system which will block off the recirculation flow, and eliminate a possible flowpath between the two ventilation trains. This modification eliminates the possibility of the failure of a control room return air damper impacting the ability of the VC system to pressurize the control room because of the flowpath between the trains. Eliminating the recirculation pathway results in an increase in calculated operator dose from 5.3 rem to 8.4 rem. This value is still significantly below the GDC 19 thyroid equivalent limit of 30 rem. For the above reasons, Duke Power concludes that this change does not involve a significant reduction in the margin of safety.

The NRC staff reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 23, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for

Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 12, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local Public Document Room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29770.

Dated at Rockville, Maryland, this 16th day of September 1991.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–22838 Filed 9–20–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-498 and 50-499]

Houston Lighting & Power Co. City Public Service Board of San Antonio Central Power and Light Co. City of Austin, TX; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-76 and NPF-80 issued to Houston Lighting & Power Company, et al., (the licensee) for operation of the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

The proposed amendments would replace Technical Specification 3/4.6.2.2, "Spray Additive System" with a new specification entitled "Recirculation Fluid pH Control System" to be consistent with a planned plant modification which would eliminate the containment spray additive system.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of accidents previously evaluated.

The proposed change to a Recirculation Fluid pH Control System does not increase the probability of accidents previously evaluated because the new system cannot initiate an accident because passive components would be used in place of active components and the system mitigates the consequences of an accident. The potential for failure of active components would be decreased by this proposal. Therefore, the proposed change does not increase the probability of any accident previously evaluated. The consequences of previously evaluated accidents do not significantly increase since doses remain within the acceptance criteria of 10 CFR 100 and SRP (Standard Review Plan) limits.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new modes of operation are proposed and the proposed Recirculation Fluid pH Control System will provide the same function as the current spray additive system, to mitigate the effects of a LOCA. The proposed system would not be used during normal plant operations.

(3) The proposed changes do not involve significant reductions in the margin of safety.

The LOCA does not significantly increase and remain within the acceptance criteria of 10 CFR 100 and the SRP. Additionally, hydrogen generation is not increased and equipment qualification will remain within the acceptance criteria.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 23, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of

the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Suzanne C. Black: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C. 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 30, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 17th day of September 1991.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–22839 Filed 9–20–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Form RI 92–22

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of an information collection. Form RI 92–22, 1991 Annuity Supplement Earnings Report, is used to annually obtain the amount of personal earnings from annuity supplement recipients to determine if there should be a reduction in benefits paid to the annuitant.

Approximately 3,000 RI 92–22 forms will be completed per year.The form requires 15 minutes to fill out. The annual burden is 750 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908–8550.

DATES: Comments on this proposal should be received on or before October 23, 1991.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., CHP 500, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–22758 Filed 9–20–91; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29682; File Nos. SR-Amex-90-38; SR-CBOE-90-27; SR-NASD-91-02; SR-NYSE-90-51; and SR-PSE-90-41]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the American Stock Exchange, Inc., et al Relating to Options Communications to Customers

September 13, 1991.

The American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the National Association of Securities Dealers, Inc. ("NASD")[1] the New York Stock Exchange, Inc. ("NYSE"), and Pacific Stock Exchange, Inc. ("PSE") (collectively referred to as "the Self-Regulatory Organizations" or "SROs") filed with the Securities and Exchange Commission ("Commission"), on December 27, 1990, October 24, 1990, January 9, 1991, October 22, 1990, and December 3, 1990, respectively, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] proposed rule changes to modify uniformly their rules governing options communications and the industry publication "Guidelines for Options Communications" ("Guidelines")[4] to reflect changes in the options market and the way these changes impact communications with the public.

The proposed rule changes were published for comment in Securities Exchange Act Release No. 28833 (January 29, 1991), 56 FR 4657 (February 5, 1991). No comments were received on the proposed rule changes.[5]

In response to the SEC's comments contained in a letter, dated June 8, 1989, from Richard G. Ketchum, Director, Division of Market Regulation ("Division"), SEC, to Donald van Weezel, Chairman of the Options Self-Regulatory Council ("OSRC Letter"),[6] the SROs have filed amendments to their uniform rules concerning options communications with customers and have proposed various revisions to the Guidelines. The OSRC Letter recommended greater uniformity and communication among the SROs in connection with the review of options advertisements, educational material, sales literature and options-related communications. The OSRC Letter also recommended that the SROs update and improve the Guidelines and provide for consistent application of the Guidelines by the SROs and their member firms. Accordingly, the SROs have jointly proposed changes to the Guidelines to reflect, among other things, changes that have occurred in the options market in the last several years and address the introduction of new products. In connection with the amendments to the Guidelines, the SROs have also proposed conforming amendments to their rules governing options-related communications.

Specifically, the amendments to the SROs rules: [7] (1) Apply the options communication requirements contained in these rules to educational materials; [8] (2) delete the requirement that options communications be in "good taste"; (3) clarify the term "advertisement" to include sales material that reaches a mass audience through any telecommunications device; (4) strengthen the application of the options communication requirements by replacing the word "should" with the word "shall," thus emphasized that these requirements are mandatory; (5) allow member organizations to use standardized options worksheets for each product type; [9] and (6) allow Registered Representatives to provide in sales literature records or statistics which portray their own past performance or actual transactions instead of those of the member organization as a whole, provided it is done within the context of the requirements of the SROs' options communications rules.

The amendments to the Guidelines, in addition to incorporating the above-mentioned changes to the SROs' rules, add language to explain the significance of a review of an options communication by an SRO. The revised Guidelines state that an SRO review of an options communication is not an endorsement of the investment plan or its suitability for investors, but rather a review to determine if the information

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[1] In order to conform its options communications rules with those of the other SROs, the NASD proposes to amend Article III, section 35 of the Association's Rules of Fair Practice to delete all provisions related to options and establish a new Section 35A dealing exclusively with options communications. Proposed section 35A, entitled "Options Communications with the Public," is identical in substance to the other SROs' options communication rules. Section 35A also contains two provisions which: (1) give any District Business Conduct Committee ("DBCC") of the NASD the authority to require that a member submit, for up to a one-year period, all options communications, or portions thereof, to the NASD at least ten days prior to their use if the DBCC determines that the member will again depart from the options communication requirements contained in section 35A; and (2) describe the NASD's procedures for conducting spotchecks of member firms' options communications.

The NASD also has submitted five amendments to its proposal. First, on February 22, 1991, the NASD amended its filing to state that the NASD membership has approved the proposed rule change. Second, on May 22, 1991, the NASD amended its filing to include the specific proposed revisions to the Guidelines, including the amendments which provide member firms with specific factors to be considered in evaluating whether a particular investment approach constitutes an options program. Third, on June 14, 1991, the NASD amended its filing to redesignate proposed Section 46, which the NASD originally proposed as the options communication rule, as Section 35A and delete additional references in Section 35 to options communications. Fourth, on July 10, 1991, the NASD amended its filing to renumber section 35 and correct cross references contained in section 35 to reflect a new section 35(g) which was approved by the Commission in file number SR-NASD-90-28. The amendment also renumbers section 35(c) to reflect the proposed deletion of a provision dealing with options communications from this section. Fifth, on July 24, 1991, the NASD amended its filing to change the effective date of approval of the filing from September 1, 1991, to a date specified in a Notice to Members announcing Commission approval of the filing, such date not to be later than 30 days following publication of the Notice to Members.

[2] 15 U.S.C. 78s(b) (1988).

[3] 17 CFR 240.19B-4 (1990).

[4] The Guidelines are an industry-wide publication produced jointly by all the SROs, and are distributed to all member firms. They are designed to amplify the standards contained in the SROs' options communications rules and thereby assist member firms in maintaining proper standards in their preparation of options-related communications with the public. The Guidelines, however, have not been amended since their initial publication in 1980.

[5] The Amex, CBOE, NYSE, and PSE amended their proposals on May 28, 1991, April 26, 1991, April 29, 1991, and May 29, 1991, respectively, to clarify the standards for determining whether a particular investment approach may constitute an options program. The NASD's third amendment to its filing, described *supra* note 1, includes identical changes. These amendments were not separately noticed for comment because they are non-substantive in nature, as they are merely designed to clarify the standards contained in the SROs' proposed rule changes as to the role of member firms in determining whether an options program exists.

[6] Pursuant to Rule 17d-2 under the Act, the SROs reached an agreement to allocate options regulatory responsibilities for common members. As part of this agreement, the SROs formed the OSRC which is comprised of one representative of each SRO participating in the agreement. The SROs are all members of the OSRC.

[7] The SROs propose to amend the following rules: Amex Rule 991; CBOE Rule 9.21; Article III, Section 35 of the NASD Rules; NYSE Rule 791; and PSE Rule 9.28.

[8] In particular, with respect to educational material, the Guidelines define such communications to include any explanatory material distributed or made generally available to customers or the public that is limited to information describing the general nature of the standardized options markets or one or more strategies and conforms with Rule 134a of the Securities Act of 1933. More specifically, the Guidelines state that communications which discuss definitions (*i.e.*, calls and puts), contract specifications, market operations, and common options strategies constitute educational material. The Guidelines also state that recommendations, specific or implied, are prohibited in educational material, as well as past or projected performance figures and annualized rates of return.

[9] Earnings projections for various options strategies are commonly provided to customers by means of worksheets.

contained in the communication is consistent with the requirements of the rules of the SROs. In this regard, the Guidelines specifically state that SRO approval does not imply that an SRO has determined that the information contained in such communication is accurate or complete. The amendments to the Guidelines also reiterate SRO rules that require member firms to maintain records which evidence the name(s) of the person(s) who prepared the options communications and the name(s) of the person(s) who approved the material, which records must be kept in an easily accessible place for examination by an SRO for a period of three years.

The amendments to the Guidelines also provide more particularity with respect to the standards by which options communications should be prepared and reviewed by firms and reiterate that recommendations and past or projected performance figures are not permitted in any advertisement or educational material, only sales literature. In this regard, the amendments also clarify the standards with respect to whether hypothetical examples constitute projected performance figures.[10] Specifically, the amendments provide that examples of profitable options transactions which use hypothetical securities and prices are not considered projected performance figures and are permitted in educational material so long as no suggestion is made that profits are probable. The amendments also require that a statement be included to the effect that the hypothetical examples were constructed only for illustration purposes. In addition, regardless of whether real or hypothetical options transactions are used, the Guidelines reiterate that examples of profitable options transactions must be accompanied by examples of breakeven situations as well as the description of the risks.

In addition, the proposed amendments to the Guidelines provide that any communication that discusses the uses or advantages of a particular options strategy should disclose the fact that commissions and other costs may be a significant factor. Previously, the Guidelines stated that advertisements or sales literature only had to reflect the fact that a subsequent exercise or closing transaction would be subject to commission charges. The Guidelines are also amended to provide that no statement contained in an options communication may suggest that a secondary market for standardized options will always be available.

Further, the amendments to the Guidelines established criteria for firms to consider when determining whether or not a particular investment approach could be deemed an options program. If an options program is deemed to exist, prior to becoming involved in the program, customers must be furnished with a written explanation of the nature, risks, the cumulative history or unproven nature of the program and its underlying assumptions. Any written explanation or promotional material about a particular options program must also meet the requirements of the SROs as they apply to communications with the public. Additionally, the amendments require, rather than suggest, that options communications must contain a warning statement that options are not suitable for all investors when discussing the uses and advantages of options. The amendments also replace the reference in the Guidelines to the Options Clearing Corporation prospectus with a reference to the options disclosure document, and reiterate the requirement that member firms must comply with the provisions of the Securities Investors Protection Corporation ("SIPC") by-laws promulgated under the Securities Investors Protection Act that require disclosure of SIPC membership.

The Guidelines also were amended to provide a list of some of the risks of trading in index options that should be disclosed in communications dealing with index options, as well as a description of the risks of uncovered options writing, combination writing, and other complex options strategies that should be disclosed in communications dealing with these strategies. With regard to communications dealing with uncovered writing, the Guidelines also suggest that the Special Statement for Uncovered Writers ("Special Statement") be offered in such communications.[11]

Lastly, the guidelines were amended to provide that member firms are strongly recommended, when preparing communications discussing a new options product, to discuss the distinguishing features and unique risks of the new product. The amendments also provide more examples of problem areas that member firms should avoid when preparing options communications. For example, the Guidelines state, among other things, that the use of language which expresses certainty with respect to the benefits of specific options transactions should be avoided.

The SROs believe that the proposed rule changes are consistent with section 6(b) of the Act, in general, and further the objectives of section 6(b)(5), in particular, in that they are designed to promote just and equitable principles of trade and protect investors and the public interest.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[12] Specifically, the commission believes that the proposals are consistent with section 6(b)(5) in that they will protect investors and the public interest by improving the Guidelines. The Commission notes that the proposals were submitted by the SROs to comply with recommendations made by the Division in the OSRC Letter. These recommendations, which are reflected in the proposed amendments to the Guidelines, were designed to update the Guidelines to address regulatory and market developments since 1980 and to provide more specific guidance in several areas.[13]

In addition, the Commission believes that the revised Guidelines and SRO rules will provide member firms with more specific direction in the preparation of options-related communications. The Commission believes adherence to these more detailed standards by member firms will, in turn, prevent the dissemination of misleading or inaccurate options communications to investors. The Commission also believes that more

[10] A principal distinction between sales literature, which is not subject to pre-use approval, and educational material, which is, is that educational material can not contain any past or projected performance figures, annualized rates of return, or recommendations.

[11] See Securities Exchange Act Release No. 26952 (June 21, 1989) 54 FR 27256 (June 28, 1989) (order approving File Nos. SR-Amex-89-03, SR-CBOE-89-01, SR-NASD-89-17, SR-Phlx-89-17, SR-PSE-89-14). Member organizations are required to provide the Special Statement to options customers who intend to engage in uncovered writing.

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] Consistent with the OSRC Letter, the Commission notes that any significant future changes to the Guidelines should be filed pursuant to section 19(b)(1) of the Act. Section 19(b)(3)(A) provides that a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule constitutes a proposed rule change which is entitled to take effect upon filing with the Commission. Accordingly, to the extent that future revisions to the Guidelines modify a stated policy, practice, or interpretation or create additional standards or specificity about conduct, they must be filed, at a minimum, pursuant section 19(b)(3)(A) of the Act and, depending upon the substance of the modifications, section 19(b)(1).

detailed guidance will facilitate uniformity among the SROs in their review of options communications.

Specifically, the Commission believes that clarifying the disclosure required concerning commission charges, the availability of secondary options markets, SIPC membership, and statements regarding the suitability of options, as well as clarifying the use of past and projected performance figures in options communications, the use of worksheets, and member firm record retention requirements will serve to provide member firms with more direction in preparing options communications. Similarly, the Commission notes that strengthening the wording of SRO rules and the Guidelines to use the word "shall" instead of "should", expanding the list of problem areas highlighted in the Guidelines, and clarifying what constitutes an options program in the Guidelines should provide member firms with better direction in the preparation of options communications.

The Commission also believes that updating the Guidelines and SRO rules to reflect developments in the options industry since the Guidelines were first published will provide better guidance to member firms. Specifically, the revised Guidelines describe with more particularly the risks of trading in index options, uncovered options writing, and other complex options strategies that member firms should discuss when preparing options communication dealing with these topics. The Guidelines also strongly suggest that member firms describe the unique characteristics and risks of new options products when preparing communications about these products.

In addition, the Commission believes it it consistent with the Act for the SROs to delete the requirement that options communications be in "good taste." Because the "good taste" test is subjective in nature, the Commission agrees with the SROs that it is difficult to be imposed with any uniformity. Nevertheless, because of other objective standards contained in the SROs' options communication rules and the Guidelines, deletion of the "good taste" test does not mean that options communications can be in "poor taste." Prohibitions against misleading, untruthful or exaggerated statements, among other things, will still be contained in the SRO's options communication rules and apply to all options communications.

Moreover, the Commission believes it is consistent with the Act for the SROs to amend the Guidelines to clarify the effect of an SRO review of an options communications. Specifically, the Commission believes it is reasonable for the SROs to state clearly that their review process is limited strictly to determining whether the manner and form of a proposed options communication is in compliance with their respective rules. The Commission also believes it is reasonable for the Guidelines to provide that an SRO review should not be construed as an endorsement of the options communications. The Commission believes to do otherwise would place the SROs in a position of guaranteeing the accuracy, veracity, and completeness of options communications, which task would be overly burdensome for the SROs and rightfully belongs with the curators of the options communications, the member firms. In this regard, the Commission notes, as do the Guidelines, that an SRO review does not relieve a member firm of its responsibility to comply with all other applicable provisions of SRO rules and the Federal Securities Laws.

Finally, the Commission believes it is reasonable for the SRO's to update the term "advertisement" in their rules to encompass communications made via telecommunication devices and address the standards by which educational material should be reviewed.[14]

Lastly, the Commission believes it is consistent with section 15A(b)(6) of the Act for the NASD to amend its rules to create options communications requirements identical to the other SROs' requirements.[15] In doing so, the NASD is facilitating uniformity of the standards under which options communications will be prepared and reviewed by the member firms and the SROs, thereby protecting public investors from misleading, false, or inaccurate options communications.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule changes (SR–Amex–90–38, SR–CBOE–90–27, SR–NASD–91–02, SR–NYSE–90–51, and SR–PSE–90–41) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 91–22821 Filed 9–20–91; 8:45 am]

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[14] In 1982, the Commission adopted Rule 134a under the Securities Act of 1933 which first permitted the dissemination of educational or instructional material involving standardized options without such material being deemed a prospectus under section 2(10) of the Securities Act of 1933. As a result, the Guidelines and SRO rules needed to be updated to address the provisions of Rule 134a as they pertain to educational and instructional materials.

[15] The Commission notes that the NASD's options communications rules contain provisions that: (1) Require pre-use submission of all options communications under certain circumstances; and (2) establish the NASD's procedures for conducting routine spot-checks of member firms' options communications. The Commission believes these provisions are consistent with the Act because they will serve to ensure that the options communication standards are properly implemented. In addition, the Commission notes that, even though the other SROs' options communication rules do not contain these provisions, the other SROs can impose similar pre-use submission requirements pursuant to their disciplinary authority and can, and in fact do, conduct spot-checks of their members' options communications pursuant to their examination authority.

[16] 15 U.S.C. 78s(b) (1988).

[17] 17 CFR 200.30–3(a)(12) (199).

[Release No. 29696; File No. 600–21]

Self-Regulatory Organizations; Intermarket Clearing Corporation; Notice of Filing of a Request of Temporary Registration as a Clearing Agency

September 16, 1991.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(a), notice is hereby given that on September 11, 1991, The Intermarket Clearing Corporation ("ICC") filed an amendment to its application for registration as a clearing agency requesting that the Securities and Exchange Commission ("Commission") extend its registration as a clearing agency, for a period of 18 months, until April 3, 1993.[1]

On October 3, 1988, the Commission granted ICC's temporary registration as a clearing agency pursuant to sections 17A and 19(a)(1) of the Act and rule 17Ab2–1 thereunder, for a period of 18 months.[2] On March 13, 1990, ICC filed an amendment to its application requesting that the Commission extend its registration as a clearing agency until October 3, 1991.[3] ICC's registration was extended on April 5, 1990 until October 3, 1991.[4]

[1] Letter from James C. Yong, Assistant Secretary of Intermarket Clearing Corporation to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated September 11, 1991.

[2] Securities Exchange Act Release No. 26154 (October 3, 1988), 53 FR 39556.

[3] Letter from James C. Yong, Deputy General Counsel, ICC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission (March 13, 1990).

[4] Securities Exchange Act Release No. 27879 (April 5, 1990), 55 FR 13342.

ICC's primary functions are to act as guarantor of exchange-traded futures and options contracts and to serve as a clearing agency for all transactions effected on its Participant Exchanges. ICC originally sought registration as a clearing agency in order to hold and control securities options positions in connection with a Cross-Margining Program between ICC and its parent, The Options Clearing Corporation ("OCC"). Subsequently, OCC has established a Cross-Margining Program with the Chicago Mercantile Exchange ("CME") that is structured somewhat differently than the ICC/OCC Cross-Margining Program. ICC staff is currently studying whether to restructure the ICC/OCC Cross-Margining Program to be more similar to the Cross-Margining Program between OCC and CME.

Interested persons are invited to submit written data, views, and arguments concerning this application within thirty days of the date of publication of this notice in the **Federal Register**. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act. Persons making written submissions should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 600–21. Copies of the application and all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–22771 Filed 9–20–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18316; 812–7663]

Nationwide Anglia Building Society; Application

September 13, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Act of 1940 ("1940 Act").

APPLICANT: Nationwide Anglia Building Society.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order exempting it from all provisions of the 1940 Act to enable it to offer and sell its debt securities in the United States without registering as an investment company under the 1940 Act.

FILING DATES: The application was filed on December 21, 1990, and an amendment to the application was filed on March 25, 1991. By letter dated September 12, 1991 counsel provided certain updated financial information and stated that Applicant would file another amendment to include April 4, 1991 fiscal year-end results and the new proposed form of designation of agent for service of process.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 8, 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 Robert L. Cuningham, Jr. at Fried, Frank, Harris, Shiver & Jacobson, One New York Plaza, 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. Applicant is a permanent building society established under the laws of the United Kingdom ("U.K."). Under the Building Societies Act of 1986 (the "1986 Societies Act") Applicant's primary business is limited to the raising of a stock or fund, principally by way of investments by its members and making residential mortgage loans to its borrowing members. Thus, Applicant is substantially similar to a savings and loan association in the United States. Applicant is owned by its investing members.

2. At April 4, 1991 (Applicant's most recent fiscal year-end), Applicant was the second largest building society in the U.K. in terms of assets. Its total consolidated assets at that date were more than 31 billion pounds sterling (approximately U.S. $55.3 billion at the exchange rate in effect on such date). Applicant's consolidated net profit was about 196 million pounds sterling (approximately U.S. $349.8 million). In keeping with applicable regulatory requirements, the overwhelming majority of Applicant's assets (approximately 76% of total consolidated assets) represented loans to individuals secured by liens on residential real estate located in the U.K. Such loans also represented the principal source of Applicant's income (approximately 82.5% of consolidated gross income).

3. Applicant's business and operations are subject to extensive regulation under the 1986 Societies Act, including supervision and review by the principal regulatory authority, the Building Societies Commission (the "Commission"). The Commission exercises regular and extensive supervision over Applicant's management, asset and liability character and composition, and advertising, among other things. The 1986 Societies Act and the Commission's regulations require regular reports containing financial and other information and demonstrating compliance with specified financial ratios and reserve requirements, and require regular certification by Applicant and its independent accountants as to compliance with the 1986 Societies Act.

4. The 1986 Societies Act extended the powers of certain building societies, including Applicant, to permit them to provide a full range of retail financial services, including banking services, investment services, and insurance services. However, such powers are statutorily limited by both the size of any investment and the nature of the ancillary activity. Thus, the major portion of Applicant's assets and income is required to be attributable to its primary business of residential mortgage lending.

5. Applicant also is subject to the Building Societies Investor Protection Board (the "Board"), which was established under the 1986 Societies Act to insure up to 90% of the first 20,000 pounds sterling of a building society's liability to a saver in respect of deposits

and other specified protected investments.

6. Applicant proposes to issue and sell unsecured prime quality commercial paper exempt from the registration requirements of the Securities Act of 1933 by virtue of section 3(a)(3) thereof. Applicant initially proposes to offer such commercial paper in the United States, in minimum principal denominations of $100,000, through one or more dealers to sophisticated institutional investors and other investors who normally purchase commercial paper. Applicant also may, from time to time, offer other debt securities for sale in the United States.

Applicant's Legal Analysis

1. As of April 4, 1991, a substantial majority of Applicant's assets consisted of residential mortgage loans. These obligations could be deemed "investment securities" within the meaning of section 3(a)(3) of the 1940 Act, and, as a result, Applicant may be deemed to be an "investment company" under the 1940 Act. Accordingly, Applicant filed the application to clarify its status under the 1940 Act.

2. Section 6(c) of the 1940 Act provides, as here relevant, that the SEC may conditionally or unconditionally exempt any person from the provisions of the 1940 Act if such an exemption would be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Applicant submits that an exemption would be in the public interest because, absent a section 6(c) exemption, Applicant would be effectively precluded from selling its debt securities publicly in the United States and therefore denied ready access to the United States capital markets. Applicant also submits that an exemption would be consistent with the protection of investors because Applicant's business is subject to extensive regulation under the 1986 Societies Act that is comparable to that in which United States savings and loan associations operate. Since Applicant is substantially similar to a savings and loan association in the United States, it is submitted that an exemption would be consistent with the purposes fairly intended by sectin 3(c)(3) of the 1940 Act, which expressly excludes from the definition of an "investment company" any "savings and loan association, * * * or similar institution." Applicant cannot rely on this exclusion from the definition of an investment company, however, because it is not a United States financial institution.

4. Applicant regards the SEC's pending proposal to amend Rule 6c–9 extend the Rule's coverage, *inter alia*, to foreign insurance companies, Canadian trust companies, and Canadian loan companies as support for exemptive relief for other foreign entities similar to United States financial institutions covered by Section 3(c)(3), where there is an appropriate local regulatory scheme applicable to such institution. See Investment Company Act Release No. 17682 (Aug. 17, 1990). Applicant submits that its application falls within the apparent general rationale of the pending proposals to amend Rule 6c–9.

Condition

As condition to the requested exemptive relief, Applicant will comply with Rule 6c–9 under the 1940 Act as it is currently proposed to be amended in Investment Company Act Release No. 17682 (Aug. 17, 1990) and as it may be reproposed, adopted or amended in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–22822 Filed 9–20–91; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application to Withdraw From Listing and Registration; (Orbit Gas Company, Common Stock, No Par Value) File No. 1–6632

September 17, 1991.

Orbit Gas Company ("Company") has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's Common Stock currently trades on the BSE and also is traded in the over-the-counter market on the National Association Securities Dealers Automated Quotation System ("NASDAQ"). Although supporting data is not readily available, the management of the Company believes that the overwhelming majority of trading in the last few years has occurred on NASDAQ so that approval of this application will merely officially affirm what had already occurred in fact. In addition, the Company's Board of Director has concluded that the liquidity of the Common Stock in the hands of shareholder's might be improved, and in any case would not be impaired, by focusing all trading on NASDAQ. Nevertheless, approval of the application will be significant because it will relieve the Company of the necessity of filing reports and other documents with the Exchange in compliance with various provisions of the Act. Finally, the Company is aware that shareholders may lose the ability to use the Common Stock for margin loan purposes if the securities are delisted but believes that this concern is essentially academic, given the relative size of the Company, the continuing lack of liquidity for the Common Stock, and current and expected credit conditions.

Any interested person may, on or before October 8, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–22772 Filed 9–20–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25375]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 16, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s)

should submit their views in writing by October 10, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, my be granted and/or permitted to become effective.

Mississippi Power Company (70–7964)

Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, an electric utility subsidiary company of The Southern Company ("Southern"), a registered holding company, has filed an application under sections 2(a)(8)(A), 9(a) and 10 of the Act.

By order dated August 12, 1987 (HCAR No. 24440), the Commission authorized Mississippi to acquire up to 12.5% of the issued and outstanding common stock, representing a 9.9% voting interest, and up to 10% of the issued and outstanding preferred stock of WaterFurnace International, Inc. ("Manufacturer"), a closely held Indiana corporation. In addition, Mississippi was authorized to grant an exclusive license to Manufacturer for a term of up to 34 years for the manufacture of integrated heat pump products utilizing Mississippi's patented triple loop ("LP3") refrigerant circuit technology and to provide certain other services to Manufacturer. Manufacturer recently notified Mississippi that it has discontinued manufacture of LP3 products.

Mississippi now proposes to restructure its investment in Manufacturer and facilitate the development of products utilizing the LP3 technology by exchanging all of its common stock and preferred stock in Manufacturer for 605,130 shares of common stock of WFI Industries Ltd. ("WF-Canada"), a publicly held Canadian company. The exchange rate will be based on a pricing formula for WF-Canada common stock based on, among other things, prior sales of the stock and the expected performance of Manufacturer and WF-Canada.

Mississippi further proposes to provide working capital to WF-Canada by acquiring up to 600,000 additional shares of WF-Canada common stock in open market and privately negotiated transactions at an estimated cost of $992,356 ($1.65 average price per share), in three types of transactions. First, Mississippi proposes to acquire from Royal Bank Capital Corporation an outstanding option to purchase up to 200,000 shares. The option price is $25,356 and its exercise price is $1.31 per share payable on or before October 15, 1991, for a total price of $287,356. Second, Mississippi proposes to purchase up to 200,000 shares of WF-Canada common stock through open market purchases over a period of not more than 90 days at market prices not exceeding $2.11 per share, for a maximum cost of $422,000 exclusive of commissions. Third, Mississippi proposes to purchase up to 200,000 newly issued shares directly from WF-Canada in a private placement of 100,000 units, with each unit consisting of one share of common stock, $1.35 per share, and a warrant to acquire one share of common stock at an exercise price of $1.48 per share, for a total cost of $283,000.

WF-Canada is a distributor of Manufacturer's heat pump products in Canada and the United States and also owns 28.1% of Manufacturer's outstanding common stock. Following the proposed share exchange and acquisition, Mississippi will own approximately 16.37% of WF-Canada's outstanding common stock, if Mississippi exercises all of its warrants and other rights.

Mississippi proposes to license the LP3 technology to WF-Canada on a non-exclusive basis for use in the manufacture and distribution of electric heat pumps in Canada and the United States. Mississippi and its associate companies will not participate in the marketing or distribution of LP3 products. WF-Canada and its subsidiary companies will market and sell the products, directly and through independent dealers, anywhere in Canada and the United States, including Mississippi's service territory.

The license will consist of two successive 17-year terms corresponding to Mississippi's rights to exclusive use of the LP3 technology obtained pursuant to Letters Patent. During the initial term, which has approximately 13 years remaining, Mississippi will receive royalty payments equal to 4% of WF-Canada's gross dollar volume of sales of units incorporating the LP3 technology. If Mississippi renews the patent, the license agreement will also be automatically renewed for an additional 17 years, and the royalty payment reduced to 2% of the gross dollar volume.

Mississippi will enter into a voting agreement with WF-Canada limiting its voting of shares of WF-Canada's common stock to 9.9% of the total number of voting shares, with the balance of Mississippi's shares being voted in the same proportion as are the publicly held shares of WF-Canada, excluding for this purpose any shares voted by Mississippi. Mississippi will be entitled to elect one member of WF-Canada's seven-person board of directors and one of three non-voting advisory directors.

Finally, Mississippi has requested an order under section 2(a)(8)(A) of the Act declaring that WF-Canada is not a subsidiary company of Southern or Mississippi, as that term is defined by the Act, on the basis that neither Southern nor Mississippi will exercise a direct or indirect controlling influence over WF-Canada's management or operations.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–22823 Filed 9–20–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before October 23, 1991. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

AGENCY CLEARANCE OFFICER: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th

Floor, Washington, DC 20416, telephone (202) 205–6629.

OMB REVIEWER: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Client's Report of 7(J) Task Order. Service Received.

Form No.: SBA Form 1540.

Frequency: On Occasion.

Description of Respondents: 8(a) Program Participants.

Annual Responses: 2,000.

Annual Burden: 100.

Title: Management Training Report.

Form No.: SBA Form 888.

Frequency: On occasion.

Description of Respondents: Instructors of SBA Co-Sponsored. Training Seminars.

Annual Responses: 16,000.

Annual Burden: 2,656.

Cleo Verbillis,

Acting Chief, Administrative Information Branch.

[FR Doc. 91–22788 Filed 9–20–91; 8:45 am]

BILLING CODE 8025–01–M

Small Business Investment Companies; Advisory Council

AGENCY: Small Business Administration.

ACTION: Notice of reestablishment of Investment Advisory Council.

SUMMARY: The Investment Advisory Council is being reestablishment in order to provide advice and counsel to the Investment Division of the Small Business Administration. The Council would consider capital formation and other issues relevant and important to the SBIC program.

EFFECTIVE DATE: September 18, 1991.

ADDRESSES: Written comments on this Notice should be directed to Office of Investment, suite 8500, Small Business Administration, 409 3rd St., SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John H. Simonds, Council Liaison, 202–205–7596.

SUPPLEMENTARY INFORMATION: The Investment Advisory Council is being reestablished. The goals and objectives of the Council are to advise, counsel, and confer with the Associate Administrator for Investment (AA/I) of the Small Business Administration (SBA) in carrying out his duties relevant to the Small Business Investment Company (SBIC) and the Specialized Small Business Investment Company (SSBIC) programs. The Council shall report all of its findings and proposals to the AA/I. The scope of the Council's activities includes SBA's Investment Program, but may encompass related issues that impact upon other SBA programs as well.

The Council shall consist of no more than 17 members appointed by the Administrator. Members of the Council shall be appointed for a term not to exceed two years. Council membership shall be composed of qualified individuals directly affected by, and interested in, the SBIC and SSBIC programs as well as persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed. At the request of the AA/I, other individuals with particular expertise relevant to the Council's functions may be invited to advise the Council as necessary.

No member of the Council will receive compensation from the United States Government by virtue of his or her service on the Council. At the direction and subject to the approved of SBA's AA/I and Comptroller, SBA will reimburse members of the Council and invited participants for travel expenses incurred while conducting official Council business.

All administrative staff services, support, facilities, and expenses of the Council deemed necessary by the AA/I shall be furnished by SBA's Office of Investment.

Dated: September 12, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–22504 Filed 9–20–91; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Denver, will hold a public meeting at 8:30 a.m. on Thursday, October 3, 1991, at the Small Business Administration, 999 18th St., suite 701, Denver Colorado, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Gilbert M. Cisneros, Regional Administrator, U.S. Small Business Administration, 999 18th St., suite 701, Denver, Colorado, 80202 telephone (303) 330–7021.

September 16, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–22787 Filed 9–20–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of Legal Adviser

[Public Notice 148]

Submission of Claims Against Iraq to the United Nations Compensation Commission

Note: This notice was originally published in the **Federal Register** on September 16, 1991 (56 FR 46817), but the text of the United Nations Compensation Commission criteria was inadvertently omitted. The notice is being republished to include the text of the criteria.

This notice provides background information concerning the establishment of the United Nations Compensation Commission. The notice also describes the criteria for the submission of the first category of claims to the Commission. For additional information contact the Office of International Claims and Investment Disputes, Department of State, Washington, DC 20520. Telephone (202) 632–5040.

United Nations Security Council Resolution 687, adopted on April 3, 1991, reaffirms Iraq's liability under international law for any direct loss, damage or injury to foreign governments, nationals and corporations, as a result of its unlawful invasion and occupation of Kuwait. Resolution 687 further creates a fund to pay compensation for such claims out of Iraqi oil revenues and establishes the Compensation Commission to administer the fund and pay claims.

In accordance with United Nations Security Council Resolution 692, the Compensation Commission has three organs: (1) A Governing Council composed of the 15 members of the Security Council; (2) an Executive Secretary appointed by the UN Secretary General, with a staff of administrators and experts; and (3) a series of commissioners (to provide technical advice and process claims) to be appointed by the Governing Council.

The first session of the Governing Council took place in Geneva from July 23–August 2. The Council elected a President (Ambassador Berg of Belgium), adopted simple rules, and approved criteria for the expedited processing of the first categories of claims. (The text of the criteria is set forth below.) The UN Secretary General also appointed a senior Peruvian diplomat (Carlos Alzamora) as Executive Secretary. Additionally, a series of experts is being appointed to provide advice until Commissioners can be selected.

The criteria adopted by the Governing Council concern individuals who suffered personal losses during the Iraqi invasion and occupation of Kuwait. Governments may submit consolidated claims for up to $100,000 per person on behalf of their nationals and (in their discretion) residents. It is expected that these claims will be reviewed on an expedited basis by Commissioners, who will make recommendations to the Governing Council on the total amount to be paid to each Government. Each Government will then allocate these sums to its claimants.

The criteria also state that compensation will not be provided for attorneys' fees or other expenses for claims preparation. Moreover, any compensation, whether in funds or in kind, already received from any source will be deducted from the total amount of losses suffered.

Special fixed payments of $2500 per person are available, without the need to document the actual amount of loss, with respect to persons who departed the area, or who suffered serious personal injury or the death of a close family member. If a claim is made for $2500 for departure without proof of loss, the individual is not eligible to claim additional departure losses later. However, making a claim for this amount for death or serious injury will not prevent further claims for additional amounts.

The criteria further state that governments are encouraged to submit claims for both categories within six months from the date on which the Executive Secretary circulates to Governments, the appropriate claims forms. We expect the Governing Council to produce the claims forms within the next two months.

After the claims forms are established, the United States Government will collect, consolidate and submit them to the Compensation Commission. Claims forms will be distributed to all individuals who have reported claims against Iraq to the Department of the Treasury, pursuant to its census of claims. (See 56 FR 5636, February 11, 1991.)

The Governing Council has stated its intent to establish as promptly as possible criteria for additional categories of claims to permit consolidated submissions by Governments for all losses covered by Security Council Resolution 687 (including losses by individuals in excess of $100,000, business losses, and environmental damage and loss of natural resources).

Dated: September 10, 1991.

Ronald J. Bettauer,

Assistant Legal Adviser for International Claims and Investment Disputes.

Text of United Nations Compensation Commission Criteria

SECURITY COUNCIL

First Session of the Governing Council of the United Nations Compensation Commission

Dated: August 2, 1991

Criteria for Expedited Processing of Urgent Claims

1. The following criteria will govern the submission of the most urgent claims pursuant to resolution 687 (1991) for the first categories to be considered by the Commission. It provides for simple and expedited procedures by which Governments may submit consolidated claims and receive payments on behalf of the many individuals who suffered personal losses as a result of the invasion and occupation of Kuwait. For a great many persons these procedures would provide prompt compensation in full; for others they will provide substantial interim relief while their larger or more complex claims are being processed, including those suffering business losses.

2. These criteria are without prejudice to future Council decisions with respect to criteria for other categories of claims, which will be approved separately as promptly as possible, with expert advice from the Commissioners as may be required.

3. The following criteria are not intended to resolve every issue that may arise with respect to these claims. Rather, they are intended to provide sufficient guidance to enable Governments to prepare consolidated claims submissions. It will likely be necessary for the Council to make further decisions on the processing of claims after receiving expert advice where needed.

4. Each Government may submit one or more consolidated claims for each category established by the Council. Thus, each Government may make separate consolidated submissions covering claims in each of the categories set forth below; and it may later submit separate consolidated claims for each additional category to be established by the Council.

5. The Council will promptly establish criteria for additional categories of claims, to permit consolidated submissions by Governments for all losses covered by paragraph 16 of resolution 687 (1991). Business losses of individuals may be part of consolidated claims under the expedited procedures set forth below. The Council will provide further advice on an urgent basis as to the types of business losses eligible for consideration under the expedited procedures. Business losses of corporations and other legal entities will be covered in other criteria to be established. The Council will also separately consider claims on behalf of third parties, such as Governments, insurance companies, relief agencies and employers, which have made payments or provided relief to persons suffering compensable losses.

6. The Council will consider promptly, after receiving expert advice, the circumstances in which claims for mental pain and anguish may be admitted, the amounts to be awarded, and the limits to be imposed thereon.

7. The Council will separately examine the question of the eligibility or otherwise of claims by or in respect of members of the allied coalition armed forces; the Executive Secretary will have available, *inter alia*, the provisions of the relevant national legislation of the Governments concerned.

8. The Commission will process the claims in the initial categories in paragraphs 10 to 16 on an expedited basis. While decisions on the precise method of processing these claims will be made at a later stage, the following steps are contemplated. As the claims are received they would be submitted to a panel of Commissioners for review within a set time limit. If, as expected, the volume of claims in these categories is large, the Commissioners would be instructed to adopt expedited procedures to process them, such as checking individual claims on a sample basis, with further verification only if circumstances warranted. The Commissioners would be asked to report to the Council on the claims received and the amount recommended for the claims submitted by each Government. The Council would then decide on the total amount to be allocated to each Government. To the extent necessary, the Council would seek expert advice (for example, on what constitutes serious personal injury) at any stage of the process.

9. As contributions are made to the Fund, the Council will allocate those funds among the various categories of claims. If resources of the Fund are insufficient with respect to all claims processed to date, *pro rata* payments would be made to Governments periodically as funds become available.

The Council will decide on the priority for payment of various categories of claims.

Payment of Fixed Amounts

10. These payments are available with respect to any person who, as a result of Iraq's unlawful invasion and occupation of Kuwait: (a) departed from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991; (b) suffered serious personal injury; or (c) whose spouse, child or parent died.

11. In the case of departures, $2,500 will be provided where there is simple documentation of the fact and date of departure from Iraq or Kuwait. Documentation of the actual amount of loss will not be required. Claims submitted under this procedure for departure from Iraq or Kuwait cannot be resubmitted for a greater amount in any other category. If the loss in question was greater than $2,500 and can be documented, it may instead be submitted under paragraph 14 and in other appropriate categories.

12. In addition, in the case of serious personal injury not resulting in death, $2,500 will be provided where there is simple documentation of the fact and date of the injury; and in the case of death, $2,500 will be provided where there is simple documentation of the death and family relationship. Documentation of the actual amount of loss resulting from the death or injury will not be required. If the actual loss in question was greater than $2,500, these payments will be treated as interim relief, and claims for additional amounts may also be submitted under paragraph 14 and in other appropriate categories.

13. These amounts are payable cumulatively where more than one situation applies with respect to a particular person. However, no more than $10,000 will be paid for death, and no more than $5,000 for departure, with respect to any one family (consisting of any person and his or her spouse, children and parents).

Consideration of Claims for Up To $100,000 of Actual Losses Per Person

14. These payments are available with respect to death or personal injury, or losses of income, support, housing or personal property, or medical expenses or costs of departure, as a result of Iraq's unlawful invasion and occupation of Kuwait. The Commission will give expedited priority consideration to claims for such losses up to $100,000 per person.

15. (a) Such claims must be documented by appropriate evidence of the circumstances and the amount of the claimed loss. The evidence required will be the reasonable minimum that is appropriate under the circumstances involved, and a lesser degree of documentary evidence would ordinarily be required for smaller claims, such as those below $20,000.

(b) If the loss in question was greater than $100,000, claims for additional amounts may also be submitted in other appropriate categories. Criteria for the submission of claims in excess of $100,000 will be approved separately. Claims larger than $100,000 may be submitted in their entirety at a later date under those separate procedures, or the first $100,000 may be submitted at this time and the remainder separately.

16. Compensation will not be provided for losses suffered as a result of the trade embargo and related measures, nor will costs of attorneys' fees or other expenses for claims preparation be compensated under this category. Any compensation, whether in funds or in kind, already received from any source will be deducted from the total amount of losses suffered.

Requirements Applicable Under Both Categories

17. Claims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State.

18. Claims must be for death, personal injury or other direct loss to individuals as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention.

19. Claims will be submitted by Governments. Each Government will normally submit claims on behalf of its nationals; each Government may, in its discretion, also submit the claims of other persons resident in its territory. In addition, the Council may request an appropriate person, authority or body to submit claims on behalf of persons who are not in a position to have their claims submitted by a Government. Each Government shall make one or more consolidated submissions of all such claims for each category. The Council encourages the submission of such claims within six months from the date on which the Executive Secretary circulates to Governments the claims forms described below; and the Commission will thereupon give consideration to such claims as provided herein. The Council will consider at a later time the period within which all such claims must be submitted.

20. Each consolidated claim must include:

(a) A signed statement by each individual covered containing:

(i) His or her name and address, and any passport number or other identifying national number;

(ii) For claims under paragraph 14, the amount, type, and reason for each element of the loss, and any compensation, whether in funds or in kind already received from any source for the claim asserted;

(iii) Any documents evidencing the matters set forth in the definition of each category, as well as the items set forth in the preceding subparagraph; and

(iv) His or her affirmation that the foregoing information is correct, and that no other claim for the same loss has been submitted to the Commission;

(b) The affirmation of the Government submitting the claim that, to the best of the information available to it, the individuals in question are its nationals or residents, and the affirmation of the Government or of the person, authority or body as referred to in paragraph 19 that it has no reason to believe that the information stated is incorrect.

21. The Executive Secretary (or a Commissioner) will prepare and the Executive Secretary will distribute a standard form for submission of claims within each category, incorporating the above elements in a clear and concise manner. Except as may otherwise be agreed between the Executive Secretary and the Government in question, claims will be submitted to the Executive Secretary by Governments or by persons, authorities or bodies as referred to in paragraph 19 on the standard form and must include the information in an official language of the United Nations. Each Government may adopt such procedures as it finds appropriate in preparing its consolidated claim. The Executive Secretary (or a Commissioner) will be available to answer questions or provide assistance to any Governments which may request it.

[FR Doc. 91-22812 Filed 9-20-91; 8:45 am]

BILLING CODE 4710-22-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Service Station at Laramie, WY; Closing

Notice is hereby given that on or about September 25, 1991, the flight service station at Laramie, Wyoming will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Casper, Wyoming. This information will be reflected in the AAA Organizational Statement the next time it is issued. Section 313(a) of Federal Aviation Act of 1958, as amended. 72 Stat. 752; 49 U.S.C. app. 1354(a).

Issued in Renton, Washington, on September 4, 1991.

F. Isac,

Regional Administrator, Northwest Mountain Region.

[FR Doc. 91-22796 Filed 9-20-91; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Rawlins, WY; Closing

Notice is hereby given that on or about September 27, 1991, the flight service station at Rawlins, Wyoming, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Casper, Wyoming. This information will be reflected in the FAA Organizational Statement the next time it is issued. Section 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. app. 1354(a).

Issued in Renton, Washington, on September 4, 1991.

F. Isac,

Regional Administrator, Northwest Mountain Region.

[FR Doc. 91-22797 Filed 9-20-91; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Rock Springs, WY; Closing

Notice is hereby given that on or about September 30, 1991, the flight service station at Rock Springs, Wyoming, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Casper, Wyoming. This information will be reflected in the FAA Organizational Statement the next time it is issued. Section 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. app. 1354(a).

Issued in Renton, Washington, on September 4, 1991.

F. Isac,

Regional Administrator, Northwest Mountain Region.

[FR Doc. 91-22798 Filed 9-20-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. MC-89-10]

Inspection, Repair and Maintenance; Periodic Motor Vehicle Inspection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to commercial motor carriers on State and Canadian periodic inspection programs.

SUMMARY: This document adds the periodic inspection (PI) programs of the Alabama Liquefied Petroleum Gas (LPG) Board; the States of California, Hawaii, Louisiana, and Minnesota; all the Canadian Provinces; and the Yukon Territory to the list of programs which are comparable to, or as effective as, the Federal PI requirements contained in 49 CFR 396.15 through 396.23. The FHWA published its initial list on December 8, 1989 (54 FR 50726). Including those added today, there are 19 States, the Alabama LPG Board, the District of Columbia, 9 Canadian provinces and one Canadian Territory which have PI programs which the FHWA has determined to be comparable to, or as effective as, the Federal annual inspection requirements.

DATES: This docket will remain open until further notice.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-89-10, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with any of the following word processing programs: WordPerfect, WordStar, or Microsoft Word (Macintosh). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Hagan, Office of Motor Carrier Standards, HCS-10, (202) 366-2981; or Mr. Paul L. Brennan, Office of the Chief Counsel, HCC-20, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 210 of the Motor Carrier Safety Act of 1984 (the Act) (49 U.S.C. App. 2509) required the Secretary of Transportation to establish standards for annual or more frequent inspection of commercial motor vehicles (CMVs), and the retention, by motor carriers, of the records of such inspections. On December 7, 1988, the FHWA published a final rule in the **Federal Register** (53 FR 49402) under Docket No. MC-113 which implemented the statutory requirements of the Act by amending part 396, Inspection, Repair, and Maintenance, of the Federal Motor Carrier Safety Regulations (FMCSRs). That final rule generally requires that all CMVs operating in interstate commerce be inspected at least once a year. This inspection is to be based on Federal inspection standards, or a State inspection program determined by the FHWA to be comparable to, or as effective as, the Federal standards. Accordingly, if the FHWA determines that a State's PI program is comparable to, or as effective as, the requirements of part 396, then a motor carrier must ensure that its commercial motor vehicles which are required by that State to be inspected through the State's inspection program are so inspected. If a State does not have such a program, then a motor carrier is responsible for ensuring that an inspection is performed using other procedures included in that rule.

On March 16, 1989, the FHWA published a Notice in the **Federal Register** (54 FR 11020) under Docket No. MC-89-10 which requested States and other interested parties to identify and provide any information or source materials that would describe the type of PI programs now being performed in their States for CMVs. In addition, the FHWA requested that each State with a PI program provide an initial assessment of whether its State program is comparable to, or as effective as, the Federal Standards contained in 49 CFR 396.15 through 396.23.

Upon reviewing the information submitted by all of the States, the FHWA published a notice on December 8, 1989, in the **Federal Register** (54 FR 50726). This notice identified 15 States and the District of Columbia as having PI programs which are comparable to, or

as effective as, the Federal standards contained in 49 CFR 396.15 through 396.23.

Determination

Since the December 8, 1989, notice, the FHWA received additional information on the periodic inspection programs for the States of California and Hawaii. Together with the information previously submitted by these States, the FHWA was able to complete its evaluation of their periodic inspection programs and found them to be comparable to, or as effective as, the Federal annual inspection requirements. The FHWA was notified that the Alabama Liquefied Petroleum Gas Board (empowered by State law to make inspections and assess penalties for violations) has in place a program to annually inspect LPG cargo vehicles. The review of this program indicates that it is comparable to the Federal inspection requirements. Also, the FHWA has been notified that the State of Louisiana has modified its periodic inspection program, effective July 2, 1990. Based upon a review of Louisiana's program, the FHWA finds that periodic inspections of CMVs by the State of Louisiana's certified inspectors are comparable to the Federal inspection program. Consequently, the FHWA has concluded that the Alabama LPG Board and the States of California, Hawaii and Louisiana have PI programs that are compared to, or as effective as, the Federal periodic program set forth in part 396 of the FMCSRs.

In addition to the above States, Minnesota has initiated a periodic inspection program. Minnesota's program requires periodic inspection of all powered commercial motor vehicles with a gross vehicle weight rating of 26,001 pounds or more. In addition, Minnesota's program requires the periodic inspection of all trailers with a gross vehicle weight rating of 10,001 pounds or more. The State of Minnesota limits the inspection requirement to commercial motor vehicles with Minnesota-based license plates. The effective date of Minnesota's periodic inspection program is April 1, 1991. On this date all of the above-designated commercial motor vehicles which are registered in the State of Minnesota must have been inspected during the previous 12-month period. In order to meet the Federal requirements, those powered commercial motor vehicles with a gross vehicle weight rating between 10,001 and 26,000 pounds must utilize alternative means, e.g., by self-inspection, the use of a commercial shop, or by passing a roadside inspection that meets Federal requirements. During the period from July 1, 1990, to April 1, 1991, a motor carrier with vehicles that will be subject to Minnesota's inspection program must ensure that its in-service vehicles are inspected, either under Minnesota's PI program or one of the alternate means listed above to meet the Federal requirements.

Canadian Provinces and Territories

The FWHA has determined that all of the Canadian Provinces and the Yukon Territory have periodic inspection programs that are comparable to, or are as effective as, the Federal requirements. When a Canadian motor carrier operates its CMVs within the borders of the United States, the motor carrier must ensure that any CMV being operated has met the Federal periodic inspection requirements, through Canadian Provincial or Territorial inspection programs, roadside inspection, State inspections, or self-inspection prior to operating them in the United States.

States with Equivalent Periodic Inspection Programs

The States discussed in this notice, i.e., Alabama, California, Hawaii, Louisiana and Minnesota, together with those listed in the FHWA notice on December 8, 1989, in the **Federal Register** (54 FR 50726) (i.e., the District of Columbia and the States of Arkansas, Illinois, Maine, Maryland, Michigan, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, Rhode Island, Utah, Vermont, Virginia and West Virginia) are currently the only States with PI programs comparable to, or as effective as, the Federal annual inspection program. All other States either have no PI program or their inspection programs are not comparable to the Federal standards. Should any of these States wish to establish a program or modify their programs to become comparable to the Federal requirements, they should contact the appropriate FHWA regional office. The addresses of these regional offices are given in 49 CFR part 390.

The FHWA intends to keep docket MC–89–10 open until further notice. If a State decides to revise its PI program and, as a result, that State's program becomes comparable to the Federal PI program, this information will be published in the **Federal Register**. The State would then be included among those States determined to have comparable or equivalent programs.

If a State decides not to change its program, or if a State does not have a PI program, motor carriers operating CMVs domiciled in those States must comply with the annual inspection requirements either through programs in other States or through the alternative inspection options identified above.

State Recordkeeping Requirements

It should be noted that if an inspection program of a State or Canadian Province, or Territory is considered to be comparable to, or as effective as, the Federal program, then the recordkeeping requirements for that inspection also meet the Federal requirements. At the time each State, Provincial or Territorial program was reviewed, the recordkeeping requirements for the inspection were considered. FWHA's acceptance of the various periodic inspection programs included acceptance of the recordkeeping requirements. There is one exception, where the State, Province or Territory does not require the motor carrier to carry proof of inspection on its commercial motor vehicle, the motor carrier must ensure that proof of the periodic inspection is carried aboard the vehicle. The proof may consist of an inspection decal or a copy of the inspection report.

Elsewhere in today's **Federal Register** the FHWA is amending 49 CFR part 396 to clarify this issue.

Issued on: September 13, 1991.

T.D. Larson,

Federal Highway Administrator.

[FR Doc. 91–22785 Filed 9–20–91; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Nissan Research and Development, Inc.; Petition for Exemption From the Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants the petition by Nissan Research and Development, Inc. (Nissan) for an exemption in whole from the parts marking requirements of the vehicle theft prevention standard for a new Nissan car line that will be introduced in Model Year (MY) 1993. The agency grants this exemption under section 605 of the Motor Vehicle Information and Cost Savings Act. The agency is granting the petition because it has determined that the antitheft device that the petitioner intends to install on this line as standard equipment is likely to be as effective in reducing and deterring motor vehicle

theft as would compliance with the parts marking requirements.

DATES: The exemption granted by this notice will become effective beginning with the 1993 model year.

SUPPLEMENTARY INFORMATION: On March 21, 1991, this agency received a submission from Nissan Research and Development, Inc. (Nissan) seeking an exemption from the parts marking requirements of the vehicle theft prevention standard (49 CFR part 541) pursuant to the requirements of 49 CFR part 543, Petition for Exemption From the Vehicle Theft Prevention Standard. Nissan seeks an exemption for a new car line that they intend to introduce in MY 1993. The agency reviewed the March 21, 1991 submission and concluded that 49 CFR 543.6(a) (4) and (5) were not sufficiently addressed. These sections require manufacturers to provide reasons for their belief that the antitheft device will be effective in reducing and deterring motor vehicle theft, and reasons for their belief that the agency should determine that the antitheft device is likely to be as effective as compliance with parts-marking. The regulation requires that the assurance be provided, through a written discussion that includes any statistical data that are available to the petitioner, that a line of passenger motor vehicles equipped with the antitheft device is likely to have a theft rate equal to or less than that of passenger motor vehicles of the same, or similar, line which have parts marked in compliance with part 541. The petitioner shall also provide an explanation of its belief that the data submitted are sufficiently representative and reliable to warrant the agency's reliance upon them.

The agency noted that the Nissan Maxima car line, since Model Year 1987, has been equipped with an antitheft device that is identical to that planned for the new MY 1993 Nissan car line. Despite the fact that the antitheft device has been standard on the Maxima, the theft rate for the Maxima has consistently been rising since 1985. The agency asked Nissan to explain this phenomenon. The agency further cited 49 CFR 543.7(a) that states that the agency will inform the manufacturer of areas of insufficiency and that the petition will not be processed under this part until the required information is submitted.

On April 23, 1991, the agency asked Nissan to provide the additional information discussed above. On May 23, 1991, the agency received the required supplementary information. After reviewing the submissions, the agency determined that together, Nissan's submissions of March 21, 1991 and May 23, 1991 constitute a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Accordingly, May 23, 1991 is the date on which the statutory 120 day period for processing Nissan's petition began. The agency further decided to grant Nissan's request under 49 CFR part 512 to treat new product plans for MY 1993 and certain design specifications as confidential business information.

In its petition, Nissan included a detailed description of the identity, design, and location of the components of the antitheft device, including diagrams of the components and their location in the vehicle. Nissan states that the new car line for MY 1993 will have the same antitheft device that is currently standard on the Nissan Infiniti Q45, the Nissan 300ZX, and Nissan Maxima models.

To activate the device, the driver must turn the ignition switch to the "OFF" position, and ensure that all doors, the hood, and the trunk lid are closed and locked. The driver's or front passenger's doors must be locked either with the key or by pushing the vehicle's door lock plunger to the down position. This motion ensures that all doors, the hood, and the trunk lid are locked. If an unauthorized entry is attempted through the doors, the hood, the trunk lid, if any of the key cylinders are tampered with, or if either of the doors or the trunk lid should be opened by releasing the inside door lock knob or by using the opener switch, the headlights will flicker on and off and the alarm (horn) will sound.

In addition, the device is armed with a starter interrupt function so that if tampering does occur, the engine will not start. The alarm automatically turns off in 2 to 4 minutes. However, if one of the protected areas mentioned above is tampered with again, the alarm will sound once more. If this occurs, the alarm will continue to sound and the starter will not operate until the door or trunk lid is unlocked with the key. Once the device has been activated, it may be turned off only by unlocking either the doors or trunk lid with the key or by turning the ignition switch to the "ACC" or "ON" position.

An indicator light on the cluster panel illuminates different signals to let the driver know the condition of the warning system. If the ignition switch is in the "OFF" position and if the doors, hood, or trunk lid are open, the indicator light will flicker to remind the driver to arm the system. If the doors are closed and then left unlocked, the light will go off and the vehicle will be left unarmed. The indicator light will come on for approximately 30 seconds when the last door (hood or trunk lid) is locked, after which the light will go off to indicate that the warning system is armed.

The new car line for MY 1993 is equipped with a steering column locking device, so that, if an unauthorized person should forcibly break the steering column locking device and the ignition switch is jump-started, the interrupt relay will be activated by preventing the starter motor from operating. Switches, sensors and control units are located within protected areas in the vehicle to prevent the antitheft device from being defeated or circumvented. Nissan also informed the agency of additional measures they have taken for the MY 1993 car line to strengthen the lock cylinders.

Nissan further states that extensive testing has been conducted to demonstrate the reliability and durability of its antitheft device. Nissan's testing confirmed the device's tolerance for temperature extremes, stress, shock, vibration, humidity, repeated operation, static electricity, and other factors.

Nissan believes that its antitheft device will reduce and deter theft of the new car line for MY 1993 based on reduced theft rates of the Nissan 300ZX which is presently equipped with the same device. The company based its belief upon theft data for Model Years 1983/1984, which the agency has published on November 12, 1985 at 50 FR 46666. Nissan states that the 300ZX has been equipped with the antitheft device since the model designation was changed from 280ZX to 300ZX in July 1983. Nissan also states that thefts of the 300ZX dropped significantly in that model line, resulting in a 51 percent decrease for the Model Year 1984 theft rates and 42 percent drop in the Model Year 1985 theft rates as compared to the MY 1983 theft rates (per 1,000 vehicles).

The agency further reviewed the theft rates for the 300ZX. Final theft data previously published by the agency showed that, compared to the MY 1983 theft rates, the theft rates of the 300ZX had dropped, resulting in a 30 percent decrease for MY 1986, and a 45 percent decrease for MY 1987 (per 1,000 vehicles). In addition, compared to the MYs 1983/84 theft rates, agency data revealed that the thefts of the 300ZX showed a 7 percent decrease for MY 1988 (per 1,000 vehicles) and a 53 percent decrease for MY 1989 (per 1,000 vehicles).

The theft experience for the Nissan Maxima, however, is different than that

of the Nissan 300ZX. Based on data provided by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation, that NHTSA relies on, the theft rate for the Maxima was 4.18 (per thousand) vehicles in 1984. Nissan states that the antitheft device, (that is the subject of the exemption petition for the new MY 1993 car line) was installed on the Maxima beginning from MY 1985. In 1985, the Maxima's theft rates dropped below 2.0. However, the theft experience of the Maxima has been uneven since then, rising to 3.69 for 1986, to 4.74 for 1987, 6.68 for 1988, and 5.18 for 1989. The agency asked Nissan to explain this phenomenon for the Maxima car line, and received information in a written response from Nissan on May 23, 1991. The agency reviewed the information, for which confidential treatment has been granted, and has determined that the factors on the Maxima that appear to account for the unevenness in the theft rate for the Maxima are not present on new Maximas and will not be present on the new MY 1993 car line.

For these reasons, Nissan believes that the antitheft system proposed for installation on its new car line for MY 1993 is likely to be as effective in reducing thefts as compliance with the parts-marking requirements of part 541.

The agency determines that the antitheft system proposed for installation in the new Nissan car line for MY 1993 is likely to be as effective in reducing and deterring thefts as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency reached this determination based on the information provided in Nissan's petition. That information shows that the device will provide the types of performance listed in 49 CFR 543.6(a)(3): passive activation, attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operations of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. That information also included a description of reliability and functional test procedures prescribed by Nissan's engineering department for the antitheft system and its components. Finally, that information included a showing that the function and design of its antitheft device are identical to those of other devices that the agency has considered likely to be as effective as complying with part 541 would be.

49 CFR 543.6(a)(4) requires the petitioner to provide reasons for its belief that the antitheft device, that is the subject of the petition for exemption, will be effective in reducing and deterring motor vehicle theft. After reviewing Nissan's complete petition, the agency finds that Nissan has provided adequate reasons for its belief that the antitheft device will reduce and deter theft.

For the foregoing reasons, the agency hereby exempts in full the new Nissan car line for MY 1993 from the requirements of 49 CFR part 541.

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

However, the agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in issuing part 543 to require the submission of a modification petition for every change in the components or the design of an antitheft device. The significance of many such changes would be *de minimis*. Therefore, NHTSA suggests that if Nissan contemplates making any changes the effects of which might be characterized as *de minimis*, then the company should consult the agency before preparing and submitting a proposal to modify.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on: September 17, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–22767 Filed 9–20–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances; Notice of Determination

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, 1989–1 C.B. 717, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include ethylene dibromide.

EFFECTIVE DATE: This modification is effective as of July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On July 9, 1991, the Secretary determined that ethylene dibromide should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective as of July 1, 1990.

The petition to add ethylene dibromide was submitted by Ethyl Corporation, a manufacturer and exporter of this substance. No material comments were received on this petition.

Ethylene dibromide has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 100 percent by weight of the materials used in its production.

HTS number: 2903.30.05.

Schedule B number: 2903.30.0500.

CAS number: 106–93–4.

Ethylene dibromide, a colorless liquid, is derived from the taxable chemicals ethylene and bromine. The predominant method of producing ethylene dibromide is via ethylene reaction with bromine.

The stoichimoetric material consumption formula for this substance is:

C_2H_4 (ethylene) + Br_2 (bromine)→ $C_2H_4Br_2$ (ethylene dibromide)

The rate of tax prescribed for this substance, under section 4671(b)(3), is $4.51 per ton. This is based upon a conversion factor for ethylene of 0.149 and a conversion factor for bromine of 0.851.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–22859 Filed 9–20–91; 8:45 am]

BILLING CODE 4830–01–M

Tax on Certain Imported Substances; Notice of Determination

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, 1989–1 C.B. 717, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include methyl isobutyl ketone.

EFFECTIVE DATE: This modification is effective as of July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On July 9, 1991, the Secretary determined that methyl isobutyl ketone should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective as of July 1, 1990.

The petition to add methyl isobutyl ketone was submitted by Pecten Chemicals, an exporter of this substance. No material comments were received on this petition.

Methyl isobutyl ketone has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 72.4 percent by weight of the materials used in its production.

HTS number: 2914.13.00.

Schedule B number: 2914.13.0000.

CAS number: 108–10–1.

Methyl isobutyl ketone, a colorless liquid, is derived from the taxable chemical propylene. The predominant method of producing methyl isobutyl ketone is by a three-step process utilizing acetone in condensation, dehydration, and hydrogenation steps. Acetone is passed over a strong base catalyst to form diacetone alcohol, then dehydrated to mesityl oxide, and subsequently hydrogenated to methyl isobutyl ketone.

The stoichiometric material consumption formula for this substance is:

2 CH_3CHCH_2 (propylene) + O_2 (oxygen) ——> CH_3CO $CH_2CH(CH_3)_2$ (methyl isobutyl ketone) + .5 O_2 (oxygen)

The rate of tax prescribed for this substance, under section 4671(b)(3), is $5.72 per ton. This is based upon a conversion factor for propylene of 1.175.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–22858 Filed 9–20–91; 8:45 am]

BILLING CODE 4830–01–M

Tax on Certain Imported Substances; Notice of Determination

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, 1989–1 C.B. 717, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include methyl chloroform and trichloroethylene.

EFFECTIVE DATE: This modification is effective as of July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal Revenue Code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On March 5, 1990, the Secretary determined that methyl chloroform and trichloroethylene should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective as of July 1, 1990.

The petitions to add methyl chloroform and trichloroethylene were submitted by Vulcan Chemicals, a manufacturer, exporter, and importer of these substances. No material comments were received on these petitions.

Methyl Chloroform

Methyl chloroform has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 94.4 percent by weight of the materials used in its production.

HTS number: 2903.19.50.10.

Schedule B number: 2903.19.5010.

CAS number: 71–55–6.

Methyl chloroform, a liquid, is derived from the taxable chemicals *chlorine* and *ethylene*. The predominant method of producing methyl chloroform is from vinyl chloride. Vinyl chloride is produced from ethylene dichloride. Ethylene dichloride is produced by the chlorination of ethylene.

The stoichiometric material consumption formula for this substance is:

C_2H_4 (ethylene) + 1.5 Cl_2 (chlorine) + 0.25 O_2 (oxygen) ——> CH_3CCl_3 (methyl chloroform) + 0.5 H_2O (water).

The rate of tax prescribed for this substance, under section 4671(b)(3), is $3.18 per ton. This is based upon a conversion factor for chlorine of 0.80 and a conversion factor for ethylene of 0.21.

Trichloroethylene

Trichloroethylene has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 84.9 percent by weight of the materials used in its production.

HTS number: 2903.22.00.

Schedule B number: 2903.22.0000.

CAS number: 79–01–6.

Trichloroethylene, a liquid, is derived from the taxable chemicals chlorine and ethylene. The predominant method of producing trichloroethylene is by the oxychlorination of ethylene dichloride. Ethylene dichloride is produced by the chlorination of ethylene.

The stoichiometric material consumption formula for this substance is:

C_2H_4 (ethylene) + 1.5 Cl_2 (chlorine) + 0.75 O_2 (oxygen) ——> C_2HCl_3 (trichloroethylene) + 1.5 H_2O (water)

The rate of tax prescribed for this substance, under section 4671(b)(3), is $3.18 per ton. This is based upon a conversion factor for chlorine of 0.80 and a conversion factor for ethylene of 0.21.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–22861 Filed 9–20–91; 8:45 am]

BILLING CODE 4830–01–M

Tax on Certain Imported Substances; Notice of Determination

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, 1989–1 C.B. 717, that the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code will be modified to include 2-ethyl hexanol.

EFFECTIVE DATE: This modification is effective as of July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), 202–566–4475 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a) of the Internal revenue code, an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On March 5, 1990, the Secretary determined that 2-ethyl hexanol should be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code, effective as of July 1, 1990.

The petition to add 2-ethyl hexanol was submitted by Aristech Chemical Corporation, a manufacturer and exporter of this substance. No material comments were received on this petition.

2-ethyl hexanol has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 56.8 percent by weight of the materials used in its production.

HTS number: 2905.16.00.10.

Schedule B number: 2905.16.0010.

CAS number: 104–76–7.

2-ethyl hexanol, a liquid, is derived from the taxable chemical propylene. The predominant method of producing 2-ethyl hexanol is the oxo process.

The stoichiometric material consumption formula for this substance is:

2 C_3H_6 (propylene) + 2 CO (carbon monoxide) + 4 H_2 (hydrogen) ——> $C_4H_9CHC_2H_5CH_2OH$ (2-ethyl hexanol) + H_2O (water).

The rate of tax prescribed for this substance, under section 4671(b)(3), is $3.90 per ton. This is based upon a conversion factor for propylene of 0.80.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–22860 Filed 9–20–91; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Group Projects for International Visitor Grantees

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs, U.S. Information Agency (USIA) announces its intention to award ten grants of approximately $130,000 each to private, not-for-profit organizations arranging group projects for International Visitors traveling within the U.S..

DATES: Dates for the programs and deadlines for submission of each proposal are indicated in the individual program descriptions which follow. All copies must be received at the U.S. Information Agency by 5 p.m. EDT (or EST) on the due date indicated. Faxed documents will not be accepted, nor will documents postmarked on the due date but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the deadline indicated. Grants should begin approximately four weeks prior to the project opening date.

ADDRESSES: The original and 15 copies of the completed application (stapled, not bound), including required forms, should be submitted by the deadline to: U.S. Information Agency, Ref: International Visitor Group Projects, Office of the Executive Director, (E/X), room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Ms. Teresa J. Wilkin, Acting Chief, Group Projects Division (E/VP), room 255, 301 4th Street SW., Washington, DC 20547; telephone (202) 619–6285, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Programs are authorized under Public Law 87–256, the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays

Act), "to increase mutual understanding between the people of the United States and the people of other countries." In line with the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs and projects must conform to all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Subject to the availability of funds, USIA seeks separate proposals from non-profit organizations for programs for International Visitors traveling throughout the U.S. in nine Multi-Regional group projects and one Young African Leaders group project. Each is centered around a different theme. Participants in the projects will be foreign leaders or potential leaders selected by U.S. embassy committees abroad. Each group will consist of approximately 20 foreign visitors in addition to the three or four American escort officers who accompany them.

With the exception of the six-week Young African Leaders Project, each program will be 28 days in length. Programs should begin in Washington, DC, with an orientation and overview of the issues and a central examination of federal policies regarding these issues. They would then incorporate visits to at least six but no more than seven additional communities in at least three geographical regions. The programs should provide additional opportunities for participants to experience the diversity of American society and culture. At appropriate points in the project, participants may be divided into smaller, five- or six-member teams for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group. Home hospitality and homestays are encouraged. In cities where such councils, exist, arrangements for community visits must be made through the National Council for International Visitors (NCIV) and the network of its constituent councils throughout the U.S.

Proposals must include a comprehensive line item budget for which specific details are available in the application packet.

Application Procedures

To be eligible for consideration, organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the theme of the project. Organizations with less than four years' experience in international exchange will not be eligible to compete for these grants. Experience in programming exchange visitors is desirable.

Interested organizations should write or call the Group Projects Division (address provided above) to request application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Following are the preliminary project summaries for each project:

Title: Higher Education in the U.S.
Type: Multi-Regional.
Dates: January 13–February 7, 1992.
Proposal Due: October 21, 1991.
Project Goals:

—To provide a deeper understanding of the diversity of higher education in the U.S., and of the distinctive traditions, dynamics, and roles of institutions ranging from community colleges through colleges and universities to the major research universities;
—To examine current issues and trends influencing the debate on education in the U.S., such as core curriculum requirements and "multiculturalism," the tension between disciplinary and interdisciplinary approaches, finance and fund-raising, the relation between teaching and research, relations between university-based research and non-university users of research (government, business, etc.), university outreach (extension programs, public education), and the education of teachers;
—To facilitate discussions on issues of mutual interest and concern among the project participants and representatives of American educational institutions, including possibilities for linkages between U.S. and foreign institutions of higher education.

Participants: This project is intended for university administrators and policy makers, such as deans, rectors, department chairmen, and ministry of education officials concerned with university education.

Summary: Through lecturers and on-site visits at American institutions of higher education throughout the United States, participants will become familiar with the great diversity in our universities, four-year colleges, and community colleges. The different philosophies of public and private institutions, including religiously affiliated institutions of higher education, will be examined.

Participants will have the opportunity to observe how these different kinds of institutions concern themselves with the issue of core curriculum and "multiculturalism," the tension between disciplinary and interdisciplinary studies, fund-raising, teacher training, and the relation between teaching and research. Participants will meet with their American counterparts to exchange views on these and other subjects of mutual interest such as educational administration and the role of the faculty in governance of the university. The group will also meet with educational policy makers, curriculum experts in key disciplines, and authors of textbooks.

The group will visit industry-affiliated research and training institutes, and policy research institutes (think tanks) that interact with universities to better understand the relationship between higher education and industry in the United States.

In Washington, DC, discussions will be held with representatives from the National Academy of Sciences, the National Endowment for the Humanities, and other national organizations, such as professional academies, institutional associations, accrediting associations, the Congress, the Department of Education, think tanks, and with editors of Chronicle of Higher Education. A meeting should also be scheduled with USIA's Office of Academic Programs to discuss the Fulbright and Humphrey Programs, teacher exchanges, and university linkages. Attendance at the annual conference of the American Council on Education will be arranged.

Themes which will be explored in the national itinerary are: The decentralized nature of American higher education; the role of the federal, state and local governments in higher education; relations between university-based research projects and non-university users of research (government, industry and business); curriculum issues (core curriculum requirements and "multiculturalism"), multidisciplinary studies in relation to disciplinary studies; university outreach (extension programs, public education, etc.); the role of the faculty in university governance; the internationalization of higher education; teacher education; the changing demographics of student population and enrollment patterns and institutional adjustments to these changes; financing of higher education, including financial aid to students; and institutional accreditation.

Title: Teaching English as a Second Language.

Type: Multi-Regional.
Dates: February 3–28, 1992.
Proposal Due: November 12, 1991.
Project Goals:

—To examine the organization and methodology of Teaching English as a Second language programs in the United States, especially as they apply to large groups of students;
—To give teachers of English an opportunity to meet with American professional colleagues to discuss current trends and developments in the field;
—To develop a better understanding of the educational system in the U.S. and the linkages between educational institutions and community programs; and
—To provide an exposure to the complexity of social, political, economic and demographic dynamics in the U.S.

Participants: This project is designed for government education officials and directors of English language programs.

Summary: This project should expose participants to the organization and methodology of a wide variety of English teaching programs and teacher training programs in the U.S., including bi-lingual programs in elementary and secondary schools, English programs for refugees, college preparatory programs, vocational English as a second language, adult basic education, TEFL/TESOL programs and applied linguistics. A representative range of issues and institutions will be covered. Participants will observe classes and visit language laboratories. Issues such as curriculum and materials development, testing, innovative class techniques, teaching reading and writing, and English for Special Purposes (ESP) will be examined. In addition, the group will visit the English Language Programs Division at USIA, where a unique series of English-teaching video programs has recently been developed.

Following the Washington, DC, program participants will travel to various geographic regions of the U.S., to examine well-established and nationally recognized TESOL programs, and meet with educators in communities with bi-lingual educational systems, serving ethnically and culturally diverse populations. While the focus of the program will be primarily on TESOL activities, visitors will also be exposed to other elements of the education field in the U.S. including adult and continuing education, programs for special students (such as literacy training and cultural orientation programs for new immigrants), and vocational training programs for non-native speakers of English.

The program will end in Seattle, Washington, or another Pacific Northwest city, enabling participants, at their option to travel to Vancouver, British Colombia in order to attend the 1992 International TESOL Convention, March 3–7, 1992.

Title: The role of the Media in the U.S.
Type: Young African Leaders (English/French/Portuguese).
Proposal Due: December 2, 1991.
Projects Goals:

—To foster an understanding of the constitutional and political context of journalism in the United States;
—To explore the legal and philosophical commitments to freedom of the press and the influence of these commitments on the practice of journalism in the U.S.;
—To examine the role of media in the formulation and implementation of key U.S. foreign and domestic policies;
—To provide direct exposure to American society and to promote appreciation of U.S. cultural pluralism.

Participants: The project is designed for young African journalists (between 25 and 35 years of age) whose emerging talents and potential are recognized and who are expected to be influential in shaping the perceptions of and attitudes toward the U.S. in their home countries.

Summary: This six-week project will examine key issues in American journalism in both print and broadcast media. Providing an understanding of the First Amendment will be a fundamental goal. The impact of the media on domestic and foreign policy will also be examined. Questions of journalistic ethics, professionalism, and the business of journalism will be addressed. The project should consist of six distinct program segments, including an initial week of orientation in Washington, DC, a week of regionally balanced team visits to other cities, a week-long practicum with professional counterparts around the country, a week-long university-based seminar, a second week of team visits to medium-sized American cities, and a final week devoted to discussions of synthesis and a final evaluation session.

The project should open in Washington with orientation briefings to introduce participants to American government, economy, society and culture. The week ought also to include introductory sessions on the role of press freedom in American society, journalistic ethics, the economics of mass media, and international news flow.

Meetings should be arranged to discuss the role of the media in decision-making in U.S. foreign policy, especially American foreign policy towards Africa. Participants would need to meet the government officials to discuss media relations at the federal level, and with representatives from nonprofit and commercial news media.

Professional appointments will include USIA's VOA, Television and Film Service, and the Washington Foreign Press Center. Other media organizations will include Accuracy in Media and the Reporters Committee for Freedom of the Press. The Center for Foreign Journalists in Reston could be contacted to arrange panel discussions or workshops.

Title: American Theater.
Type: Multi-Regional.
Dates: March 16–April 10, 1992.
Proposal Due: December 16, 1991.
Project Goals:

—To demonstrate the richness, diversity and vitality of theater arts in the United States;
—To observe government and private support of theater arts and both academic and community involvement in American theater;
—To examine reflections of American life and society in theater and other creative performing arts; and
—To facilitate dialogue between foreign and American theater specialists and to encourage institutional linkages.

Participants: This project is intended for theater directors, producers, playwrights, actors, critics, and drama professors whose achievements are recognized in their own countries.

Summary: This project will expose participants to different styles of American theater (Broadway, Off-Broadway, regional, experimental, community, ethnic, university, children's, and dinner theater). In meetings with directors, producers, playwrights, actors, costume, set and lighting designers, union representatives, prominent American theater specialists, and the theater-going public, participants will discuss such topics as directing, scripting, and acting techniques, current trends and new technologies in stage lighting and set and costume designs, theater apprenticeship programs, theater administration, fund-raising, and American life and society as reflected in theater productions.

The program will open in Washington, DC, with an introduction to traditions, current trends, and new developments in American theater, and a focus on the flourishing theater activities in the city. Special efforts will be made to secure appointments with appropriate persons

in direction and theater management at the Folger Theater, Arena Stage, and others as available. Depending upon performance schedules, other local theater groups to be presented might include New Playwrights Theater, the Studio Theatre, Source Theater, Woolly Mammoth, Horizon Theater, and the Olney Theater. In order to enhance group dynamics, a "Show and Tell" session will be planned for the Washington segment. Participants will be encouraged to introduce themselves to their colleagues by presenting information on the organization and work and/or by showing slides of their theater productions.

In the national program, participants will travel as a group to cities across the U.S. to visit commercial and regional theaters. Time will be set aside at each stop for participants to attend ethnic theaters and/or small community theaters individually or in small groups.

Attendence at theater workshops and drama classes and discussions with theater staff are to be emphasized. Meetings with public relations personnel and tours of facilities will be de-emphasized. Because of frequent attendance at evening theater performances, home hospitality will play a relatively minor role in this project.

A highlight of the project will be several days' attendance at the Humana Festival of New American Plays in Louisville, Kentucky, scheduled from February 18–March 28, 1992. Participants must have opportunities to make professional contacts with American and international theater specialists attending the festival. In addition, seminars should be organized for participants to confer with the producing director and members of the Actors' Theater of Louisville and Stage One Theater.

The project will conclude in New York City where participants will meet with leading American specialists and attend theater performances. Free time will be provided for participants to make individual appointments or to attend other performing arts presentations such as ballet, modern dance, opera, and concerts.

Title: Grassroots Democracy in the U.S.

Type: Multi-Regional.

Dates: April 6–May 1, 1992.

Proposal Due: January 13, 1992.

Project Goals:

—To provide a greater understanding of the democratic form of government in the U.S. and of citizens' involvement in their own governance;

—To observe the variety of citizen groups that interact with American elected officials at all levels to address legitimate but divergent interests;

—To illustrate the diversity of viewpoints held by Americans and how this diversity contributes to a dynamic and resilient pluralistic political system.

Participants: This project is intended for civic and community leaders, political party leaders, local government officials, journalists and educators.

Summary: The aim of this project is to examine the extent to which citizen participation in the political process is a means of harnessing the power of constructive criticism to effect change and to ensure stability in government. Participants will encounter a wide variety of special interest and citizen action groups that have arisen in the United States to give vent to the social and economic pressures inherent in a multi-ethnic, market-oriented society.

The program should begin in Washington with a series of meetings that will explain how democracy functions in the United States. Discussions with academics and think tank specialists will center on factors that shape the participatory nature of democracy in a pluralistic society. At the national headquarters of special interest groups, participants will learn the impact of local and regional outlooks on national policy-making and they will hear of the philosophy and techniques of citizen action groups, including those related to coalition-building, fund-raising, lobbying Congress and other government officials, and to drafting legislation. The group will meet with members of Congress or staff who can describe the pressures placed on Congress by its various constituencies and the means by which the conflicting demands of these groups are attended to and satisfied, showing the role of citizen participation in the public policy decision-making process. The participants will also receive briefings at federal agencies such as the Environmental Protection Agency and the Consumer Product Safety Commission, bodies formed as government's response to civic action and advocacy.

With the Washington experience as a foundation on which to build, the group will visit different geographic regions to see grassroots political organizing firsthand and to observe local citizens contributing to the debate on national and international concerns, including world peace, immigration, the environment, human rights, economic revitalization, consumer protection and accountability in government. In cities and small towns located in diverse economic regions of the country, participants should meet with members of a wide variety of grassroots organizations such as neighborhood boards, professional associations, citizen action leagues, church groups and local chapters of single-issue advocacy organizations in order to observe the extensive range of ways in which American citizens can become involved in the political process to advocate their particular cause or viewpoint.

In a state capital with a sitting legislature, participants should attend a public hearing on bills being considered by lawmakers and meet with elected officials to hear about efforts to ensure that various viewpoints are accommodated during the policy making process. At another stop, the group ought to observe the influence concerned citizens can have on public policy through recourse to such devices as initiative and referendum to decide controversial community issues. Home hospitality is to be a major component of this project.

Title: U.S. Energy Resources for the Present and Future.

Type: Multi-Regional.

Dates: April 27–May 22, 1992.

Proposal Due Date: February 10, 1992.

Project Goals:

—To show how the U.S. addresses its energy needs in the context of environmental concerns;

—To examine U.S. Government and private sector programs for developing and utilizing new sources of energy and new energy technologies;

—To study the example the U.S. can provide to the world in resolving energy-related problems;

—To explore the proposition that international cooperation in the field of energy resource development is in the interest of all nations.

Participants: his project is designed for officials of energy, planning or environment ministries, executives of energy research institutions, university professors, science editors, utility regulators and business executives.

Summary: At the crux of the world's major environmental problems, such as alleged global warming and the greenhouse effect, lie unresolved issues of energy resource utilization. The U.S., as the world's largest consuming nation, receives the brunt of international criticism. Ofter it is perceived as a nation squandering its energy resources. This project is designed to explore the extent to which the U.S. addressing the

environmental effects of energy use, and to examine the underlying attitudes and habits that have allowed a heavy demand for energy to develop.

This project should begin in Washington, DC, with an overview of the recent efforts to enact a national energy policy. Participants need to hear from the many competing organizations and interests that have made the effort such a long and, at times, acrimonious one. They ought to meet with officials at the Department of Energy as well as the Environmental Protection Agency for discussions of how energy policy is coordinated and advanced as well as an assessment of the successes and setbacks policymakers have experienced to date. In a visit to a research organization specializing in energy issues, they are to hear projections of future energy demands and descriptions of the possible response strategies being formulated by private energy-oriented associations. The Washington program should also include an overview of the alternative energy sources that are being tapped within the U.S. and of the role of conservation efforts in overall energy policy.

Beyond Washington, the group will visit geographically distinct areas of the U.S. in order to observe how various regions of the country are responding to energy related problems. Participants will discuss energy issues specific to these regions with local citizens, government officials, non-governmental organizations, and industry in each of several locations. At utility companies, they should learn how the pursuit of clean air has led some states, such as New York and Massachusetts, to implement the concept of "environmental least-cost pricing," an attempt to bring market forces rather than regulation to bear on the cost of keeping the environment clean. At energy research institutes across the nation, participants are to be exposed to ongoing attempts to reduce U.S. dependence on fossil fuels and the pursuit of energy diversification. They should learn of the latest research on and development of alternative energy sources such as solar, wind, geothemal, and synthetic fuels. In a state with operating nuclear power plants, participants will explore the politics of nuclear power and discuss the safeguards that have evolved in the face of strong public concern about plant safety. In the western part of the U.S., the group will examine issues faced by states in developing potential energy resources in environmentally sensitive areas. In meetings with grassroots consumer organizations, participants will discuss strategies for increasing public awareness of energy utilization's impact on the environment. Media specialists will describe their efforts to encourage an energy conservation mentality among the public and to change behavior in the use of energy resources.

During the project, the group will divide into teams, each visiting a city noted for its specific efforts to reduce energy consumption through innovative transportation schemes or ecological building design. Home hospitality will be included throughout the project so that participants can achieve an understanding of energy consumption attitudes in American life.

Title: Entrepreneurship: Alive and Well in the U.S.

Type: Multi-Regional.

Dates: May 26–June 19, 1992.

Proposal Due: March 2, 1992.

Project Goals:

—To further understanding of the social, economic, and political factors which influence and encourage private enterprise;

—To present the U.S. economy as one developed through equitable access to economic opportunity;

—To provide examples of successful entrepreneurial efforts in the U.S.

Participants: This project is designed for government officials, private business organization or industry representatives, labor leaders, academics, community leaders, and journalists with an interest in the American free enterprise system.

Summary: This program will enable participants to survey current U.S. economic conditions and factors which influence and encourage private enterprise such as current Administration policies, the influence of labor, immigration, and private/public cooperation, and to assess major controversial economic issues and the implications of those issues for small business.

This project should open in Washington, DC, with an overview of the structure of American government, the history and philosophy of the American free market system, federal economic policies, and current issues in entrepreneurship and the creation of small businesses. Participants will meet with representatives from the Departments of Commerce and Treasury, Congress, the U.S. Chamber of Commerce, the National Federation of Independent Business, the Small Business Administration, trade associations, and think tanks, to learn about the growing importance of privatization in the U.S. economy. An academic specialist should give the group background on the most recent research on what individual psychological characteristics contribute to successful entrepreneurship and discuss current theories on how to achieve business success. Another specialist will be asked to illustrate the parallels between greater individual freedom in the market place and increased economic growth. The group should visit one of the many entrepreneurial firms that have sprouted in the suburban capital area during the last decade.

Beyond Washington, the group will observe examples of successful entrepreneurial efforts in various geographic regions, visiting at least one recipient of the 1991 Malcolm Baldrige Award for excellence in American business. Other discussions should explore critically the ways the U.S. federal, state, and local governments attempt to foster the growth of small business, including programs designed to assist women and minority group members getting started in business. The group will visit state-sponsored small business "incubators" to learn more about this example of public/private cooperation. They will discuss with the beneficiaries of such cooperation the growth-promoting state and local programs and tax incentives for small business development that are intended to abet individual entrepreneurial effort, as well as the impact of labor unions and immigration—both legal and illegal—on entrepreneurism. Participants will observe how the rapid growth of high-tech electronic and biotech manufacturing as well as service industries, including consulting organizations, has created opportunities for entrepreneurial endeavor. Since many successful businesses are often an entrepreneur's second, third, or fourth attempt, discussion of failed efforts will also be provided.

In community visits, the group will observe the role the university plays in developing an infrastructure on which entrepreneurship can flourish. It will visit campuses where entrepreneurship is taught. Home hospitality with professionals in the field will be provided. The project will include a regional financial center, where participants will meet representatives of major financial organizations and venture capital firms to learn about venture capital formation and financing alternatives available to entrepreneurs in the U.S.

Title: Regional and Ethnic Culture in the U.S.

Type: Multi-Regional.
Dates: June 22–July 17, 1992.
Proposal Due: March 30, 1992.
Project Goals:

—To study the influence of regional U.S. history and culture on political, social and cultural institutions, as well as on individuals and the creative arts;
—To encourage long-term linkages between American and international scholars and institutions;
—To study regional and folk culture programs in the U.S. and their possible relevance for programs in the participants' countries.

Participants: This project is intended for professors of American Studies, American History and American Literature, folklorists, oral and cultural historians, cultural preservationists, sociologists, social anthropologists, and journalists with a substantive interest in the history and culture of the U.S.

Summary: This project should examine the "great melting pot" of ethnic and cultural diversity that collectively forms the United States of America. By taking a close look at various immigrant populations, as well as more established second and third generation Americans from all corners of the globe, visitors will gain a greater understanding of the broad, yet individual nature of the term "American".

By visiting different areas of the country, participants will become familiar with the historical, artistic, literary, religious, ethnic, and other social features that help distinguish one region from another. A case study approach may be taken to further illustrate for the participants the contrast between assimilation and maintaining ethnic distinction—a process which many immigrant populations must face. Topics to be explored in the program will include the African-American, Hispanic, Slavic, Asian, and Native American experiences and their relationship to the larger society, as well as regional literature, religion, art and music, cultural preservation and assimilation, organizations that help maintain ethnicity, demographics, and the legal bases for equal rights and their protection.

The annual Folklife Festival at the Smithsonian Institution, featuring examples of the folk music and culture of the U.S., will be occurring during the Washington week, making it possible for the visitors to take advantage of this excellent resource.

Title: The Role of Volunteers and Community Service Groups.
Type: Multi-Regional.
Dates: July 20–August 14, 1992.
Proposal Due: April 27, 1992.
Project Goals:

—To illustrate how the values of fairness and equal opportunity relate to underlie American society and contribute to a widespread commitment to volunteer service;
—To explore the role of voluntary service as a way of addressing the many social problems faced by a rapidly changing society;
—To provide information on planning, designing, managing and developing volunteer programs;
—To facilitate the exchange of ideas and experiences between volunteer organizations in the U.S. and those in participants' home countries.

Participants: This project is intended for government officials and community leaders who are active in volunteer work, administrators of volunteer programs, and scholars and professionals who are interested in research related to citizen participation in human services.

Summary: This project is designed to illustrate how strong ethical, social and moral values form the basis for the vast array of human services offered in America through the efforts of unpaid individuals. Additionally, emphasis will be placed on the non-monetary benefits which these individuals realize through their volunteer efforts such as enhanced self esteem and greater social awareness.

The program will open in Washington with an overview of the American tradition of volunteerism, government and corporate efforts to promote voluntary action in human services, and the many types of private volunteer programs throughout the country. The overview will also provide background on the educational, political, economic and social systems of the U.S., with an emphasis on how they encourage volunteer service. Appointments will be scheduled at Vista, the Peace Corps, and the President's Commission on Volunteerism, as well as possible visits to programs for the homeless or people with AIDS. A specialist in the field will describe how U.S. tax incentives stimulate charitable donations by both corporations and individuals and how laws encourage tax-exempt organizations to exist for the public benefit.

Beyond Washington, a one-day seminar organized by a volunteer center will cover issues involved in creating and administering volunteer programs. It also will explore the benefits which voluntary service contributes to both community and personal development, emphasizing the creation of community partnerships that cross racial, cultural and religious lines. Additionally, the seminar will outline the skills which individuals acquire in the areas of teamwork and goal-setting, skills which contribute directly to advancement in paid positions, especially for women and minorities. Another seminar session will provide the participants an opportunity to share information on volunteer efforts in their home countries with their colleagues and American counterparts. One seminar should familiarize participants with the work of major university-based research programs that focus on the not-for-profit sector.

Programs in cities and small towns in different regions of the country will allow participants to work side-by-side with American volunteers in order to become familiar with the daily operation of volunteer organizations addressing social concerns ranging from human services to international and cross-cultural exchange. Examples of community/government/business cooperation in addressing these issues will be explored. Additionally, participants will learn about the role volunteer organizations such as Common Cause and the League of Women Voters play in providing avenues for citizen participation in the political process and in increasing governmental accountability. In a visit to a public action lobbying office, participants will discover the power of volunteerism in influencing public policy decisions.

Title: Community Development: The U.S. Experience.
Type: Multi-Regional.
Dates: September 14–October 9, 1992.
Proposal Due: June 22, 1992.
Project Goals:

—To demonstrate the variety and complexity of American citizen's involvement in public and community affairs and to present active citizen involvement as a fundamental of democratic society;
—To broaden understanding of individual initiative and volunteerism: Its philosophy, history and cultural impetus;
—To examine how community development and self-help organizations are founded, financed, developed and managed in the U.S.;
—To provide insights into American life and society through the observation of community activities as they are evidenced in family, church, grass-roots programs, and local government;
—To establish international contacts and provide a basis for ongoing

dialogue and exchange in the field of community development.

Participants: This project is intended for community leaders, administrators of volunteer programs and other professionals who are interested in citizen participation in community development.

Summary: This program will open in Washington, DC, with an overview of our political, educational and social systems, and examples of government and private efforts to promote individual action in human and social services throughout the U.S. Participants will meet government officials, academics and civic leaders at the national level to discuss how these systems work. Some of the appointments requested will include Vista, Peace Corps, the National Association of Neighborhoods, the National Federation of Local Arts Councils, and the President's Commission on Volunteerism.

Visits to cities and small towns in varied regions of the U.S. will provide opportunities to exchange ideas with community leaders of ethnic groups and observe the operation of civic and volunteer organizations. These will be involved with issues such as health care, education, literacy, housing and homelessness, child and infant day care, care for the aged and handicapped, legal aid, cooperatives, assistance to immigrants and refugees, crime watch and citizen patrols, environmental protection, political organizing and lobbying, community planning and leadership development. The roles of the federal, state, and local governments in promoting community development will be examined. Also discussed will be new trends such as workplace-based community programs, the self-help movement and creation of community partnerships. Field trips to see programs in operation and on-going community workshops will be given priority. Home hospitality will be included as an integral part of this program.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of expert USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of General Counsel, the appropriate geographic area office, and the budget and contracts offices.

Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

The proposed program should be representative of current expert knowledge in the relevant subject area, and should demonstrate high professional qualitative standards.

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality—program plan must adhere to the objectives described above.

2. Feasibility—institutional capacity of the organization to conduct the program will be considered.

3. Track record—the Agency will consider the past performance of prior grantees.

4. Potential—for organizations which have not received Agency grants, the potential to achieve program goals, as demonstrated in the proposal, will be considered;

5. Multiplier effect/impact—proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.

6. Cost effectiveness—greatest return on each grant dollar and degree of cost-sharing exhibited;

7. Value to U.S.-Partner Country Relations—assessments by USIA's geographic area desk, and overseas officers, of the need, potential impact and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative.

Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process approximately six weeks prior to the project's opening date. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: September 18, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-22925 Filed 9-20-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 184

Monday, September 23, 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).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 9:00 a.m. October 3, 1991.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, NW., Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: At this meeting the Board will deliberate on and discuss with the Department of Energy, its contractors, and outside experts the implementation of Board Recommendation 90–2, Design, Construction, Operation, and Decommissioning Standards at Certain Priority DOE Facilities, and Board Recommendation 91–1, Strengthening the Nuclear Safety Standards Program for DOE's Defense Nuclear Facilities. This meeting will also cover DOE's activities on the development of nuclear safety rules and orders. The Department of Energy will take appropriate measures to safeguard any classified or controlled nuclear information it presents at this meeting.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, (202) 208–6400.

Dated: September 19, 1991.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 91–22956 Filed 9–19–91; 12:20 pm]

BILLING CODE 6820–KD–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 5:30 p.m. October 22, 1991.

PLACE: The Conference Center (Municipal Auditorium), 214 Park Avenue, S.W., Aiken, South Carolina. The entrance to the facility is located at 215 The Alley.

STATUS: Open.

MATTERS TO BE CONSIDERED: At this meeting the Board will deliberate on and review with the Department of Energy, its contractors, and outside experts outstanding technical issues affecting the operating power level of the K-Reactor at Savannah River Site, South Carolina. The Department of Energy will take appropriate measures to safeguard any classified or controlled nuclear information it presents at this meeting.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, (202) 208–6400.

Dated: September 19, 1991.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 91–22957 Filed 9–19–91; 12:20 pm]

BILLING CODE 6820–KD–M

DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

Notice

September 18, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: September 25, 1991, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 944th Meeting—September 25, 1991, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 618–027, Alabama Power Company
CAH–2.
Project No. 2756–035, Burlington Electric Department Winooski One Partnership
CAH–3.
Project No. 5946–002, Massachusetts Hydro Associates
CAH–4.
Project No. 10668–001, Barbara K. Londegran
CAH–5.
Project No. 8121–003, Warren B. Nelson
CAH–6.
Omitted
CAH–7.
Omitted
CAH–8.
Project No. 2114–020, Public Utility District No. 2 of Grant County, Washington
CAH–9.
Project No. 2370–032, Pennsylvania Electric Company
CAH–10.
Project No. 4238–003, Racehorse Company
CAH–11.
Project No. 6901–001, City of New Martinsville, West Virginia
CAH–12.
Project Nos. 1962–012 and 1988–018, Pacific Gas and Electric Company and Sacramento Municipal Utility District, the Northern California Power Agency, and the Cities of Anaheim, Azusa, Banning, Colton, and Riverside California
CAH–13.
Project No. 9156–003, Silver Star Hydro Ltd.
CAH–14.
Project No. 11007–001, Sullivan Island Associates
Project No. 11024–001, Robert and Barbara Sullivan

Consent Agenda—Electric

CAE–1.
Docket No. ER91–562–000, Virginia Electric and Power Company
CAE–2.
Docket Nos. ER91–565–000 and ER91–566–000, New England Power Company
CAE–3.
Docket No. ER91–357–000, Kansas Power and Light Company
CAE–4.
Docket No. EL91–46–000, Madison Gas and Electric Company
Docket No. ER91–563–000, Madison Gas and Electric Company and Wisconsin Public Service Corporation
CAE–5.
Omitted
CAE–6.
Omitted
CAE–7.
Docket Nos. EC91–9–001, EL91–22–001 and ES91–21–001, UtiliCorp United Inc. and Centel Corporation
CAE–8.
Docket No. EL91–28–000, North Carolina Electric Membership Corporation and Brunswick Electric Membership Corporation v. Carolina Power & Light Company
Docket No. EL91–54–000, Carolina Power & Light Company

CAE–9.
Docket No. EL91–27–000, American Municipal Power-Ohio, Inc. v. Dayton Power and Light Company
CAE–10.
Docket No. ER90–289–003, Central Power and Light Company
Docket No. EL90–36–000, Public Utilities Board of the City of Brownsville, Texas, *et al.* v. Central Power and Light Company
CAE–11.
Docket No. ER90–315–000, Duke Power Company
CAE–12.
Docket No. ER91–49–000, Citizens for Clean Air and Reclaiming our Environment v. Newbay Corporation

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP91–215–000 and RP91–217–000, Transwestern Pipeline Company
CAG–2.
Docket No. RP91–214–000, Transcontinental Gas Pipe Line Corporation
CAG–3.
Docket No. RP91–207–000, Ringwood Gathering Company
CAG–4.
Docket Nos. TA91–1–24–000, 001, 002 and 003, Equitrans, Inc.
CAG–5.
Docket Nos. TA92–1–32–000 and 001, Colorado Interstate Gas Company
CAG–6.
Docket Nos. TA92–1–11–000 and 001, United Gas Pipe Line Company
CAG–7.
Docket No. TA91–2–15–000, Mid Louisiana Gas Company
CAG–8.
Docket Nos. TM92–2–37–000 and 001, Northwest Pipeline Corporation
CAG–9.
Docket No. TM92–1–33–000, El Paso Natural Gas Company
CAG–10.
Docket No. TQ91–7–59–000, Northern Natural Gas Company
CAG–11.
Docket No. TQ91–5–34–000, Florida Gas Transmission Company
CAG–12.
Docket No. TM91–3–2–002, East Tennessee Natural Gas Company
CAG–13.
Docket No. TQ91–6–59–003, Northern Natural Gas Company
CAG–14.
Docket Nos. RP91–29–006 and 008, Tennessee Gas Pipeline Company
CAG–15.
Docket Nos. GT91–19–000 and 001, Williston Basin Interstate Pipeline Company
CAG–16.
Docket No. RP91–212–000, Stingray Pipeline Company
CAG–17.
Docket No. RP91–216–000, ANR Pipeline Company
CAG–18.
Docket No. RP91–211–000, Natural Gas Pipeline Company of America
CAG–19.
Omitted
CAG–20.
Docket No. RP91–150–001, Northwest Pipeline Corporation
CAG–21.
Docket No. RP91–92–001, Colorado Interstate Gas Company
CAG–22.
Docket Nos. RP91–126–000, 001, CP91–1669–000, CP91–1670–000, CP91–1671–000, CP91–1672–000 and CP91–1673–000, United Gas Pipe Line Company
CAG–23.
Docket No. RP91–99–000, Northern Border Pipeline Company
CAG–24.
Docket Nos. RP91–187–004 and CP91–448–002, Florida Gas Transmission Company
CAG–25.
Docket Nos. RP85–203–006, RP88–203–005, RP85–202–005, RP88–262–014, *et al.*, RP88–88–009, RP82–58–028, *et. al.*, TA84–1–28–011, *et al.*, TA85–1–28–011, TA85–2–28–002, TA85–3–28–006, TA86–2–28–006, TA86–3–28–006, TQ89–2–28–004, TA91–1–28–004 and TM91–28–001, Panhandle Eastern Pipe Line Corporation
Docket No. C586–596–005, Trunkline Gas Company
CAG–26.
Docket Nos. PR91–52–004, RP91–53–005, RP90–178–002, TM90–14–28–004, RP89–134–006, RP89–125–004, RP89–10–006, RP89–9–009, RP88–262–015, *et al.*, RP88–241–010, RP88–240–008, RP87–103–101, TM91–5–28–001, TM91–4–28–001, TM91–3–28–004, TM91–2–28–004, TM90–10–28–002, TM90–13–28–003, TM90–12–28–003, TM90–11–28–002, TM90–8–28–004, TM90–7–28–005, TM90–5–28–002, TM90–4–28–003, TM90–14–28–003, RP89–227–003, TM90–2–28–003, TM90–6–28–002, RP89–232–003, RP89–185–007, RP89–134–006, RP89–125–004, RP89–10–001, RP89–9–001, RP88–241–001 and RP88–240–001, Panhandle Eastern Pipe Line Company
CAG–27.
Docket Nos. RP91–68–008 and 010, Penn-York Energy Corporation
CAG–28.
Docket Nos. RP91–82–005 and RP90–108–103, Columbia Gas Transmission Corporation
Docket No. RP90–107–011, Columbia Gulf Transmission Company
CAG–29.
Docket No. RP91–188–001, El Paso Natural Gas Company
CAG–30.
Docket No. TA91–1–86–001, Pacific Gas Transmission Company
CAG–31.
Docket No. TA91–1–29–001, Transcontinental Gas Pipe Line Corporation
CAG–32.
Docket No. RP91–51–008, CNG Transmission Corporation
CAG–33.
Docket No. RP91–181–001, Northern Natural Gas Company
CAG–34.
Docket No. RP87–62–012, 013 and RP86–148–008, Pacific Gas Transmission Company
CAG–35.
Docket No. RP91–65–005, Arkla Energy Resources, a Division of Arkla, Inc.
CAG–36.
Docket Nos. RP89–35–012, RP89–36–010 and RP86–33–014, Midwestern Gas Transmission Company
CAG–37.
Docket No. RP91–177–002, Wyoming Interstate Company, Ltd.
CAG–38.
Docket Nos. RP91–119–001 and RP90–119–008, Texas Eastern Transmission Corporation
CAG–39.
Docket No. RP91–132–001, Colorado Interstate Gas Company
CAG–40.
Docket No. RP91–166–002, Northwest Pipeline Corporation
CAG–41.
Omitted.
CAG–42.
Docket Nos. TM91–9–21–001, TM91–10–21–001, RP91–90–003, RP91–41–003, 006 and 007, Columbia Gas Transmission Corporation
CAG–43.
Docket No. CP86–250–005, Ozark Gas Transmission System
CAG–44.
Docket Nos. RP88–93–000 and RP88–40–000 (Phase II Remand), Questar Pipeline Company
CAG–45.
Docket Nos. RP91–176–000 and RP89–48–014, Transwestern Pipeline Company
CAG–46.
Docket Nos. RP87–62–000, RP86–148–000 and RP90–109–000, Pacific Gas Transmission Company
CAG–47.
Docket No. PR91–17–000, TEX/CON Gas Pipeline Company
CAG–48.
Docket No. PR91–18–000, Aquila Gas Systems Corporation
CAG–49.
Docket No. PR91–11–000, Red River Pipeline Corporation
CAG–50.
Docket No. RP90–110–000, Trunkline LNG Company
CAG–51.
Docket No. RP90–111–011, East Tennessee Natural Gas Company
CAG–52.
Docket No. RM89–16–004, Order Implementing the Natural Gas Wellhead Decontrol Act of 1989
CAG–53.
Docket No. RI88–30–055, Phillips 66 Natural Gas Company
CAG–54.
Docket No. GP91–2–001, Natural Gas Pipeline Company of America
CAG–55.
Docket No. CP90–644–002, Columbia Gas Transmission Corporation and Commonwealth Gas Pipeline Corporation
CAG–56.
Docket Nos. CP89–460–008 and CP90–1–002, Pacific Gas Transmission Company
CAG–57.
Docket No. CP90–2214–002, El Paso Natural Gas Company

CAG–58.
Docket Nos. CP89–661–007 and CP88–187–007, Algonquin Gas Transmission Company
CAG–59.
Docket Nos. CP1372–002, CP90–1373–002, CP90–1374–002 and CP90–1375–002, Altamont Gas Transmission Company
CAG–60.
Docket No. CP91–433–001, Tennessee Gas Pipeline Company
CAG–61.
Docket No. CP91–2519–001, Columbia Gulf Transmission Company and Arkla Energy Resources, a Division of Arkla, Inc.
Docket No. CP91–2521–001, Tennessee Gas Pipeline Company, Columbia Gulf Transmission Company, Arkla Energy Resources, a Division of Arkla, Inc., and Mississippi River Transmission Corporation
CAG–62.
Docket No. CP90–2294–002, Transwestern Pipeline Company
CAG–63.
Omitted
CAG–64.
Docket No. CP79–389–015, Transcontinental Gas Pipe Corporation
CAG–65.
Docket No. CP91–716–001, Tennessee Gas Pipeline Company
CAG–66.
Docket No. CP89–1684–002, Steuben Gas Storage Company
Docket No. CP90–177–002, CNG Transmission Corporation
Docket No. CP90–685–002, Transcontinental Gas Pipe Line Corporation
CAG–67.
Docket Nos. CP88–712–001 and 003, CNG Transmission Corporation
Docket No. CP90–189–001, CNG Transmission Corporation and Texas Eastern Transmission Corporation
CAG–68.
Docket No. CP89–634–008, Iroquois Gas Transmission System, L.P.
Docket Nos. CP89–629–000 and 001, Tennessee Gas Pipeline Company
CAG–69.
Docket No. CP89–93–007, Williams Natural Gas Company
CAG–70.
Docket No. CP91–2782–000, Algonquin Gas Transmission Company
CAG–71.
Docket No. CP91–2324–000, Tennessee Gas Pipeline Company
CAG–72.
Docket Nos. CP91–2852–000 and CP91–2855–000, Williston Basin Interstate Pipeline Company
CAG–73.
Docket No. CP91–2834–000, Colorado Interstate Gas Company
CAG–74.
Docket No. CP91–2820–000, Florida Gas Transmission Company
CAG–75.
Docket No. CP91–2302–000, Columbia Gulf Transmission Company
CAG–76.
Docket No. CI90–58–000, New England Power Company and the Narragansett Electric Company
CAG–77.
Docket No. CI91–52–000, Providence Gas Company and Prov Energy Investments, Ltd.
Docket No. CI91–28–000, Northern Minnesota Utilities
Docket No. CI91–75–000, Peoples Natural Gas Company, Division of UtiliCorp United Inc.
Docket No. CI91–78–000, Gulf States Pipeline Corporation
Docket No. CI91–79–000, Transok, Inc.
CAG–78.
Docket No. CI91–33–000, JMC Fuel Services, Inc.
Docket No. CI91–35–000, Connecticut Natural Gas Corporation
CAG–79.
Docket No. CP90–959–000, Distrigas of Massachusetts Corporation
CAG–80.
Docket No. CP91–2097–000, Questar Pipeline Company
CAG–81.
Docket No. CP91–1798–000, Natural Gas Pipeline Company of America
CAG–82.
Docket No. CP91–1253–000, WestGas Interstate, Inc.
CAG–83.
Docket No. CP91–38–001, Algonquin Gas Transmission Company
CAG–84.
Docket No. CP91–2086–000, Florida Gas Transmission Company
CAG–85.
Docket No. CP91–1052–000, Mississippi River Transmission Corporation
CAG–86.
Docket No. CP91–2778–000, Valero Transmission, L.P.
CAG–87.
Docket No. RP91–107–004, Williams Natural Gas Company
CAG–88.
Docket No. RP85–202–005, Trunkline Gas Company
CAG–89.
Omitted
CAG–90.
Docket No. RP91–189–001, Midwestern Gas Transmission Company
CAG–91.
Docket No. CP91–2430–000, Tennessee Gas Pipeline Company
CAG–92.
Docket Nos. CP89–1–009 and CP89–2–006, Mojave Pipeline Company

Hydro Agenda

H–1.
Omitted

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket Nos. TA85–3–29–033, TA86–1–29–011, TA85–1–29–018, TA86–5–29–012, RP83–137–031 and CP85–190–026, Transcontinental Gas Pipe Line Corporation. Order on rehearing.

PR–2.
Docket Nos. RP91–170–000, 001, RP87–71–005 and RP88–182–005, Gas Research Institute. Order on 1992 filing and remand.

II. Producer Matters

PF–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Docket No. CP88–570–006, Mobile Bay Pipeline Projects
Docket No. CP87–415–004, Florida Gas Transmission Company and Southern Natural Gas Company
Docket No. CP88–437–002, Tennessee Gas Pipeline Company
Docket No. CP89–464–003, Florida Gas Transmission Company, Southern Natural Gas Company and Tennessee Gas Pipeline Company
Docket No. CP89–511–002, Texas Eastern Transmission Corporation and ANR Pipeline Company
Docket No. CP89–512–002, Texas Eastern Transmission Corporation
Docket Nos. CP89–513–002 and CP89–517–002, Southern Natural Gas Company
Docket No. CP89–523–002, Transcontinental Gas Pipeline Corporation, Florida Gas Transmission Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation and ANR Pipeline Company
Docket No. CP89–522–003, Transcontinental Gas Pipe Line Corporation, Florida Gas Transmission Company, Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation
Docket No. CP88–474–002, Texas Eastern Transmission Corporation
Docket No. CI91–16–001, Shell Gas Pipeline Company. Order on rehearing and clarification.
PC–2.
Docket No. CP91–1111–000, Algonquin Gas Transmission Company. Order on application to construct facilities.
PC–3.
Docket Nos. CP91–2677–000, CP89–634–000 and 001, Iroquois Gas Transmission System, L.P.
Docket Nos CP89–629–000, 001, 002, 005, CP89–639–000, 001 and 002, Tennessee Gas Pipeline Company
Docket Nos. CP89–661–000, 001 and 004, Algonquin Gas Transmission Company. Order on construction of Phase II.
PC–4.
Docket No. CP91–2315–000, Boston Gas Company. Order on request for declaratory order on jurisdiction.

Lois D. Cashell,

Secretary.

[FR Doc. 91–23000 Filed 9–19–91; 4:04 pm]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

September 19, 1991.

FCC To Hold Open Commission Meeting Thursday, September 26, 1991

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 26, 1991, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Common Carrier—Title: Policies and Rules Concerning Interstate 900 Telecommunications Services (CC Docket No. 91–65). Summary: The Commission will consider adoption of a *Report and Order* concerning regulations on interstate 900 and other interstate pay-per-call services.

2—Common Carrier—Title: In re Rules and Policies Regarding Calling Number Identification Service (RM–7397). Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* to establish federal policies and rules concerning interstate calling number identification service (caller ID).

3—Common Carrier—Title: Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service (GEN Docket Nos. 90–54 and 80–113). Summary: The Commission will consider adoption of an *Order on Reconsideration* for the *Report and Order* concerning the rules affecting "wireless cable" services.

4—Mass Media—Title: Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands (GEN Docket No. 90–54). Summary: The Commission will consider adoption of a *Second Report and Order* on whether to revise and conform rules governing MDS, OFS, and ITFS, which affect "wireless cable" services.

5—Mass Media—Title: Amendment of Part 73 of the Commission's Rules Regarding AM Broadcast Technical Assignment Criteria (MM Docket No. 87–267). Summary: The Commission will consider adoption of a *Report and Order* concerning AM technical and legal requirements and the expanded AM band.

6—General Counsel—Title: Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in which the Commission is a Party (GC Docket No. 91–119). Summary: The Commission will consider adoption of an *Initial Policy Statement and Order* that examines the use of Alternative Dispute Resolution Procedures.

7—Office of Engineering and Technology—Title: Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum to the Fixed-Satellite Service and the Mobile-Satellite Service for Low-Earth Orbit Satellites (RM's 7334, 7399 & 7612). Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* concerning the allocation of spectrum in the VHF/UHF bands for a low-earth orbit satellite system.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

Issued: September 19, 1991.

Donna R. Searcy,

Secretary.

[FR Doc. 91–22988 Filed 9–19–91; 3:15 pm]

BILLING CODE 6712–01–M

RESOLUTION TRUST 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 at 3:58 p.m. on Tuesday, September 17, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) The resolution of failed thrift institutions; (2) the early termination of assistance agreements and prepaying promissory notes; (3) sale of assets; (4) contracting matters; and (5) litigation.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), and seconded by Director Robert L. Clarke (Comptroller of the Currency), and concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550 17th Street, NW., Washington, DC.

Dated: September 18, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–22920 Filed 9–18–91; 4:21 pm]

BILLING CODE 6714–01–M

RESOLUTION TRUST 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 Board of Directors of the Resolution Trust Corporation will meet in open session following the FDIC open session that begins at 2:00 p.m. on Tuesday, September 24, 1991 to consider the following matters:

Summary Agenda

A. *Memorandum re:* Disposition of minutes of previous meetings.

Discussion Agenda

A. *Memorandum re:* Final policy regarding resolution of minority depository institutions.

B. *Memorandum re:* Proposed regulations restricting the purchase of assets from RTC.

C. *Memorandum re:* Delegation of Authority to Execute Contracts.

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. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: September 18, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–22922 Filed 9–18–91; 4:34 pm]

BILLING CODE 6714–01–M

federal register

Monday
September 23, 1991

Part II

Environmental Protection Agency

40 CFR Parts 261 and 266

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Used Oil; Supplemental Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 266

[FRL-3974-4; EPA/OSW-FR-91-023]

Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil

AGENCY: U.S. Environmental Protection Agency.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice announces the availability of additional data on the composition of used oil and used oil residuals. EPA will consider the new data in making its final decision whether or not to list some or all used oils as hazardous waste, as proposed in November, 1985. Also, based on a portion of the new data, EPA is today considering amending its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous four wastes from the reprocessing and re-refining of used oil. Finally, today's notice provides additional information on the proposed used oil management standards for recycled oil under section 3014 of RCRA. Public comment is requested on the proposed used oils and residuals to be listed as hazardous, on a number of specific aspects of the newly available data, on specific aspects of the Agency's approach for used oil management standards, and on several aspects of the hazardous waste identification program as related to used oil.

DATES: Comments will be accepted until November 7, 1991.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Docket Number F-91-UOLP-FFFFF on your comments.

The EPA RCRA Docket is located in room 2427, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The docket numbers F-85-UO-FFFFF and F-91 ULOP-FFFFF are available for the public review. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Telephone 800-424-9346 (toll free) or 703-920-9810 locally. To obtain copies of the supplemental proposal, contact EPA RCRA Docket, at 202-260-9327 or Regulatory Development Branch at 202-260-8551. If no answer, please leave your name and address to receive a copy of the supplemental proposal.

For information on specific aspects of this rule, contact Ms. Rajni D. Joglekar, U.S. EPA, 401 M Street, SW., Washington, DC 20460, Telephone (202) 260-3516.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulation of Hazardous Waste

On December 18, 1978, EPA initially proposed guidelines and regulations for the management of hazardous wastes as well as specific rules for the identification and listing of hazardous wastes under Section 3001 of the Resource Conservation and Recovery Act (RCRA) (43 FR 58946). At that time, EPA proposed to list waste lubricating oil and waste hydraulic and cutting oil [1] as hazardous wastes on the basis of their toxicity. In addition, the Agency proposed recycling regulations to regulate (1) the incineration or burning of used lubricating, hydraulic, transformer, transmission, or cutting oil that was hazardous and (2) the use of waste oils in a manner that constituted disposal.[2]

In the May 19, 1980 regulations (45 FR 33084), EPA decided to defer promulgation of the recycling regulations for waste oils in order to consider fully whether waste- and use-specific standards may be implemented in lieu of imposing the full set of subtitle C regulations on potentially recoverable and valuable materials. At the same time, EPA deferred the listing of waste oil for disposal so that the entire waste oil issue could be addressed at one time. Under the May 19, 1980 regulation, however, any waste oil exhibiting one of the characteristics of hazardous waste (ignitability, corrosivity, reactivity, and toxicity) that was disposed, or accumulated, stored, or treated prior to disposal, became regulated as a hazardous waste subject to all applicable subtitle C regulations.

B. Used Oil Recycling Act

In an effort to encourage the recycling of used oil and, in recognition of the potential hazards posed by its mismanagement, Congress passed the Used Oil Recycling Act (UORA) on October 15, 1980 (Pub. L. 96-463). UORA defined used oil as "any oil which has been refined from crude oil, used, and as a result of such use, contaminated by physical or chemical impurities." Among other provisions, UORA required the Agency to make a determination as to the hazardousness of used oil and report the findings to Congress with a detailed statement of the data and other information upon which the determination was based. In addition, the Agency was to establish performance standards and other requirements under section 7 of UORA as "may be necessary to protect the public health and the environment from hazards associated with recycled oil" as long as such regulations "do not discourage the recovery or recycling of used oil." These provisions are now included in section 3014 of RCRA.

In January 1981, EPA submitted to Congress the used oil report mandated by section 8 of the UORA.[3] In the report, EPA indicated its intention to list both used and unused waste oil as hazardous under section 3001 of RCRA based on the presence of a number of toxicants in crude or refined oil (*e.g.*, benzene, naphthalene, and phenols), as well as the presence of contaminants in used oil as a result of use (*e.g.*, lead, chromium, and cadmium). In addition, the report cited the environmental and human health threats posed by these waste oils, including the potential threat of rendering ground water unpotable through contamination.

C. Hazardous and Solid Waste Amendments

On November 8, 1984, the Hazardous and Solid Waste Amendments (HSWA) were signed into law. In addition to many other requirements, HSWA mandated that the protection of human health and the environment was to be of primary concern in the regulation of hazardous waste. Specific to used oil, the Administrator was required to "promulgate regulations * * * as may be necessary to protect human health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the

[1] The term "waste oil" includes both used and unused oils that may no longer be used for their original purpose.

[2] "Use in a manner constituting disposal" means the placement of hazardous waste directly onto the land in a manner constituting disposal or the use of the solid waste to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (40 CFR 261.2(c)(1)).

[3] Report to Congress: Listing of Waste Oil as a Hazardous Waste Pursuant to section (8)(2), Pub. L. 96-463; U.S. EPA, 1981.

recovery or recycling of used oil consistent with the protection of human health and the environment." (Emphasis added to highlight HSWA language amending RCRA section 3014(a) (see section 242, Pub. L. 98–616).) This altered EPA's mandate with respect to the regulation of used oil by requiring that protection of human health and environment be a prime consideration, even if such regulation may tend to discourage the recovery or recycling of used oil.

HSWA required EPA to propose whether to identify or list used automobile and truck crankcase oil by November 8, 1985, and to make a final determination as to whether to identify or list any or all used oils by November 8, 1986. On November 29, 1985 (50 FR 49258), EPA proposed to list all used oils as hazardous waste, including petroleum-derived and synthetic oils, based on the presence of toxic constituents at levels of concern from adulteration during and after use. Also on November 29, 1985, the Agency proposed management standards for recycled used oil (50 FR 49212) and issued final regulations, incorporated at 40 CFR part 266, subpart E, prohibiting the burning of off-specification used oil [4] in non-industrial boilers and furnaces (50 FR 49164). Marketers of used oil fuel and industrial burners of off-specification fuel are required to notify EPA of their activities and to comply with certain notice and recordkeeping requirements. Used oils that meet the fuel oil specification are exempt from most of the 40 CFR part 266, subpart E regulations.

On March 10, 1986 (51 FR 8206), the Agency published a supplemental notice requesting comments on additional aspects of the proposed listing of used oil as hazardous. In particular, commenters to the November 29, 1985 proposal suggested that EPA consider a regulatory option of only listing used oil as a hazardous waste when disposed, while promulgating special management standards for used oil that is recycled. The supplemental notice also contained a request for comments on additional issues related to the "mixture rule" (40 CFR 261.3(a)(2)(iii)), on test methods for determining halogen levels in used oils, and on new data on the composition of used oil and used oil processing residuals.

[4] Used Oil that exceeds any of the following specification levels is considered to be "off-specification" used oil under 40 CFR 266.40(e): Arsenic—5 ppm, Cadmium—2 ppm, Chromium—10 ppm, Lead—100 ppm, Flash Point—100 °F minimum, Total Halogens—4,000 ppm.

D. Decision Not to List Recycled Used Oil

On November 19, 1986, EPA issued a decision not to list as a hazardous waste used oil that is being recycled (51 FR 41900). At that time, it was the Agency's belief that the stigmatic effects associated with a hazardous waste listing might discourage recycling of used oil, thereby resulting in increased disposal of used oil in uncontrolled manners. EPA stated that several residues, waste waters, and sludges associated with the recycling of used oil may be evaluated to determine if a hazardous waste listing was necessary, even if used oil was not listed. EPA also outlined a plan that included making the determination whether to list used oil being disposed as hazardous waste and promulgation of special management standards for recycled oil.

EPA's decision not to list used oil as a hazardous waste based on the potential stigmatic effects was challenged by the Hazardous Waste Treatment Council, the Association of Petroleum Re-refiners, and the Natural Resources Defense Council. The petitioners claimed that (1) the language of RCRA indicated that in determining whether to list used oil as a hazardous waste, EPA may consider technical characteristics of hazardous waste, but not the "stigma" that listing might involve, and (2) that Congress intended EPA to consider the effects of listing on the recycled oil industry only after the initial listing decision.

On October 7, 1988, the Court of Appeals for the District of Columbia found that EPA acted contrary to law in its determination not to list used oil under RCRA section 3001 based on the stigmatic effects. (See Hazardous Waste Treatment Council v. EPA, 861 F.2d 270 (D.C. Cir. 1988) [HWTC I].) The court ruled that EPA must determine whether to list any used oils based on the technical criteria for waste listings specified in the statute.

E. Recent Agency Activities

After the 1988 court decision, EPA began to reevaluate its basis for making a listing determination for used oil. EPA reviewed the statute, the proposed rule, and the many comments received on the proposed rule. Those comments indicated numerous concerns with the proposed listing approach. One of the most frequent concerns voiced by commenters related to the quality and "representativeness" of the data used by EPA to characterize used oils in 1985. Numerous commenters indicated that "their oils" were not represented by the data and, if they were represented, those oils were characterized when mixed with other more contaminated oils or other hazardous wastes. Many commenters submitted data demonstrating that their oils, particularly industrial used oils, did not contain high levels of toxicants of concern.

In addition, the Agency recognized that much of the information in the 1985 used oil composition data is more than five years old, as most of the information was collected prior to 1985. Since the time of that data gathering effort, used automotive oil composition may have been affected by the phase-down of lead in gasoline. The Agency also recognized the need to collect analytical data addressing specific classes of used oils as collected and stored at the point of generation (i.e., at the generator's facility).

Finally, the promulgation of the toxicity characteristic (TC) (55 FR 11798, March 29, 1990) is known to identify certain used oils as hazardous. Due to the possibility of changes in used oil composition described above and the new TC, the Agency recognized that additional data on used oil characterization may be needed prior to making a listing determination. The Agency believes it is important to consider the effects of the TC before taking final action on the listing determination and used oil standards in accordance with its mandate in section 3014(b) of RCRA to "list or identify" used oil as a hazardous waste.

F. Purpose of Today's Notice

EPA's overall approach to used oil consists of three major components. First, EPA identifies approaches for making a determination whether to list or identify used crankcase oil and other used oils as hazardous wastes, as required by section 3014(b). (See discussion in section III of this notice.) Second, EPA proposes a number of alternatives relating to management standards to ensure proper management of used oils that are recycled. EPA discusses an approach under which the management standards would be issued in two phases. (See discussion in sections VIII.C and IX of this notice.) Phase I will consist of basic requirements for used oil generators, transporters, road oilers, and recyclers including burners and disposal facilities to protect human health and the environment from the potential hazards caused by mismanagement of used oil. Once the Phase I standards are in place, EPA may decide to evaluate the effectiveness of these standards in reducing the impact on human health

and the environment. Upon such evaluation, EPA will consider whether or not more stringent regulations are necessary to protect human health and the environment, and propose these regulations as Phase II standards. The third part of EPA's general approach to used oil is the consideration of nonregulatory incentives and other nontraditional approaches to encourage recycling and mitigate any negative impacts the management standards may have on the recycling of used oil, as provided by section 3014(a). (See discussion in section II of this notice.)

Today's notice presents supplemental information gathered by EPA and provided to EPA by individuals commenting on previous notices on the listing of used oil and used oil management standards. As discussed above, numerous commenters on the 1985 proposal to list used oil as hazardous contended that the broad listing of all used oils unfairly subjects them to stringent subtitle C regulations because their oils are not hazardous. Based on those comments, the Agency has collected a variety of additional information regarding various types of used oil, their management, and their potential health and environmental effects when mismanaged. Today's notice presents that new information to the public and requests comment on that information, particularly if and how this information suggests new concerns that EPA may consider in deciding whether to finalize all or part of its 1985 proposal to list used oil as a hazardous waste.

In addition, today's notice expands upon the November 29, 1985 (50 FR 49258) proposal to list used oils as hazardous and the March 10, 1986 (51 FR 8206) supplemental notice by discussing regulatory alternatives not previously presented in the **Federal Register**. Based on the public comments received relative to the two notices, the Agency has investigated several important aspects of used oil regulation, including application of the mixture rule (40 CFR 261.3(a)(2)(iii)) to used oils. For these aspects, the Agency has identified alternative approaches that were not presented explicitly in the earlier notices. Those alternatives are presented in today's notice. (See discussion in sections IV and V of this notice.)

Today's notice also discusses the Agency's intention to amend 40 CFR 261.32 by adding four waste streams from the reprocessing and re-refining of used oil to the list of hazardous wastes from specific sources. (See discussion in section VII of this notice.) The Agency noted its intention to include these residuals in the definition of used oil in its November 29, 1985 proposal to list used oil as hazardous. The wastes from the reprocessing and re-refining of used oil, which are more fully described later, include process residuals from the gravitational or mechanical separation of solids, water, and oil; spent polishing media used to finish used oil; distillation bottoms; and treatment residues from primary wastewater treatment.

Today's notice also includes a description of some of the management standards (in addition to or in place of those proposed in 1985) that EPA is considering promulgating with the final used oil listing determination. EPA, under various RCRA authorities, is considering management standards for used oils, whether or not the oil is classified as hazardous waste. (See discussion in sections VIII and IX of this notice.)

When promulgated, the standards may: (a) Prohibit road oiling, (b) restrict used oil storage in surface impoundments, (c) limit disposal of nonhazardous used oil, (d) require inspection, reporting, and cleanup of visible releases of used oil around used oil storage containers and aboveground tanks and during used oil pickup, delivery, and transfer, (e) impose spill cleanup requirements and allow for limited CERCLA liability exemptions, (f) institute a tracking mechanism to ensure that all used oils reach legitimate recyclers, and (g) require reporting of used oil recycling activities. The used oil burner standards included in 40 CFR part 266 subpart E will continue to regulate the burning of used oil for energy recovery. All of the requirements (including those in part 266, subpart E) may be placed in a new Part (*e.g.*, 40 CFR part 279). Used oils that are hazardous (either listed or characteristic) that cannot be recycled are not included in these provisions, but are instead subject to 40 CFR parts 261–270.

With today's notice, EPA is providing information and requesting comment on management standard options that expand upon or differ from those proposed in 1985. What is provided with today's notice is not an exhaustive list or discussion of possible used oil management standards, but a discussion of some additional standards that are under consideration by EPA. In some cases, EPA is providing information in this notice to clarify issues in response to public comment on the Agency's 1985 proposed rule, so that commenters may have the opportunity to consider additional issues the clarification may raise. In other cases, the Agency is providing information and soliciting comment on additional management standards or management standards that vary from those proposed in 1985. (See appendix A that cites the appropriate **Federal Register** pages from the 1985 proposal. Also see specific sections in this notice for used oil management standards.)

Given the extensive body of public comment on used oil issues in general, the Agency will request public comment only on specific considerations for which new alternatives have been identified. Comments are not solicited regarding other elements of the 1985 proposal and subsequent notices. However, these earlier-announced alternatives and comments received about them remain part of this rulemaking and of EPA's full consideration of used oil issues. EPA will respond to comments previously received upon finalization of the rule.

II. Incentives for Promoting the Collection and Recycling of Do-It-Yourself Generated Used Oil and Used Oil Procurement Activity

In 1988, 1.3 million gallons of used oil was generated. Fifty-seven percent of the 1.3 million gallons generated entered the used oil management system and was recycled. Of the remaining used oil, the do-it-yourselfer (DIY) generator population (i.e., generated by homeowners) disposed of approximately 183 million gallons of mostly automotive crankcase oil, while nonindustrial and industrial generators dumped/disposed of 219 million gallons. EPA believes that the majority of the remaining 43 percent of used oil that was generated could and should be recycled in an effort to meet the nation's petroleum needs and conserve natural resources.

A. DIY-Generated Used Oil

RCRA does not provide authority to regulate the disposal of household waste (*e.g.*, DIY-generated motor oil and oil filters), nor does it give EPA the authority to mandate collection programs for DIY-generated used oil. Over the past five years, EPA has developed public education programs and informational brochures to encourage DIY generators of automotive crankcase oil to recycle their used oil. The Agency realizes, however, that educational outreach alone may not be adequate, given the absence of a mechanism to facilitate the collection of used oil from these generators. Very little DIY oil is currently being recycled (<10 percent of DIY-generated used motor oil). Commenters have indicated that local collection programs can be

successful over the long term only if petroleum prices remain high or if used oil handlers are required to accept used oil from DIY generators in exchange for some benefit.

Some states encourage collection and recycling of DIY used oil by providing some regulatory relief to used oil generators accepting DIY used oil. For instance, in New Jersey, automotive service stations are exempt from manifesting requirements if they accept DIY used oil. Several other states that regulate used oil offer similar relief to used oil handlers that collect or recycle DIY oil. EPA is interested in learning more about the effectiveness of these state requirements in increasing the recycling of used oil and minimizing DIY oil dumping. EPA, therefore, requests information on program feasibility and effectiveness, particularly from used oil handlers located in states with similar programs.

RCRA does not give EPA the authority to mandate the recycling of used oil. However, the Agency does have authority to require such management of used oil under Section 6 of the Toxic Substances Control Act (TSCA). Section 6(a) provides that if the manufacture, processing, distribution, use, or disposal of a chemical substance or mixture presents an unreasonable risk of injury to health or the environment, the Administrator shall, by rule, apply requirements to that substance, to the extent necessary to protect against such risk. Commenters have suggested that section 6 be used to promote used oil recycling. This could be achieved by requiring lubricating oil manufacturers to use a certain percent (to be determined) of DIY used oil in their production processes.

The Agency has evaluated and documented the environmental harm caused by mismanagement of used oil. This is discussed in detail in section VIII.A of today's notice, and in "Environmental Damage From Used Oil Mismanagement," which is included in the docket for today's notice. EPA believes it may be beneficial to use the authority in TSCA section 6 and other TSCA provisions to mandate the recycling of used oils that feasibly can be recycled. Recycling used oil and not disposing of it is a more environmentally preferable management alternative. EPA requests comment on whether TSCA section 6 is an appropriate statutory mechanism to control used oil mismanagement via its recycling.

There are five approaches currently under consideration. EPA requests comment on these approaches and other alternatives that warrant the Agency's consideration. These approaches, if implemented, might establish a system of both regulatory and incentive-based mechanisms to address: (1) The production of lube oils, (2) their collection after initial use and (3) their recycling or proper disposal in a manner consistent with the goals of RCRA section 3014. To obtain and respond to public comment before taking any of these steps, and to ensure that they may achieve their intended purposes in the least burdensome and most efficient manner, EPA is soliciting comments on, and requesting that those comments be organized to separately address the five approaches under consideration. While EPA solicits comments on these possible approaches, EPA wishes to emphasize that it is not today proposing to adopt any incentive system when it finalizes the Phase I management standards discussed in sections VIII and IX below. Rather, the following discussion is akin to an ANPRM on these issues. A description of each follows.

1. Acceptance of DIY Used Oil by Used Oil Generators and Retailers

Similar to some state programs, EPA may require used oil generators and lube oil retailers to follow certain steps, including posting signs stating their acceptance of DIY-generated used oil, checking DIY-generated used oil for evidence of mixing, and maintaining collection containers in compliance with storage standards. EPA might use TSCA section 6 authorities to promulgate such rules.

As explained in a later section of this notice, certain used oil generators (*i.e.*, service station dealers, any government agency that establishes a facility solely for the purpose of accepting used oil, and refuse collection services required to collect and deliver used oil to an oil recycling facility), as defined in section 101(37) of CERCLA, may become eligible for an exemption from CERCLA liability under CERCLA section 114(c). These generators may be required to, at a minimum, support their claim of DIY-generated used oil acceptance by maintaining records of the quantities of DIY-generated used oil collected and comply with the section 3014 used oil management standards.

2. Acceptance of DIY Oil by Used Oil Recyclers, Re-refiners, and Refiners

This program could be similar to the one for used oil generators except that used oil recyclers and re-refiners, including lubricating oil manufacturers, may be collecting DIY-generated used oil (or contracting collection) either at curbside or in specific locations. EPA may require commercial used oil recyclers/re-refiners to initiate community, municipality, or civic organization-based DIY collection programs. The requirements that the Agency may explore for used oil recyclers/re-refiners are the same as those being considered for lube oil retailers, with minor differences. Like lube oil retailers, recyclers might be required to accept DIY-generated used oil and check incoming oil for evidence of mixing. Additional provisions may include keeping records of annual quantities of DIY-generated used oil accepted, and reporting the disposition of DIY-generated used oil. Lube oil manufacturers may be required to use a certain percent of lube oil feedstock coming from DIY-generated used oil. The DIY-generated used oil collected through such programs must be managed in accordance with all applicable used oil management standards by the collectors and processors, however.

3. Target System for Lube Oil Producers

EPA is considering the establishment of a "target" system for all lube oil producers under TSCA section 6, under which each producer may have to recycle, or arrange for recycling of, specific quantities of used oil. EPA may require that lube oil producers and importers follow certain steps, such as registering with EPA, reporting annually on whether projected recycling targets were met, and providing documentation to support compliance with EPA-designated targets. Under the RCRA authority, EPA would require used oil purchase, sales, and recycling data collection and reporting while under the TSCA authority, EPA would ban sales of lube oil by certain non-registered producers and importers as discussed below.

Under such a program, EPA might ban or otherwise restrict lube oil sales by non-registered producers and importers. The Agency is also considering setting recycling targets (e.g., a mandatory recycling ratio or other numerical target) for each lube oil producer and importer based on their share of the lube oil market. The targets might be established for used oil in general, or they might be specifically directed at DIY-generated used oil. EPA solicits comments on this approach.

4. Used Oil Credit System

EPA also is considering using TSCA section 6 authorities to set a mandatory "recycling ratio" (*i.e.*, a target) for used oil and to require lube oil producers to bear the responsibility for assuring that used oil is recycled in accordance with

the established ratio.[5] The mandatory recycling ratio may be set as a percentage of the annual production quantity of lube oils. In the initial year of the program EPA could set the recycling ratio at the current recycling rate for used lube oils (*e.g.*, 30%). The Agency could then increase the mandatory recycling ratio annually (*e.g.*, by 2% per annum) to encourage increased levels of used oil recycling.

Lube oil manufacturers may be responsible for accepting DIY-generated used oil, implementing the mandatory recycling ratio and demonstrating compliance with the mandatory recycling ratio. The credit system differs from the "target" system, in that this demonstration could be made in one of several ways. Manufacturers could recycle used oil themselves by collecting and putting used oil back through the refinery process, could purchase re-refined oil from a re-refiner or processor, or could purchase "used oil recycling credits" from re-refiners or used oil processors. Used oil re-refiners and processors may generate credits for every unit of used oil recycled. Recycling credits generated by re-refiners and processors could be sold to primary lube oil manufacturers at a price set by market forces.

EPA requests comments on the mechanisms described above for promoting the collection and recycling of DIY-generated and other used oils. EPA solicits comments in particular on several issues. First, should a system of differential credits for used oil re-refining be implemented, under which used oil recycled through re-refining generates, *e.g.*, 1.5 times as many credits per gallon as reprocessing for fuel? Second, what role, if any, should EPA play as a potential seller of last resort if credits are in short supply? Third, should EPA allow the banking of such credits and if so, what limitation(s) may be placed on the use of banked credits? Fourth, what "balance period" should be selected for manufacturers to demonstrated compliance with the recycling ratio, and how may such balance periods relate to the calendar year? Fifth, how should the recycling of U.S. oil in foreign recycling facilities (e.g., Canada) be handled for purposes of generating credits?

5. Deposit-Refund System for Used Oil

EPA also believes a deposit-refund system to encourage collection of additional quantities of DIY-generated used oil can be developed. Under this approach retailers of lube oil may be required to collect a deposit on certain quantities of lube oil. If lube oil retailers are required to accept used oil, these facilities could then refund deposit amounts to customers on returning their used oil. EPA is concerned over the large quantity of used oil improperly disposed by DIY oil changers and is seriously considering requiring such deposits and refunds to increase collection from this segment. EPA believes that while a mandatory recycling percentage—such as those described above will increase the overall collection of all types of used oil—such a system does not directly address the DIY segment. EPA is concerned that if sufficient funding under the "deposit/refund system" is not available to the retailer, the cost of making refunds will have an impact on the retailers' net profit. EPA requests comment on the likely impacts on the business of such a system and how the impact could be minimized.

The amount of lube oil on which deposits may be paid may undoubtedly be greater than used oil returned by customers for refund, because some oil is inevitably not captured from the filter, etc. This result may either produce some excess revenue to retailers, or may allow a somewhat greater amount to be paid in refund than the deposit amount.

EPA solicits comment on several specific issues pertaining to a deposit-refund system for used oil implemented at retail. First, what may be sufficient monetary amounts of such deposits and refunds to induce various levels of change in DIY behavior without inducing possible perverse effects—such as diluting the oil to increase its volume? Second, what level of deposits and refunds might be required to induce additional DIY recycling over time? Third, what would the administrative and other burdens of such a system? Fourth, would it be appropriate to implement both a mandatory recycling ratio and a deposit-refund system? Fifth, since the system would probably produce excess revenue to retailers if the deposit amount were equal to the refund amount, should EPA consider either differential deposits and refunds or allow retailers to retain excess revenue to defray program costs? Sixth, to reduce the impacts of changes in virgin oil prices on recycling, should the deposit/refund amounts be "pegged" (in an administratively set schedule) to a benchmark virgin oil price?

B. Used Oil Procurement Activity

Besides efforts to encourage the collection of DIY-generated used oil, EPA has instituted other measures to encourage used oil recycling. For example, in 1988 EPA published a final procurement guideline for Federal Procurement of lubricating oils containing re-refined oil. The 1988 guideline designates lubricating oils as products for which the procurement requirements of RCRA section 6002 apply. The guideline also provides guidance to Federal government procuring agencies for complying with the requirements of RCRA section 6002 procurement provisions. All procuring agencies and all procurement actions involving lubricating oils where the agency buys $10,000 or more of the lube oil products at one time, or during the course of the past fiscal year, are required to comply with the section 6002 guidelines. The purpose of RCRA section 6002, and EPA's subsequent procurement guidelines, is to stimulate demand for products made from recycled materials and to assist in stabilizing the market for these products. In addition, EPA currently is working with the General Services Administration and the Department of Defense to certify vendors of recycled lube products for civilian and military purchases. EPA also is investigating vehicle warranty issues for vehicles using re-refined lube products. In some cases car dealerships are refusing to honor manufacturers' vehicle warranties if re-refined lube oils are used in the vehicles. EPA currently is investigating the root of this issue and may work with vehicle manufacturers to establish company positions that could be passed on to individual dealerships.

III. Used Oil Identification and Characterization

In 1985 and 1986, commenters expressed substantial concern regarding the impact of listing all used oils as hazardous wastes. Many commenters pointed out that certain used oils were not hazardous at the point of generation (*i.e.*, at the point that the used oil was removed from a crankcase or drained from machinery). Commenters also took exception to the data used to characterize used oil, saying that the information did not properly represent the spectrum of used oils generated. In addition, many commenters indicated uncertainty regarding the impact of the mixture rule on wastes containing *de minimis* quantities of used oils. Commenters also expressed concern regarding the appropriateness of subtitle C regulation for derived-from residuals such as wastewater treatment sludges. Today's notice identifies the issues presented by commenters, presents

[5] The credit system described here is essentially the same system provided for under the proposed "Oil Recycling Incentives Act" (H.R. 872, S. 399, 102nd Congress 1st session).

alternatives devised by either the Agency or the commenters, and requests public comment on the efficacy of the presented alternatives.

A. Used Oils To Be Evaluated at the Point of Generation

In response to the 1985 proposal to list used oil as a hazardous waste, numerous commenters contended that not all used oils are typically and frequently hazardous at the point of generation. These commenters argued that used oil drained directly from a crankcase or machinery reservoir may not contain the constituents of concern at levels exceeding regulatory concern and, in fact, that used oils were adulterated after the point of generation through mixing with other wastes.

The Agency initiated an investigation of used oils at the point of generation. Also, the Agency sought to determine whether significant differences existed in the composition of and hazards associated with various used oil streams. Thus, in contrast to the November 1985 proposed rule, which may have identified and listed all used oils as hazardous, the Agency investigation sought to determine whether or not a basis for listing existed for separate types of used oils. The EPA study addressed whether each type of used oil met the criteria for listing at the point of generation, whether the existing toxicity characteristic may capture those types of used oil that are clearly hazardous, and whether good housekeeping (management) practices could prevent post-use adulteration of used oils. Thus, the Agency sought to determine which types of used oil met, at the point of generation, the criteria for listing as contained in 40 CFR 261.11.

B. Data Collection

EPA began a sampling and analysis study in 1989 that addressed the composition of used oils at the point of generation. During the study, EPA was able to obtain samples of used oils as drained from the crankcase or oil reservoir of automobiles, other vehicles, and machinery and from on-site storage tanks. This approach allowed a comparison of the composition of the used oils at the point of generation to the composition of used oils in storage tanks and identification of the extent of any post-use adulteration that occurred. While storage tanks are not the only place where post-use adulteration could occur, EPA selected this sampling strategy because they are the first place adulteration could conceivably occur. The newly generated data from the 1989 study are discussed in detail later in today's notice. At this time, the Agency requests comment on this newly collected data and on the concept of basing the listing determination solely on used oils at their point of generation rather than after collection and likely adulteration, the latter being the approach considered in the November 1985 proposal.

The Agency notes that, as discussed more fully below, the management standards for used oil may well include requirements designed to control and discourage adulteration of used oil. If effective, such management standards could reduce the adulteration of as generated used oil, thus allowing the Agency to determine whether to list or identify as hazardous used oil from various segments on the basis of the concentrations of the constituents of concern as generated. Although EPA believes that adulteration of as generated used oil is a reasonable mismanagement scenario and is concerned that regulations may not fully stop this practice, the Agency is considering a number of proposals (*e.g.*, rebuttable presumption and 1,000 ppm halogen cutoff for non-intentional mixing of hazardous solvents or wastes) that may, in effect, require those who adulterate as generated used oil to manage the waste as hazardous. The Agency is particularly interested in comments that address whether or not evaluation and listing of used oils at the point of generation is protective of human health and the environment, whether it is consistent with the criteria for listing contained in section 3001 of RCRA and 40 CFR § 261.11, and whether EPA may continue to consider post-use adulteration of used oil as a basis for listing used oil as hazardous.

In conducting the sampling and analysis study, EPA considered several factors. When the toxicity characteristic (TC) was promulgated on March 29, 1990 (55 FR 11798), it added 11 constituents to the original list of 14 EP Toxic constituents that may cause a waste to be characteristically hazardous. The Agency believed that it might be necessary to address the additional organic constituents and the new TC Leaching Procedure in its study. Second, EPA recognized that for a significant number of used oil samples collected and analyzed prior to the 1985 proposal, analytical data were not available regarding the possible presence of polynuclear aromatic hydrocarbons (PAHs) in used oils. PAHs may present a significant danger to human health if present in high enough quantities. Of particular concern were PAHs such as benzo(a)pyrene, benzo(b)fluoranthene, and benzo(k)fluoranthene, all of which are currently included as appendix VIII constituents.

In order to address used oils as generated, the Agency defined a number of unique types or classes of used oil. On the basis of the information gathered prior to 1985 and on the public comments received in response to the November 29, 1985 proposed listing, the Agency identified a number of independent segments within the used oil universe. In addition to the most well known used oil generators (*i.e.*, automotive and diesel engines), the Agency identified several smaller used oil segments, including diesel powered heavy equipment and railroad engine crankcase oils, marine oil, hydraulic oil and fluids, metalworking oil, electrical insulating oil, natural gas-fired engine oil, and aircraft engine oil. Selection of these segments is discussed in "Used Oil Characterization Sampling and Analysis Program," which is included in the docket for today's rule [6].

Each of these segments was evaluated primarily for the presence of selected TC constituents (arsenic, chromium, cadmium, lead, barium, benzene, trichloroethylene, and tetrachloroethylene) and secondarily for the presence of PAHs. The segments also were evaluated to determine the compositional concentration of the specified constituents and to determine to what extent samples exhibit the toxicity characteristic. This approach was undertaken so that a decision whether to list any or all portions of the used oil universe might adequately reflect the hazardous nature of each segment.

C. Point of Generation Data

1. Stratified Random Sampling Plan

A sampling and analysis study of known generators representing the various used oil categories was undertaken by EPA in 1989 to (1) provide updated information on the composition of automotive and industrial used oils at the point of generation and (2) determine the status of these used oils with respect to the toxicity characteristic (TC). The sectors chosen for study based on the above discussion are shown in Table III.C.1.

[6] Briefly, the sample type and size was determined based on the 1985 sampling and analytical study, data received from the commenters in response to the 1985 proposal, and the current used oil generation and storage practices. A limited number of samples were collected for certain used oil (*e.g.*, marine oils) to substantiate the 1985 proposal used oil data.

TABLE III.C.1.—USED OIL SECTORS

Automotive Oil and Fluids, including:
—Automotive (unleaded gasoline engine) Crankcase Oil.
—Automotive Oils/Fluids in Used Oil Storage Tanks.
Diesel Engine Crankcase Oil, including:
—Truck/Bus Engine Crankcase Oil.
—Truck/Bus Oils/Fluids in Used Oil Storage Tanks.
—Diesel Powered Heavy Equipment Crankcase Oil.
—Railroad Engine Crankcase Oil.
Marine Oil.
Hydraulic Oils/Fluids.
Metalworking Oil.
Electrical Insulating Oil.
Natural Gas-Fired Engine Oil.
Aircraft Engine Oil.
Aircraft Oil/Fluids in Storage Tanks.

Based on the information gathered prior to 1985 and on the public comments received in response to the 1985 proposed listing, the Agency identified a number of independent segments within the used oil universe. The segments included automotive and diesel engine oils as well as categories of industrial used oil, as shown in Table III.C.1.

Once the categories were established, sampling frames consisting of lists of used oil generators (*i.e.*, units) representing each category were developed. The generators were identified in localized geographic regions (1) to reduce time and travel costs associated with the field sampling so that resources could be allocated toward laboratory analyses and (2) to better define the location and population of generators to be sampled. The sampling strategy was not intended to characterize variation in used oil on the basis of geographic origin because no information suggests that used oil collected from generators in localized regions vary. Generally, engines are designed to run within specific temperature ranges, with variations dependant upon climatic temperature conditions. We would expect that, across the United States, similarly designed engines will run at similar temperatures and will break down and/or contaminate the engine oil in similar ways. In the early stages of the used oil sampling and analysis program, EPA collected a limited number of used oil samples in Houston, Texas. These samples were collected to allow laboratory personnel to become familiar with the physical and chemical properties of used oil. The samples collected in Houston, while limited, tend to corroborate the assumption that geographic variability will not strongly impact the overall findings of the study.

Generators included in each subpopulation (strata) were identified through telephone directories, Standard Industrial Code (SIC) classifications, an automated data base, and trade organizations. Simple random sampling of each used oil generator subpopulation was conducted in order to reduce bias in the selection of generators. Greater detail regarding the sampling frames used is presented in "Used Oil Characterization Sampling and Analysis Program," in the docket.

The selected sites were visited and samples were collected. The number of samples collected in each of the targeted sectors ranged from four to twenty. For some sectors (where the adulteration can potentially occur) it was possible to collect used oil samples from both the point of generation and the on-site storage tank, thereby allowing an evaluation of the extent to which used oil in on-site storage units may undergo adulteration.

The thrust of the latest sampling effort was to substantiate and further elucidate the previously collected used oil characterization data, not to develop a set of new data on which to base the listing decision. In 1985, EPA obtained data from approximately 1,000 samples that were representative of the generation and storage practices. For many used oil industrial segments, new samples were collected in 1988 as spot check samples to verify the 1985 characterization data. For the other used oil segments (*e.g.*, automotive crankcase oils), used oil samples were collected in larger numbers to (a) assess the changes in used oil characteristics resulting from the phase-down of lead in gasoline and (b) differentiate as generated versus storage tank samples of used oil. The data presented in today's notice will be evaluated along with the data provided by the commenters during the comment period for this notice. EPA also will evaluate the data used in 1985 proposal to list used oil and the commenter submitted data received in response to the 1985 proposal.

EPA believes that waste characterization data provides one of the decision-making tools when making a listing determination; under 40 CFR § 261.11(a)(3). EPA also considers the following decision-making factors: waste quantities, toxicity, and hazard potential of the constituents, mobility and transport potential of the waste in the environment, known health and environmental damage cases, plausible types of improper management of waste, and actions taken by the other governmental agencies or regulatory programs (*e.g.*, state regulations or other Federal regulations).

2. Analytical Approaches Used

In coordination with the 1989 EPA used oil sampling and analysis effort, a Quality Assurance Project Plan (QAPjP) was prepared and implemented in accordance with the EPA format and guidance specified in SW–846, "Test Methods for Evaluating Solid Waste (Physical/Chemical Methods), Third Edition." The QAPjP details the analytical plan and procedures implemented to verify the quality of the data obtained.

The analytical program was designed to characterize used oils with respect to the compositional concentration of the constituents of concern and with respect to the Toxicity Characteristic (TC). In order to do this, the Toxicity Characteristic Leaching Procedure (TCLP) was applied to used oil samples, and after filtration, the liquid phase (filtrate) of the samples were analyzed for selected constituents of concern using analytical methods from SW–846. While EPA has not designated standard reference materials for the TCLP, many standard reference materials exist for the analytical methods that were subsequently employed. For example, in conducting organometallic analysis, EPA employed Conostan, a petroleum-derived standard reference material. Information on standard reference materials used is further elucidated in the background document on the sampling and analysis effort.

In conducting the TCLP, the initial step is filtration of the sample. The TCLP calls for the used oil sample to be filtered using a 0.6–0.8 μm glass fiber filter. Upon completion of filtration, two fractions of the used oil sample exist. The first is the filtrate, which has passed through the filter. The second is the solids, which have not passed through the filter but are, in turn, used to form leachate following acid extraction. EPA ran a compositional analysis on the filtrate to determine the concentration of constituents that could be released from the used oil.

Next EPA assumed that minimal concentrations of hazardous constituents would leach from the solid phase (*i.e.*, the material remaining on the filter) if the full TCLP was performed.[7]

[7] The full TCLP method calls for rotary agitation followed by pressure filtration and analysis of the leachate of the solid portion of a waste sample if it contains greater than 0.5% solids.

This assumption, which was verified by further laboratory analyses, enabled EPA to estimate the TCLP final analyte concentration based on the concentration of TC compounds found in the filtrate. Compositional data from the initial filtrate phase also provided EPA with data to estimate the composition of the unfiltered used oil sample. It should be noted that these estimates are lower bounds for the TCLP final analyte and compositional concentrations for each used oil sample. The Agency confirmed that these lower bounds are a fair estimate of the full TCLP concentrations for the used oil sample. Additional detail regarding these leaching analyses can be found in the docket.

Total compositional concentrations were estimated by assuming that the contaminant concentrations in the filtrate were identical to those in the unfilterable portion. Thus, the total concentration would be equal to the filtrate concentration. This assumption is justified based on laboratory evidence; used oils tend to clog the filter after a portion has passed through. Only in rare cases were solid particles found to clog the filter, rather, the filter clogged from the oil itself and little difference between the unfilterable portion and the filtrate could be discerned. This leads the Agency to contend that the filtrate is representative of the used oil as a whole.

After filtration, analyses were conducted on the filtrate portion of the sample. All of the samples were analyzed for metallic contaminants. Approximately twenty-five percent of the samples were analyzed for organic constituents. The Agency believed that most used oils that contained TC constituents would exhibit the characteristic for D008 [Lead], as well as other characteristics. Since lead was believed to be the dominant TC constituent, more metals analyses were conducted than organic analyses.

Table III.C.2 provides a summary of the analytical methods used to characterize the samples. Full detail on these methods and their application to used oils can be found in "Used Oil Characterization Sampling and Analysis Program," in the docket.

TABLE III.C.2—ANALYTICAL METHODS FOR TESTING USED OIL

Parameter:	Analytical Method:
Filtration	● SW-846 Method 1311, Toxicity Characteristic Leaching Procedure (TCLP).
Inorganics	Sample Preparation: ● SW-846 Method 3040, Dissolution Process for Oils, Greases, or Waxes (kerosene dissolution). ● SW-846 Method 3051, Microwave Digestion (HNO_3 only). Analysis: ● SW-846 Method 6010, Inductively Coupled Plasma Atomic Emission Spectroscopy, or ● SW-846 Method 7000 series, Atomic Absorption/graphite furnace.
Volatile Organics	● SW-846 Method 8240 GC/MS for Volatile Organics (purge and trap). ● SW-846 modified Method 3810, Headspace (with isotope dilution).
Semi-Volatile Organics	Sample Preparation: ● SW-846 Method 3580, Waste Dilution. Analysis: ● SW-846 Method 8310, Polynuclear Aromatic Hydrocarbons (HPLC). ● SW-846 Method 8270, GC/MS for Semi-Volatile Organics: Capillary Column Technique (modified for selective ion monitoring).
PCBs	● SW-846 Method 8080, Organochlorine Pesticides and PCBs.

3. New Methods Under Consideration For Used Oil

In conducting the analysis of the used oil samples that were collected, the Agency found that several of the available analytical protocols enumerated in SW-846 required adaptation and one required modification in order to efficiently analyze for the target analytes found in the used oil matrix. The Agency is not requesting comment on the modified methods at this time, but is presenting this discussion for information purposes only. The modified method was used to detect volatile organic analytes in oily waste. As stated below, the method modification was undertaken to detect very low levels of organics in used oil. This modification allowed detection of small quantities of volatile organics and increased (rather than decreased) the potential for a used oil sample to exhibit the TC for volatile organic constituents. A draft copy of the method is available in the docket for today's notice and the Agency intends to propose a revised SW-846 Method 3810 in the near future. No modified methods were necessary for metal analyte detection.

Analytical difficulties were particularly troublesome with respect to organic analytes. These difficulties arose because the analytical detection limits required by this investigation were somewhat lower than those that could be achieved by existing methodology in these matrices.

For volatile organic contaminants, the Agency found that the traditional purge and trap GC/MS method (Method 8240) did not provide detection limits that were sufficiently low. As an alternative, the Agency has modified an existing headspace screening method (Method 3810) to include isotope dilution. This allows convenient injection of headspace samples. This modified method, which is included in today's docket, includes the addition of several standard isotopes that correspond to each of the target analytes. Based on the results of the analyses in the evaluation of used oils, the Agency is considering addition of this method to SW-846. At this time, the Agency is conducting studies of automated headspace methodology in order to expand its applicability beyond the target analytes addressed under the used oil investigation. Improved reproducibility for the method can be obtained by using an automated headspace analyzer in place of the manual syringe.

For semi-volatile organics analyses, the Agency had similar difficulties. The existing SW-846 methods were adequate for analyzing most samples, but the used oil matrix required dilutions that yielded unacceptable detection limits. To improve the detection levels, the Agency utilized a specific ion monitoring (SIM) option on the GC/MS. Instead of scanning the sample for a full spectrum of semi-volatile compounds, the Agency found that detection limits an order of magnitude lower could be achieved using SIM. This adaptation is entirely within the scope of Method 8270 and allowed the Agency to lower the detection limit for specific semi-volatile organic constituents, PAHs. The Agency is considering the applicability of SIM to other analytical programs at this time. However, since most semi-volatile analyses are targeted for a wide range of compounds, application of SIM may be limited to those situations where few target analytes are being investigated.

4. Commenter Submitted Analytical Data

Many commenters on the 1985 proposal to list used oils as hazardous

waste stated that certain used oils should not be classified as hazardous. After EPA published its decision not to list used oil as hazardous waste (51 FR 41900, November 19, 1986), several commenters submitted data regarding the composition of and constituent concentrations in used oils generated at their facility or facilities. The Agency has reviewed this newly submitted data, which is located in the docket for today's notice, and will consider the data in making a decision to list. Comments are welcome on the newly submitted data, as discussed below.

Reynolds Metal Company submitted analytical data regarding the constituent levels in used oils from three aluminum rolling plants as well as oil sludge residue resulting from oil treatment. Additional data on aluminum mill oil was submitted by Alumax. Reynolds analyzed two types of oil before and after use: A light weight synthetic oil and a water-based oil emulsion. The data submitted suggest that metalworking oils generated in the aluminum rolling process do not typically exhibit the TC for metal contaminants.

Reynolds conducted additional analyses of the same three types of virgin and used oil samples for organic constituents. The data for volatile organics indicate that virgin and used metalworking oils employed by Reynolds in the production process do not exhibit the TC characteristic. For semi-volatile organics, the data for samples of water-based oil emulsion indicate that this type of oil does not exhibit the TC for semi-volatiles. However, data for samples of lightweight synthetic oil and petroleum solvent were submitted with such high detection limits that the Agency is precluded from rendering an opinion.

Alumax submitted data on two samples of rolling oil from one mill operation. The samples were of cold mill oil and hot mill oil. Analytical data indicate that toxicity characteristic constituents are not present at levels of regulatory concern in the two samples and detection limits were well below the regulatory level. Further, Alumax provided analytical data on volatile and semi-volatile constituents in each of the two samples, which indicate that the constituents are not present at levels of regulatory concern.

The Agency believes that data submitted by Reynolds Metal Company and Alumax for metalworking oils used in aluminum mills may support the conclusion that these oils generally do not exhibit the toxicity characteristic and are not hazardous at the point of generation. EPA requests comments on the used oil data submitted by Reynolds and Alumax that can be found in the RCRA Docket for today's notice.

In addition, Reynolds submitted data regarding the characterization of an oil sludge. It is not clear from the information whether the sludge is a distillation bottom from a vacuum distillation process employed in the recovery of oil or whether the sludge is from the wastewater treatment process. Further, Reynolds did not submit any TCLP analysis data on oily sludges. The Agency encourages Reynolds and other commenters to submit process information, characterization, and additional data concerning such sludges.

5. Results

a. *Compositional analysis.* As previously discussed, EPA determined the constituent concentrations found in the liquid phase of the sample after filtration. The summary of the sampling and analysis study results is presented in Table III.C.3, which shows the data separately for each category of used oil sampled and analyzed.

TABLE III.C.3A.—USED OIL SAMPLING AND ANALYSIS SUMMARY

Constituent	Automotive crankcase oil—Unleaded gasoline engines			Automotive oils/fluids—Storage tank samples			Diesel engine crankcase oil—from truck and buses			Diesel truck/bus maintenance—Facility storage tanks			Diesel heavy equipment—Crankcase oil		
	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)
	Analyzed	Contaminant detected		Analyzed	Contaminant detected		Analyzed	Contaminant detected		Analyzed	Contaminant detected		Analyzed	Contaminant detected	
Arsenic	12	0	<1	8	0	<2.4	10	1	2	10	1	0.39	10	0	<1
Barium	12	5	1.0–43	8	3	11.6–32.6	10	2	1.5–6.4	10	2	9.7–76.4	10	1	1.5
Cadmium	12	7	0.5–3.4	8	5	1.0–5.0	10	2	0.7–3	10	6	0.27–1.9	10	6	0.8–4.5
Chromium	12	10	0.8–23	8	3	2.67–5.0	10	5	1.8–7.1	10	2	2.45–7.0	10	5	1.5–8
Lead	12	12	5.5–150	8	8	29–345	10	10	2.9–19.0	10	9	8.0–133	10	8	1–33.0
Benzene	7	6	0.53–13.2	6	5	0.28–420	2	0	ND	2	2	19.3			NA
Trichloroethylene	7	0	<25	6	0	<50	2	0	ND	2	1	1.0			NA
Perchloroethylene	7	0	<25	6	4	89–1700	2	0	ND	2	1	74			NA
Trichloroethane	7	1	25	6	3	51–2100	2	0	ND	2	1	60			NA
Tetrachloroethanes	7	0	<25	6	0	<50	2	0	ND	2	0	<2			NA
Benzo(b)fluoranthene	4	4	13–91	3	3	5–19	4	1	1.5	4	2	2.4–46	2	0	<5
Benzo(k)fluoranthene	2	2	10–22	3	3	1.9–12	4	1	1.1	3	1	1.2	2	0	<5
Benzo(a)pyrene	4	4	25–86	3	3	7.3–24	4	1	2.0	4	1	3.0	2	0	<5
PCBs	2	0	ND	3	0	ND	1	0	ND	1	0	ND			NA

(1) Analyte concentrations in TCLP filtrate. ND=Constituent not detected. Detection limits varied with matrix affects. NA=Not analyzed. Revised: 2-12-91.

TABLE III.C.3B.—USED OIL SAMPLING AND ANALYSIS SUMMARY

Constituent	Heavy equipment maintenance facility storage tanks			Diesel railroad engine crankcase oil			Marine oil—marina used oil storage tanks			Marine oil—foreign cargo ships*			Marine oil—miscellaneous categories		
	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)
	Analyzed	Contaminant detected		Analyzed	Contaminant detected		Analyzed	Contaminant detected		Analyzed	Contaminant detected		Analyzed	Contaminant detected	
Arsenic	4	4	0.38–1.59	11	0	<1	7	0	<1	8	0	<1	3	0	<1
Barium	4	0	<10	11	4	1.3–4.3	7	7	2.0–9.9	7	1	17.8	3	1	1.5
Cadmium	4	4	0.51–1.48	11	1	12.0	7	7	1.0–3.4	8	0	<0.25	3	1	2.3
Chromium	4	3	0.89–2.43	11	8	1.1–43.3	7	7	3.1–6.4	8	6	1.2–5.0	3	1	3.6
Lead	4	4	10.8–142	11	7	1.5–31.5	7	7	65.0–360	8	7	2.0–19.0	3	3	0.4–160
Benzene			NA	1	0	<2.5	1	0	<2.5			NA			NA
Trichloroethylene			NA	1	0	<2.5	1	0	<2.5			NA			NA
Perchloroethylene			NA	1	0	<2.5	1	0	<2.5			NA			NA
Trichloroethane			NA	1	0	<2.5	1	0	<2.5			NA			NA
Tetrachloroethanes			NA	1	0	<2.5	1	0	<2.5			NA			NA
Benzo(b)fluoranthene			NA	3	0	<5			NA			NA			NA
Benzo(k)fluoranthene			NA	3	0	<5			NA			NA			NA
Benzo(a)pyrene			NA	3	0	<5			NA			NA			NA
PCBs			NA			NA			NA			NA			NA

* Samples did not filter with TCLP filtration device. Data are total constituent concentrations in unfiltered portion. (1) Analyte concentrations in TCLP filtrate. ND = Constituent not detected. Detection limits varied with matrix affects. NA = Not analyzed. Revised: 2–12–91.

TABLE III.C.3C.—USED OIL SAMPLING AND ANALYSIS SUMMARY

Constituent	Hydraulic oil/fluids			Metalworking oil/fluids			Electrical insulating oils			Natural gas-fired engine oil			Aircraft engine oil		
	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)
	Analyzed	Contaminant detected		Analyzed	Contaminant detected		Analyzed	Contaminant detected		Analyzed	Contaminant detected		Analyzed	Contaminant detected	
Arsenic	12	1	3.26	14	3	2.0–21.5	11	0	<1	15	0	<1	10	1	3.7
Barium	12	6	1.4–460	14	7	0.3–8.1	11	0	<1	15	8	2.1–23.0	10	0	<1
Cadmium	12	6	1.4–10.1	14	5	1.3–4.8	11	0	<0.25	15	1	1.9	10	5	2.0–13.0
Chromium	12	3	1.0–1.6	14	3	1.0–5.4	11	0	<1	15	0	<1	10	5	2.5–32.0
Lead	12	7	1.0–7.0	14	10	1.0–6033	11	1	1.0	15	8	1.5–30.0	10	5	1800–10500
Benzene	4	0	ND	5	0	<5	4	0	<5	4	2	26–32	3	0	<25
Trichloroethylene	4	0	ND	5	0	<5	4	0	<5	4	0	ND	3	0	<25
Perchloroethylene	4	0	ND	5	0	<5	4	0	<5	4	0	ND	3	0	<25
Trichloroethane	4	0	ND	5	0	<5	4	0	<5	4	0	ND	3	0	<25
Tetrachloroethanes	4	0	ND	5	0	<5	4	0	<5	4	0	ND	3	0	<25
Benzo(b)fluoranthene	3	0	<5	3	1	6	3	0	<5	3	0	<5	1	0	<5
Benzo(k)fluoranthene	3	0	<5	3	0	<5	3	0	<5	3	0	<5	1	0	<5
Benzo(a)pyrene	3	0	<5	3	0	<5	3	0	<5	3	0	<5	1	0	<5
PCBs	2	0	ND	3	0	ND	2	1	6.9	3	0	ND			NA

(1) Analyte concentrations in TCLP filtrate. ND = Constituent not detected. Detection limits varied with matrix affects. NA = Not analyzed. Revised: 2–12–91.

TABLE III.C.3D.—USED OIL SAMPLING AND ANALYSIS SUMMARY

Constituent	Aircraft oil/fluids—used oil storge tanks			Virgin oil		
	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)
	Analyzed	Contaminant detected		Analyzed	Contaminant detected	
Arsenic	7	1	1.49	6	0	<9.9
Barium	7	2	3.0–80	6	0	<4.9
Cadmium	7	6	1–11.3	6	2	0.7
Chromium	7	4	1.5–10	6	0	<4.9
Lead	7	6	11–2400	6	1	1.0
Benzene	2	1	0.2	1	0	<5
Trichloroethylene	2	0	<25	1	0	<5
Perchloroethylene	2	0	<25	1	0	<5
Trichloroethane	2	2	290–2500	1	0	<5
Tetrachloroethanes	2	0	<25	1	0	<5

TABLE III.C.3D.—USED OIL SAMPLING AND ANALYSIS SUMMARY—Continued

Constituent	Aircraft oil/fluids—used oil storge tanks			Virgin oil		
	Number of samples		Concentration range (ppm)	Number of samples		Concentration range (ppm)
	Analyzed	Contaminant detected		Analyzed	Contaminant detected	
Benzo(b)fluoranthene	1	0	<1	5	0	<5
Benzo(k)fluoranthene	1	0	<1	5	0	<5
Benzo(a)pyrene	1	0	<1	5	0	<5
PCBs			NA			NA

(1) Analyte concentrations in TCLP filtrate. ND=Constituent not detected. Detection limits varied with matrix affects. NA=Not analyzed. Revised: 2-12-91.

The analytical results are for the analysis of the TCLP filtrate only and provide the number of samples analyzed, the number of samples in which a specific contaminant was detected, and the range of concentrations of the specific contaminant that was detected. QA/QC data generated in conjunction with the analytical program are available in today's docket. The concentration range (in parts per million) provides an indication of the extent to which a particular category of samples contains a given contaminant and to what extent the samples in that category may exceed regulatory levels of concern for compositional concentrations. The Agency evaluates a number of factors in making a listing determination, all of which are detailed in 40 CFR 261.11. Among the criteria for listing a waste as hazardous, 40 CFR 261.11(a)(3) states that the Administrator may list a waste as "toxic" hazardous waste if it contains any of the hazardous constituents in appendix VIII, after consideration of such additional factors as the toxicity and concentration of constituents in the waste, the mobility and persistence of the constituents in the waste, the degradability of the waste, the bioaccumulation potential, the plausible types of improper management of the waste, the quantity of waste generated, and the nature and severity of the human health and environmental risks posed by the waste. EPA is continuing to rely upon the data presented in the 1985 proposal regarding the mobility, persistence, and bioaccumulation potential of used oil since the Agency has not received information refuting its findings on these additional factors. The Agency also has developed additional data regarding environmental damage caused by past improper management of used oil (see "Environmental Damage From Used Oil" in today's docket and section VIII.A of today's notice). However, the newly available sampling and analysis data has caused the Agency to revise its analysis of the nature and toxicity of the waste and the human health and environmental risks posed.

When considering appendix VIII constituents, the nature of the toxicity of the constituent in the waste can be determined using the health-based numbers developed by EPA for the constituents in question. For the purposes of this evaluation, EPA has used the Maximum Contaminant Level (MCL) most recently promulgated under the Safe Drinking Water Act. If an MCL was not available, the Risk Specific Dose (RSD), which corresponds to a specific level of risk (1×10^{-6}) to an individual of contracting cancer over a 70-year lifetime from the intake of contaminated drinking water, was employed. The health-based numbers (HBNs) for tetrachloroethanes and the three PAHs (benzo(a)pyrene, benzo(b)fluoranthene, and benzo(k)fluoranthene) are RSDs. The remaining HBNs are MCLs. In the case of lead, EPA is presenting evaluations of the MCL for lead (0.05 parts per million). A newly promulgated "action level" for lead (0.015 parts per million) was promulgated on June 7, 1991 (56 FR 26460) and constitutes the level at which treatment technologies must be undertaken by drinking water supply facilities. EPA has not decided whether to consider an amendment to the Toxicity Characteristic level of 5 ppm lead based on the action level, and so, for the listing evaluation below, we continue to rely on the 0.05 ppm MCL. Table III.C.4. presents the HBNs for the constituents of concern.

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TABLE III.C.4 - USED OIL CONSTITUENT CONCENTRATIONS AND HBNS

AUTOMOTIVE CRANKCASE OIL (UNLEADED GASOLINE ENGINES)

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	12	12	0	0	0
Barium	1	12	10	2	0	0
Cadmium	0.01	12	5	3	4	0
Chromium	0.05	13	3	8	2	0
Lead	0.05	13	0	0	11	2
Benzene	0.005	12	5	0	2	5
Trichloroethylene	0.005	9	9	0	0	0
Perchloroethylene	0.005	9	9	0	0	0
Trichloroethane	0.2	9	8	0	1	0
Tetrachloroethanes	0.001	9	9	0	0	0
Benzo(b)fluoranthene	3.0E-06	4	0	0	0	4
Benzo(k)fluoranthene	3.0E-06	2	0	0	0	2
Benzo(a)pyrene	3.0E-06	4	0	0	0	4
PCBs	5.0E-04	2	2	0	0	0

AUTOMOTIVE OILS/FLUIDS - STORAGE TANKS

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	8	8	0	0	0
Barium	1	8	5	3	0	0
Cadmium	0.01	11	4	1	6	0
Chromium	0.05	11	8	3	0	0
Lead	0.05	11	0	0	6	5
Benzene	0.005	11	2	3	1	5
Trichloroethylene	0.005	6	6	0	0	0
Perchloroethylene	0.005	6	2	0	0	4
Trichloroethane	0.2	6	3	0	1	2
Tetrachloroethanes	0.001	6	6	0	0	0
Benzo(b)fluoranthene	3.0E-06	3	0	0	0	3
Benzo(k)fluoranthene	3.0E-06	3	0	0	0	3
Benzo(a)pyrene	3.0E-06	3	0	0	0	3
PCBs	5.0E-04	3	3	0	0	0

DIESEL ENGINE CRANKCASE OIL - TRUCKS AND BUSES

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	10	9	1	0	0
Barium	1	10	10	0	0	0
Cadmium	0.01	10	8	1	1	0
Chromium	0.05	10	5	4	1	0
Lead	0.05	10	0	5	5	0
Benzene	0.005	4	4	0	0	0
Trichloroethylene	0.005	4	4	0	0	0
Perchloroethylene	0.005	4	4	0	0	0
Trichloroethane	0.2	4	4	0	0	0
Tetrachloroethanes	0.001	4	4	0	0	0
Benzo(b)fluoranthene	3.0E-06	4	3	0	0	1
Benzo(k)fluoranthene	3.0E-06	4	3	0	0	1
Benzo(a)pyrene	3.0E-06	4	3	0	0	1
PCBs	5.0E-04	1	1	0	0	0

TABLE III.C.4 - USED OIL CONSTITUENT CONCENTRATIONS AND HBNS (continued)

DIESEL TRUCKS/BUSES - STORAGE TANKS

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	10	9	1	0	0
Barium	1	10	8	2	0	0
Cadmium	0.01	10	4	4	2	0
Chromium	0.05	10	8	1	1	0
Lead	0.05	10	0	0	7	3
Benzene	0.005	3	0	0	1	2
Trichloroethylene	0.005	2	1	0	1	0
Perchloroethylene	0.005	2	1	0	0	1
Trichloroethane	0.2	2	1	0	1	0
Tetrachloroethanes	0.001	2	2	0	0	0
Benzo(b)fluoranthene	3.0E-06	4	2	0	0	2
Benzo(k)fluoranthene	3.0E-06	3	2	0	0	1
Benzo(a)pyrene	3.0E-06	4	3	0	0	1
PCBs	5.0E-04	1	1	0	0	0

DIESEL ENGINE CRANKCASE OIL - HEAVY EQUIPMENT

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	10	10	0	0	0
Barium	1	10	10	0	0	0
Cadmium	0.01	10	4	4	2	0
Chromium	0.05	10	5	4	1	0
Lead	0.05	10	2	5	3	0
Benzene	0.005	0	0	0	0	0
Trichloroethylene	0.005	0	0	0	0	0
Perchloroethylene	0.005	0	0	0	0	0
Trichloroethane	0.2	0	0	0	0	0
Tetrachloroethanes	0.001	0	0	0	0	0
Benzo(b)fluoranthene	3.0E-06	2	2	0	0	0
Benzo(k)fluoranthene	3.0E-06	2	2	0	0	0
Benzo(a)pyrene	3.0E-06	2	2	0	0	0
PCBs	5.0E-04	0	0	0	0	0

HEAVY EQUIPMENT MAINTENANCE FACILITY - STORAGE TANKS

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	4	0	4	0	0
Barium	1	4	4	0	0	0
Cadmium	0.01	4	0	3	1	0
Chromium	0.05	4	1	3	0	0
Lead	0.05	4	0	0	3	1
Benzene	0.005	0	0	0	0	0
Trichloroethylene	0.005	0	0	0	0	0
Perchloroethylene	0.005	0	0	0	0	0
Trichloroethane	0.2	0	0	0	0	0
Tetrachloroethanes	0.001	0	0	0	0	0
Benzo(b)fluoranthene	3.0E-06	0	0	0	0	0
Benzo(k)fluoranthene	3.0E-06	0	0	0	0	0
Benzo(a)pyrene	3.0E-06	0	0	0	0	0
PCBs	5.0E-04	0	0	0	0	0

TABLE III.C.4 - USED OIL CONSTITUENT CONCENTRATIONS AND HBNS (continued)

DIESEL ENGINE CRANCKCASE OIL - RAILROAD

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	11	11	0	0	0
Barium	1	11	11	0	0	0
Cadmium	0.01	11	10	0	1	1
Chromium	0.05	11	3	4	4	0
Lead	0.05	11	4	5	2	0
Benzene	0.005	2	2	0	0	0
Trichloroethylene	0.005	2	2	0	0	0
Perchloroethylene	0.005	2	2	0	0	0
Trichloroethane	0.2	2	2	0	0	0
Tetrachloroethanes	0.001	2	2	0	0	0
Benzo(b)fluoranthene	3.0E-06	3	3	0	0	0
Benzo(k)fluoranthene	3.0E-06	3	3	0	0	0
Benzo(a)pyrene	3.0E-06	3	3	0	0	0
PCBs	5.0E-04	0	0	0	0	0

MARINE OIL - MARINA OIL STORAGE TANKS

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	7	7	0	0	0
Barium	1	7	7	0	0	0
Cadmium	0.01	7	0	1	6	0
Chromium	0.05	7	0	4	3	0
Lead	0.05	7	0	0	0	7
Benzene	0.005	1	1	0	0	0
Trichloroethylene	0.005	1	1	0	0	0
Perchloroethylene	0.005	1	1	0	0	0
Trichloroethane	0.2	1	1	0	0	0
Tetrachloroethanes	0.001	1	1	0	0	0
Benzo(b)fluoranthene	3.0E-06	0	0	0	0	0
Benzo(k)fluoranthene	3.0E-06	0	0	0	0	0
Benzo(a)pyrene	3.0E-06	0	0	0	0	0
PCBs	5.0E-04	0	0	0	0	0

MARINE OIL - FOREIGN CARGO SHIPS

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	8	8	0	0	0
Barium	1	7	6	1	0	0
Cadmium	0.01	8	8	0	0	0
Chromium	0.05	9	3	6	0	0
Lead	0.05	9	1	5	3	0
Benzene	0.005	0	0	0	0	0
Trichloroethylene	0.005	0	0	0	0	0
Perchloroethylene	0.005	0	0	0	0	0
Trichloroethane	0.2	0	0	0	0	0
Tetrachloroethanes	0.001	0	0	0	0	0
Benzo(b)fluoranthene	3.0E-06	0	0	0	0	0
Benzo(k)fluoranthene	3.0E-06	0	0	0	0	0
Benzo(a)pyrene	3.0E-06	0	0	0	0	0
PCBs	5.0E-04	0	0	0	0	0

TABLE III.C.4 - USED OIL CONSTITUENT CONCENTRATIONS AND HBNS (continued)

MISCELLANEOUS MARINE OILS

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	3	3	0	0	0
Barium	1	3	3	0	0	0
Cadmium	0.01	3	2	0	1	0
Chromium	0.05	3	2	1	0	0
Lead	0.05	3	0	2	0	1
Benzene	0.005	0	1	0	0	0
Trichloroethylene	0.005	0	1	0	0	0
Perchloroethylene	0.005	0	1	0	0	0
Trichloroethane	0.2	0	1	0	0	0
Tetrachloroethanes	0.001	0	1	0	0	0
Benzo(b)fluoranthene	3.0E-06	0	0	0	0	0
Benzo(k)fluoranthene	3.0E-06	0	0	0	0	0
Benzo(a)pyrene	3.0E-06	0	0	0	0	0
PCBs	5.0E-04	0	0	0	0	0

HYDRAULIC OILS/FLUIDS

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	12	11	1	0	0
Barium	1	12	10	1	1	0
Cadmium	0.01	12	6	0	5	1
Chromium	0.05	12	9	3	0	0
Lead	0.05	12	5	5	2	0
Benzene	0.005	6	5	1	0	0
Trichloroethylene	0.005	6	6	0	0	0
Perchloroethylene	0.005	6	6	0	0	0
Trichloroethane	0.2	6	6	0	0	0
Tetrachloroethanes	0.001	6	6	0	0	0
Benzo(b)fluoranthene	3.0E-06	3	3	0	0	0
Benzo(k)fluoranthene	3.0E-06	3	3	0	0	0
Benzo(a)pyrene	3.0E-06	3	3	0	0	0
PCBs	5.0E-04	2	2	0	0	0

METALWORKING OILS/FLUIDS

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	14	11	3	0	0
Barium	1	14	14	0	0	0
Cadmium	0.01	14	9	0	5	0
Chromium	0.05	14	11	2	1	0
Lead	0.05	14	5	5	3	1
Benzene	0.005	7	5	0	0	0
Trichloroethylene	0.005	7	5	0	0	0
Perchloroethylene	0.005	7	5	0	0	0
Trichloroethane	0.2	7	5	0	0	0
Tetrachloroethanes	0.001	7	5	0	0	0
Benzo(b)fluoranthene	3.0E-06	3	2	0	0	1
Benzo(k)fluoranthene	3.0E-06	3	3	0	0	0
Benzo(a)pyrene	3.0E-06	3	3	0	0	0
PCBs	5.0E-04	3	3	0	0	0

TABLE III.C.4 - USED OIL CONSTITUENT CONCENTRATIONS AND HBNS (continued)

NATURAL GAS–FIRED ENGINE OIL

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	15	15	0	0	0
Barium	1	15	11	4	0	0
Cadmium	0.01	15	14	0	1	0
Chromium	0.05	15	15	0	0	0
Lead	0.05	15	7	4	4	0
Benzene	0.005	7	5	0	0	2
Trichloroethylene	0.005	7	7	0	0	0
Perchloroethylene	0.005	7	7	0	0	0
Trichloroethane	0.2	7	7	0	0	0
Tetrachloroethanes	0.001	7	7	0	0	0
Benzo(b)fluoranthene	3.0E–06	3	3	0	0	0
Benzo(k)fluoranthene	3.0E–06	3	3	0	0	0
Benzo(a)pyrene	3.0E–06	3	3	0	0	0
PCBs	5.0E–04	3	3	0	0	0

AIRCRAFT ENGINE OIL

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	10	9	1	0	0
Barium	1	10	10	0	0	0
Cadmium	0.01	10	5	0	4	1
Chromium	0.05	10	5	2	3	0
Lead	0.05	10	5	0	0	5
Benzene	0.005	4	3	1	0	0
Trichloroethylene	0.005	4	4	0	0	0
Perchloroethylene	0.005	4	4	0	0	0
Trichloroethane	0.2	4	4	0	0	0
Tetrachloroethanes	0.001	4	4	0	0	0
Benzo(b)fluoranthene	3.0E–06	1	1	0	0	0
Benzo(k)fluoranthene	3.0E–06	1	1	0	0	0
Benzo(a)pyrene	3.0E–06	1	1	0	0	0
PCBs	5.0E–04	0	0	0	0	0

AIRCRAFT OIL/FLUIDS – STORAGE TANKS

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	7	6	1	0	0
Barium	1	7	6	1	0	0
Cadmium	0.01	7	1	1	4	1
Chromium	0.05	7	3	1	3	0
Lead	0.05	7	1	0	1	5
Benzene	0.005	3	2	1	0	0
Trichloroethylene	0.005	3	3	0	0	0
Perchloroethylene	0.005	3	3	0	0	0
Trichloroethane	0.2	3	1	0	0	2
Tetrachloroethanes	0.001	3	3	0	0	0
Benzo(b)fluoranthene	3.0E–06	1	1	0	0	0
Benzo(k)fluoranthene	3.0E–06	1	1	0	0	0
Benzo(a)pyrene	3.0E–06	1	1	0	0	0
PCBs	5.0E–04	0	0	0	0	0

TABLE III.C.4 - USED OIL CONSTITUENT CONCENTRATIONS AND HBNS (continued)

ELECTRICAL INSULATING OIL

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	11	11	0	0	0
Barium	1	11	11	0	0	0
Cadmium	0.01	11	11	0	0	0
Chromium	0.05	11	11	0	0	0
Lead	0.05	11	10	1	0	0
Benzene	0.005	7	7	0	0	0
Trichloroethylene	0.005	7	7	0	0	0
Perchloroethylene	0.005	7	7	0	0	0
Trichloroethane	0.2	7	7	0	0	0
Tetrachloroethanes	0.001	7	7	0	0	0
Benzo(b)fluoranthene	3.0E-08	3	3	0	0	0
Benzo(k)fluoranthene	3.0E-08	3	3	0	0	0
Benzo(a)pyrene	3.0E-08	3	3	0	0	0
PCBs	5.0E-04	2	1	0	0	1

VIRGIN OIL SAMPLES

Constituent	Health Based Number (mg/L)	Total Number Samples Analyzed	Number Samples Constituent Not Detected	Number Samples With Positive Constituent Detection		
				#≤100x HBN	100x<#≤1,000x HBN	#>1,000x HBN
Arsenic	0.5	6	6	0	0	0
Barium	1	6	6	0	0	0
Cadmium	0.01	6	4	2	0	0
Chromium	0.05	6	6	0	0	0
Lead	0.05	6	5	1	0	0
Benzene	0.005	2	2	0	0	0
Trichloroethylene	0.005	2	2	0	0	0
Perchloroethylene	0.005	2	2	0	0	0
Trichloroethane	0.2	2	2	0	0	0
Tetrachloroethanes	0.001	2	2	0	0	0
Benzo(b)fluoranthene	3.0E-06	5	5	0	0	0
Benzo(k)fluoranthene	3.0E-06	5	5	0	0	0
Benzo(a)pyrene	3.0E-06	5	5	0	0	0
PCBs	5.0E-04	0	0	0	0	0

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Information regarding the concentration of the appendix VIII constituents in the waste is available from the extensive sampling and analysis effort undertaken by the Agency and is presented in Table III.C.3. To assess the threat posed by each of the categories of used oil, the Agency compared the compositional concentration of each constituent of concern to its corresponding health-based number.

Historically, EPA has evaluated toxic constituent concentrations in relation to the corresponding HBN. In making a determination to list a particular waste, EPA examines concentrations for the constituents of concern, assuming that some dilution and attenuation (D/A) will occur. EPA generally relies on D/A factors that encompass a broad range of possibilities, ranging from 100 to 10,000, which correspond to concentrations for each constituent of concern in the environment that are 1 percent and 0.01 percent, respectively, of their concentrations in the waste. In the past, EPA has determined that compositional concentrations exceeding 1,000 times HBN and leachate concentrations exceeding 100 times HBN are typically hazardous and pose a risk to human health or the environment. The reason for this differentiation lies in the fact that leachate concentrations already simulate some degree of environmental effect on the waste, while compositional concentrations do not.

EPA has evaluated compositional concentrations of the constituents of concern in used oils based upon the recently collected analytical data to determine (1) the number of samples in which the constituent was not detected or for which the value was below detection limits; (2) the number of samples in which the reported concentration was less than 100 times greater than the HBN; (3) the number of samples in which the reported concentration was between 100 and 1,000 times greater than the HBN; and (4) the number of samples in which the reported concentration was greater than or equal to 1,000 times the HBN. These results are shown in Table III.C.4.

The data indicate that automotive crankcase oils generally contain high levels of polynuclear aromatic hydrocarbons (PAHs). Of the samples analyzed, 100 percent exceeded the health-based number for benzo(b)fluoranthene and benzo(a)pyrene by a factor of greater than 1,000. No other category of "as generated" used oil exhibited such consistently high levels of PAHs. Data for automotive oil/fluid from storage tanks correlate positively to the "as generated" data for PAHs in that similar concentrations of PAHs were detected in as generated automotive samples and in automotive storage tank samples. Like the data for as generated automotive crankcase samples, all automotive used oil storage tanks samples (100 percent) exceeded the health-based number for all PAHs by a factor of more than 1,000.

The constituent data also indicate that aircraft engine oils exceeded the MCL for lead by a factor of greater than 1,000 in 50 percent of the ten samples. In fact, those five samples contained concentrations of lead that were greater than 10,000 times the MCL. These five samples were obtained from piston-engine aircraft. Samples from turbo-prop aircraft do not exhibit such high concentrations of lead. As with automotive crankcase oil, samples from aircraft oil/fluid storage tanks show lead levels that consistently exceed the MCL by a factor of greater than 1,000. All marine oil storage tank samples exceed the MCL for lead by a factor of greater than 1,000.

b. *Toxicity characteristic analysis.* As discussed previously, the Agency also believes that it is useful to evaluate the extent to which used oil exhibits the toxicity characteristic. To accomplish this evaluation, EPA determined the TCLP final analyte concentrations from the constituent concentrations found in the liquid phase of the sample after filtration. An assumption was made that the concentrations of contaminants was much higher in the filtrates than in the leachates. This assumption was based on analytical data that demonstrated that the two phases, filtrate and leachate, are different and, further, that the concentration of contaminants in filtrates was higher than in leachates. The concentration values were evaluated to determine the percent of used oil in each category that exhibits the TC.

Based on the Agency's evaluation of the used oil analytical data and the assumption that sample data are representative of similar used oils nationwide, it was determined that certain types of used oils exhibit the toxicity characteristic and contain other hazardous substances that are of regulatory concern to EPA. Table III.C.5 presents the percent of samples in each used oil category that exhibited the TC.

TABLE III.C.5.—PERCENT OF USED OILS EXHIBITING TC

Used oil category	No. of samples evaluated	Percent of samples exhibiting TC [1]	Confidence limits [2]	
			Lower confidence limit [3] (percent)	Upper confidence limit [3] (percent)
Automotive Crankcase Oil—Unleaded Gasoline Engines	12	75	50	90
Automotive Oils/Fluids—Storage Tank Samples	8	100	75	100
Diesel Trucks and Buses—Crackcase Oil	10	10	1	35
Diesel Trucks/Buses—Storage Tank Samples	10	70	35	88
Diesel Heavy Equipment—Crankcase Oil	10	0	0	22
Diesel Railroad Engine—Crankcase Oil	10	20	6	50
Marine Oil—Marina Used Oil Storage Tank Samples [4]	7	86	50	99
Hydraulic Oils/Fluids	11	45	20	70
Metalworking Oils/Fluids	12	17	5	40
Electrical Insulating Oil	10	0	0	22
Natural Gas-Fired Engine Oil	15	20	4	33
Aircraft Engine Oil:				
—Turbojet aircraft	5	0	0	38
—Piston engine aircraft	4	100	50	100
Aircraft Oils/Fluids—Storage Tank Samples	7	86	50	99

[1] Based on estimated final analyte concentrations of one or more TC constituents. Majority of samples exhibited TC for lead; however, some exceeded TC levels for arsenic, cadmium, chromium, or organic constituents.

[2] Confidence limits for a proportion at the 90th percentile.

[3] From Table A-22, Experimental Statistics, National Bureau of Standards Handbook 91, 1963.

[4] Samples exhibited TC for lead only. Supplemental point-of-generation data indicate crankcase oils from gasoline powered marine engines are TC hazardous for lead.

Results of sample surveys in which a small number of samples are collected are subject to some uncertainty; therefore, the upper and lower confidence limits were determined and reported. The upper and lower confidence levels are shown in Table III.C.5 and reflect, respectively, the highest and lowest percentage of samples that could be expected to exhibit the TC. Confidence limits such as these provide a numerical basis for determining how often a given population of used oil will emulate the sample population. At the 90th percentile, it can be stated that for 9 of 10 sample collection/analysis events, the estimated percent of samples exhibiting the TC (*i.e.*, 90 percent) will fall somewhere within the upper and lower limits.

While EPA has considered the upper and lower boundaries, the Agency believes that the percent of samples exhibiting the TC shown in the table is the best approximation of the percentage of used oil in each category that can be expected to exhibit the TC. The Agency is not basing its determinations on the best approximation alone but EPA conducted statistical analysis of the concentration data and supported this conclusion (see statistical analysis procedure discussed in detail in the background document "Used Oil Characterization Sampling and Analysis Program"). The Agency is presenting confidence limits to show the variability in the degrees of precision of the percentage estimates and to provide the public with the broad data available on the statistical analyses.

Despite the phase-down of lead additives in gasoline, automotive crankcase oils from unleaded gasoline engines exhibited the TC in 75% of the samples, primarily for lead. The Agency is requesting comment on the source or sources of lead in automotive crankcase used oil, which may include gasoline blow-by, bearings and parts, or leaking seals. The Agency is interested not only in data on the sources of lead in auto crankcase used oil, but also in possible ways to eliminate or reduce the lead. All samples from used oil storage tanks at automotive maintenance facilities (100 percent) exhibited the TC for lead, as well as other constituents such as solvents. Although difficulties exist in analyzing the samples for TC organics, it is likely that automotive crankcase oils and oil from used oil storage tanks will exhibit the TC for benzene, since the compositional data indicate the presence of benzene in elevated concentrations. The data also suggest that used oils from gasoline-powered marine craft exhibit the TC for lead and piston-engine aircraft exhibit the TC for cadmium and lead, respectively.

The EPA data suggest that used oils from turbojet/turbofan-type aircraft do not exhibit the TC (0 percent) while used oils from piston-engine aircraft do exhibit the TC, primarily for lead. Approximately 86% of oil from used oil storage tanks at aircraft maintenance facilities exhibit the TC for lead in very high concentrations and 86 percent of samples from marine oil storage tanks were TC hazardous. In part, the lead content in marine oil storage tanks may be attributable to mixing of otherwise non-hazardous marine oils with lead-contaminated used oils from gasoline-powered marine engines.

Of the remaining categories sampled, no electrical insulating oils exhibited the TC (0%) and only 17 percent of the metalworking oils exhibited the TC. Diesel engine crankcase oils from trucks, buses, heavy equipment, and railroad engines were not generally found to be TC hazardous for metals. However, adulteration of used oil with other materials or more contaminated oils was found by comparing samples taken at the point of generation to samples taken from on-site used oil storage tanks. Approximately 70% of used oils from diesel storage tanks exhibited the TC. This may be attributable to mixing of used diesel oil with lubricant cleaners in storage tanks.

D. Used Oil Stratification Based on Hazardousness and Listing Options

On November 29, 1985 (50 FR 9258), EPA proposed to list all used oils as hazardous waste, including petroleum-derived and synthetic oils, based on the presence of toxic constituents at levels of concern from adulteration during and subsequent to use. This proposal and the comments received in response are still under consideration by the Agency. The Agency continues to be concerned about the adulteration of used oil because the resulting used oil/hazardous waste mixtures may present a potential environmental and human health threat. It is appropriate to consider adulteration in deciding whether and how to regulate used oil. It may not be necessary to list used oil as hazardous waste to control adulteration. Further, an across the board listing would penalize generators of "clean" used oils who are careful not to mix other materials into the oil. The Agency has, therefore, developed alternatives to an across the board listing of all used oil based on the adulteration concern.

Given the compositional and TC data for used oil provided by the 1989 sampling and analysis effort, the Agency has revised the tentative conclusions it reached based on the data collected for the 1985 proposal. EPA now recognizes the variability of constituent concentrations between different used oil streams and now believes that it may not be appropriate to list all used oils as a hazardous waste.

As discussed in the previous section, the results of TCLP analyses of used oil indicate that some categories of used oil (*i.e.*, automobile crankcase oil, piston-engine aircraft oil, and gasoline-powered marine craft oil) frequently exhibit the TC. The remaining categories of used oil occasionally exhibit the TC; however, they do not consistently fail the test.

EPA recognizes that those used oils that fail the TC clearly are hazardous, but also acknowledges that those used oils that do not exhibit the TC may be appropriate for listing.

The Agency closely evaluated the results of the compositional analyses of the various used oil categories in addition to TC analyses to ensure that any listing decision for the categories met the criteria for listing contained in 40 CFR 261.11. As shown earlier, compositional data, when compared to the corresponding health-based numbers, correlates very closely to the TC findings. That is, in samples where the constituent concentration exceeds the health based number by a factor of 1,000 or more, the sample generally exhibits the TC for that constituent. In addition to the TC constituents, automotive crankcase oils exceeded the health-based numbers for PAHs by a factor of more than 1,000, and piston-engine aircraft exceeded the health-based numbers for lead by a factor of greater than 10,000. In used oil categories that did not exhibit the TC, PAH analytes generally were not detected. This finding leads the Agency to tentatively conclude that used oil may be divided into segments for listing consideration. This is discussed next.

1. Listing Options Overview

Table III.D.1 presents three options for listing or identifying used oil as hazardous. First, EPA may continue to rely on the 1985 proposal to list all used oil based on adulteration concerns. The

November 1985 proposal to list used oil as hazardous has the advantage of clearly defining the scope of the listing (*i.e.*, all used oils generated in the United States). Further, the 1985 proposal would capture used oils that are adulterated subsequent to use and would ensure regulation of used oils collected in storage tanks that become contaminated with solvents and other fluids. However, the 1985 proposal to list all used oil as hazardous may capture within the scope of the listing used oils that are not hazardous at the point of the generation and that may or may not be adulterated subsequent to use.

TABLE III.D.1.—LISTING OPTIONS

Option One: Adulteration Approach.	List all used oils as proposed on November 29, 1985 based on the potential for adulteration and environmental damage when mismanaged.
Option Two: As-Generated Approach.	List used oils from gasoline-powered engines (*i.e.*, automotive crankcase, gasoline powered marine craft, and piston-engine aircraft) based on the presence of constituents of concern at >1,000 times the health based level and sampling data that show these used oils exhibit the TC in >50% of samples. Other used oils and mixtures remain subject to hazard determination for all characteristics and rebuttable presumption and mixture rule for hazardous wastes.
Option Three: No list; Rely on Management Standards.	List no used oils and rely on section 3014 management standards to regulate used oils and mixtures.

Alternately, EPA may decide to make a listing determination only on those categories of used oil that are typically and frequently hazardous based on their toxicity at the point of generation, and rely on other mechanisms such as the hazardous waste characteristics, the mixture rule, the rebuttable presumption, and the used oil management standards (all of which are discussed in detail in today's proposal) to regulate used oils that are not listed. Listing used oils at the point of generation may capture only those used oil categories that are typically and frequently hazardous. It would not list those that are typically and frequently non-hazardous, but non-listed used oils would continue to remain subject to the hazardous waste characteristics (*e.g.*, ignitability, toxicity). Further, under the mixture rule, any mixture of a listed hazardous waste (including listed used oil) and a solid waste becomes subject to regulation as a listed hazardous waste (unless specifically exempted from the rule). Thus, mixtures of non-listed used oil and hazardous waste would be regulated as hazardous waste. Also, the rebuttable presumption, as explained in today's proposal, would regulate as hazardous any used oil containing 1,000 ppm or more total halogens, based on the presumption that the oil has been mixed with a listed halogenated solvent. While generators of such mixtures may rebut the presumption by showing that the source of the halogens is not a listed solvent, the Agency believes that used oil that is adulterated with solvents subsequent to use will be captured by the rebuttable presumption. Finally, the used oil management standards contained in this and previous proposals will encourage good management practices for used oil, which the Agency believes will result in less adulteration of used oil subsequent to use.

2. Analysis of New Options

Option One was fully discussed in the 1985 proposal and is not discussed here. Two alternatives are discussed. Commenters should address these new options at this time.

Under Option Two, categories of used oil that were found to be "typically and frequently" hazardous would be listed as hazardous waste because of the presence of lead, PAHs, and other toxic constituents including arsenic, cadmium, chromium, and benzene (see § 261.11(a)(3) and (b) of the Agency's listing criteria). To define "typically and frequently," the Agency is proposing that when 50 percent of more of the samples in a used oil category exceed the levels of concern, the used oil category is deemed to be "typically and frequently" hazardous. Under Option Two, EPA is considering both TCLP data and compositional data in determining those "as generated" categories of used oil that are "typically and frequently" hazardous. Under this option, if greater than 50 percent of the samples in a given used oil category were found to exhibit the TC and, based on compositional analysis, exceed the health-based number for TC constituents or PAHs by a factor of greater than 1,000, the used oil category is deemed to be "typically and frequently" hazardous. The Agency requests comment on the 50 percent cutoff for determining if a waste is "typically and frequently" hazardous.

Under this approach, "used oil from gasoline powered engines", which includes automotive crankcase, gasoline powered marine engine oils, and piston-engine aircraft oils may be listed as hazardous waste. Compositional data for these categories indicate they are high in PAHs. Furthermore, analytical data from 17 samples of these kinds of engine oils indicate that more than 75 percent of the samples exhibit the toxicity characteristic, primarily for lead. Table III.C.6 identifies the proposed hazardous waste code and waste description.

TABLE III.C.6.—USED OILS PROPOSED FOR LISTING

Waste description	Proposed hazardous waste code
Used oils from gasoline-powered engines (*e.g.*, automotive crankcase, marine, and piston-engine aircraft).....	F030

Based on the Agency's data and data submitted by commenters, EPA believes the remaining used oils are not typically and frequently TC hazardous as generated and do not contain high levels of PAHs. Thus, under this option, they would not be listed as hazardous. Those used oils that are not listed would, of course, remain subject to the characteristics for the purpose of waste identification.

There are several advantages and disadvantages to this option. Listing of specific used oil categories may allow for easier implementation at generator sites and may increase certainty for industry and EPA as to the hazardousness of categories of used oil. Further, this option may institute a greater degree of national uniformity in the regulation of used oil. Some states currently regulate used oil as a hazardous waste, and EPA has become aware of cases where used oil has been shipped for disposal from States in which it is regulated as a hazardous waste into States in which it is not.

Further, this option may reduce the cost and time of analytical testing of the three categories of used oil listed and may present enforcement advantages in terms of testing and administration. As previously discussed, listing of the three used oil categories may capture those used oils that are typically and frequently hazardous; however, listings may capture individual used oils within each category that are not hazardous as generated (such as a single automotive used oil sample that does not contain high levels of lead or PAHs). Generators of a particular used oil that does not meet the criteria for listing as a

hazardous waste may petition for delisting under 40 CFR 260.22, but we recognize this option is not very feasible for such a large, diverse universe as used oil generators.

A third option being proposed is a "No List" option for used oils, based on the technical criteria under 40 CFR 261.11(a)(3). 40 CFR 261.11(a)(3) provides that EPA may take a number of factors into account in making a listing decision. Those factors relate to the hazards posed by the waste in question. In some circumstances, even though a waste contains toxic constituents, it may not pose a substantial hazard if improperly managed.

Section 3014(a) allows the Agency to develop management standards under subtitle C independent of whether used oil is listed or identified as a hazardous waste. Section 3014(a) does not require EPA to list or identify used oils as hazardous wastes prior to setting management standards for recycled used oil, but it does authorize EPA to develop regulatory standards for recycling of all used oils, both hazardous and nonhazardous. The management standards proposed in 1985 and today control improper disposal such as road oiling, dumping, and land disposal. (See discussion in VIII.B of this notice.) Today's notice discusses changes to the 1985 proposal, including the possibility of adopting these standards without listing used oil.

If EPA does promulgate management standards for used oil under section 3014(a), then the Agency's consideration of the listing factors in 40 CFR 261.11(a)(3) would be significantly different than if no management standards were issued. Specifically, since the management standards address the types of mismanagement that historically have occurred with used oil (*i.e.*, adulteration with hazardous waste, road oiling with contaminated used oil, spillage, etc.) the need to list used oil to attain environmental control may be greatly reduced.

Of course, EPA must consider 40 CFR 261.11(a)(3) in its entirety. The other listing factors (i–vi and viii–x) may largely be unaffected by imposition of management standards. EPA would, however, give significant weight to the factors in 40 CFR 261.11(3)(vii) and (3)(x), since in this case, the standards would not only address typical mismanagement scenarios but, equally important, would be enforceable under RCRA Section 3008, to the same extent as if the material was listed as hazardous waste. EPA believes that the types of mismanagement historically associated with used oil may no longer be plausible if subject to Federal enforcement. Furthermore, the regulation issued under RCRA 3014(a) must be "consistent with protection of human health and the environment," which parallels the standards for regulation issued under RCRA 3002–3004, to which hazardous used oil would be subject. Under this approach, EPA, considering 40 CFR 261.11(a)(3) as a whole, might find that listing used oil as hazardous waste is not necessary to achieve adequate control, given the implementation and enforcement of management standards for recycled oil, since the likelihood of mismanagement and resultant consequences greatly would be reduced. (See discussion in sections VIII and IX of the notice.) Therefore, listing or identification of used oil as hazardous waste may not be necessary to meet the statutory requirements of RCRA sections 3001 and 3014(b).

Should EPA decide to undertake this approach, used oil would not be listed as a hazardous waste, but generators of used oil would continue to be required to determine if the used oil exhibited any characteristics of hazardous waste if they chose to dispose of the used oil. Used oil that exhibits any characteristic and is recycled would be subject to the RCRA section 3014 management standards being proposed in lieu of regular subtitle C requirements, so a characteristic determination would not be required. However, used oil destined for disposal that exhibits any characteristic must be disposed in accordance with all applicable subtitle C requirements and this way generators would have to determine—as is presently the case—whether the used oil exhibits a characteristic. EPA requests comments on whether a specific test (using the TCLP) should be required every time used oil would be disposed or whether the generator knowledge would be adequate to make the disposal decision.

EPA recognizes that this option is not completely comprehensive because EPA lacks the authority to impose Federally-enforceable regulations on the disposal of nonhazardous used oil. Therefore, a suboption that the Agency is considering would combine aspects of Options Two and Three to list used gasoline-powered engine crankcase oil when disposed. This might be accomplished in one of two ways. First, the listing description in Table III.C.6 might be modified to refer only to crankcase oil "being disposed of". As an alternative, EPA might promulgate the listing description as shown in Table III.C.6, but would then exclude recycled oil from the definition of hazardous waste in 40 CFR 261.4(b). As discussed below in this notice, the Agency is considering a presumption that used oil is to be recycled, so the listing would only come into effect if a person took some action, *i.e.*, placing used oil is a disposal unit, indicating intent of disposal. The listing would effectively control crankcase oil disposal, since it would be in compliance with subtitle C requirements. Comments are requested on both the general "No List" options and the sub-option of listing used oil when disposed, based on the factors discussed above.

EPA requests comments on the three options presented here. EPA specifically requests comment on the advantages and disadvantages of making a listing determination for those used oils that consistently fail the TC.

EPA particularly is interested in the views of States on the critical issue of whether used oil should be listed as hazardous waste. A number of States currently list used oil as hazardous waste or special waste, while most do not. EPA is very interested in having State governments comment on whether a national listing (of some or all used oils) may help or hinder effective implementation of existing State used oil regulatory programs and State or local DIY collection programs.

Over the past 10–12 years, those States who have regulated used oil as hazardous or special wastes, those with no specific used oil regulation but certain requirements (*e.g.*, recordkeeping, invoice, notification) for used oil recycling, and those with no State used oil regulation have collectively experienced positive impacts (increased recycling) and negative impacts (greater mismanagement) from used oil regulation. EPA believes the consideration of State experience is crucial in developing a national used oil regulation. In the interim between the 1985 proposal to list all used oils as hazardous and the 1986 decision not to list used oil, the Agency contacted various States to assess their perspectives on the proposal to list all used oils and its impact on used oil handlers within the respective States. Based on State comments at the time, EPA inferred that the listing could produce negative impacts on used oil recycling and increase mismanagement. The main reason cited was the lack of the availability of enforcement funds to implement and enforce State regulation. EPA is again interested in determining the impact of listing alternatives discussed in today's notice on local used oil markets in general.

IV. Oily Wastewaters

The Agency today is proposing to amend the mixture rule to exclude those non-hazardous wastewaters, at facilities subject to Section 402 or 307(b) of the Clean Water Act [8], that are contaminated with very small quantities of listed used oil. In the November 29, 1985 rule, which proposed to list all used oil as hazardous waste, EPA considered exempting wastewaters contaminated with *de minimis* or very small quantities of used oil from the mixture rule (40 CFR 261.3) (see 50 FR 49263–49264). EPA continues to believe that the concentrations of hazardous constituents that may be present in such mixtures will be so small as to pose no significant hazard to human health and the environment. The following regulatory definition of the wastewater to be excluded from the mixture rule if mixed with *de minimis* quantities of used oil, as proposed in the November 29, 1985, has not changed and is repeated below for the convenience of the reader.

(F) Used oil caused by a de minimis loss of lubricating oil, hydraulic oil, metalworking fluids, or insulating fluid or coolant. For purposes of this paragraph, "de minimis" losses include small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or when small amounts of oil are lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases or to used oil recovered from wastewater.

The Agency recognizes that an exemption from the mixture rule will only remove from RCRA Subtitle C regulation non-hazardous wastewaters contaminated with very small, non-separable amounts of listed used oil. For example, oily wastewaters can be passed through an oil/water separator or other device to remove excess oil. Used oil that is recovered from wastewater will be subject to the section 3014 management standards for recycled oil as proposed in section IX.A.4 in today's notice. The remaining wastewater will contain minimal amounts of used oil, as described in the proposed definition. Since these mixtures present an insignificant hazard, EPA also is proposing to exempt such wastewater mixtures from RCRA section 3014 management standards.

[8] Section 402 of the Clean Water Act requires a NPDES permit for direct discharges of pollutants to waters of the U.S. Section 307(b) of the Clean Water Act requires facilities discharging to Publicly Owned Treatment Works (POTWs) to comply with pre-treatment standards.

The exemption for mixtures of used oil and non-hazardous wastewaters would not apply if the used oil is discarded as a result of abnormal manufacturing operations (*e.g.*, plant shutdowns or operation malfunctions resulting in substantial spills, leaks, or other releases). Such a mixture will be considered a used oil and would be subject to the RCRA section 3014 management standards. The exemption also would not apply to non-hazardous wastewaters contaminated with small amounts of used oil that are mixed with other hazardous waste. Such a mixture is already subject to full regulation under 40 CFR parts 262–265, and parts 268, 270, 271, and 124 via the 40 CFR 261.3 "mixture rule". This is discussed in more detail next.

The practical effect of this proposed exclusion for facilities discharging wastewaters under the Clean Water Act (CWA) will vary. If a facility discharges wastewater (including oily wastewater) to surface waters under section 402 of the CWA, such wastewaters when discharged are not solid wastes under RCRA, and are not subject to any subtitle C requirements (see 40 CFR 261.4(a)(2)). Similarly, wastewaters are generally not solid or hazardous wastes under RCRA when they are discharged through sewers to publicly owned treatment works (POTWs) under section 307(b) of the CWA (see 40 CFR 261.4(a)(1)).

Wastewaters discharged to surface waters or POTWs are considered to be solid wastes under RCRA before discharge, and are therefore, subject to the generator requirements of 40 CFR part 262 if they are listed or characteristic hazardous wastes. However, the wastewaters are not subject to the standards of 40 CFR part 264 (e.g., permitting) if they are treated in wastewater treatment tanks subject to section 402 or 307(b) (see 40 CFR part 264.1(g)(6) and 40 CFR 260.10). If wastewaters containing small amounts of used oil are exempt from the used oil mixture rule, the effect will therefore be that these facilities no longer have to comply with the generator requirements of 40 CFR part 262. In addition, facilities discharging to POTWs will no longer have to comply with the hazardous waste notification requirements of 40 CFR 403.12(p).

Facilities which discharge to surface waters or to POTWs and which employ surface impoundments rather than wastewater treatment tanks are currently subject to the standards of 40 CFR part 264 if their wastewater is hazardous. For these facilities, the effect of today's proposal would be to exempt them from these standards, the generator requirements of 40 CFR part 262, and (for facilities discharging to POTWs), the notification requirements of 40 CFR 403.12(p).

The Agency believes that these exclusions are justified because the wastewaters exempted under today's proposal pose no significant threat to human health and the environment and because they are already subject to Clean Water Act controls. EPA notes that CWA pretreatment regulations prohibit facilities from discharging petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin to POTWs in amount that will cause pass through to surface water or interfere with POTW operation (see 40 CFR 403.5(b)(6)). Similarly, oily wastewaters discharged directly to surface waters may be subject to technology-based controls under Section 402 of the CWA and must always comply with water quality standards established under the State programs.

V. Used Oil Mixtures To Be Evaluated

A. Mixtures of All Used Oils and Hazardous Waste

Mixtures of used oil and hazardous waste are classified as hazardous waste under the mixture rule of 40 CFR 261.3 and are subject to the full subtitle C regulation for hazardous waste. Under 40 CFR 266.40(c), used oil to be burned for energy recovery that contains more than 1,000 ppm of total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR part 261, subpart D. Currently, the presumption may be rebutted by showing that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in 40 CFR part 261, appendix VIII or that the constituents are only from hazardous waste generated by conditionally exempt small quantity generators subject to 40 CFR 261.5.

As proposed on November 29, 1985 as part of the used oil management standards (50 FR 49219), EPA is considering applying the "rebuttable presumption" for used oil fuels that may have been mixed with chlorinated hazardous wastes (found at 40 CFR 266.40(c)) to all used oil that is recycled, reused, or reclaimed. The only way to rebut this presumption would be to demonstrate and document that the halogenated compounds detected in the mixture are not listed solvents. Mixtures of used oil and hazardous waste, including mixtures of used oil and hazardous waste from conditionally exempt small quantity generators,

would be subject to recycling standards for hazardous waste rather than the proposed management standards for recycled used oil.

EPA is considering applying the rebuttable presumption applied when burning for energy recovery to used oils designated for recycling, disposal, or incineration. If a used oil contains more than 1,000 ppm halogens, then the used oil may be classified as a hazardous waste and be subject to all subtitle C regulations, including the land disposal restrictions, unless the presumption of mixing can be rebutted. The rationale for expanding the rebuttable presumption to all used oil that is recycled or disposed is based on EPA's finding that high halogen content indicates that hazardous waste mixing has probably occurred. (EPA discussed this rationale in the November 29, 1985 proposal (see 50 FR 49220) as well as the final burning and blending regulation at 50 FR 49176.) Therefore, there is no reason to limit the application of the rebuttable presumption only to used oils that are burned for energy recovery since the likelihood that mixing has occurred appears to be unrelated to the ultimate disposition of used oil. The Agency solicits comments on the expansion of the rebuttable presumption.

B. Mixtures of Listed Used Oil and Other Materials

1. Applicability to Listed and Characteristic Used Oils

EPA wishes to clarify for the regulated community the applicability of the mixture rule of 40 CFR 261.3 to used oil. EPA is not opening the mixture rule for comments, but is providing the following discussion for information purposes only. The mixture rule applies only to mixtures of listed hazardous waste and solid waste; that is, by virtue of mixing a listed hazardous waste with a solid waste, the solid waste automatically becomes a listed hazardous waste. Wastes that are characteristically hazardous (or listed solely because they exhibit one of the characteristics) are considered hazardous until they no longer exhibit any hazardous characteristics. This distinction becomes important when addressing used oil mixtures, some of which may contain a used oil proposed for listing in today's notice and some of which may contain non-listed used oils that exhibit one of the characteristics. Because of the regulatory scheme proposed today (*i.e.* some oils may be listed), some used oil mixtures destined for disposal may be subject to regulation under hazardous waste regulations because they contain used oil that is listed as a hazardous waste or because the mixture, though not containing a listed used oil, may itself exhibit a hazardous waste characteristic. By contrast, some mixtures destined for disposal may be subject to Subtitle D regulation because they contain nonhazardous used oil.

2. Applicability of the Mixture Rule to Specific Solid Wastes

In the November 29, 1985 proposal to list used oils as hazardous waste, the Agency requested comments on mixtures of used oil and industrial wipers [9] that are contaminated with small amounts of used oil. Additionally, on March 10, 1986 (51 FR 8206), the Agency published a request for comments on a proposal to amend the mixture rule to exclude sorptive minerals [10] that are placed on the floors of industrial establishments primarily to clean up spills of used oil resulting from incidental or routine drips, sprays, or seepages. Commenters submitted analytical data indicating that mixtures did not exhibit a hazardous characteristic. The Agency is not requesting additional comments on previously proposed exclusions, which are still under consideration, but welcomes comment on the commenter-submitted data as well as the issues regarding industrial wipers and sorptive minerals discussed below.

a. *Industrial wipers:* In the November 1985 proposal to list used oil as hazardous waste, EPA proposed an exemption from the mixture rule for industrial wipers, partly in response to a petition submitted by the Kimberly-Clark Corporation. Based on the comments received in response to that notice, EPA is considering promulgating this exemption, or a similar exemption in 40 CFR 261.4(b), with the stipulation that all free-flowing used oil has been removed from the industrial wiper (*i.e.*, by draining, squeezing, or other removal technique) to ensure that the amount of used oil disposed with the wiper is minimized. EPA believes that free-flowing used oil is removable and recyclable and would be covered under RCRA section 3014 used oil generator standards discussed in today's notice. (See discussion on recycling of used oil from used oil-contaminated absorbent materials in section IX.A.2.) EPA requests comment on using either a *de minimis* cutoff, as proposed in 1985, or the "one drop" approach, as discussed in section V.D. of today's notice, for determining whether used oil contaminated solid waste or used oil containers containing free-flowing used oil. From an enforcement point of view, the "one-drop" approach is preferred, since it does not require extensive quantitative testing. EPA believes that wipers, in filters, or sorptive materials containing insignificant quantities of oil is not likely to exhibit the characteristic of toxicity and could be regarded as non-hazardous solid waste. EPA reqests comment on whether a *de minimis* quantity cutoff that could be used to determine the presence or absence of free-flowing oil in mixtures of used oil and solid waste or used oil containers (e.g., used oil filters). EPA will consider new comments submitted with respect to the 1985 proposed *de minimis* levels signifying a concentration cutoff.

EPA is proposing to conditionally grant an exemption to industrial wipers contaminated with used oil and discussed in the petition submitted by Kimberly-Clark and two other similar petitions submitted by the Scott Paper Company and the Alliance of Textile Care Associations.

A wiper not containing free-flowing used oil would not be considered a hazardous waste under this proposal, since it would contain insignificant quantities of used oil. EPA proposes to classify the act of removing used oil from the wiper for recycling as a recycling method rather than a regulated RCRA waste treatment process. EPA believes that processes (e.g., draining, squeezing, crushing, chopping, etc.) used to remove free-flowing used oil from used oil contaminated solid wastes are within the scope of what may be regulated under section 3014, but we are not certain if specific standards are necessary to protect human health and the environment from these activities. Therefore, EPA solicits comments on whether the act of removing free-flowing used oil from an industrial wiper should be regulated under section 3014 management standards. Only by using one of these methods one can remove free-flowing used oil from mixtures. Comments are requested on risks that these activities may pose, and controls that might be applied.

A wiper containing free-flowing used oil, and the used oil separated, however, would be subject to RCRA section 3014 management standards for generators in the majority of cases, and those for recyclers in certain other cases (*e.g.*, laundry services; brokers and recyclers involved in collecting intact used oil filters, industrial wipers, and sorbent materials; and product manufacturers.) As mentioned above, EPA does not

[9] The term "industrial wipers" includes shop towels, rags, and disposable wipers.

[10] The term "sorptive minerals" includes absorbent clay or absorbent diatomaceous earth.

propose to regulate the used oil removal process itself, but does propose to require clean-up of any spills that occur during draining or collecting of used oil. The primary reason is that a possibility exists for used oil drips, releases, and/or spills while the free-flowing oil is removed (generated) and collected. By this Agency's action, such mishaps would be minimized and associated cleanups would be undertaken. Used oil removed from a solid waste must be collected into a unit (e.g., container or tank) regulated under section 3014. If the used oil is separated from wastewater, the used oil must be directed to a unit regulated under section 3014. This approach would exclude only the physical act of used oil removal.

Generators who failed to remove non-free flowing used oil from an industrial wiper may be required to dispose of the wiper as hazardous waste, if the used oil in the wiper were listed or if the wiper exhibited a hazardous characteristic. If recycled, the undrained wiper and oil may be subject to the section 3014 standards prior to removal of the oil and any used oil removed from an industrial wiper would be subject to any listings, characteristic determinations, or RCRA section 3014 management standards that may otherwise apply to used oil. While the drained wiper is no longer subject to the section 3014 standards, the removed oil would continue to be subject to section 3014 for recycling.

b. *Sorptive Minerals:* In comments submitted relative to the November 1985 proposal, the Sorptive Minerals Institute (SMI) provided information to support their contention that sorptive minerals (*i.e.*, absorbent materials such as clays and diatomaceous earths) do not release hazardous constituents under pressure and that significant quantities of oil or hazardous constituents do not leach out of sorptive minerals. This is important in the determination as to whether mixtures of used oil and sorptive materials may be regulated under the "mixture rule" (40 CFR 261.3), if any used oils are listed. Results of SMI's study (a copy of which is in the docket for today's notice), using EPA's Liquid Release Test, showed that the typical sorptive material could hold more than 60 percent of its weight in oil, even at high pressures. To test the assumption that sorptive materials do not leach constituents of concern, SMI allowed several sorptive minerals to absorb a pooled used motor oil sample. The sample contained high levels of TC constituents. Testing using the TCLP showed that the constituents of concern did not leach when exposed to prolonged TCLP extraction, even at high loading levels; thus, these mixtures are unlikely to pose a hazard when disposed. Based on the SMI data, EPA is proposing an exemption for sorptive minerals from the definition of hazardous waste in 40 CFR 261.4(b).

In order to provide a means for generators to qualify for the exemption, the Agency proposes that generators test sorptive minerals used to clean up oil spills by using EPA's Liquid Release Test (SW–846 proposed Method 9096) (55 FR 22543, June 1, 1990) to determine the minerals' ability to desorb used oils. The Liquid Release Test is designed to determine whether or not liquids will be released from sorbents when they are subjected to overburden pressures in a landfill.

Finally, the exemption is based on the premise that the sorptive minerals may be used, in appropriate amounts, only when spills or leaks occur, and that excess used oil may be removed from the sorptive mineral through pressing or squeezing. If the used oil so removed is recycled, these activities would not be subject to RCRA regulations for hazardous waste treatment but would be considered as used oil recycling activities. As with industrial wipers, EPA proposes not to regulate the removal of free-flowing used oil from the sorptive materials. However, any used oil so removed may be subject to the RCRA section 3014 management standards, listings, or characteristic determinations as appropriate. Any use of sorptive materials (or other materials) simply to dilute used oil prior to disposal may be considered treatment, potentially subject to hazardous waste regulation and permitting.

C. Oil Filters

Under current RCRA subtitle C regulations, if a generator is sending a used oil filter for disposal, the generator is required to determine whether the used oil filter is a hazardous waste. This can be accomplished either by use of the generator's knowledge of the waste or process that generated the waste or by testing. In the case of the TC, testing requires running the TCLP. EPA guidance on this issue has stated that the TCLP can be performed on oil filters by crushing, grinding, or cutting the filter and its contents until the pieces are smaller than one centimeter and will pass through a 9.5 mm standard sieve. If the oil filter exhibits the TC it is a hazardous waste subject to RCRA subtitle C regulations.

However, certain recycling activities generally are exempt from subtitle C regulation, and EPA encourages generators to recycle used oil filters. To accomplish this, generators or recycling facilities may crush, dismantle, cut open, spin, centrifuge, or drain the oil filter to remove the used oil from the filter. The following exemptions can then be applied:

- If the used oil is recycled, then the draining/crushing is considered an unregulated used oil recycling activity, not regulated treatment. (See discussion in section V.B.2.a for EPA's rationale for not subjecting draining activities to the section 3014 management standards.)
- Used oil that is recycled is exempt from subtitle C regulation under the used oil recycling exemptions in 40 CFR 261.6 (a)(2)(iii) and (a)(3)(iii), but may be subject to RCRA section 3014 management standards when promulgated.
- Crushed or drained oil filters that are recycled are exempt from Subtitle C regulation under the hazardous scrap metal exemption in 40 CFR 261.6(a)(3)(iv).

As a best operating practice, based on the information available to EPA, the Agency recommends that the generator or recycling facility both drain and crush used oil filters to remove as much of the oil as possible.

The Iowa Waste Reduction Center at the University of Northern Iowa conducted a study of over 1,200 used automotive oil filters to determine methods to reduce the potential environmental damage from the filters. The Iowa study, which is included in the docket for today's notice, found that the environmental impact could be significantly reduced through draining used oil filters to remove the free-flowing used oil, which removed approximately one-half of the used oil. The amount of used oil recovered through draining was dependent upon the drainage time, ranging from 44 percent in 4 hours to 55 percent in 12 hours. The study further found that draining followed by compression in a hydraulic press removed 88 percent of the residual oil, with 12 percent (one ounce) of used oil remaining in the filter material.

Based on the results of the Iowa study, it appears that insignificant amounts of free-flowing used oil remain in filters after crushing; therefore, EPA is proposing an exclusion for used oil filters that have been drained and crushed from regulation as hazardous waste under 40 CFR 261.4(b), which defines those solid wastes that are not hazardous wastes. Such an exclusion would allow crushed and drained oil filters to be managed as solid waste

under RCRA subtitle D [11] by exempting them from any listings or characteristics of hazardous waste, including the TC. Oil drained from the filter would still be subject to any listings, characteristic determinations, or RCRA section 3014 management standards as otherwise applicable. (Refer to section IX.A.5 for similar discussion as Part of Phase I used oil management standards.) EPA specifically requests comment on the Iowa study and on what parameters, if any, may be set in determining what constitutes "crushing." EPA also requests comment and supporting analytical data on other methods that may be used to remove free-flowing used oil from spent oil filters.

D. Mixtures of Small Quantities of Listed Used Oil and Solid Waste

If any used oils are listed, the strict application of the mixture rule to mixtures of such oil with other materials can result in the classification of many materials as listed hazardous waste. As discussed above, EPA is considering specific exemptions for industrial wipers, sorptive minerals, and oil filters that have been drained of free-flowing used oil. There are a number of other such materials. The Agency believes that many of these materials may not pose a threat to human health and the environment because of the very small quantities of used oil involved. Because a quantitative limit is difficult to determine, the Agency sought a qualitative limit. Such a limitation could be qualitatively assessed by determining whether or not free flowing used oil is present in the mixture. If one drop of listed used oil is capable of flowing from the mixture, then the waste may be considered hazardous.

If promulgated, the "one-drop" philosophy may allow the disposal in subtitle D facilities of solid nonhazardous waste that does not contain free flowing used oil. Under this exemption, generators could drain scrap metal, contaminated soil, or other nonhazardous wastes of all free flowing used oil and then dispose of the drained material in accordance with subtitle D. If the used oil drained from the scrap metal is to be recycled, these activities would not be subject to RCRA regulations for hazardous waste treatment (see 40 CFR 261.6 (a)(2)(iii) and (a)(3)(iii)) or to the RCRA section 3014 management standards. (See discussion in section V.B.2.a for EPA's rationale for not subjecting draining activities to the section 3014 management standards.) However, any used oil so removed may be subject to the RCRA section 3014 management standards, listings, or characteristic determinations as appropriate. EPA has already recommended this approach above, in the specific cases of industrial wipers, sorptive materials, and oil filters.

As previously discussed, the Agency proposes that generators of test sorptive minerals used to clean up oil spills test those minerals using EPA's Liquid Release Test (SW–846 proposed Method 9096) (55 FR 22543, June 1, 1990) to determine the minerals' ability to desorb used oils. The Liquid Release Test is designed to determine whether or not liquids will be released from sorbents when they are subjected to overburden pressures in a landfill. EPA also is proposing to require generators of other used oil/solid waste mixtures to test those mixtures using EPA's Paint Filter Test (SW–846 Method 9095) to determine that there is no additional free-flowing used oil in the mixture. These tests will verify that the used oil/solid waste mixture meets the "one-drop" philosophy criteria.

EPA also requests comment on other test methods that are being or could be used to determine whether all free-flowing oil has been removed from used oil laden solid waste. In addition, the Agency would like to receive data that would indicate the applicability of the Paint Filter Test or new test methods to used oil contaminated soils.

The Agency acknowledges the advantages of an easily identifiable mixture rule limit. Public comment is requested on the efficacy of the "one-drop" test in determining which mixtures of used oil and solid waste may be subject to subtitle C regulation under the mixture rule. In the alternative, EPA solicits comment on whether a quantifiable level could be established and what an appropriate level might be.

E. Mixtures of Non-listed, Hazardous Used Oil and Solid Waste

EPA is concerned that confusion may exist for the regulated community on the applicability of RCRA regulations to mixtures of non-listed used oil that exhibit one or more of the characteristics of hazardous waste and solid waste. The following discussion is provided as a guideline for the regulated community and responds to comments provided in response to the November 1985 and March 1986 notices. This discussion would only apply if EPA chooses to list some used oils.

1. Shock Absorbers

Monroe Auto Equipment submitted detailed analytical data on used oils in shock absorbers, since, in their view, shock absorbers may be considered hazardous waste if the oil contained in them were listed as hazardous. Data were submitted from an independent laboratory that analyzed several samples of used shock absorber oil for the presence of CERCLA Listed Hazardous Substances (Table 302.4 of 40 CFR 302.4) and EP Toxic metals using SW–846 methods 6240 and 8270. The analyses demonstrated that the constituents were not present at concentrations of regulatory concern. Under today's proposal, EPA is considering listing only certain categories of used oil. Oil in shock absorbers is not among those proposed for listing, but all solid waste nonetheless remains subject to a hazard determination for the characteristics of hazardous waste. Spent shock absorbers that are disposed of remain subject to a characteristic determination, and any applicable subtitle C requirements when discarded. Generally, however, the oil in spent shock absorbers is not removed. Instead, the entire unit is recycled by manufacturers. Shock absorbers sent for recycling, and oil recovered from them that is recycled, would be exempt from hazardous waste regulation, but would still be subject to section 3014 management standards (as discussed below).

2. Request for Comment on Other Mixtures

Commenters on the November, 1985 and March, 1986 **Federal Register** notices suggested that additional mixture rule exemptions be considered by the Agency prior to promulgation. In particular, commenters sought clarification on the application of the mixture rule to several other mixtures, including soil contaminated with used oil and coal "treated" with used oil.

EPA requests comments on extending the proposed one-drop philosophy to all such mixtures. We note that facilities applying or using used oil for purposes such as coal treating are subject to part 266, subpart E, and would be subject to the section 3014 management standards discussed in today's notice since they are producing used oil fuel. EPA requests comment on whether coal treated with small amounts of used oil should be exempt from regulation, and what conditions might be placed on treated coal as part of an exemption.

[11] EPA recognizes that some States are considering banning used oil filters, even when crushed and drained filters, from municipal landfills. Individual States would, of course, retain authority for such controls even with the proposed exclusion.

VI. Derived-From Rule

The existing "derived from" rule contained in 40 CFR 261.3(c)(2) provides that "any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including a precipitation run-off) is a hazardous waste." If any used oils are listed, residues from their handling and treatment may also be deemed listed hazardous waste. EPA is, as discussed below, separately proposing to list as hazardous certain waste residuals from used oil recycling and re-refining, making the derived-from rule moot for those particular residues.

A. Applicability to Used Oil Fuel Residuals

While EPA is concerned about the potential impacts of regulating burning residuals (*e.g.*, ash) as hazardous waste, the Agency notes that the derived-from rule is an important part of the current hazardous waste definition. The rule, as explained May 19, 1980 (45 FR 33096) was instituted to ensure that toxic constituents that are likely to end up in treatment residuals are properly managed.

1. Residuals From the Burning of Off-Specification and Specification Used Oil Fuel

The Agency is contemplating the applicability of the derived-from rule of 40 CFR 261.3(c)(2) to ash or pollution control device-collected residuals from burning off-specification used oil as a fuel. Under the approach for listing only certain used oil and the planned management standards for all used oils discussed today, off-specification used oil fuel may or may not contain used oils that are listed as hazardous waste. However, under the derived-from rule as currently written, any ash (or pollution control residual, such as baghouse dust), from burning listed used oil may itself be hazardous waste. Thus, a determination as to whether the derived-from rule applies to a particular residual may be difficult to make and may tend to cause generators to treat all used oil fuel residuals as derived-from wastes. The regulation of burning residuals as hazardous waste may raise the expense involved in handling used oil fuel and may likely discourage this use.

EPA requests comment on the composition of used oil fuel residuals from burning of off-specification fuel. If EPA receives sufficient data on residuals generated by the burning of used oil to show that it is not hazardous, the Agency will consider amending the derived-from rule to exclude residuals produced from the burning of used oil fuels. Under this approach, EPA may only exclude residuals from the derived-from rule. Residuals generated by the burning of off-specification used oil fuel may remain subject to the hazardous waste characteristics, and any residual exhibiting the characteristic of hazardous waste may be subject to the hazardous waste regulations. (Of course, this amendment would not affect the application of the derived-from rule to residuals from burning fuels constituting mixtures of used oil and hazardous waste regulated under 40 CFR part 266, subpart D.)

Further, EPA notes that under 40 CFR 266.43(b)(6)(i), provided all requirements are met, "specification used oil fuel is not subject to further regulation unless it is subsequently mixed with hazardous waste or unless it is mixed with used oil so that it no longer meets the specification." Thus, used oil fuel that meets the specification is not subject to the derived from rule if the appropriate notices and fuel analyses have been completed. In developing the specification for used oil fuel, EPA's rationale was to establish specification levels that limited the toxic constituents in the fuel. The specifications were set at levels that may present a lower risk in human exposure scenarios. When burned, the limited levels of toxic contaminants in specification used oil fuel either will be destroyed or remain in the burning residual. Ash and other residuals from the burning of specification used oil fuel are less likely to be contaminated. EPA is not proposing today to alter the used oil fuel specification established under 40 CFR part 266, subpart E.

2. Co-firing Specification Used Oil With Fossil Fuels or Virgin Fuel Oils

In the November 29, 1985 final rule addressing burning of waste fuel and used oil fuel in boilers and industrial furnaces, combustion residuals excluded from regulation under RCRA section 3001 were not subject to the burning rule (50 FR 49190). As stated in that rule, EPA has interpreted the RCRA section 3001 exclusions to include "fly ash, bottom ash, boiler slag and flue gas emission control waste resulting from (1) the combustion solely of coal, oil, or natural gas, (2) the combustion of any mixture of these fossil fuels, or (3) the combustion of any mixture of coal and other fuels, including hazardous wastes or used oil fuels, up to a 50 percent mixture of such other fuels." Further, residuals from the burning of these fossil fuels and mixtures, including ash and emission control dust, are not subject to the hazardous waste characteristics. Today's proposal continues those exclusions for the combustion of any mixture of coal and up to 50 percent used oil that is subject to RCRA section 3014 management standards, as proposed.

EPA has received a request for guidance on the co-firing of specification used oils with virgin oils at facilities eligible for the exclusion noted above because they burn virgin fuel oil only. EPA believes that such a practice is consistent with the intent of RCRA to encourage the recycling and reuse of used oils in an environmentally sound manner. EPA, however, notes that under the current regulatory provisions and interpretations (as discussed above), this particular mix of materials to be burned for energy recovery may cause the burning facility to lose their exclusion under EPA's interpretation of RCRA section 3001. Because of EPA's desire not to discourage legitimate and beneficial recycling practices, EPA is proposing to consider specification used oil fuel to be equivalent to a fossil fuel for the purpose of the interpretation discussed above. The effect of this interpretation is to allow the burning of a mix of virgin and specification used oil fuels in utility boilers.

B. Applicability to Used Oil Reintroduced in Petroleum Refinery Processes

The Agency is considering exempting petroleum-based products that include listed used oil as a raw material from the requirements of 40 CFR parts 262 through 266 and parts 268, 270, and 124, as well as the notification requirements of RCRA section 3010. The Agency has already excluded fuels produced from the refining of oily hazardous wastes and oils reclaimed from hazardous waste, both resulting from normal petroleum refining practices, under 40 CFR 261.6(a)(3) (v) and (vi). The Agency is today proposing to extend those exclusions to fuels produced and oil reclaimed from used oil.

It may be possible that, when incorporated into a product that will undergo extensive processing prior to being offered for sale, the constituents of concern in a used oil will be removed. The Agency is considering exempting used oil that is mixed with crude oil or other oily materials and later used as a raw material in a refining process from subtitle C requirements by adding listed used oil to the recyclable materials contained in 40 CFR 261.6(a)(3). EPA solicits data that may support such an exemption. As discussed when EPA first

promulgated the exclusions under 40 CFR 261.6(a)(3) (v) and (vi), (see 50 FR 49169, November 29, 1985), the hazardous wastes that fall under these exclusions must be introduced into the process prior to distillation or catalytic cracking. It was the Agency's determination at the time of promulgation of the exclusions that these steps were essential to the removal of contaminants in the refinery process (see 50 FR 49169, November 29, 1985). EPA today proposes that the same requirements apply to used oil; that is, used oil must be introduced into the process or pipeline prior to distillation or catalytic cracking.

Because processes that involve only cursory removal of constituents should not be excluded from the derived-from rule, the Agency requests comment on requiring introduction of used oil prior to distillation or catalytic cracking, on other refining processes that may be included in the exemption, and on defining those activities that involve only cursory removal of contaminants. Further, the Agency requests information on the efficacy of introducing used oils into the process prior to catalytic cracking.

VII. Reprocessing and Re-refining Residuals

A. Residuals as Related to Used Oil

In the 1985 proposal to list used oil as hazardous, EPA stated that used oil residues or sludges resulting from the re-refining or reprocessing of used oils may be included in the definition of used oil, even though these residuals are not specifically mentioned in the statutory definition of used oil. Over the past several years, EPA has gathered information on residuals from the re-refining and reprocessing of used oil. Between 1986 and 1988, EPA conducted three separate sampling and analysis studies to determine the composition and characterization of re-refining and reprocessing residuals. The results of these studies are summarized below.

As a result of the studies conducted, EPA has now concluded that residuals from the reprocessing and re-refining of used oil constitute a waste stream separate from used oil.[12] The residuals from reprocessing and re-refining are distinctly different from used oil in physical state, constituent concentration, and potential hazard to human health and the environment. The residuals generally contain higher levels of toxic constituents than their source oils, primarily due to concentration of contaminants in the reprocessing and re-refining process. Such concentration of contaminants, even when constituents are present at low concentration in used oil, can generate a waste more hazardous than its source. Thus, independent of whether the source oil is hazardous or nonhazardous, it is the Agency's belief that residuals from the reprocessing and re-refining of used oil are inherently hazardous.

For the reasons enumerated above, the Agency is considering promulgating separate listings for used oil residuals based on our 1985 proposal to list all used oil (and residuals) and the data presented later in this section. Further, EPA is interpreting the congressional definition of used oil as laid out in UORA and HSWA to include residuals from the reprocessing and re-refining of used oil, meaning that any residual listing would be under HSWA and, thus, would become effective in authorized and non-authorized states at the same time. EPA believes that HSWA provides the authority to EPA to consider whether to list or identify all used oils as hazardous. If EPA were to list all used oils, the residuals from the reprocessing and re-refining of used oil automatically would be HSWA-listed hazardous waste pursuant to the derived-from rule. Even if the Agency may elect to list or identify portions of the used oil universe, or not to list any used oils, EPA believes that HSWA authority extends to the residuals.

Among the used oil processing and re-refining residuals proposed to be listed as hazardous waste in this notice, distillation bottoms designated as RCRA Waste Code No. K154, may be regulated under the section 3014 management standards when recycled as feedstock to manufacture asphalt products (e.g., road paving and roofing material) rather than as a listed hazardous waste. EPA believes that distillation bottoms are not substantially different from the virgin raw material generally used to produce asphalt products (e.g., road-paving material or asphalt shingles). EPA requests comment and supporting data that may demonstrate that distillation bottoms are or are not significantly different than the virgin feedstock used in asphalt products. In 1985, EPA proposed to exempt from the hazardous waste regulations the use of used oil processing residues in asphalt products. EPA may grant such an exemption if the commenter-submitted data or EPA-collected data supports the exemption. (See discussion in IX.H. and X.C.4. for distillation bottoms management standards and cost analysis, respectively.)

B. Re-refining and Reprocessing Waste Streams

The specific waste products resulting from re-refining and reprocessing procedures are dependent upon the specific steps used by the re-refiner or reprocessor; however there are several general waste types that are generated within these industries. Unless specifically noted, these wastes can be generated at several points in the process.

Gravity and Mechanical Separation Waste Streams include filter residues, tank bottoms, and pretreatment sludges that may be generated by processes in which solids, oil, and water are separated at ambient temperature. Tank Bottoms are thick, tar-like layers that accumulate over time at the bottom of storage tanks. Centrifuge sludges are generated during centrifuge separation of used oil fractions.

Lube Polishing Media usually contains heavy metals, phenols, oil, and other compounds. Polishing media usually consists of clay compounds or activated carbon used as adsorbents to improve the color, odor, and stability of re-refined lube oils.

Distillation Bottoms constitute the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. Composition of still bottoms varies with column operation and feedstock.

Wastewater and Treatment Residues may be generated from the separation of water contamination in storage tanks, from run-off that contains oil from spills and process leakage, from process cooling water, and as a byproduct resulting from distillation procedures. Wastewater sludges may be generated as residues from the wastewater treatment procedures.

Each of these wastes has been further characterized below and additional background information is available in the docket.

C. Re-refining and Reprocessing Data Availability

Due to the distinct nature of these residuals, the Agency has undertaken specific steps to gather and develop up-to-date data that adequately characterize the wastes generated by these processes. Agency efforts continued following publication of the 1985 proposal, with independent efforts by the Office of Water (OW) and the Office of Solid Waste (OSW). Data and site-specific information were obtained from sampling activities and site visits

[12] Distillation bottoms from the re-refining and reprocessing of used oil used to produce asphalt products would be regulated under the proposed RCRA section 3014 management standards.

conducted by OSW in 1986–1987, sampling activities conducted by OW in 1986–1987, and RCRA 3007 questionnaires for the reprocessing/re-refining industry completed in 1987.

From November 1986 to January 1987, 11 facilities, including three re-refiners, six reprocessors, and two collectors, were visited by OSW to determine current waste generation practices in the industry. At four of these facilities, including one re-refiner and three reprocessors, a composite sample representing all solid wastes generated by the plant was collected and analyzed. The feedstock for the facilities comprised mixed used oil (crankcase and industrial) at two facilities, industrial oils only at one facility, and fuel oils at the remaining facility. Each of these four samples were analyzed for total constituent content and Toxicity Characteristic (TC) leachable levels of volatile organic compounds, PCBs, semivolatile organic compounds, and metals. This data can be found in the docket and is presented at this time for public comment.

Four re-refiners were visited by OW between September 1986 and January 1987. These facilities used a feedstock of mixed crankcase and industrial oils. The results of the sampling efforts, in which a total of 48 samples were collected, were published in a preliminary data summary (EPA 440/1–89/014). The data include analysis results of the following samples obtained from two reprocessing and two re-refining facilities:

Sample description	No. of samples
Gravitation and Mechanical Separation:	
Filter cake	4
Lube Polishing Media:	
Spent clay	5
Spent activated carbon	3
Distillation Bottoms:	
Still bottoms	7
Wastewater Treatment Residues:	
Process wastewater	13
Final effluent	11
DAF sludge	5

Samples were analyzed for total constituent levels of the TC metals, dioxins, and PCBs, as well as priority, conventional, and nonconventional pollutants (as defined by the Clean Water Act). RCRA 3007 questionnaires were sent to 80 facilities in the used oil reprocessing and re-refining industry in Fall 1987. Twelve facilities responding to the questionnaires provided data on six distinct waste streams. Data from 14 streams are available. In 1987, additional sampling and analysis activities were conducted at seven facilities. A total of 17 samples were collected, including seven samples of untreated process wastewater, five samples of filter solids, and one sample each of filter clay, spent catalyst, caked residue, storage tank bottoms, and wastewater treatment sludge. The used oil feedstock at these facilities was either unspecified or a mix of crankcase, lube oil, and industrial oil.

Data from all of the sampling and analysis activities as well as the RCRA 3007 questionnaire data collection activity are summarized in Table VII.C.1. While several TC organic constituents were detected, only those TC organic constituents exceeding the TC threshold are shown. In addition, the data reflected high concentrations of polynuclear aromatic hydrocarbons (PAHs) in many of the samples, particularly benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, and phenanthrene. As discussed in the background document for these wastes, PAHs may present a significant danger to human health if present in high enough quantities. In many cases, one or more of the PAHs were present at or above the quantities that may present a hazard to human health and the environment.

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TABLE VII.C.1 Used Oil Reprocessing/Re-refining Data

Constituent	Gravity/Mechanical Separations - Filter Residues			Gravity/Mechanical Separations - Tank Bottoms			Gravity/Mechanical Separations - Centrifuge Sludge			Lube Polishing - Spent Clay			Lube Polishing - Spent Catalyst and Spent Carbon		
	Number of Samples			Number of Samples			Number of Samples			Number of Samples			Number of Samples		
	Analyzed	Contaminant detected	Concentration Range (ppm)	Analyzed	Contaminant detected	Concentration Range (ppm)	Analyzed	Contaminant detected	Concentration Range (ppm)	Analyzed	Contaminant detected	Concentration Range (ppm)	Analyzed	Contaminant detected	Concentration Range (ppm)
Arsenic	11	11	0.005 - 42	9	3	0.013 - 5	10	4	5 - 150	12	8	0.4 - 24	3	1	800
Barium	11	11	0.086 - 2215	23	20	0.21 - 1300	10	9	21 - 3610	12	9	58 - 794	3	3	14 - 155
Cadmium	12	10	0.037 - 110	10	8	0.02 - 50	10	4	11 - 216	12	12	0.5 - 155	3	3	1.1 - 11
Chromium	9	9	0.094 - 235	19	17	1.2 - 735	10	8	19 - 938	12	12	3 - 746	3	3	3.5 - 170
Lead	11	11	0.29 - 71536	20	20	0.02 - 2370	11	9	1 - 11000	12	8	0.4 - 1200	3	3	6.89 - 643
Nickle	8	8	7.6 - 280	2	2	25 - 130	8	5	6 - 367	4	4	2 - 138	2	2	2.4 - 13500
Benzene	1/5	1	35	1	1	6.5	0	0	NA	1/4	1	0.812	2	2	0.42 - 317
Trichloroethylene	1/5	1	590	11/12	9	2.2 - 13090	3	2	100 - 1100	1/4	1	8.871	0/2	0	NA
Tetrachloroethylene	6	6	0.15 - 1700	15	12	70 - 1900	3	3	100 - 7000	1/4	1	2.114	0/2	0	NA

Constituent	Distillation Residues - Still Bottoms			Distillation Residues - Coked Residue			Wastewater/Treatment Sludge Process Wastewater			Wastewater/Treatment Sludge Treatment Sludge		
	Number of Samples			Number of Samples			Number of Samples			Number of Samples		
	Analyzed	Contaminant detected	Concentration Range (ppm)	Analyzed	Contaminant detected	Concentration Range (ppm)	Analyzed	Contaminant detected	Concentration Range (ppm)	Analyzed	Contaminant detected	Concentration Range (ppm)
Arsenic	11	5	1 - 5	1	1	18	25/27	15	0.0064 - 0.2	5	3	2.2 - 5.3
Barium	12	11	6 - 1400	1	1	390	29/30	18	0.041 - 14	5	5	264 - 1030
Cadmium	13	11	0.7 - 29	1	1	62	25/30	10	0.001 - 0.32	5	5	1.81 - 71
Chromium	13	12	3 - 160	1	1	510	29	17	0.004 - 2	5	5	93.9 - 2060
Lead	13	13	366 - 15000	1	1	6150	29/30	22	0.1 - 30	6	6	0.15 - 2040
Nickle	5	4	1 - 97	1	1	220	14/15	12	0.43 - 6.6	4	3	36.5 - 870
Benzene	1/4	1	239	1	1	0.054	20/24	18	0.47 - 73	3	3	2.6 - 528
Trichloroethylene	0/4	0	NA	0/1	0	NA	17 - 26	11	0.12 - 3.4	2/3	2	2.6 - 61.6
Tetrachloroethylene	0/4	0	NA	1	1	0.041	13 - 26	10	3.29	2/3	2	50.5 - 1463

Number of samples analyzed uncertain for some constituents. Number shown (e.g., x/y) shows the total known samples analyzed, either x or y.

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Data submitted by Reynolds Metals Company (see discussion in section III.C.4 of today's notice) may indicate that vacuum distillation of rolling oils used in aluminum manufacturing may not produce a hazardous sludge similar to that proposed for listing today. As discussed earlier in today's notice, the data submitted by Reynolds for the sludge was incomplete and sufficient information was not provided to enable EPA to identify the point in the process where the waste was generated. As stated previously, EPA encourages Reynolds and other commenters with similar processes to submit data on the sludges generated.

D. Listing of Residuals

While analysis of these residuals by TCLP may capture a large portion of the wastes as hazardous, the Agency views the high concentrations of lead and chromium in these waste streams, (which are 100–3,000 times the health based number) as an indication that the wastes are typically and frequently hazardous. In addition, the TC does not take into consideration the presence of PAHs, which were found at levels exceeding regulatory concern. Thus, the Agency is considering adding four wastes from the reprocessing and re-refining of used oil to the list of hazardous wastes from specific sources (40 CFR 261.31). The four wastes are:

K152—Process residuals from the gravitational or mechanical separation of solids, water, and oil for the reprocessing or re-refining of used oil, including filter residues, tank bottoms, pretreatment sludges, and centrifuge sludges.

K153—Spent polishing media from the finishing of used oil in the reprocessing or re-refining process, including spent clay compounds and spent catalysts.

K154—Distillation bottoms from the reprocessing or re-refining of used oil.

K155—Treatment residues from oil/water/solids separation in the primary treatment of wastewaters from the reprocessing and re-refining of used oil.

1. Constituents of Concern

The primary basis for listing these residuals from used oil reprocessing and re-refining as a hazardous waste concerns the presence of certain toxic constituents. As previously discussed, reprocessing and re-refining residuals typically contain a number of toxicants listed in appendix VIII, including arsenic, barium, cadmium, chromium, lead, nickel, benzene, tetrachloroethylene, trichloroethylene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, and fluoranthene.

Of the toxicants detected in reprocessing and re-refining residuals, three metals (lead, chromium, and cadmium) consistently were found at sufficiently high concentrations in all four waste streams to warrant inclusion in appendix VII as the basis of listing for these wastes. In addition, K152 contains benzo(a)anthracene, benzo(a)pyrene, benzo(b) and (k)fluoranthene, chrysene, dibenz(a,h)anthracene, and fluoranthene at sufficiently high levels to warrant their inclusion in appendix VII also as the basis for listing this waste.

In relation to the residuals from re-refining and reprocessing of used oil, the Agency has evaluated the criteria for listing a waste as hazardous that are contained in 40 CFR 261.11(a)(3) and that were presented earlier in this notice in regard to used oil. EPA has found that these wastes typically and frequently contain toxic constituents, including some that are carcinogenic, that, when mismanaged, pose a substantial threat to human health and the environment and may, therefore, be listed. Further discussion on the constituents of concern and the potential hazards posed by these wastes can be found in the background document for today's notice.

2. Fate and Transport of Toxic Constituents in the Environment

The Agency is evaluating the mobility and persistence in the environment of the constituents of concern present in residuals from the reprocessing and re-refining of used oil. Because some of the constituents of concern are water soluble to some extent, they can (1) leach out of the wastes in a water-soluble form, (2) be transported through the subsurface environment from the waste, (3) eventually reach ground-water bodies, and (4) contaminate drinking-water wells.

In order to conduct a qualitative evaluation of fate and transport of re-refining and reprocessing residuals, the Agency is evaluating potential risks to human health posed by exposure to a drinking water/waste mixture. EPA examined hypothetical ground-water concentrations by assuming that, through subsurface transport, dilution and attenuation (DA) processes will reduce the concentrations of the hazardous constituents of concern by a given factor. The Agency evaluated three DA factors: 100, 1,000, and 10,000. These three values correspond to drinking well water contaminant concentrations a 1, 0.1, and 0.01 percent of the contaminant's original concentration in the waste.

The three DA factors used in this analysis are intended to encompass a broad range of possibilities. While the DA factors were not selected to represent any particular environmental condition or range of environmental conditions, they represent assumptions varying from a moderate amount of dilution and attenuation to a high degree of dilution and attenuation. As shown in Tables VII.C.2 through VII.C.5, the wastes examined pose a potential threat to human health and the environment across this wide range of assumptions.

TABLE VII.C.2.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K152

Hazardous constituent	Average waste conc. detected [2] (ppm)	Health-based water concentration limit (ppm)	Basis [4]	Estimated drinking well concentrations [1]			Calculated concentration to health-based limit ratios [3]		
				DA 100	DA 1,000	DA 10,000	DA 100	DA 1,000	DA 10,000
Cadmium	25	0.01	MCL	0.25	0.025	2.5×10^{-3}	25	2.5	0.25
Chromium	150	0.05	MCL	1.5	0.15	0.015	30	3.0	0.30
Lead	1570	0.05	MCL	15.70	1.57	0.157	314	31.4	3.14
PAHs:									
Benz(a)anthracene	115	1×10^{-5}	RSD (Class B_2)	1.15	0.115	0.0115	100000	10000	1000
Benzo(a)pyrene	150	3×10^{-6}	RSD (Class B_2)	1.5	0.15	0.015	500000	50000	5000
Benzo(b and k)fluoranthene	270	2×10^{-5}	RSD (Class B_2)	2.7	0.27	0.027	100000	10000	1000
Chrysene	150	2×10^{-4}	RSD (Class C)	1.5	0.15	0.015	8000	800	80
Dibenz(a,h)anthracene	33	7×10^{-7}	RSD (Class B_2)	0.33	0.033	3.3×10^{-3}	500000	50000	5000
Fluoranthene	490	1	Rfd	4.9	0.49	0.049	5	0.5	0.05

[1] Calculated for three dilution/attenuation (DA) levels.

[2] Average concentrations calculated from process residuals or process sludge data.
[3] Ratio obtained by dividing assumed drinking well concentration column by health-based water concentration limit column, for all three dilution/attenuation (DA) levels.
[4] Reference Dose (Rfd), Risk Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained in the report, as are the classes of RSDs. Class A, B, and C carcinogens are based on exposure limits at a 10^{-6} risk level.

TABLE VII.C.3.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K153

Hazardous constituent	Average waste conc. detected [2] (ppm)	Health-based water concentration limit (ppm)	Basis [4]	Estimated drinking well concentrations [1] (ppm)			Calculated concentration to health-based limit ratios [3]		
				DA 100	DA 1,000	DA 10,000	DA 100	DA 1,000	DA 10,000
Cadmium	45	0.01	MCL	0.45	0.045	4.5×10^{-3}	45	4.5	0.45
Chromium	160	0.05	MCL	1.60	0.16	0.016	32	3.2	0.32
Lead	200	0.05	MCL	2.0	0.2	0.02	40	4.0	0.40

[1] Calculated for three dilution/attenuation (DA) levels.
[2] Average concentrations calculated from process residuals or process sludge data.
[3] Ratio obtained by dividing assumed drinking well concentration column by health-based water concentration limit column, for all three dilution/attenuation (DA) levels.
[4] Reference Dose (RfD), Risk Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained in the report, as are the classes of RSDs. Class A, B, and C carcinogens are based on exposure limits at a 10^{-6} risk level.

TABLE VII.C.4.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K154

Hazardous constituent	Average waste conc. detected [2] (ppm)	Health-based water concentration limit (ppm)	Basis [4]	Estimated drinking well concentrations [1] (ppm)			Calculated concentration to health-based limit ratios		
				DA 100	DA 1,000	DA 10,000	DA 100	DA 1,000	DA 10,000
Cadmium	3.5	0.01	MCL	0.035	3.5×10^{-3}	3.5×10^{-4}	3.5	0.35	0.35
Chromium	15	0.05	MCL	0.150	0.015	1.5×10^{-3}	3.0	0.3	0.03
Lead	500	0.05	MCL	5	0.5	0.058	100	10	1

[1] Calculated for three dilution/attenuation (DA) levels.
[2] Average concentrations calculated from process residuals or process sludge data.
[3] Ratio obtained by dividing assumed drinking well concentration column by health-based water concentration limit column, for all three dilution/attenuation (DA) levels.
[4] Reference Dose (RfD), Risk Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained in the report, as are the classes of RSDs. Class A, B, and C carcinogens are based on exposure limits at a 10^{-6} risk level.

TABLE VII.C.5.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K155

Hazardous constituent	Average waste conc. detected [2] (ppm)	Health-based water concentration limit (ppm)	Basis [4]	Estimated drinking well concentrations [1] (ppm)			Calculated concentration to health-based limit ratios [3]		
				DA 100	DA 1,000	DA 10,000	DA 100	DA 1,000	DA 10,000
Cadmium	43	0.01	NCL	0.43	0.043	4.3×10^{-3}	43	4.3	0.43
Chromium	1070	0.05	MCL	10.7	1.07	0.107	214	21.4	2.14
Lead	1400	0.05	MCL	14.0	14.0	0.14	280	28	2.8

[1] Calculated for three dilution/attenuation (DA) levels.
[2] Average concentrations calculated from process residuals or process sludge data.
[3] Ratio obtained by dividing assumed drinking well concentration column by health-based water concentration limit column, for all three dilution/attenuation (DA) levels.
[4] Reference Dose (RfD), Risk Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained in the report, as are the classes of RSDs. Class A, B, and C carcinogens are based on exposure limits at a 10^{-6} risk level.

The Agency believes that the DA factors used in assessing the potential migration of the constituents of concern in re-refining and reprocessing residuals are not unrealistic. In developing listings for wood preserving wastes, which are oily and can be expected to behave similarly to used oil, EPA assessed the impact of these wastes on land. To assess the effectiveness of the hypothetical concentrations (by assuming a set of three DA factors) in representing the real-life leaching and migration processes, the Agency compared average concentration of certain constituents (chromium, fluoranthene, pyrene, anthracene, and naphthalene) in wood preserving wastes (oil-based) and the ground-water contamination data from the damage cases related to the wood preserving industry. The Agency assumed that, in the past, wood preserving wastes containing high concentrations (higher than averages calculated for the rulemaking activity) were disposed of on land, which resulted in contaminated ground water as evidenced by the damage cases. The comparison provided the Agency with a mechanism to determine the potential migration of toxic and hazardous constituents from oily wastes in soil.

The results of the comparison suggested that metals such as chromium and semivolatile compounds such as anthracene, fluoranthene, chrysene, and pyrene are released from the oily wastes and, hence, are capable of contaminating ground water. The calculated DA factors for these semivolatile compounds in oily waste range from 10 to 100,000. Based on this preliminary comparison, the Agency concludes that the constituents of

concern in oily wastes can be carried over to receptor points as aqueous leachate at concentrations ranging from 10 to 0.001 percent and 1 to 0.01 percent of the original concentration of semivolatile compounds and metals, respectively, in the oily wastes.

As shown in Tables VII.C.2 through VII.C.5, the ratio of the drinking water well concentrations to health based levels is greater than 1 in most of the cases. The Agency, therefore, believes that the potential for human exposure is significant and provides a basis for listing these wastes as hazardous.

3. Potential for Environmental Hazard

The potential hazards of used oil are presented later in today's notice. (See discussion in section VIII.A of this notice.) In addition, environmental damage incidents from used oil mismanagement are discussed in "Environmental Damage From Used Oil," which is included in the docket for today's notice. EPA has identified five Superfund sites and other environmental damage incidents directly attributable to the mismanagement of residuals from used oil reprocessing and re-refining. These damages include contamination of ground water, surface water, and soils as well as damage to fish and water fowl in the surrounding area. The clean up costs associated with the five Superfund sites total well over $61 million.

VIII. The Agency's General Approach to Used Oil Management Standards

In addition to the new data and issues discussed above, EPA has been evaluating used oil management standards. On November 29, 1985 (50 FR 49212), EPA proposed a comprehensive set of management standards for generators, transporters and recycling facilities that handle and recycle used oil. EPA received substantial public comment on the proposed requirements. The Agency has been re-evaluating the proposed management standards in light of public comments. EPA is now looking at several potential approaches to the management standards. EPA is considering finalizing certain 1985 proposed management standards, but the Agency is also considering modifying some of the proposed standards and dropping other standards in light of public comment, additional data, and/or additional regulatory actions the Agency has taken since the 1985 proposal.

The intent of the management standards alternatives identified and discussed in this notice is not to replace or withdraw the 1985 proposed standards but to set forth options to (a) clarify or modify certain 1985 proposed standards, (b) defer selected standards (e.g., financial responsibility), and (c) add new requirements (e.g., recordkeeping and reporting requirements for certain generators and transporters). The Agency is requesting comments on specific approaches that are under consideration and that are discussed in this notice. EPA is not seeking any additional comments on the 1985 proposal itself.

This notice outlines the basic approach EPA is proposing for used oil management standards. The following sections describe in detail the need to ensure the safe management of all used oils, whether or not they are determined to be hazardous and whether or not they are recycled. The Agency is considering an approach, described below, under which one set of management standards (with certain exemptions for used oil mixtures that contain de minimis quantities of used oil) may control recycling and disposal of used oils and therefore mitigate potential hazards from all used oils (hazardous and nonhazardous, and recyclable and nonrecyclable). EPA has also considered an approach under which only used oils that are deemed hazardous waste may be regulated under the management standards. EPA is concerned that this sort of approach, while focusing on the most hazardous used oils, may be very difficult to implement. For example, adulteration of used oil with hazardous waste has been a very serious problem, and any used oil may be adulterated. A system that regulated only certain used oils may not effectively control adulteration. EPA also believes that irrespective of a listing determination, all used oils pose some threat to human health and the environment and therefore all used oils need to be handled in a safe manner. EPA requests comment on this issue. Commenters may also want to qualify comments on specific management standards under discussion by indicating whether the standard should apply to all used oils, or only to hazardous used oils, as appropriate.

The Agency believes that the mismanagement of used oil may pose hazards to human health and the environment. EPA believes that the primary sources of used oil mismanagement and potential hazards include:

- Ground-water contamination from disposal or storage in unlined impoundments or landfills;
- Air emissions from improper burning or the burning of used oil mixed with other hazardous wastes;
- Soil, surface water and ground-water contamination from improper disposal of DIY-generated used oil (e.g., landfill, yard or sewer disposal);
- Contamination from improper storage practices at used oil generator sites, transfer facilities and recycling facilities; and
- Environmental contamination from road oiling.

The Agency is considering implementing these management standards in a two-phased approach. The approach is designed to reduce the risks posed by used oil mismanagement while imposing regulatory burdens upon used oil recycling in a gradual, considered manner.

The Phase I requirements proposed today are designed to address the potential hazards associated with improper storage and disposal of used oil by establishing basic requirements applicable to used oil generators, transporters, recyclers, and disposal facilities. These requirements consist of "basic" management standards including detection and cleanup of used oil releases associated with storage and transportation, recordkeeping requirements (used oil tracking), and reporting of used oil recycling and disposal activities. The Phase I requirements also address hazards associated with road oiling and improper disposal of some or all used oils. The Agency is considering a ban on road oiling of used oils given the potential hazards to human health and the environment from direct application of used oil to land and given the fact that used oils used for road oiling are often mixed with hazardous wastes. The Agency is also proposing a recycling presumption, testing requirements for non-recyclable used oils, and is considering developing disposal guidelines for non-hazardous used oils to protect against potential hazards from land disposal of used oils. These provisions are discussed in more detail below.[13]

The standards proposed in November, 1985 as revised and/or supplemented today address each of the risks and potential types of mismanagement listed above, with the exception of air emissions from improper or uncontrolled burning of used oil fuels. Currently, the 40 CFR part 266 subpart E regulations restrict residential burners from burning used oils that do not meet the used oil

[13] Used oils that are non-recyclable and hazardous (i.e., listed or characteristic hazardous) will have to be disposed in compliance with the current subtitle C requirements for disposal of hazardous wastes.

fuel specification. However, air emissions from used oil industrial burners are not yet controlled under RCRA. EPA is still studying the need for emissions standards for used oil burners and the proper level of controls necessary for used oil burning units. EPA plans to address emissions standards for used oil burners at a later date, possibly in "Phase II" of the management standards.

As part of a comprehensive approach to addressing used oil, EPA also wants to promote the recycling of DIY-generated used oil (including household-generated used oils that may fall under the household hazardous waste exclusion). Currently, DIY-generated used oils (approximately 193 million gallons annually) are not widely recycled and in fact, are often improperly disposed. Today's notice discusses several options for regulatory incentives, that may be included in Phase II or developed under a separate schedule. These options would be developed to promote the recycling of DIY-generated used oils. As discussed earlier in this notice, several non-regulatory approaches are also under consideration for increasing the quantities of DIY-generated used oils that are collected and recycled.

EPA has also undertaken several efforts to provide outreach information and develop non-regulatory incentives for used oil recycling. Several of these efforts focus on the collection and recycling of DIY-generated used oil. EPA has developed and distributed publications educating households and individuals on the hazards associated with improper dumping of used oil and encouraging DIY oil changers to recycle used oil. EPA has published specific step-by-step instructions on how to change automobile crankcase oil and how to dispose of the oil properly so that it enters the used oil recycling system. The Agency has also published information on how to establish local used oil recycling programs and how service stations and other facilities can establish used oil recycling programs.

At a later date, EPA may develop additional regulatory and/or non-regulatory incentives for encouraging the collection and recycling of DIY-generated used oils should the Agency determine that additional incentives are necessary. The need to establish additional incentives will be based in part on how effective today's approaches (or those promulgated after review and comment on this proposal) are in promoting used oil recycling and ensuring that such recycling is conducted in a manner protective of human health and the environment. If significant quantities of DIY oil are still not entering the used oil recycling system and DIY oil management practices have not altered, then additional incentives may be appropriate.

Under today's notice, EPA is considering, as one option for used oil generator standards, a revision to the 1985 proposed management standards which would eliminate the small quantity used oil generator category, while also reducing the requirements applicable to all used oil generators. Under the approach discussed today, all used oil generators may be subject to a single, minimum set of requirements. By eliminating the distinction between categories of used oil generators, used oil generators may be less reluctant to collect DIY used oil since the collection of these used oils will not subject the generator to more stringent management standards. Similarly, imposing minimum, "good housekeeping", standards creates the most conducive regulatory environment possible for recycling given EPA's mandate, by ensuring protection of human health and the environment, but taking into account the impacts on recycling when devising the regulatory schemes. If EPA determines that the section 3014 management standards that are promulgated in Phase I are adequately implemented and enforced across the board, then additional standards may not be necessary.

The following section describes EPA's proposed phased approach for the used oil management standards. As mentioned above, Phase I would contain "basic" management standards, including detection and cleanup of used oil releases or leaks associated with storage and transportation, recordkeeping (used oil tracking) requirements, and reporting of used oil recycling and disposal activities. EPA has also considered an alternative approach in which no management standards would be issued until the Agency has developed a comprehensive, risk-based management scheme for used oil, which would address DIY-generated oil, used oil burning by industrial burners, etc. This approach may have the advantage of avoiding piecemeal regulation of the industry. However, factors in favor of a phased approach include providing, in the short term, at least a minimum level of protection to human health and the environment from potential hazards from used oil and the possibility of changing regulatory provisions in Phase II based on feedback from the implementation of Phase I. In addition, much uncertainty exists concerning certain key components (e.g., to what extent current participants in used oil recycling will remain in the system under a regulatory regime), and that actual implementation of limited controls may be the best manner of data collection. EPA believes the phased approach described below is flexible and may allow for adjustments as problems of over- or under-regulation are identified. EPA requests comment on a phased versus a delayed/comprehensive approach.

As explained in more detail below, EPA believes that all used oils may require some level of control to protect human health and the environment. Various authorities are available to the Agency to effect this control. RCRA section 3014 provides EPA with the authority to regulate generators, transporters and recycling facilities that handle recycled used oil or used oils that are to be recycled, regardless of whether or not the used oils are identified as hazardous waste. Section 3014 does not, however, provide the Agency with regulatory authority over used oils that are not recycled. Other RCRA authorities, however, are available and can be applied to used oils that may be treated and/or disposed in municipal solid waste landfills or other facilities.

The next section briefly discusses the potential hazards associated with used oil. This is followed by a discussion of the basic approach EPA is considering for used oil management standards to ensure the safe management of all used oils, whether or not they are recycled. The notice then describes the phased regulatory approach that the Agency is considering for used oil management standards at this time. If the Agency is convinced that only used oils determined to be hazardous should be regulated, EPA may draw on the 1985 proposal, as well as ideas described here, to finalize management standards for those hazardous used oils.

A. Potential Hazards of Used Oils

Past practices for used oil storage, transportation, and disposal have resulted in documented damages to human health and the environment. Human health and environmental hazards associated with used oil stem from both the potential uncontrolled management of used oils that are mixed with hazardous substances or wastes such as PCBs and chlorinated solvents, and the release of used oil itself to the environment. Past mismanagement of used oils has resulted in significant environmental damage, which the Agency has documented extensively. Of

the 445 National Priorities List (NPL) facilities having documented Records of Decision, 185 (42%) have had used oils co-disposed with other hazardous or industrial solid waste. These oils include used motor oil, cooling/cutting oil, and transformer oil. Of the 185 facilities, 30 are used oil recyclers (6.7% of the total number of facilities). At several of these recycler sites, contaminants other than those expected to be in used oil were found, indicating that mixing occurred either prior to receipt of the used oil or at the facility.

In addition, the 1981 Report to Congress on used oil includes damage incidents and examples of severe threats to human health and the environment. As explained in that Report, used oil mixed with hazardous wastes has been shown to have toxic or carcinogenic effects on humans. Also, used oil that is mixed with solvents or other hazardous wastes when burned creates products of incomplete combustion (PICs). These PICs are of particular concern due to their carcinogenic nature.

EPA has prepared a compilation of information on the environmental damages caused by improper management activities (see Used Oil Background Document, "Environmental Damage from Used Oil Mismanagement" draft report). This effort was undertaken to provide more recent data than was available in November, 1985. The hazardous constituents found in used oil damage cases are those that are discussed in the listing proposal above and in the November 1985 proposal.

EPA believes that the used oil management standards may need to include provisions to ensure mixtures of used oil and hazardous waste are identified and properly managed. Even used oils that have not been mixed or co-disposed with hazardous waste may contain toxic constituents that may be released during improper management. If used oil that is not classified as hazardous is managed improperly, it can reach and contaminate environmental receptors such as surface water and drinking water wells. Typically, an oily sheen is formed on top of the water surface making the water nonpotable for human consumption and resulting in a reduction of oxygen necessary to sustain aquatic life.

Several potential pathways exist for used oil to cause damage to the environment. Used oil can be spilled or leaked onto soil or entrained in airborne dust particles. Further, ground and surface waters can be contaminated by run-off, leakage, or seepage of used oil. Some activities that may release constituents and pose potential threats to human health and the environment include land disposal in non-secured units, improper or mismanaged storage or over accumulation, and road oiling for dust suppression. Potential hazards are increased when other hazardous substances are added to the oil, and existing data show this has historically been a common practice. [14]

Improper management and landfill disposal of both used oils and materials contaminated with used oils creates multiple hazards to human health and the environment. Used oil that enters a landfill has a potential to migrate away from the source and has the potential to form an oil plume that can directly reach the ground water, float on the surface of the water, and/or be carried in a plume over the ground-water table, making the ground water nonpotable. In addition, used oil that enters a landfill in a solid form or adsorbed to a solid may leach and eventually contaminate ground water.

Storage of used oil can also lead to environmental damage, particularly due to accidental releases. Used oils generally are stored in underground storage tanks (USTs), aboveground storage tanks, and drums (containers). The major risks associated with storage and accumulation of used oil are fires and loss of stored used oil through surface run-off and seepage into the soil. Both aboveground and underground storage tanks can develop leaks in the bottom of the tank that can go unnoticed. Underground storage tank leaks generally will go unnoticed until visually apparent or until detected by monitoring equipment (if the UST is so equipped). A severe UST failure or the rupture of an aboveground storage tank can result in rapid ground-water contamination, generally occurring in less than an hour in sandy soil and just over a week in silty soil. [15], [16] The storage of used oils in drums and containers can lead to environmental damage through catastrophic spills or repeated small spills to the surrounding area. [17]

Used oils used for road oiling present four pathways for contamination. Evaporation, seepage, run-off, and dust transport occur concurrently. The rate of vaporization depends upon the individual vapor pressure for the components of the used oils, the ambient temperature, and atmospheric wind conditions. Seepage depends upon the composition of the soil and may occur very quickly in sandy or silty soils. A portion of the used oil will remain in the upper level of the soil and will be subject to removal by dust transport. Assuming an average daily traffic flow of 100 vehicles, it has been estimated that 100 tons of dust per mile per year will be deposited along a 1,000-foot wide area surrounding the road. [18] Finally, oils may be washed from the road surface and carried with the rainfall runoff as a surface film or colloid or be removed by erosion.

An investigation of 25 Superfund sites that involved the mismanagement of used oil found used oil contamination of surface and ground waters, soils, and surrounding lands and crops. In several cases wildlife damage or wildlife death has been documented. Further, over 60 damage incident summaries indicate contamination of surface water, while over 30 incidents involve soil contamination, and a few contain evidence of air contamination. [19]

Used oil released to surface waters produces a harmful effect on aquatic organisms not only by physically coating them but also by causing adverse chemical changes within the organism. Such damage includes the inability of ducks to swim or dive for food in the presence of oil films, loss of insulating ability of feathers contaminated with oil, reduced viability of duck eggs due to the inability of oil-soaked feathers to insulate the eggs, and pneumonia and gastrointestinal irritations in waterfowl following preening of oil-coated feathers. [20] Other harmful effects upon aquatic habitats include the inhibition of marsh grass growth, increased susceptibility of sea grasses to parasites, abnormal development of herring larvae, and the killing of various organisms, including copepods, shrimp and white mullet.

In addition, contaminants in used oil that is disposed on land often migrate to surface water, ground water or soil where they are taken up by plant roots and have been shown to damage vegetation. [21] These contaminants pose

[14] Background Document: "Regulatory Support for Used Oil Characterization."

[15] Franklin Associates and PEDCo Environmental, Inc., "Waste Oil Storage: Final Draft Report," January, 1984, p. 3–16.

[16] Since the promulgation and implementation of the UST regulations (40 CFR part 280), these hazards are controlled through effective monitoring and leak detection procedures.

[17] Ibid. p. 3–17.

[18] Franklin Associates and PEDCo Environmental, Inc., "Evaluation of Health and Environmental Problems Associated With the Use of Waste Oil as a Dust Suppressant," February 1984, page 3–8.

[19] Environmental Damage From Used Oil Mismanagement, EPA used oil background document.

[20] Listing Waste Oil as a Hazardous Waste: Report to Congress, U.S. EPA, 1981, Pp. 16–20.

[21] Ibid., pp. 63–71.

a hazard to animals ingesting the plants and to humans consuming crops that have accumulated sufficient quantities of these contaminants. Used oil contaminants that volatilize or are suspended in dust also can contaminate and harm vegetation and enter the food chain. EPA notes that many of the potential risks to human health and the environment from the mismanagement of used oil, as documented above, are present regardless of the type of used oil that is released to the environment, particularly the contamination of ground water and effects on plant and animal life.

B. The Basic Approach

This section describes the basic approach EPA is now considering to ensure safe used oil management. Comments are requested on the overall approach as well as on specific issues described below.

1. Some Level of Control May Be Necessary for All Used Oils, Whether They Are Identified as Hazardous Waste or Not

Under the 1985 proposed listing determination, EPA would have been able to control the management (both recycling and disposal) of all used oils. Disposal would have been regulated under 40 CFR parts 264, 265, and 270, since all used oils were proposed to be listed as hazardous waste. Recycling would have been regulated under special standards (40 CFR part 266, subpart E) developed under § 3014 authority.

As noted in earlier sections covering the listing approach, data collected by EPA show that certain used oils are characteristically hazardous and/or contain appreciable quantities of 40 CFR part 261, appendix VIII toxic constituents. Further, as stated in section VIII.A, the presence of small quantities of oil in surface water may cause fish kills; can cause toxicological effects in aquatic organisms, and can make drinking water nonpotable for human consumption. Finally, effective implementation and enforcement of a used oil program may require control over all used oils, for example to control adulteration of used oil with hazardous waste. EPA, therefore, believes that basic management standards may be necessary for all used oils whether or not EPA decides to list them as hazardous wastes.

RCRA section 3014(a) does not require EPA to list or identify used oils as hazardous wastes prior to setting management standards for recycled used oil.[22,23] RCRA section 3014 was created under the authority defined by the Used Oil Recycling Act of 1980 and amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The HSWA amendments require that the section 3014 standards be consistent with RCRA's mandate of protection of human health and the environment. Legislative history indicates that Congress anticipated EPA's potential use of section 3014(a) to control both hazardous and nonhazardous used oil (House Conference Report No. 98–1133, p. 113, October 3, 1984). The House Conference Report states that "EPA retains authority under section 3014 to regulate all used oil that is not identified or listed as a hazardous waste." EPA therefore believes that it is consistent with both the goals of the statute and with the Congressional intent for section 3014 that all used oils be regulated under a single set of management standards. The following RCRA authorities can be used to control recycling and disposal of used oil:

- Under RCRA sections 3001 through 3005, EPA has the authority to regulate the disposal of used oils that are hazardous (listed, characteristic, and used oils mixed with hazardous waste).
- Section 3014(a) of RCRA authorizes EPA to develop regulatory standards for recycling of all used oils, both hazardous and nonhazardous.
- The information and enforcement authorities provided under RCRA section 3007 and section 3013 can be used to a limited extent by the Agency to control used oil disposal through inspection and monitoring.
- Under RCRA section 1008 and section 4005, EPA has statutory authority to develop subtitle D disposal guidelines to prevent releases of used oil from the site of disposal. Any disposal of solid waste in a solid waste disposal facility that is not in compliance with part 257 criteria for solid waste facilities constitutes "open dumping" of solid wastes.

EPA requests comment on the potential hazards of used oil, the need to control all used oils, whether they are determined to be hazardous waste or not, and the use of section 3014(a) to control the recycling of "nonhazardous" used oils. Comments are also requested on alternative approaches, such as regulating used oil that is identified as hazardous waste under one set of requirements, and "nonhazardous" used oils under different standards. EPA requests comment on what specific differences in such standards may be appropriate. For example, for all used oils, EPA could promulgate minimum requirements (e.g., tracking, recordkeeping, the rebuttable presumption, analytical plans, etc.), which may control adulteration of used oils. For hazardous used oils, however, EPA could also regulate storage and spill cleanup. Under this kind of approach, road oiling might be allowed for nonhazardous used oils.

2. Used Oil Handlers Should Be Regulated Under One Set of Management Standards to the Extent Possible

Data available to the Agency on used oil generation practices suggest that many used oil handlers (generators, collectors, transporters, and some recyclers including blenders, marketers, and re-refiners) are small businesses. In particular, EPA estimates that over 650,000 establishments, such as privately owned and operated service stations, automotive repair shops, and metalworking shops, generate used oil.[24] Used oil collectors and processors typically service a wide range of generators. The generators themselves are often unfamiliar with RCRA and, in fact, are not extensively regulated under Federal environmental programs.

One way to implement regulations over such a vast and diverse universe of used oil handlers may be to devise one set of comprehensive management standards designed to address all aspects of used oil management. This approach would cover all used oil handlers under one set of requirements and may incorporate provisions from various RCRA authorities including sections 1008, 3001 through 3005, 3007, 3013, 3014, and 4005. It may also minimize regulation of the same parties under numerous different regulatory programs (e.g., some used oils under subtitle C, some not, etc). In addition, this may facilitate compliance, minimize confusion within the used oil recycling industry, and minimize cross-referencing within different regulatory requirements covered under 40 CFR parts 257, 264, 265, 270, and 280. An integrated approach would also minimize the possibility of adulteration and other

[22] Although section 3014(b) does direct EPA to propose whether to list or identify used oils as hazardous wastes, this mandate is independent of the mandate to develop management standards for recycled used oils in section 3014(a).

[23] Under RCRA section 3001, as implemented in 40 CFR part 261, EPA can (a) identify any solid waste as hazardous if the waste exhibits a characteristic of corrosivity, ignitability, reactivity, or toxicity and (b) list any solid waste as hazardous if the Agency can demonstrate that the solid waste of concern may pose significant health and environmental hazards.

[24] Temple, Barker, and Sloane, "Used Oil RIA Briefing: Status Report," May 16, 1989.

mismanagement, particularly of non-hazardous used oil.

EPA is, in fact, considering establishing in title 40 of the Code of Federal Regulations (CFR) a separate part, part 279, for all of the used oil standards. Various subparts or sections in part 279 may be promulgated under the different RCRA authorities. EPA usually places regulatory provisions from different statutory authorities in different CFR parts, (e.g. subtitle C rules are in parts 260–270, subtitle I rules are in part 280, etc.) To aid implementation of the used oil rules, however, part 279 would contain most or all applicable RCRA provisions related to used oil management.

3. Used Oil Standards Should Be Developed and Applied in a Manner That Allows for Full Consideration of Recycling Impacts

In enacting section 3014 of RCRA, Congress recognized that certain used oil recycling practices may pose significant risks to human health and the environment. Congress also recognized that used oil, when properly recycled, can be a valuable resource. As a result, section 3014 requires EPA to develop used oil regulations that protect public health and the environment from the hazards associated with used oil, yet do not discourage the recovery or recycling of used oil. Specifically, RCRA states that "the Administrator shall promulgate performance standards and other requirements as may be necessary to protect the public health and the environment from hazards associated with recycled oil * * * conduct an analysis of the economic impact of the regulations on the oil recycling industry * * * ensure the regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment." The legislative history of HSWA indicates that Congress' paramount interest in regulating used oil was to ensure protection of human health and the environment. Where such protection is assured, however, "the Administrator should make every effort not to discourage the recycling of used oil." [25] Today's proposed rule attempts to balance the interests of protective regulation and the need to promote recycling. EPA recognizes that properly conducted used oil recycling reduces the risks posed by mismanagement and disposal of used oil, while conserving a valuable non-renewable resource. The Agency is attempting to impose standards upon the used oil recycling industry that will ensure adequate protection, while at the same time create an overall framework that establishes incentives for used oil recycling. This approach is premised on EPA's recognition of both objectives of section 3014, environmental protection and resource conservation/recycling and its belief that promotion of recycling will be the most effective way of eliminating improper disposal and thus protecting human health and the environment.

EPA could attempt to assess impacts and balance the competing interest of requirements now being considered through detailed studies of various regulatory approaches without implementing any of the controls. We note, however, that much uncertainty exists concerning certain key components (e.g., to what extent current participants in the used oil recycling market will remain in the market after the management standards are promulgated), and that actual implementation of limited controls may be the best manner of data collection. The approach described below is iterative (in that EPA may propose the management standards in two phases) and may allow for adjustments as problems of over- or under-regulation are identified by EPA. EPA requests comment on the basic approach for the used oil management standards described above and presented in detail below.

C. Phased Regulatory Approach

EPA thinks that a sound way to achieve the Congressional objectives of section 3014 may be to develop used oil management standards under a phased regulatory approach. To do so, the Agency initially may promulgate a basic set of management standards ("Phase I"), and then, at a later date, consider additional management standards (e.g., emission standards for burning of certain used oils, financial responsibility, etc.) that may have greater impacts on the used oil recycling industry.

EPA believes that a two-phased regulatory approach may allow the Agency to assess the level of protection provided by the Phase I standards and the impacts of the Phase I program on the used oil recycling market before imposing more stringent controls. Also, EPA would have additional time to consider non-regulatory approaches or market incentives for encouraging the recycling of non-regulated used oil (e.g., do-it-yourself generated used crankcase oils), that might reduce the need for additional regulatory controls.

The Phase I standards, as envisaged here, would cover all used oils, whether they are a hazardous waste or not. The premise is that fairly simple "good housekeeping" requirements can be implemented by used oil recyclers that will alleviate potential used oil releases without major capital expenditures. The Phase I standards, by themselves, may not prevent all hazards associated with used oil. As discussed below, EPA may select Phase I requirements (choosing from the 1985 proposal and today's notice) by taking into account the potential impacts of the requirements on used oil recycling as well as their potential to protect human health and the environment. This would mean that certain requirements (e.g., financial responsibility) that may well provide a secondary measure of protection are deferred to a later date, when additional studies are completed to help the Agency determine the appropriate balance between protectiveness and mitigating impacts on recycling. Certain standards (e.g., standards for used oil burners) that provide protection against the releases of air toxics are deferred to a later date, since data currently available to the Agency are not adequate to develop such standards at this time.

Should the Agency adopt this phased approach, EPA would issue the Phase I controls, and then at a later date, evaluate the protective nature of the initial set of requirements and the effects these standards will have had upon the recycling market. EPA might review data received from biennial reports on used oil recycling and disposal activities. In addition, if enforcement activities suggest that substantial mismanagement is still occurring and that releases have contaminated ground and/or surface water, EPA may impose additional requirements. Furthermore, if releases from storage tanks remain unattended and uncontrolled, additional requirements may be necessary to ensure protection of human health and the environment. These additional standards (Phase II) may not apply to all used oils, but rather may only apply to used oils with high levels of toxic constituents or used oils that otherwise are found to pose high potential risk. EPA may need to do additional studies to determine which oils should be subject to additional controls. (We may subject oils that are listed or exhibit the toxicity characteristic to additional controls, or use other indicators of higher toxicity or hazard.) EPA will also carefully weigh the increase in potential environmental benefits against economic impacts that may result from imposing these additional requirements

[25] House Report 98–198, Part 1., p.59.

prior to proposing any additional standards, as required by RCRA section 3014(a). In addition, as discussed above, EPA may consider non-regulatory options or economic incentives to maximize recycling of all used oils, particularly DIY-generated used oils. These nonregulatory controls might mitigate the need for further regulatory controls.

Section D. 3014(a) Used Oil Management Standards Based on a Presumption of Recycling

1. Use of Section 3014(a) Standards To Control Used Oil Management

In 1980, Congress took steps to facilitate the recycling and reuse of used oil by enacting the Used Oil Recycling Act. The intent of this Act was not only to conserve energy and reduce virgin oil demands through recycling of used oil, but also to limit "improper" disposal of the recyclable resource (Pub.L. 96–463, October 15, 1980). Further, used oil recycling will assist the country in compensating for a fluctuating virgin oil supply and in minimizing the nation's dependence on virgin oil imports. [26] Given this national policy, EPA is considering disposal controls for both hazardous and nonhazardous used oils partly as a means to further promote increased recycling of used oils.

Section 3014 of RCRA gives EPA authority to develop management standards for "recycled oil". [27] The Agency interprets section 3014(c) authority to cover all used oil management practices preceding the recycling of the used oil (50 FR 49216, November 29, 1985). At a recycling facility or on the way to a transfer or recycling facility, used oil could be disposed improperly, either unintentionally or intentionally. Health and environmental hazards associated with used oil in storage, in transit prior to recycling, or being managed prior to its ultimate management (treatment or disposal) are similar to the hazards associated with the used oil when it is handled at the recycling facility and therefore also should be minimized. Hence, management of used oil from the point of generation through recycling and distribution to end users may need to be regulated to protect human health and the environment from potential hazards.

Because RCRA does not provide EPA with explicit authority to regulate the disposal of used oil outside of a hazardous waste listing, and due to the fact that EPA wants to discourage disposal and meet RCRA's mandate to protect human health and the environment, EPA is considering an approach whereby all used oils would be presumed to be destined for recycling, and therefore subject to section 3014 management standards, unless the generator or handler can show otherwise. This means that all used oils would be presumptively subject to the standards issued under section 3014 for recycled used oils, from the time the used oil is generated until it is recycled or reused. If a person can show that the used oil cannot be recycled (discussed below), then the section 3014 standards would not apply. The Agency assumes that if used oil cannot be recycled then it would be disposed and disposal will be controlled using other authorities, i.e., either subtitle C or subtitle D, depending on whether the used oil is hazardous waste or not.

2. Basis for Presumption

EPA's current data on used oil support the recycling presumption. [28] In 1988, approximately 57% of the total amount of used oil generated was collected for recycling. An additional 12% was recycled on-site. [29] As shown in Table II.B.1, at least nine types of used oils are generated by various industrial and nonindustrial sectors around the country. The vast majority of these oils are recycled as fuel oil but some of these oils can also be recycled to manufacture high quality lubricants. EPA recognizes that at the generator level, especially in the do-it-yourselfer (DIY) segment, some used oil is not recycled, but rather disposed. However, this used oil is mainly automotive oil that can be recycled. [30] EPA believes that the recycling presumption is well founded in that a majority of used oils can be recycled, and most currently are recycled.

EPA requests comments on the concept and basis of the recycling presumption.

3. Rebuttal of Recycling Presumption

EPA is aware of certain categories of used oils (e.g., watery metalworking oils, oily bilge water) that may not be recyclable. EPA, therefore, may provide an opportunity for used oil handlers to rebut the used oil recycling presumption by showing that their used oil can not be recycled. Under the approach being considered, handlers of used oils could rebut the recycling presumption by showing that their used oil is not recyclable in any manner. These used oils may not be subject to the section 3014(a) standards upon a demonstration of "nonrecyclability". Under this approach, EPA is considering requiring documentation of "nonrecyclability" and records supporting the reasons for disposal. The documentation may include a demonstration that:

- The BTU content of the used oil is less than 5,000 BTU/lb. (5,000 BTU is the minimum value for legitimate energy recovery, as discussed in the final burning and blending rule, 50 FR 49186),
- The used oil has such a high moisture content (>90% water) that it would not be accepted by a processor or re-refiner,
- The used oil is an emulsion and the oil and water are inseparable,
- Technologies to treat such oils are either not commercially or regionally available, or
- The used oil does not fall within the acceptable range for viscosity (1 to 250 centipoises at 50 C).

According to industry sources, [31] the standard for "recyclability" of used oil is universal, and most used oils can be processed and treated to manufacture either burner fuel, lube oil base stock, or feedstock for refining. The extent of used oil processing required and the cost of processing are dependent upon

[26] One estimate suggests that in the U.S., if all "as generated" used oil (1.3 billion gallons per year) is recycled then approximately 0.5 percent (representing 30,000,000 barrels of the petroleum supply) of the nation's petroleum need could be met. (Source: Nolan J.J., C. Harris, and P.O. Cavanaugh. 1990. Used Oil: Disposal Options, Management Practices and Potential Liability, Third Edition, Published by Government Institutes, Inc. Rockville, MD. pg. 3.)

[27] RCRA section 3014 does not provide EPA with explicit authority to regulate the disposal of used oils that are not listed as hazardous wastes.

[28] In 1988, EPA collected information to revise the used oil flow estimates used to support the 1985 proposed standards and to determine the information needs for an RIA. The revised information suggests that, at the generator level, 150 million gallons of used oil were recycled in 1988 as fuel. In addition, of the 770 million gallons collected, approximately 650 million gallons were recycled or re-refined in 1988. (Source: Memo to F. Smith, EPA/OSW from K. Dietly, P. Voorhees, and J. Hayde, Temple, Barker, & Sloane, July 18, 1989.)

[29] Of the used oil generated by non-DIY generators, in 1988, 66% was recycled off-site and an additional 13% was recycled on-site at non-DIY generator sites.

[30] EPA believes that through public education and awareness programs developed by EPA (e.g., EPA publication: Used Oil Bulletin), local governments, voluntary organizations (e.g., Project R.O.S.E.), and others (e.g., Amoco and Mobil have instituted DIY oil collection programs at selected gas stations in certain parts of the country), DIY recycling could be significantly increased.

[31] EPA contacted used oil recyclers and rerefiners. They indicated that any used oil is recyclable and the presence of water is not a limiting factor. Recyclers and rerefiners are capable of handling used oil containing any amount of water and the cost to used oil generators is a function of water content. If used oil has low water content (2–5%), under the "ideal" market conditions, recyclers/rerefiners tend to pay used oil generators for a batch of oil.

the customer's needs. However, available processing technologies are capable of removing water, distilling volatile solvents, modifying the viscosity of used oil, and fractionating components of used oil.

EPA may require the above-mentioned documentation information to be submitted to the Agency, or instead may simply require handlers of used oil claiming a rebuttal to maintain records on-site for a period of time (e.g., 3 years) with a subsequent survey of a sample of facilities.

EPA requests comments on the suggested procedures for rebutting the recycling presumption and the associated recordkeeping requirements. EPA's proposed controls for the disposal of (nonrecyclable) used oil are discussed below.

E. Controls on the Disposal of Used Oil

When used oils must be disposed, EPA wants to ensure that they are disposed in an environmentally safe manner (i.e., in a facility whereby potential release and migration of the used oil will be minimal and non-threatening to the environment). The disposal of hazardous used oils, either listed or characteristic, is regulated under the RCRA hazardous waste regulations. Currently, used oil handlers disposing of used oil must determine whether the oil is hazardous (i.e., exhibits a characteristic) prior to disposal. EPA is now considering, as discussed earlier in this notice, listing certain used oils as hazardous waste. Further, EPA is considering imposing an explicit testing requirement on used oil handlers disposing of non-listed used oil to determine whether or not the used oil exhibits any of the characteristics. Non-recyclable, hazardous used oils must be disposed of in accordance with subtitle C disposal standards. For the disposal of nonhazardous used oils, EPA is considering using RCRA sections 1008 and 4005 authorities to promulgate used oil disposal guidelines. The specific requirements that EPA is currently considering are described in more detail below. Even if EPA does not develop additional sections 1008 and 4005 guidelines, the disposal of bulk or non-containerized liquid hazardous waste (those that fail the paint filter liquids test) in any landfill is currently prohibited under RCRA section 3004(c).

EPA is considering controlling the disposal of used oil for three reasons. First, as discussed above, small quantities of even nonhazardous used oil, when disposed in proximity to a water body, can make that water nonpotable for human consumption, can reduce the oxygen content of water, and can reduce light penetration in water by forming an oily sheen on top of the water. Second, there is evidence that States that stringently regulate the disposal of used oil have higher used oil recycling rates than the national average. Thus, such regulation is consistent with the express objective of section 3014 to promote used oil recycling. Third, as shown in Table III.C.5, significant fractions of used oil are likely to exhibit the Toxicity Characteristic (TC) and therefore, must be handled as hazardous waste, if disposed. Some used oils may also exhibit the characteristic of ignitability and therefore, must be managed as hazardous waste, if disposed. As discussed in previous FR notices (50 FR 49260 to 49267 and 50 FR 49176, November 29, 1985), used oil often contains toxic constituents that may indicate that the oil was mixed with halogenated solvents. Therefore, EPA is considering using, in addition to sections 1008 and 4005, its information gathering authorities (RCRA section 3007) and monitoring authorities (RCRA section 3013) to promulgate one or all of the following regulatory options for used oil disposal.[32]

EPA believes that certain used oils may require disposal because they can not be recycled. In cases where the used oil is not recyclable and the disposal of the used oil is not controlled under the current subtitle C regulations, EPA wants to ensure that disposal occurs in an environmentally safe manner.[33] Therefore, EPA is considering the following three alternative regulatory approaches to control the disposal of nonrecyclable, nonhazardous used oil:

- Allow disposal of non-hazardous used oil (in a Subtitle D permitted disposal facility) only after a demonstration that the used oil being disposed is not hazardous and is not recyclable; or
- Allow disposal of nonhazardous used oil only if the disposal facility is in compliance with disposal guidelines that will be developed at a later date under section 1008 authority; or
- Ban disposal of nonhazardous used oil using the open dumping prohibition of RCRA section 4005.

1. Demonstration Before Disposal

a. *Testing for hazardousness.* To ensure that used oils that are disposed of in Subtitle D facilities, either industrial solid waste management facilities covered under 40 CFR part 257 or municipal solid waste landfills, are not hazardous waste, EPA is considering requiring used oil generators, transporters, or recycling facilities that are directing used oil toward subtitle D disposal to comply with the section 3014 management standards prior to disposal, and demonstrate that the used oil is not a hazardous waste by testing the used oil for halogen content, and the hazardous waste characteristics. EPA does not normally require parties to demonstrate that solid wastes are not hazardous, but used oil has a long history of being a conduit for disposal of hazardous waste via mixing, and available data show that used oils in storage tanks contain significant amounts of hazardous constituents, presumably due to mixing.[34] Therefore, EPA is considering requiring a demonstration (testing and recordkeeping) that used oil being disposed either on- or off-site is not hazardous because it:

- Is not a listed used oil (if any used oils are listed),
- Does not exhibit a characteristic of hazardous waste, and
- Is not a mixture of used oil and hazardous waste (i.e., it meets the rebuttable presumption requirements).

b. *Control of nonhazardous used oil disposal.* Under the approach described above, used oil would be subject to all section 3014 standards unless a person rebuts the presumption of recycling. Once a party rebuts the presumption of recycling, the party must comply with all applicable section 3014 standards until the used oil is shipped off-site for disposal. To prevent environmental harm that may result from used oil being disposed (e.g., ground-water contamination by oil itself), and given the need to conserve petroleum resources, EPA is considering imposing recordkeeping and reporting requirements to monitor the disposal of nonrecyclable, nonhazardous used oil. As described below, EPA is also considering banning the disposal of used oil for these same reasons.

EPA may use RCRA section 3007 authority to require used oil generators

[32] EPA notes that sections 3007 and 3013 authorities have been traditionally used on a case-by-case basis for individual facilities. Today, however, EPA is considering using these authorities for the broad class of persons who dispose of used oil, and therefore, we are considering promulgating national regulations to ensure information is collected concerning used oil disposal.

[33] EPA notes that should the Agency go forward with the 1985 proposal to list all used oils as hazardous waste, this discussion would be moot. However, as discussed earlier in this notice, listing all used oils is not the only option the Agency is currently considering.

[34] See *Used Oil Characterization Sampling and Analysis Program*, EPA, February, 1991.

who are disposing of used oil on-site or shipping the used oil off-site for disposal to keep records, and possibly report, the quantities of nonhazardous used oil disposed, the mode of disposal, the location of disposal, and the date of disposal. The generator may also be required to keep records of the analyses performed to demonstrate that the used oil being disposed is not hazardous. In addition, any used oil handler who successfully rebuts the recycling presumption outlined in section D above may be required to maintain the necessary documentation.

EPA believes that such information gathering and recordkeeping would supplement the recycling presumption discussed above. Current data shows that most used oils are in fact recyclable. The Agency may require information from any person disposing of used oil documenting that it is not recyclable, and therefore not subject to the section 3014 management standards. In addition, EPA believes these requirements may promote increased recycling of used oils by increasing the cost of disposal. EPA is considering requiring parties wishing to dispose of non-hazardous used oil to demonstrate that the used oil is not hazardous and not recyclable each time the party disposes of used oil, or requiring a one-time demonstration only. EPA requests comment on the approach described above for controlling the disposal of used oils. EPA also requests comment on the appropriate frequency for making the demonstration (testing and recordkeeping) that used oil is not hazardous and not recyclable prior to sending used oil for disposal.

2. Disposal Guidelines

As another alternative, EPA may allow disposal of nonhazardous used oil provided that owner/operators of disposal facilities follow specific disposal guidelines that may be developed at a later date under RCRA section 1008 authority. RCRA authorizes EPA to provide technical descriptions of the level of performance that provides protection of human health and the environment and to provide minimum criteria defining those practices which constitute open dumping. Under RCRA, states can prohibit disposal of solid waste that is not in compliance with the Federal technical guidelines if the disposal method is determined to be a form of open dumping. The disposal guidelines developed by EPA could establish design and operation steps for:

- Controlling down-gradient migration of used oil or generation of oil plumes that could reach drinking water sources;
- Locating certain sites or designating/dedicating other sites as acceptable used oil disposal sites based on:

—Simple site-specific factors such as soil type, annual rainfall, proximity to surface water and/or ground water sources, proximity to the nearest human population, and proximity to ecologically sensitive habitats (aquatic and terrestrial); or

—Other site-specific prevention and detection measures.

Until such time that EPA develops and publishes § 1008 disposal criteria, parties disposing of non-hazardous used oils will have to comply with the current part 257 and part 258 disposal criteria.

EPA requests comment on the appropriateness of developing disposal guidelines specifically for used oil.

3. Banning All Used Oil Disposal on Land

EPA has received comments suggesting a total ban on the disposal of used oil. EPA believes, however, that this may not be feasible since some kinds of nonrecyclable used oil must be disposed. In addition, a total ban may not be necessary because EPA is currently developing part 258 criteria for municipal solid waste landfills. These criteria may set forth minimum requirements governing facility location, design, operation, ground water monitoring, corrective action requirements, financial assurance, and closure and post-closure care. In addition, a ban may be unnecessary because the disposal of bulk or non-containerized liquid hazardous wastes (those that fail the paint filter liquids test) in any landfill is prohibited by RCRA section 3004(c).

Many states, in an effort to promote recycling and to preserve landfill capacity, have already banned disposal of used oil in municipal landfills. The current Federal guidelines for disposal facilities do not specifically address used oil. However, as with any solid waste, disposal of used oil in facilities that do not meet the 40 CFR part 257 criteria constitutes "open dumping" and is prohibited (See RCRA section 4005(a)). Therefore, nonhazardous used oil may have to be disposed only in permitted municipal landfills that meet the revised criteria, or in other solid waste disposal facilities that meet the part 257 criteria. EPA may place regulatory language in the used oil standards to reiterate this prohibition.

EPA requests comment on the feasibility and desirability of a total ban on disposal of all used oil.

F. Other General Changes from the 1985 Proposed Rule

The following sections describe some of the other aspects of the proposed rule that EPA is considering revising. The final section of this notice describes the specific requirements applicable to used oil generators, transporters, recyclers, burners, marketers, and disposal facilities.

1. Modification of Current Exemption for Characteristic Used Oil to be Recycled

Section 261.6(a)(2)(iii) of 40 CFR exempts from full subtitle C regulation used oils that exhibit one or more of the characteristics of hazardous waste and that are recycled by burning for energy recovery in boilers and industrial furnaces. Instead, used oils that are burned for energy recovery in boilers and industrial furnaces are regulated under 40 CFR part 266, subpart E (regulations for used oil burned for energy recovery). Additionally, 40 CFR 261.6(a)(3)(iii) exempts used oils exhibiting one or more of the characteristics and recycled in a manner other than burning from regulation under RCRA subtitle C.

If EPA determines that any used oils are to be listed as hazardous waste, EPA may revise the current part 261 exemptions to include in the exemptions any used oils that are listed as hazardous wastes and recycled. The effect of revising the current exemptions to include listed used oils will be to subject all hazardous (either listed or characteristic) used oils that are recycled to the same set of recycling requirements as nonhazardous used oils under a separate part (i.e., part 279). These requirements will be protective, but different from those required for most other hazardous wastes, as provided by section 3014 (see the discussion in the November 29, 1985 proposal, 50 FR 49218, footnote 17).

EPA requests comments on expanding the 40 CFR 261.6(a) exemptions to include listed used oils, if any used oils are listed as hazardous wastes.

2. Application of the 1,000 ppm Halogen Rebuttable Presumption to All Used Oils

As proposed in 1985, EPA is considering applying the 1,000 ppm halogen rebuttable presumption, currently required for used oils that are recycled to recover energy (50 FR 49176, November 29, 1985), to all used oils that are recycled in any manner. EPA believes that used oils failing the 1,000 ppm halogen limit are probably hazardous wastes due to the fact that they may be mixed with chlorinated solvents. These used oils must be

managed as hazardous wastes (and not as hazardous used oils) unless the mixing presumption can be successfully rebutted (50 FR 49205, November 29, 1985). EPA stated in the proposal and reiterates here that a mixture of used oil and hazardous waste must be managed as a hazardous waste under subtitle C, regardless of whether it exceeds the 1000 ppm halogen limit. EPA is considering requiring recyclers to test, using the EPA approved SW–846 test method 8010, every incoming shipment of used oil to determine whether it exceeds the 1000 ppm halogen limit, and further, whether it contains listed solvents. EPA may require documentation that used oil has not been mixed with listed solvents F001–F005. Likewise, to successfully rebut the presumption, if the used oil exceeds the 1,000 ppm halogens level, the generator may be required to provide documentation that the source of the halogens is not a listed hazardous waste.

EPA believes that the testing of used oils for halogen content can be performed either by a collector when picking up a used oil shipment or by a recycler when accepting used oil for recycling. In some cases, testing may not be necessary if, based upon the generator's knowledge, the generator certifies that the used oil shipment does not contain any solvents. Both the transporter and recycler would remain responsible for ensuring that this certification is correct.

EPA requests comment on whether it is appropriate to require recyclers to test used oil. Comments are also solicited on the frequency of testing suggested above.

3. Options for Regulation of Used Oil Generators

Available data show that more than 600,000 generators of used oil generate between 0 and 1,000 kg/month of used oil; these generators collectively generate more than 430 million gallons of used oil annually.[35] They account for approximately 40 percent of the total used oil generated annually and account for more than 90 percent of all used oil generators (653,000 generators). On-site used oil management practices of generators generating less than 1000 kg per month would have been essentially uncontrolled under the 1985 proposal, while generators of more than 1000 kg per month of used oil would have been more stringently regulated (50 FR 49251–49254).

[35] Table 3 at 50 FR 49224, November 29, 1985.

By exempting the small quantity generators who recycle used oil from most substantive standards proposed in 1985, the Agency was trying to account for both the economic impact and protectiveness standards as mandated by section 3014. EPA believed that the generators producing over 1,000 kg per month may be in a better position to absorb the regulatory costs associated with the rather complex regulatory scheme proposed in 1985 (50 FR 49225). As indicated in section X of today's notice, the annual cost of complying with the management standards is likely to range between $100 and $650 per used oil generator. The economic analysis performed to support this notice indicates that a small fraction of the small businesses and small used oil generators may face incremental costs as great as $477 per year (see the discussion in section XI of today's notice).

EPA is now considering two alternatives to the approach proposed in 1985. Under the first option, EPA is considering eliminating the distinction between small quantity (less than 1,000 kg/month) and large quantity generators of used oil that was proposed in 1985 (50 FR 49222 through 49226, November 29, 1985). EPA believes that this option may facilitate both the recycling of all used oils (irrespective of who generates the used oil and how it is generated) and the implementation of one set of management standards for all used oil generators. Other reasons for eliminating this distinction include: (a) It minimizes complexity by placing all used oil generators under uniform regulatory requirements; (b) it eliminates the need for measuring quantities of hazardous used oils collected and stored each month; (c) it eliminates the concerns that generators could be bumped into a more stringent regulatory category if they collect DIY-generated crankcase oil, and (d) above all, it allows for a system whereby all used oil is collected, recycled, and managed in an environmentally sound manner, thus reducing hazards to human health and the environment. The single set of used oil management standards would capture all used oil generators and require them to comply with used oil storage and inspection requirements, cleanup requirements for releases, tracking and recordkeeping requirements, and limited reporting (e.g., reporting of used oil disposal). As discussed below in section IX.B., this single set of standards for all generators may be less stringent than the standards proposed for large quantity generators in 1985 (50 FR 49227–49331).

In addition to the advantages already enumerated today for regulating all generators, this option would enable all "service station dealers," as defined in CERCLA section 101(37), to avail themselves of an exemption from CERCLA liability. As discussed later in section IX.B.2.b. of this notice, (a) once service station dealers comply with the management standards promulgated under section 3014 of RCRA, including corrective action (i.e., spill response and cleanup), and (b) they accept DIY-generated used oil for the purpose of recycling, these generators would be exempt from CERCLA liability for off-site releases of used oil. Under the approach proposed in 1985, however, service stations that are exempt SQGs would not qualify for this exemption from CERCLA liability.

Alternatively, EPA is considering preserving some distinction between small and large generators of used oil, with certain conditions. EPA is considering exempting small quantity generators of used oil from the proposed management standards if these generators recycle the used oil they generate. Under this second option, the Agency is considering using the SPCC aboveground storage capacity exemption limit and the UST regulations underground storage capacity exemption limit as the regulatory definition of a small quantity used oil generator. Generators with total aboveground storage capacity less than or equal to 1,320 gallons or underground storage capacity less than 110 gallons may be considered a small quantity used oil generator and exempt from the used oil management standards if they recycle the used oil that they generate. EPA estimates that approximately 95 percent of the estimated 650,000 used oil generators would be exempted if the Agency decides to exempt small generators using the facility storage capacity as a discriminator. Industry contacts suggest that all non-industrial generators of used oil are likely to have an aboveground storage capacity of less than 1,320 gallons and all industrial generators are likely to have an aboveground storage capacity of greater than 1,320 gallons per facility. EPA requests comment on the number of generators that may be exempted under the used oil regulations (i.e., those generators storing used oil in aboveground tanks or containers with a total storage capacity less than or equal to 1,320 gallons and/or storing in underground tanks of a capacity less than 110 gallons) if the Agency establishes such a definition of small quantity used oil generators. As

discussed below, generators storing used oil in underground storage tanks may remain subject to the UST standards in part 280, except for those generators who may have underground storage tanks of a capacity less than 110 gallons. The UST regulations do not apply to UST systems whose capacity is 110 gallons or less (40 CFR 280.10(b)(4)), and EPA is considering not regulating generators with underground used oil tanks of such a small capacity. Again, EPA is only providing this small quantity generator exemption to those generators who meet the storage capacity limits and who recycle the used oil that they generate. If, in the future, EPA assesses that SQG-generated used oil is not recycled to the maximum capacity, EPA may revisit this exemption decision.

The advantages of basing the small quantity used oil generator exemption on the facility's total storage capacity are the following:

- In many cases, a storage capacity-based approach will allow small businesses to accumulate a quantity of used oil equivalent to their full storage capacity (if less than 1,320 gallons) and therefore may meet any similar required minimum limit for used oil pickup set by used oil collectors, without subjecting the generator to section 3014 standards.
- Will not discourage used oil generators from collecting DIY-generated used oil. For example, with a 1,000 kg per month or 300 gallon per month cutoff, EPA believes that a small business may be reluctant to accept DIY-generated oil.
- May address the concerns raised in public comments related to the small quantity used oil generator limit proposed in 1985. Some commenters were concerned that many small businesses would be pushed into the large quantity generator category due to the relatively low generation rate proposed for the small quantity used oil generator exclusion and felt that some small businesses, to avoid regulation, may mismanage their used oil (e.g., throw it in the trash, dump it on the ground or in the sewer).

The Agency requests comment on the two options under consideration for regulating used oil generators. However, the Agency is not soliciting further comments on the 1985 proposed exemption for generators of less than 1,000 kg/month at this time.

If the Agency decides to exempt small businesses as discussed above, small businesses meeting the exemption, many of whom can be classified as the "service station dealers" (SSDs) as defined under CERCLA section 114(c), would not be eligible for the CERCLA section 114(c) liability exemptions for SSDs. To be eligible for the exemption; service stations are required to (a) comply with the section 3014 used oil management standards and (b) accept do-it-yourself generated used oil. The small used oil generator exemption under the section 3014 management standards would be available to those who recycle used oil, either on site or send to the authorized used oil recyclers for recycling. EPA is not considering any notification requirement to ensure that small businesses recycle used oil. If, a "service station" meeting the small generator exemption wants to be eligible for the CERCLA section 114(c) liability exemption then, at a minimum, EPA may require the generator to (a) certify that used oil is being recycled on-site in compliance with the section 3014 used oil management standards and 40 CFR part 266, subpart E, and/or (b) have a used oil recycling contract with an authorized recycler stating that it would be recycled as burner fuel or as lube oil feedstock. The proposed paperwork would have to be maintained at generator's location and updated as necessary (e.g., if a new recycling contract is signed). These generators would be exempted from section 3014 management standards such as, corrective action (e.g., inspection and used oil release/spill cleanup), used oil tracking, and other requirements, that are currently under consideration for all regulated used oil generators. EPA requests comment on the minimal paperwork (recordkeeping) requirement that may allow otherwise section 3014–exempted small businesses to obtain the CERCLA liability exemption. In particular, is it appropriate not to impose corrective action requirements on small generators? (See CERCLA section 114(c)(4)).

4. Dust Suppression/Road Oiling

On November 29, 1985 (50 FR 49239), EPA proposed to ban the use of used oil as a dust suppressant (road oiling). On that date, EPA also proposed to list all used oils as hazardous waste (see 50 FR 49258). Both RCRA section 3004(1) and 40 CFR 266.23(b) prohibit using "a waste or used oil * * * mixed with hazardous waste" as a dust suppressant. EPA interprets this prohibition to apply to all solid wastes, including used oils, that are themselves hazardous wastes, whether mixed with other hazardous wastes or not.[36] Thus, by proposing to list all used oils as hazardous waste, EPA was also proposing to ban the practice of using used oils as dust suppressants. Even if EPA elects to list only certain used oils as hazardous waste or does not list any used oils as hazardous waste, EPA may elect to apply the dust suppression prohibition to all used oils.

As discussed earlier in this notice, EPA may determine that it is not appropriate to list any or all used oils as hazardous waste. However, given the ability of all used oils, when applied to the land for disposal or recycling, to contaminate water and make it non-potable, and given that used oil often contains toxic constituents from a variety of sources, the Agency is currently considering a ban on using any used oil as a dust suppressant, regardless of whether the used oil is a hazardous waste by definition. Additionally, considering the fact that it may be difficult to differentiate between non-listed used oils and listed used oils, that mixing of various types of used oils is common and difficult to control, and that mixing of hazardous waste into used oil has occurred commonly prior to land application as a dust suppressant (causing serious damage at Times Beach and other locations), EPA believes it may be necessary to ban the use of used oil for road oiling. EPA recognizes that mixtures of used oil and hazardous waste are currently brought under regulation as hazardous waste via the "mixture rule". However, used oils have historically come to be contaminated with toxic constituents that may or may not originate with listed wastes. A ban will effectively eliminate the potential environmental damages that may result from the migration of used oil and/or hazardous constituents after road oiling.

Since road oiling is, in fact, a type of "recycling," RCRA section 3014 provides EPA the authority to control (or ban) road oiling of all used oils. The use of used oil for road oiling or dust suppression may not be protective of human health and the environment. The Agency solicits comments on whether any used oils may be used as a dust suppressant without posing potential environmental and human health risks. As discussed in section IX.G., the Agency may allow some level of road oiling on a case-by-case basis. For that purpose, however, the party intending to apply used oil for dust suppression may have to demonstrate through analysis that the used oil is nonhazardous and that the land area on which it is to be used meets certain site-specific criteria. Commenters who favor allowing road oiling should specify how EPA can

[36] Except for wastes that are hazardous solely because of ignitability; see RCRA Section 3004 (i) and 40 CFR 266.23 (b).

ensure that hazardous wastes are not mixed with nonhazardous used oil, and how the Agency can prevent the contamination of ground waters and surface waters from used oils that have not been mixed with hazardous wastes. The Agency also solicits comment on environmentally safe alternatives to applying used oil for dust suppression.

5. Proposed Exemption for Primary Oil Refiners

In the November 29, 1985 final rule regulating hazardous wastes burned in industrial furnaces and boilers, EPA exempted from regulation hazardous waste fuels derived from the refining of oil-bearing hazardous wastes along with normal process streams. EPA also exempted oil reclaimed from hazardous waste generated in normal petroleum refining, production, and transportation, if the oil was to be refined with the normal process stream. These exemptions were provided because most hazardous waste constituents are thought to be either removed in the normal refining process or to contribute insubstantial quantities of contaminants to the final product (see the discussion at 50 FR 49168). EPA is considering extending the exclusion to fuels derived from used oils that are reinserted as feedstocks at primary petroleum refineries. This exclusion would effectively exempt the fuel from the derived-from provision in section 261.3(c)(2). As with the existing exclusion however, management standards would apply to the waste materials prior to reinsertion. Therefore, EPA may apply the section 3014 management standards to the used oil collected and stored prior to reinsertion in the crude oil pipeline or directly into the refining process. EPA requests comment on the exclusion for fuels derived from used oils that are used as feedstocks at primary petroleum refineries.

6. Underground Storage Tanks

Technical requirements for underground storage tanks (USTs) storing petroleum products and certain hazardous substances have been promulgated under RCRA subtitle I (see 40 CFR part 280) since the 1985 used oil proposal. EPA included underground storage tanks containing used oils in the universe of tanks covered by the UST standards promulgated in 1988. As the Agency stated in the preamble to the 1988 final rule for the UST technical requirements (53 FR 37112; September 23, 1988), EPA believes that used oil, when stored in underground storage tanks, presents risks similar to other petroleum products stored in USTs. EPA stated in 1988, and the Agency reiterates here, that releases from both used oil USTs and other petroleum product USTs can be prevented through the implementation of sound management practices. As a result, the Agency determined that used oil USTs must comply with the tank upgrading, operation and maintenance, corrosion protection, corrective action, closure requirements, and financial responsibility requirements promulgated for other petroleum product USTs. EPA believes that the subtitle I standards are sufficient to protect human health and the environment from potential releases of used oil from underground storage tanks (see Table VIII.F.2). EPA believes it is also important to continue to regulate used oils that are stored in underground tanks under the subtitle I regulations to avoid confusion on the part of the regulated community and to avoid dual enforcement and compliance monitoring responsibilities at the same generator or facility site.

Although not all underground tanks are currently regulated under subtitle I (i.e., those with a capacity of less than 110 gallons are exempt),[37] the majority of the used oil tanks that are underground are currently regulated under the RCRA 40 CFR part 280 regulations.

It was not clearly stated in the final rule for the UST technical standards (53 FR 37082, September 23, 1988) whether EPA intended to include USTs containing hazardous used oil under the part 280 regulations. Although the preamble discussion (53 FR 37112) indicates that all used oils in USTs fall within the purview of the subtitle I program, § 280.10(b) excludes any UST system holding hazardous waste listed or identified under subtitle C from part 280 requirements. At this time, EPA wishes to clarify that all USTs of a capacity greater than 110 gallons containing used oil (regardless of whether the used oil is listed or identified as hazardous waste), are regulated under 40 CFR part 280 standards for underground storage tanks. EPA may further clarify this point when the Agency promulgates section 3014 used oil management standards. The clarification could be codified in the new part 279, or in 40 CFR 280.10(b). Again, the Agency is making this clarification to avoid confusion on the part of the regulated community and avoid the administrative burden of having two regulating agencies responsible for enforcement and compliance monitoring at a single generator site or facility.

EPA has determined that since it is not necessary to incorporate the part 280 UST standards verbatim into the section 3014 used oil management standards regulations. Therefore, underground tanks storing used oil will continue to be regulated under the UST program (40 CFR part 280). Nonetheless, EPA proposes to clarify that compliance with part 280 will constitute compliance with section 3014, and that part 280 may be co-enforced against used oil USTs under both RCRA section 3008 and RCRA section 9006. EPA believes that a compliance with the UST requirements for the storage of used oil in underground storage tanks would be adequate to receive the CERCLA liability exemption available to service station dealers as defined in CERCLA section 114(c). (See further discussion of the CERCLA section 114(c) requirements in IX.B.2.b of the notice.) EPA requests comment on whether the compliance with the UST requirements would be adequate to activate the applicability of CERCLA liability exemption. Further, EPA believes it is important to minimize disruption in the current UST program, and section 3014 standards would be duplicative of those promulgated as part 280 requirements. Comments are requested on the proposal to continue to regulate the storage of used oil stored in underground tanks under 40 CFR part 280.

Under the federal UST program, states have the authority to implement and enforce the UST regulations. In some states used oil is a state-listed hazardous waste, while in other states used oil is regulated as a "special waste". EPA has no knowledge of (a) how these states apply the part 280 UST requirements to underground tanks used for the storage of used oil, or (b) whether the part 264, subpart J requirements are implemented and enforced for these underground tanks. EPA requests comment on this issue from states with used oil regulations. EPA also wants to know what difficulties may be encountered in the states that regulate used oil but do not enforce the part 280 UST requirements for underground used oil storage tanks.

7. Applicability of SPCC Requirements

In 1985, EPA proposed to require used oil handlers who were otherwise subject to the Spill Prevention, Control and

[37] The Agency chose under subtitle I to regulate all USTs of a capacity greater than 110 gallons because 110-gallon level coincides with DOT's definition for minimum portable tank for the transportation of hazardous materials. In the preamble to the final UST requirements EPA notes that this tank size is probably below the smallest petroleum tank routinely mass produced (275 gallons) and this level probably only excludes small sumps and other "atypical" tanks.

Countermeasure requirements (SPCC) also to comply with the proposed section 3014 used oil management standards (50 FR 49245). Since 1985, EPA has further evaluated the SPCC regulations as they apply to used oil storage tanks, and the Agency reiterates here that the SPCC requirements would continue to apply to facilities meeting the SPCC applicability criteria, in addition to the section 3014 management standards. SPCC requirements apply to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, or consuming oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines (40 CFR 112.1(b)). More specifically, part 112 applies to facilities with underground storage capacity greater than 42,000 gallons and aboveground storage capacity greater than 1,320 gallons of oil.

EPA is currently developing revisions to the Federal SPCC requirements pursuant to the Oil Pollution Act of 1990, enacted in response to the 1988 Ashland oil spill. In addition, a number of states (e.g., ME, NY, NJ, FL) have programs similar to the SPCC program while some others (e.g., OR, AL, WA) are developing similar regulations. EPA believes that many of the large used oil handlers are already in compliance with the SPCC regulations. These used oil handlers currently maintain approved SPCC plans and are equipped to execute specific requirements in the plan if used oil is discharged in harmful quantities, as defined in 40 CFR part 110. EPA is considering requiring used oil handlers who are subject to SPCC standards to comply with both the SPCC requirements and the used oil management standards since the focus of both sets of requirements, although related, is different.

The section 3014 standards discussed in today's notice cover routine operating practices rather than the response and countermeasure activities required by the SPCC regulations. Some of the differences between the SPCC requirements and the aboveground storage tank requirements under consideration for used oil handlers as discussed in this notice are the following:

- Today's requirements would be promulgated under RCRA rather than the Clean Water Act authority,
- The tank standards and the associated inspection and cleanup requirements that are under consideration would cover a wide variety of tank sizes and visible releases, leaks, or drips. The SPCC program, on the other hand, primarily covers large size tanks and the associated spills that could reach navigable waters, and
- The basic requirements to be promulgated for aboveground tanks used to store used oil would focus on routine inspections and cleanup of spills. The SPCC requirements identify additional containment and countermeasure guidelines such as secondary containment (curbing and diking), monitoring controls, integrity testing and certification, and corrosion protection.

Table VIII.F.1. summarizes in detail the requirements of 40 CFR 112.7 and 40 CFR 264.193 and 265.193. The SPCC requirements must be implemented in the event of a spill or a massive release of oils to navigable waters, while RCRA's aboveground storage tank regulations address standards for operating, maintaining, and closing tanks used to store hazardous wastes.

TABLE VIII.F.1.—COMPARISON OF SPCC REQUIREMENTS AND SUBTITLE C TANK REQUIREMENTS

	SPCC requirements	Subtitle tank requirements
Authority	The Clean Water Act and the Oil Pollution Control Act authorizes EPA to regulate activities that may harm navigable surface waters.	The Resource Conservation and Recovery Act authorizes EPA to develop management standards that are protective of human health and the environment.
Objectives	The SPCC requirements in 40 CFR part 112 are designed to protect surface water from oil contamination. Each facility must keep the SPCC plan on file to be implemented in response to a spill or leak that threatens to contaminate navigable waters.	RCRA requirements in 40 CFR parts 264 and 265, subpart J are applicable to tanks storing or treating hazardous waste and are designed to prevent ground-water contamination and other releases to the environment. Each facility must comply with minimum management standards for the containment and detection of hazardous wastes or constituents to prevent leaks and spills.
Applicability	Non-transportation-related onshore and off-shore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, or consuming oil and oil products which, due to their location, could potentially discharge oil into or upon navigable U.S. waters or adjoining shorelines. Facilites with underground storage capacity less than or equal to 42,000 gallons and aboveground capacity less than or equal to 1,320 gallons, provided no single container has a capacity in excess of 660 gallons.	Owners or operators of facilities that use tank systems for treating or storing hazardous waste.
Conditions	Must develop and maintain a Spill Prevention Control and Countermeasure Plan for oil spills, which includes: appropriate containment or diversionary structures to prevent discharged oil from reaching navigable surface waters. Provides alternative minimum containment systems that should be used, rather than requiring specific management standards. Containment options for onshore facilities include: dikes, berms or retaining walls; curbing; culverting, gutters or drainage systems; weirs, booms or other barriers; spill diversion ponds; retention ponds; and sorbent materials. Options for off-shore facilities include: curbing, drip pan; and sumps and collection systems.	Assess the integrity of existing tanks. If leaking remove from service, empty, stop flow, contain visible releases, certify repair if applicable, and report releases to the environment. Perform daily inspections of the tank system including: Monitoring leak detection equipment, secondary containment system, and external area, and documenting the inspection. Secondary containment must be provided, and must: Prevent migration; detect and collect wastes or accumulated liquids until removal; meet all design requirements; include at least an external liner or double walled tank or vault or an equivalent device; and meet all minimum management standards. An external liner or vault system must be designed to contain 100 percent of the capacity of the largest tank within its boundary. Double walled tanks must be capable of containing any release from the inner tank.

TABLE VIII.F.1.—COMPARISON OF SPCC REQUIREMENTS AND SUBTITLE C TANK REQUIREMENTS—Continued

	SPCC requirements	Subtitle tank requirements
Enforcement	Failure to prepare a SPCC plan, report discharges of over 1,000 gallons of oil, or revise a Plan as required is punishable by a civil penalty of not more than $5,000 per day of violation. Failure to implement a Plan may result in the discharge of oil to navigable waters, which is prohibited under section 110.	In order for a facility to operate, it must meet the minimum management standard. Compliance is mandatory and facilities are subject to strict enforcement penalties for violation of subtitle C provisions.

EPA is considering requiring the SPCC-recommended secondary containment options for controlling releases and spills of used oil from aboveground storage tanks at used oil recycling facilities. EPA believes that the majority of these facilities that store used oil in aboveground tanks currently have these areas designed and constructed in a manner that would meet the SPCC guidelines.[38] Figure VIII.F.1 illustrates secondary containment options that are available under RCRA subtitle C and under the SPCC regulations. As shown in the Figure, berms, dikes, or retaining walls along with an oil-impervious floor appears to be protective against sudden releases or accidental spills to contain used oil and to avoid significant contamination of nearby surface and ground water resources. EPA requests comments on the assumption that the majority of used oil facilities are currently in compliance with the SPCC aboveground tank requirements. EPA also requests comments on the adequacy of the SPCC secondary containment requirements for controlling used oil releases, and on the type of material that can be used to make storage area floors impervious to used oil.

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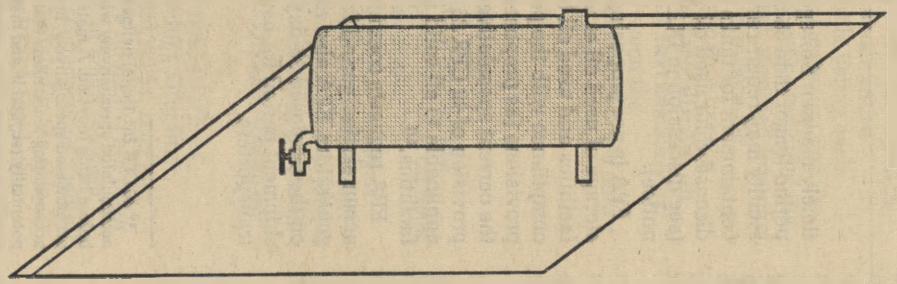
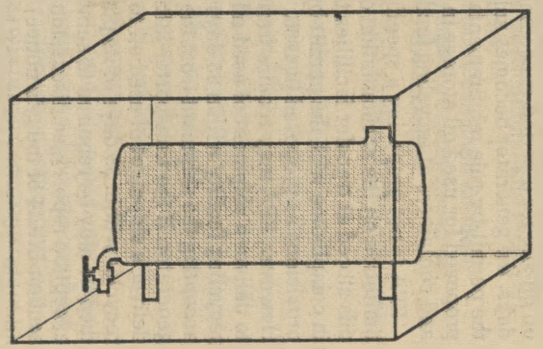
[38] The cost calculations presented in section IX of today's notice are based on the assumption that the majority of used oil recycling facilities would currently be in compliance with the SPCC requirements (even those not close to navigable waterways) and those that would not be in compliance would be required to comply with the SPCC secondary containment requirements, since EPA may consider these standards as acceptable section 3014 used oil management standards for aboveground storage tanks.

Figure VIII. F. 1 Secondary Containment Options

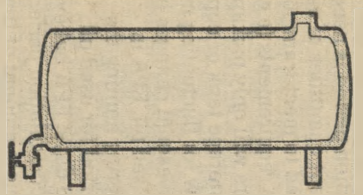
SUBTITLE C



EXTERNAL LINER

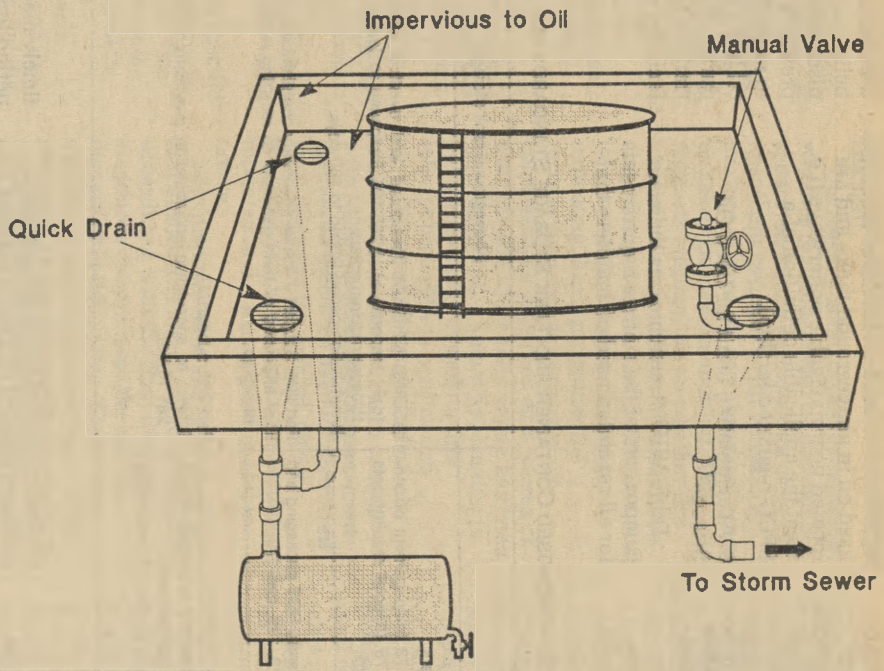


VAULT



DOUBLE-WALLED TANK

Spill Prevention Containment and Counter-Measures (SPCC)*



DIKES, BERMS, OR RETAINING WALLS

(Quick Drain is typically used for off-shore facilities, urban facilities, loading and unloading)

*EPA is developing a proposal that would strengthen the SPCC guidelines as required under the Oil Pollution Act of 1990 enacted following the Ashland Oil Spill of 1988.

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As a result of the Oil Pollution Act (OPA) of 1990, EPA is developing a proposed rule that would strengthen the existing 40 CFR part 112 requirements and would require additional prevention, containment, and control measures at SPCC-regulated facilities. EPA expects to publish the proposed rule before the end of the year. The OPA-mandated requirements, when promulgated, would be independently applicable to used oil facilities that store used oil in aboveground tanks and are located near navigable waterways (i.e., meet the applicable definition of a SPCC-regulated facility).

8. Accumulation Limit for Used Oil Storage

Table VIII.F.2. summarizes the main components of the storage requirements for all regulated used oil handlers that are discussed in today's notice. EPA believes that the storage requirements discussed in this notice are adequate to provide a level of protection necessary to minimize risks associated with used oil leaks and releases that may occur during storage at generator sites, transfer facilities, and used oil recycling facilities including used oil burners.

TABLE VIII.F.2.—PROPOSED CONTAINER AND TANK STORAGE STANDARDS FOR USED OIL

Container storage	Aboveground tank storage	Underground tank storage
Generators and burners.		
§ 265.171 (condition of containers), § 265.173 (management of containers), § 265.174 (inspections), § 265.176 (special requirements for ignitable wastes) and § 262.31 (labeling).	Labeling; § 265.194 (freeboard and overflow controls), § 265.195 (daily inspections), § 265.196 (response to leaks), and § 265.197 (closure requirements)..	40 CFR part 280.
Accumulation period limited to 90 days.	Accumulation period limited to 180 days.	
Transporters		
§ 30 days: 40 CFR 262.30 Packaging Standards; DOT packaging and transport requirements in 49 CFR parts 173, 178, and 179.	Part 265, Subpart J (minus secondary containment)	40 CFR part 280.
§ 30 days: 40 CFR 265 Supbart 1	Must ship used oil from generator to recycling facility within 35 days of pickup.	
Recycling facilities		
40 CFR part 264 subpart I	Part 264, subpart J.	40 CFR part 280.
Essentially same as for generators, plus § 264.177 (container/waste compatibility requirements) and § 264.175 (containment)..	Subject to speculative accumulation provisions defined at 40 CFR 261.1(c)(8)..	
May limit accumulation period to 35 days in lieu of secondary containment.		

In the 1985 proposed rule, EPA proposed the accumulation period for used oil at regulated generator sites [39] to 90 days (same as for hazardous waste generators). EPA received many comments requesting a longer accumulation period for used oil generators. Commenters said that a longer accumulation period is needed to allow for sufficient quantities of used oil to be accumulated to meet transporter minimum pickup requirements (e.g., some transporters will only pickup after the generator's storage tank or container is full) or to allow for fluctuating market conditions and seasonal changes in the demand for the used oil. EPA is therefore considering limiting the accumulation period for used oil generators to 180 days. EPA believes that a 180-day accumulation period will provide an adequate amount of time for used oil generators to collect and accumulate sufficient quantities of used oil to meet any restrictions on minimum collection quantities imposed by used oil transporters (i.e., some transporters may require that the generator accumulate a minimum quantity of used oil prior to collection or may set a fixed price for picking up a shipment of used oil on a minimum quantity) and will provide a sufficient amount of time to account for seasonal variations in used oil markets. If a used oil generator accumulates used oil on-site for a period exceeding 180 days, the generator becomes subject to the permit-by-rule requirements proposed for used oil storage in tanks and containers at recycling facilities.

EPA is not proposing a specific limitation on the accumulation of used oils stored at transfer facilities that are in compliance with the permit-by-rule provisions as proposed in 1985. However, EPA may require transporters to deliver a shipment of used oil to a recycling facility within 35 days of accepting the shipment from the generator. If the transporter fails to deliver a shipment of used oil to a recycler within 35 days of its pickup, then he may be required to submit an exception report (see discussion in section IX.C.4 of today's notice). In addition, thirty-five days may be allowed for storage and/or transport of the used oil from the generator to the recycler. A 35-day limit on used oil storage will ensure against over accumulation of used oil at transfer facilities, decrease the likelihood of releases of used oil to the environment, and will provide used oil generators with a level of assurance that their used oil is reaching a recycling facility in a timely manner. Storage of used oil for a period longer than 35 days at a transfer facility may require secondary containment for tanks and containers as discussed for used oil recycling facilities (see discussion in IX.D.1 of today's notice).

EPA is not proposing to limit the storage of used oil at used oil recycling facilities and used oil burners that are in compliance with the permit-by-rule provisions (as proposed in 1985) beyond the current speculative accumulation provision of 40 CFR 261.1(c)(8) that is applicable to all solid waste recycling facilities.[40]

EPA requests comments on a 180-day accumulation period for used oil generators. EPA also requests comment on the proposed 35-day limit on the shipment period for used oil transporters.

[39] EPA is considering regulating only used oil generators that store used oil in underground tanks or have a total aboveground capacity greater than 1,320 gallons.

[40] 40 CFR 261.1(c)(8) defines a material as being accumulated speculatively when it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and that, during the calendar year, the amount of material that is recycled, or sent off-site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period.

IX. Other Specific Phase I Management Standards

The standards and alternatives that EPA is considering for the first phase of the contemplated phased approach include some of those proposed in 1985 and some new requirements that EPA may deem to be necessary in light of the analysis of used oil characterization data, review of the 1985 proposed management standards and public comments specific to the 1985 proposal, and the promulgation of other EPA regulations, particularly the underground storage tank (UST) regulations. The management standards proposed in 1985 applied to all used oils; as discussed above, EPA is considering options that may apply the Phase I standards to all recycled used oils or only to used oils that are determined to be hazardous. Commenters are asked to clarify whether they believe the standards discussed below should apply to all used oils or only to a subset of the universe.

EPA solicits comments on the specific management practices and alternatives discussed in greater detail below. The reader should note that requirements proposed in 1985 but not discussed in this notice remain under active consideration. A table listing each proposed regulatory provision and its status as of today's notice (whether the same as the proposal, modified from the proposal, or a new provision) is provided in appendix A of today's notice. The table in appendix A is an easy-reference guide that summarizes the relationship between the requirements proposed in today's notice and the management standards proposed in 1985.

A. Applicability

1. Rebuttable Presumption

EPA is considering applying the rebuttable presumption for used oil fuels (§ 266.40(c)) to all used oils. The application of the 1,000 ppm halogen limit helps ensure that used oil has not been mixed with hazardous waste (see discussion in VIII.F.2 of today's notice).

2. Mixtures of Used Oil and Absorbent Materials

As discussed above, absorbent materials (e.g., sawdust, kitty litter, baled hay, absorbent socks, rags and wipers, and sorptive minerals) are often used in the cleanup of small releases and leaks. Mixing TC hazardous used oil with absorbent materials for the sole purpose of evading RCRA regulation will be considered to be impermissible dilution under the land disposal restrictions, once treatment standards have been set for the TC wastes (40 CFR 268.3(a)).

The Agency is interested in knowing whether (a) used oil can be drained or separated from a saturated mixture of absorbent material or (b) whether a mixture of used oil and absorbents can be safely burned. In addition, EPA requests information on whether the used oil recovered from such mixtures can be recycled. Recently, EPA received information from an entrepreneur indicating that a procedure for recovering used oil from used oil-contaminated materials or mixtures of used oil and other solid waste has been developed and a patent application is being processed. Based on this information, EPA is considering requiring used oil handlers that mix used oils with absorbents to comply with RCRA section 3014 management standards when the used oil recovered from mixtures is recycled. Other mixtures are discussed in the section on mixtures in the listing portion of this notice.

Any disposal of mixtures of used oil and absorbents may have to be done in accordance with the final disposal standards chosen from the options discussed in this notice. The spent absorbent materials would have to be managed as any other solid waste. If the material is mixed with a listed hazardous waste or if the mixture exhibits one of the hazardous waste characteristics, it is subject to subtitle C management (treatment and disposal) requirements.

EPA requests comment on these requirements for recycling used oil recovered from mixtures.

3. Reclamation of Used Oils Containing CFCs

EPA recently published an interim final rule exempting from the Toxicity Characteristic (TC) chlorofluorocarbon (CFC) refrigerants that are reclaimed (see discussion in 56 FR 5910, February 13, 1991). This exclusion was provided after EPA received information indicating that application of the TC may promote venting, rather than recycling, of the CFCs, which are ozone-depleting substances. EPA has received additional information indicating that lubricating oils in refrigeration units often contain CFCs. EPA is currently considering two options for the regulation of used oils containing CFCs that are to be reclaimed at CFC-reclaiming facilities. The first option is to regulate the used oil as generated (and incidentally contaminated with CFCs) under the section 3014 management standards. This option does not provide any special exclusion or exemption for used oils containing CFCs. The second option is to apply section 3014 standards to the used oil only after the CFCs have been reclaimed. This option may allow CFC reclamation facilities to continue their operations without becoming subject to additional regulation, except for the used oil generator standards for accumulation of the "cleaned" used oil prior to shipment off-site for used oil recycling. EPA believes this option will encourage the reclamation of CFCs, preventing further releases into the atmosphere. EPA requests comments on the options presented for used oils from which CFCs can be reclaimed.

EPA is aware of a research and development effort underway to formulate CFC substitutes for refrigeration units. EPA believes that used oils collected from refrigeration units need to be managed in an environmentally sound manner. EPA requests comments on the types and quantities of used oils that may be associated with refrigeration units that contain CFC substitutes in the future.

The lubricating oils generated while servicing Heating, Ventilation, and Air Conditioning (HVAC) systems are covered under today's notice as well. EPA believes that some of these oils are likely to be processed to reclaim CFCs and following the CFC recovery they are recycled as burner fuel. In the case of lubricating oils generated when servicing refrigeration units located at small commercial establishments and homes, the used lubricating oils are drained from refrigeration units by the service company staff and the servicing establishment, therefore, is the generator of the used oil. Following the collection of the used oil, the servicing establishment, as a generator of used oil, must comply with all applicable standards when the used oil management standards are promulgated. EPA solicits comment on whether HVAC trucks carry sufficient quantities of used oils that may be mixed with CFCs that the trucks should be regulated as used oil containers or whether EPA should only regulate the used oil after the CFCs (or CFC substitutes) are reclaimed from the mixture.

4. Oil/Water Mixtures

In 1985, EPA proposed to exempt oily wastewaters containing *de minimis* losses of used oils from the mixture rule (50 FR 49269). EPA is still considering excluding such mixtures from the mixture rule and the section 3014 management standards.

EPA is aware, however, that bilge waters generated on ships may contain

significant quantities of oil and hazardous constituents. EPA is, therefore, considering applying section 3014 management standards to bilge waters prior to discharge to a publicly-owned treatment works (POTW). EPA is also considering an exemption for bilge waters that have been treated in an oil/water separator. Under MARPOL 73/78 provisions, ocean-going ships are required to maintain oil/water separators on board. Under this scheme, bilge water upstream of an oil/water separator may be subject to section 3014; bilge water downstream may be exempt. The oil recovered in the oil/water separator may be subject to section 3014 standards. The generator of the bilge water may also be allowed to demonstrate that the quantity of oil in the bilge is insignificant and that the oil cannot be practicably separated. The Agency requests comments on the regulation of bilge waters containing used oil. In addition, the Agency requests analytical data on the composition of bilge waters.

EPA is also aware of certain petroleum refineries that manage used oil/water mixtures on-site prior to the disposal/treatment of the water portion of the mixture in wastewater treatment plants. EPA's understanding of the treatment of used oil/water mixtures is as follows: The mixture is passed through an oil/water separator to remove oil. The "oil-free" water is then sent to a wastewater treatment system for further treatment prior to its discharge. The used oil that is recovered and the used oil/water mixture upstream of an oil/water separator may be subject to section 3014 management standards. The refinery, in this case, may demonstrate that the quantities of used oil in the mixture are such that oil is not recoverable and hence adequately treated and discharged at the on-site wastewater treatment facility. EPA requests comment on the used oil/water mixtures handled by petroleum refineries, on other used oil/petroleum handling facilities, and on the oil content of used oil/water mixtures.

5. Used Oil Filters

As explained above in the listing section, EPA is considering exempting from regulation as a hazardous waste under § 261.4(b), used oil filters containing a listed used oil that have been drained and crushed (see section V.C). EPA is not proposing to regulate the act of draining and crushing oil filters. However, the used oil drained from the filters will be subject to the section 3014 management standards. If a drained filter casing exhibiting a hazardous waste characteristic is sent for scrap metal reclamation, it is exempt from regulation, per § 261.6(a)(3)(iv). Drained or crushed filters that are not recycled can only be disposed of in landfills that are in compliance with state regulations governing solid waste landfills. The generator of the used filters must demonstrate that the drained and/or crushed filters do not exhibit the toxicity characteristic (using generator knowledge or filter analysis data). Used filters not going for recycling that exhibit the TC must be handled as hazardous wastes.

6. Used Oil Used as a Fuel in Incinerators and Municipal Solid Waste Combustors

Currently, the management or burning of any material or solid waste in a unit meeting the definition of an incinerator in 40 CFR 260.10 is not considered to be recycling. Also, hazardous wastes, including hazardous used oils, destined for incineration (not burning for energy recovery) must go to a permitted facility meeting the requirements of 40 CFR part 264 subpart O. Materials and solid wastes that are not hazardous wastes can be burned in any solid waste combustor or incinerator that is in compliance with the municipal combustor standards.

EPA is considering allowing the use of used oil to enhance the combustion of either hazardous wastes in a permitted hazardous waste incinerator or of municipal waste in a municipal waste combustor. EPA may allow this use of used oil (whether it is determined to be hazardous or not) to be considered recycling (*i.e.*, a form of burning for energy recovery) and therefore be subject to the proposed section 3014 tracking and storage standards, rather than the hazardous waste manifesting and storage requirements. EPA requests comments on whether used oil sent to a permitted hazardous waste incinerator to enhance combustion should be subject to the hazardous waste storage and manifesting requirements or subject to the proposed section 3014 requirements. EPA also requests comments on whether or not the Agency should permit the burning of used oils that may be listed or used oils that exhibit one or more of the hazardous waste characteristics in municipal waste combustors to enhance combustion. Also, if the Agency determines that this practice is indeed a form of recycling, the Agency requests comments on whether the used oil should be subject to the proposed section 3014 used oil tracking and storage standards. The Agency believes that the section 3014 standards may provide an adequate level of protection in this case because the used oil would be transported and stored prior to recycling, much as it would be at a recycling facility that would be subject only to section 3014 and permit-by-rule standards.

EPA requests comment on the use of used oil as a fuel to enhance waste combustion at permitted hazardous waste incinerators and the regulation of this activity as a form of recycling, subject to the section 3014 standards.

B. Generator Requirements

Table IX.B.1. provides a brief summary of the proposed used oil generator requirements under the heading "all generators", that EPA is considering adopting under Phase I of the used oil management standards. Table IX.B.1. also compares the requirements that the Agency is now considering with those proposed in 1985 A more detailed discussion of the generator requirements is provided below. EPA believes that if the Phase I management standards are fully implemented and practiced by generators, then additional generator standards may not be necessary since the Phase I standards may both foster recycling and minimize human health and environmental hazards.

TABLE IX.B.1.—PROPOSED USED OIL GENERATOR STANDARDS

1985		Today—all generators [1]
SQG's	LQG's	
Storage		
<1,000 kg accumulated on-site in tanks; corrosion protection; tank material compatibility requirements.	Containers; labeling; § 265.171 (condition of containers), § 265.173 (management of containers, § 265.174 (inspections), § 265.176 (requirements for ignitable wastes). Tanks: freeboard and overflow controls; daily inspections; labeling; response to leaks; and closure requirements. Secondary containment for new tanks	Containers: 40 CFR 265.171 (condition of containers), 265.173 (management of containers), 265.174 (inspections), and 265.176 (ignitable and reactive wastes). Aboveground tanks: 40 CFR 265.195 (daily inspections), 265.196 (response to leaks), 265.197 (closure). USTs: 40 CFR Part 280. Also see Table VIII.F.2.
Corrective Action		
None	Containment of visible releases	Containers: 40 CFR 265.171. Aboveground tanks: 40 CFR 265.196 and 265.15(c). USTs: 40 CFR Part 280, Subpart E & F.
Closure		
None	Removal of oil and residues from tanks and discharge control equipment.	Aboveground tanks: 40 CFR 265.197. USTs: 40 CFR Part 280, Subpart G & H.

TABLE IX.B.1.—PROPOSED USED OIL GENERATOR STANDARDS

1985		Today—all generators [1]
SQG's	LQG's	
Preparedness and Prevention		
None	Telephone, fire extinguishers, absorbents. Requirements for emergency coordinator and arrangements with local authorities; personnel training and emergency procedures.	Same as proposed for LQGs.
Tracking		
None	§ 265, Subpart B (hazardous waste manifest) and § 262.42 (exception reporting) or recycling contract with authorized recycling facility. Also pretransport requirements: § 262.30 (packaging), § 262.31 (labeling), § 262.32 (marking), § 262.33 (placarding).	Collection log signed by generator and transporter, regardless of the existence of a recycling agreement. (Two additional options under consideration).
Recordkeeping		
None	Operating record for each shipment, including: name, address, and EPA ID number of transporter; quantity of used oil shipped; and date of shipment.	Same as proposed for LQGs.
Reporting		
None	No requirements	Reporting required only for disposal.

[1] The requirements shown under the "All Generators" column will be applicable either to all used oil generators or to all generators with underground tanks or aboveground storage capacity greater than 1,320 gallons (or one aboveground tank of capacity less than 660 gallons), depending upon the regulatory option that EPA promulgates.

As discussed previously in VIII.F.7 and VIII.F.8, EPA is considering exempting used oil generators that have a total aboveground storage capacity less than 1,320 gallons from the used oil generator standards. EPA believes that this is one way to exempt only the smallest businesses from the used oil management standards. If EPA promulgates the proposed definition of small quantity used oil generator discussed above, generators meeting the definition of a small quantity used oil generator will be exempt from the generator standards discussed below and presented in Table IX.B.1. All exempted generators, however, would have to recycle the used oil they generate, either by burning the used oil on-site for energy recovery or by shipping it off-site for recycling. The proposed exemption for small quantity generators of used oil will not be applicable if used oil is not recycled.

1. Storage in Containers and Tanks

As evident throughout today's notice, the storage standards that EPA is considering for the different segments of the used oil industry are customized to fit the potential risks associated with used oil handling. EPA believes that the storage standards address the potential hazards associated with used oil. They are developed such that used oil storage and associated leaks and spills are monitored on an on-going basis (i.e., daily or weekly inspections) and releases are cleaned up. EPA believes that the specific requirements discussed below for different categories of used oil handlers are environmentally protective and are very similar to those that are currently practiced by reputable used oil handlers.

Note that the Spill Prevention, Control, and Countermeasure (SPCC) requirements in 40 CFR part 112 and the underground storage tank (UST) standards in 40 CFR part 280 also apply to used oil handlers meeting the applicability criteria for these regulations. Also, regardless of whether EPA promulgates a definition of small quantity used oil generator, all used oil generators storing used oil in underground tanks with a capacity of 110 gallons or greater must comply with the Part 280 UST standards. The following section discusses the storage requirements that EPA is currently considering for used oil generators. Specific storage requirements for other types of used oil handlers are discussed in later sections of today's notice.

a. *Storage in Containers.* Under the 1985 proposal, large quantity generators would be required to comply with selected 40 CFR part 265, subpart I standards (50 FR 49252, November 29, 1985) for used oil container storage. EPA may require all used oil generators to

comply with the same container standards proposed in 1985 for large generators (see Table IX.B.1). These basic "minimum technical" requirements would ensure that containers (a) remain closed and are not damaged or leaking, (b) are properly labeled, (c) are inspected for leaks and releases on a routine basis (preferably daily), and (d) immediate cleanup is undertaken when a release occurs.

As discussed previously in sections VIII.F.7 and VIII.F.8, EPA is considering exempting used oil generators that have a total aboveground storage capacity of less than 1,320 gallons from the used oil management standards. EPA believes that this approach may exempt the smallest businesses from the used oil generator standards. EPA is considering including the capacity of any containers storing used oil on-site in the 1,320 gallon capacity limit for small quantity used oil generators. For example, if a generator has five containers with a total capacity of 275 gallons (5x55 gallons) on-site and a single aboveground tank with a capacity of 660 gallons, then the total storage capacity at the site meets the exemption limit since the total aboveground storage capacity is less than 1,320 gallons. EPA requests comment on whether container storage capacity should be included as part of the total aboveground storage capacity for defining the small quantity used oil generator exemption.

As discussed above, the Agency presumes that all used oils are destined for recycling, unless the presumption of recycling can be rebutted. Therefore, EPA will presume that any container of used oil at a generator site is subject to the proposed regulations as discussed here.

EPA requests comment on the container standards proposed for used oil generators. EPA also requests comment on the proposed exemption for small quantity used oil generators and on whether small quantity used oil generators should be exempt from the proposed container standards.

b. *Storage in Aboveground Tanks.* On November 29, 1985, EPA proposed a set of standards for all tanks used to store used oil (50 FR 49251 through 49254 and 49256). At the time, EPA proposed to pattern the tank requirements after the (then proposed) hazardous waste tank standards. The storage requirements outlined in the 1985 proposal are summarized below. Since 1985, additional technical requirements (including design, installation, operating, release response and detection, secondary containment, closure, and corrective action requirements) have been promulgated for tanks used to store hazardous waste under 40 CFR parts 264 and 265, subpart J. The 1985 proposal specified the following tank storage standards:

- Small quantity generators (less than 1,000 kg/month of used oil) must store used oil in tanks that meet the Subtitle I "interim prohibition" on installing unprotected tanks;
- Large quantity generators, owners and operators of transfer facilities, and owners and operators of recycling facilities (including used oil burning facilities) had to comply with the then existing 40 CFR part 265, subpart J standards. [41]

The 1985 proposal requested comment on secondary containment requirements for new aboveground tanks located at large quantity generators, and at transfer and recycling facilities. The 1985 proposed aboveground tank storage requirements were based on the fact that all used oils would have been designated as listed hazardous wastes.

The used oil management standards that are being considered at present are for all recycled used oils, only a portion of which may or may not be listed or identified as hazardous waste. With this in mind, EPA re-evaluated the 1985-proposed used oil storage standards and concluded that the then proposed storage requirements for large quantity generators may be excessive and may need to be modified or replaced with requirements that are compatible with a broad universe of used oil handlers. EPA is therefore considering the following approach for used oil storage requirements.

First, EPA is considering the deferral of any secondary containment requirements for used oil storage tanks at generator sites. Comments received on the 1985 proposal indicate that the costs of upgrading generators' tanks may seriously affect used oil recycling (i.e., API and NORA indicated that secondary containment was too expensive and does not provide significant additional environmental benefit). In addition, only a limited number of used oil handlers have used oil that may be identified or listed as hazardous, and full secondary containment may not be necessary for the diverse universe of used oil generators, particularly since EPA is considering requiring daily inspection of tanks and immediate cleanup of releases. In addition, used oils are generally not corrosive and thus waste/tank compatibility problems do not arise.

Therefore, EPA may finalize selected 1985–proposed tank standards (minus secondary containment) for aboveground tank storage for used oil generators (50 FR 49251). These are:

- Inspection of all tanks for tank damage, tank rupture, tank condition, and leaks;
- Cleanup of visible releases, leaks, or drips around the storage units;
- Requirements for storage of ignitable used oil;
- Labeling requirements for aboveground tanks demonstrating "used oil" storage;
- Freeboard controls for open tanks;
- Overflow controls (e.g., automatic cut-off) for continuously-fed tanks; and
- Closure (remove all used oil from tanks, discharge control equipment, and discharge confinement structures, if present).

These requirements take into account that many or most used oil generators are small businesses and therefore, may experience an undue economic burden. The storage requirements under consideration are similar to those applicable to generators of between 100 and 1,000 kg/month accumulating hazardous waste in tanks (40 CFR 265.201, 51 FR 25479, July 14, 1986). EPA believes that the requirements listed above provide adequate control against health and environmental hazards associated with used oil storage. The requirements identified above ensure against releases and spills that may occur during used oil handling and storage in aboveground tanks. These requirements are designed to minimize potential risks to human health and the environment.

The proposed requirements are similar to some of the controls many facilities may have in place under the Spill Prevention, Control, and Countermeasure (SPCC) program (40 CFR part 112, 38 FR 34165, December 11, 1973). It is important to note that the SPCC standards are applicable only to facilities with a total underground storage capacity of greater than 42,000 gallons, or an aboveground storage capacity of greater than 1,320 gallons. Furthermore, the SPCC requirements are applicable only to those facilities which reasonably have the potential to discharge oil into or upon the navigable waters of the United States and adjoining shorelines.

When used oil management standards are promulgated, both the SPCC and the used oil tank standards will apply independently. EPA does not believe the

[41] Part 265, Subpart J has been amended since the 1985 proposal by the addition of secondary containment and other requirements (See 51 FR 25479, July 14, 1986). The pre-existing tank standards, however, remain in Section 265.201 for generators of 100–1000 kg/mo of hazardous waste.

two programs contain conflicting provisions. While the proposed requirements in today's notice for aboveground used oil storage tanks are similar to those of the SPCC program, some differences do exist as shown in section VIII.F.7.

The special requirements proposed in 1985 for aboveground tank systems that are leaking or otherwise unfit for use (50 FR 49253) may be promulgated as proposed. New or replacement tanks would be subject to the same standards discussed above.

The Agency believes that the requirements being considered for Phase I can adequately minimize human health and environmental risks associated with routine storage procedures without excessive economic burden on small businesses at this time. These requirements should be sufficient to protect against spills and releases associated with normal operations. They may not, however, be adequate to ensure against unforeseen events. However, the probability of the occurrence of such events is very minimal. If, as discussed above, used oil management standards are implemented in two phases, and after the Phase I requirements are in place, experience suggests that additional controls (e.g., secondary containment, integrity testing and certification, and monitoring controls) are necessary to prevent spills and releases of used oil into the environment, then EPA may consider such controls for all aboveground tanks used to store used oil.

Comments are requested on the approach discussed here for managing used oils stored in aboveground tanks.

c. *Storage in Underground Tanks.* As explained above, generators storing used oil in underground storage tanks must continue to comply with the 40 CFR Part 280 standards for underground tanks as they were promulgated in 1988.

2. Release Detection and Cleanup Response

a. *Detection and Cleanup of Releases and Leaks During Storage and Transfer.* Based on the potential for small quantities of used oil to contaminate water supplies, EPA believes that it is necessary to control releases or leaks (in addition to surface spills) that may occur during routine used oil collection, storage, and transfer operations. Through inspection and cleanup requirements, EPA believes that the potential contamination associated with storage and transfer could be effectively controlled and mitigated.

The proposed requirements for containers and tanks discussed above specify inspection requirements for detecting releases of used oil around the storage units. In the case of containers and aboveground tanks, these requirements implicitly require cleanup of releases. Spills and leaks not cleaned up could be viewed as illegal disposal of solid (or hazardous) waste. EPA believes that specific, explicit requirements for the detection and cleanup of releases of used oil may be appropriate, since they:

- Are likely to occur during normal operation (i.e., pouring of used oil into containers and tanks, transferring used oil to collection trucks or to storage tanks at recycling facilities), and
- May remain undetected and uncontrolled if tanks and containers are not inspected regularly.

In addition, EPA believes that inspections for detecting visible releases, drips, and leaks and cleanup using absorbent materials are "good housekeeping" practices and is proposing that all used oil generators comply with these requirements. Many large generators have instituted them as part of employee training and site maintenance programs. EPA believes that such "good housekeeping" measures are critical for employee health and safety as well as public health and environmental protection.

EPA requests comments on the requirements under consideration to address releases in areas around the storage units. EPA also requests comment on whether facility-based employee training programs for detection and cleanup of leaks and small releases are needed and should be required in the regulations.

b. *Generator Spill Clean-up Requirements and CERCLA Liability.* A separate issue that is related to the used oil storage requirements is the issue of off-site liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for generators of used oil. Under CERCLA section 114, "service station dealers" [42] who manage used oil in accordance with conditions in CERCLA section 114(c) are not liable, under CERCLA section 107 (a)(3) or (a)(4), for response costs or damages resulting from threatened or actual off-site used oil releases. One of the conditions for relief from liability in CERCLA section 114(c) is that the service station dealer comply with RCRA section 3014 management standards, including "corrective action" (which EPA interprets, in this context, to mean simply release response and remediation) requirements. The CERCLA section 114(c) exemption will be effective when the RCRA section 3014 regulations that include RCRA Subtitle C or I requirements to conduct corrective actions are promulgated. EPA has concluded that the RCRA section 3014 generator standards must include release cleanup requirements to activate the CERCLA section 114(c) provision. Generators storing in underground tanks are subject to part 280 cleanup requirements. Since EPA is today considering in relying on the part 280 standards as being sufficiently protective against the human health and environment threats in lieu of different standards under section 3014, EPA believes that the 1988 promulgation of the part 280 requirements should be considered to have activated CERCLA section 114(c) for generators with USTs and no other tanks, containers, or other storage units. EPA requests comment on this point particularly whether the section 114(c) exemption only should take effect prospectively when the Phase I management standards take effect.

EPA is now considering what requirements will activate the provisions for used oil generators (and "service stations") that store used oil in either containers or aboveground tanks. EPA is considering applying the basic spill cleanup requirements proposed on November 29, 1985 (50 FR 49253) to used oil generators that store used oil in containers and tanks. These requirements are essentially the same as the cleanup requirements provided in § 265.196 and include removal of used oil from the tank system, removal of the tank from use, and containment of visible releases. Such standards would require generators, in the event of a spill, to contain the flow of oil to the extent possible and, as soon as practical, to clean up the oil and any contaminated materials, soils, ground waters, and surface waters (see proposed 40 CFR 266.41(c)(6)(v), 50 FR 49253, November 29, 1985).

Other provisions proposed for used oil generators in November 1985 entailed routine inspection of containers and tanks, and mitigation of any problems discovered (e.g., leaking containers) (50 FR 49227 and 49229). Taken together, EPA believes that, if promulgated, these cleanup requirements may be adequate to activate the CERCLA section 114(c)

[42] Section 114 of CERCLA (as amended by SARA) defines a "service station dealer" as "any person * * * where a significant percentage of the gross revenue of the establishment is derived from the fueling, repairing, or servicing of motor vehicles" and accepts DIY generated used oil. Section 114 also includes within the definition of service station dealer, "any government agency that establishes a facility solely for the purpose of accepting recycled oil" from households and other DIY generators.

liability exemption. Furthermore, the regulations would specify that compliance with part 280 corrective action requirements for underground storage tanks satisfies the section 3014 corrective action requirement, and that service station dealers cleaning up releases in compliance with the part 280 standards would be eligible for the CERCLA section 114(c) liability exemption.

If EPA chooses not to regulate used oil generators who have a total on-site aboveground storage capacity of less than 1,320 gallons, or one aboveground tank or container with a capacity less than or equal to 660 gallons, service station dealers meeting the definition of an exempt small quantity used oil generator will not be eligible for the CERCLA section 114 exemption, since these generators may not have to comply with the used oil management standards, including spill and release cleanup requirements, promulgated under section 3014.

EPA requests comments on the proposed spill and release cleanup requirements, and requests information on any alternative ways to activate the CERCLA section 114(c) liability exemption for used oil generators.

3. Generator Identification (ID) Numbers

In 1985, EPA proposed to require all generators of greater than 1,000 kg/month of used oil to obtain an EPA ID number (see proposed § 266.41(b), 51 FR 49252, November 29, 1985). However, EPA is now considering dropping this requirement. EPA believes that reviewing notification forms and assigning ID numbers to all used oil generators who store more than 1,320 gallons in above ground used oil tanks and containers would be resource intensive (based on the information collected for the 1985 proposal). EPA believes that used oil generated by regulated generators will be recycled and monitored by a chain of used oil handlers once it leaves the generator site and, hence, notification and ID numbers will not be necessary.

Since the Agency primarily uses ID numbers to identify the regulated universe of generators and collect generator-specific information, and since the Agency can obtain such information (e.g., type of generator and quantities of used oil generated) from transporters and used oil recyclers, the Agency believes that it may not be necessary to require used oil generators to obtain ID numbers. The tracking alternatives discussed below may also minimize the need for notification and ID numbers. Therefore, EPA is considering eliminating the notification and EPA ID number requirements for all used oil generators. As discussed below, EPA is, however, considering requiring all used oil generators to maintain collection logs, as records of used oil shipments, and keep them on file for at least three years from the date of shipment. In addition, a generator shipping hazardous used oil off-site for disposal must comply with the current regulations for identification numbers in § 262.12 and the subpart B requirements for manifesting.

EPA requests comment on the possible elimination of the EPA identification number and notification requirement for used oil generators who do not send hazardous used oils off-site for disposal.

4. Generator Tracking of Used Oil Shipments Off-site

The November 29, 1985 proposal included requirements to track or keep records of all used oils sent off-site for recycling (50 FR 49254, November 29, 1985). Generators were required to comply with the pre-transport requirements of 40 CFR 262.30 to 262.33 and the generator and transporter were required to manifest the shipment using the hazardous waste manifest, unless the generator had a written recycling agreement with an authorized used oil recycling facility (50 FR 49253). The proposed listing may have caused used oil destined for disposal to be manifested as a hazardous waste. However, in contrast, if a generator had a written agreement with a recycler, only recordkeeping and notification requirements were required for off-site shipments of used oil. [43] The Agency's 1985 proposal was an attempt to balance the need for an adequate recordkeeping and tracking system and comply with the mandate of RCRA section 3014(c) to minimize the regulatory burden on used oil generators and transporters.

Comments were received following the publication of the 1985 proposal that indicated that EPA should provide greater specificity on the proposed used oil tracking system. As discussed above, EPA is considering alternatives that involve the maintenance of a collection log by used oil generators and transporters, regardless of the existence of a recycling contract. The alternatives that the Agency is currently considering for used oil tracking from generators to recyclers are discussed here and the associated advantages and disadvantages are discussed more fully under the transporter requirements (see section IX.C.3).

As discussed above, even though all used oils may not be hazardous, some level of control over their possible mismanagement may be necessary. EPA believes that such control can be exercised by tracking used oil from generator to recycler to ensure that it reaches authorized used oil recyclers in a timely manner. EPA now believes that the 1985-proposed manifest requirement for large quantity generators that do not have a recycling contract in place may be excessive, especially since (a) all used oils will be covered under the recycling presumption and (b) the universe of recycled used oil generators may be expanded to include all generators of used oil. EPA is, therefore, considering requiring the tracking of used oil shipments from generator to recycler by use of a collection log maintained by each generator in lieu of the hazardous waste manifest, whether or not a recycling contract exists between a generator and the recycler. The use of a collection log eliminates the need for the manifesting requirement proposed in 1985 for those cases where a generator does not have a contract with a used oil recycler. EPA solicits comment on whether a collection log is an adequate requirement or whether the manifest and recycling contract option proposed in 1985 should be allowed in addition to the proposed collection log requirement.

Table IX.B.2. identifies the two options EPA is considering to track used oil from generators to recyclers via transporters. Under Option 1, EPA could require generators, regardless of any written recycling agreements they have, to keep records (a collection log signed by the generator and transporter) that document the intended destination of the used oil. These records may include documentation of the quantities of used oil shipped, the shipment dates, names and addresses of the generator and transporter, EPA identification numbers for used oil transporters, dated signatures of the generator and transporter, and EPA identification numbers of the recycling facility(ies). Under Option 2, the generator is required to maintain the same records as required under Option 1, but a transporter prepares a used oil tracking form at the conclusion of a "milk run" (for details see IX.C.3.).

[43] RCRA § 3014 prohibits EPA from requiring generators to comply with manifest requirements if a contract between the generator and an authorized recycler is in place.

TABLE IX.B.2.—ALTERNATIVES FOR TRACKING USED OIL

	1985 proposal	Option 1	Option 2
Tracking Document.	Hazardous waste manifest.	Collection log maintained by all handlers.	Collection log maintained by all used oil handlers; tracking form initiated by transporters.
Generators.	Fills out appropriate portion. No manifest when generator has contract with recycler.	Must record quantities of used oil shipped; name, address, EPA ID no. of transporter; dated signature of transporter.	Same as Option 1.
Transporters.	Fills out appropriate portion.	Must record quantities of used oil delivered; names, addresses, ID nos., and dated signatures of recycling or disposal facilities.	Tracking form must contain information required under Option 1.
Recycling Facilities/ Disposal Facilities.	Fills out appropriate portion and returns copy to generator when no contract exists.	Must retain copies of collection logs with dated signature of transporter.	Must retain copies of tracking forms signed by transporters.

5. Generator Recordkeeping and Reporting Requirements

Under the 1985 proposal, large quantity used oil generators were required to obtain EPA identification numbers (50 FR 49252) and to maintain operating records of all used oil shipments sent off-site (50 FR 49253 and 49254). Each off-site shipment was to be recorded with the name, address, and EPA ID number of the transporter; the quantity of used oil shipped; and the date of the shipment. These records were required to be maintained for three years from the date of shipment. Used oil generators with a recycling agreement were required to maintain a copy of the agreement as long as it was in effect, and to obtain a one-time signed notice from the recycler certifying that the facility is authorized to recycle used oil. EPA sees no need to change these requirements from the 1985 proposal with the exception of the possible elimination of the generator EPA ID number as discussed above.

No recordkeeping and reporting requirements were proposed for small quantity used oil generators (generators of less than 1000 kg of used oil per month) in 1985. As discussed earlier, EPA is considering an option that may include eliminating the small quantity used oil generator category. Under this approach, all generators would be subject to the same recordkeeping requirements proposed in 1985 for large generators. EPA solicits comments on whether the recordkeeping requirements discussed above should be applicable to small quantity generators, which may be defined as generators with total aboveground storage capacity less than 1,320 gallons. The Agency is also interested in receiving comments on whether a modified set of requirements might be appropriate.

In 1985, EPA proposed no reporting requirements for used oil generators who had recycling contracts, although generators using the manifests would have been subject to exception reporting. EPA does not see a need for generator reporting when the used oil is recycled on- or off-site, because recycling facilities will provide this information in their biennial report. However, EPA is considering imposing new recordkeeping or reporting requirements under Sections 3014 and 3007 authorities for generators who can rebut the recycling presumption (see discussion in VIII.D.3.) and who dispose of used oil. (Generators disposing of hazardous used oil on-site, however, are subject to other recordkeeping and reporting requirements as a hazardous waste treatment, storage, or disposal facility.) Generators who dispose of used oil would have to comply with the recordkeeping or reporting requirements associated with the recycling presumption rebuttal prior to the disposal of used oils. EPA believes that reporting of disposal practices may allow the Agency to determine whether additional controls may be necessary to control used oil disposal in the future. EPA requests comment on reporting of generator-based disposal activities.

C. Transporter Requirements

Table IX.C.1 provides a brief summary of the used oil transporter requirements that EPA is currently considering. Table IX.C.1 also compares the requirements that the Agency is now considering with those proposed in 1985 for used oil transporters. A more detailed discussion of the proposed transporter requirements is provided below.

TABLE IX.C.1.—USED OIL TRANSPORTERS

1985	Today
Storage	
For 10 days or less at a transfer facility: DOT requirements in 49 CFR Parts 173 (shipments and packaging), 178 (shipping containers), and 179 (tank cars); secondary containment standards for tanks.	Containers: (storage <30 days) 40 CFR § 262.30 (packaging), 49 CFR 173 (shipments and packaging), 178 (shipping containers), and 179 (tankcars). (storage >30 days) 40 CFR Part 265, Subpart I. Aboveground tanks: 40 CFR § 264.195 (daily inspections), § 264.196 (response to leaks), § 264.197 (closure). USTs: 40 CFR Part 280. Also, see Table IX.F.2.
Corrective Action	
40 CFR Part 263 Subpart C—Discharges in transit. Permit-by-rule facilities: remove leaking tanks from use; replace leaking containers; remedy releases.	Same as proposed for discharges in transit. Permit-by-rule facilities; 40 CFR § 264.101 and Subpart F for aboveground tanks. 40 CFR § 280, Subparts E and F for USTs.

TABLE IX.C.1.—USED OIL TRANSPORTERS—Continued

1985	Today
Closure	
Remove oil and residues from tanks	Aboveground tanks: 40 CFR 264, Subpart G. USTs: 40 CFR Part 280, Subparts G and H.
Preparedness and Prevention	
40 CFR Part 264, Subparts C and D	Same as proposed.
Tracking	
40 CFR Part 263, Subpart B Hazardous Waste Manifests or Records of Acceptance and Delivery where generator has contract with authorized recycler.	Collection log signed by generator and recycling facility. (Two additional options under consideration.)
Recordkeeping	
Records of Acceptance and Delivery, including: name, address, and EPA ID number of facilities offering or accepting the shipment; quantity of used oil shipped; and date of acceptance or delivery.	Various recordkeeping and reporting requirements under consideration. (See preamble, Section IX.C.)
Reporting	
No requirements	See Recordkeeping (above).
Permit-by-Rule	
For storage of used oil for a period exceeding 10 days	For storage of used oil in containers for a period exceeding 35 days or for any tank storage.

Even though some used oils may not be identified as hazardous, EPA believes controls on activities associated with the transportation of used oil may be appropriate. As discussed previously, used oil that is not classified as hazardous may render drinking water nonpotable if released to surface or ground waters. In addition, storage and consolidation during transportation are possible entry points for hazardous waste being mixed with used oil. Therefore, EPA believes it may be necessary to regulate the transportation of all used oils, whether any are listed as hazardous waste or not.

EPA is proposing that owners and operators of used oil transfer facilities storing used oil in tanks or in containers for a period greater than 35 days comply with the permit-by-rule requirements proposed in 1985 for used oil recyclers. The 35-day storage period at transfer facilities is the equivalent period of time proposed for delivering used oil to a recycler after receipt of the used oil from the generator. Transfer facilities storing used oil on-site for a period of time greater than 35 days may have to comply with permit-by-rule requirements similar to those proposed in 1985, except the Agency is no longer proposing secondary containment requirements for tank storage.

EPA is not considering secondary containment requirements for used oil storage tanks at transfer facilities at this time because, based on the economic analysis data presented in section X of this notice, EPA believes that collectors may not be able to absorb the costs associated with secondary containment. For example, an independent collector/transporter of average size, with three aboveground storage tanks and a storage capacity of 22,000 gallons is likely to face a total capital cost of $14,000 and an annual operating cost of $2,500. EPA may defer any secondary containment for collection/storage facilities until a later date, or may require secondary containment only for some transfer facilities, i.e, those that handle hazardous (listed or characteristic) used oil, or have a storage capacity in excess of some limit, i.e, 25,000 gallons. Comments are requested on these alternatives.

1. Transporter Storage Requirements

a. *Storage in Containers.* In 1985, EPA proposed to require transporters to comply with the 40 CFR part 264, subpart I (50 FR 49256, November 29, 1985) requirements for used oil container storage. However, storage of used oil at a transfer facility for less than 10 days was exempt from these requirements provided the containers met applicable packaging requirements of the U.S. Department of Transportation (DOT) under 49 CFR parts 173, 178, and 179. Storage in containers for greater than ten days was subject to the standards of part 264, subpart I and the used oil permit-by-rule requirements of proposed part 270. EPA is now considering increasing the 10 day storage provision for container storage to 30 days and requiring transporters storing used oil in containers at transfer facilities to comply with part 265, subpart I. In the 1985 proposal, EPA meant to propose that transporters comply with 40 CFR part 265, subpart I, rather than part 264, subpart I. Compliance with the part 264 standards, therefore, may only be necessary if an individual subtitle C permit is required.

Following the 1985 proposal, EPA received several comments requesting that the 10-day storage period at transfer facilities be extended to allow for sufficient accumulation of a marketable quantity of used oil. Alternatively, to accommodate this concern, EPA is considering extending the exempt storage period for container storage at used oil transfer facilities to 35 days. The Agency requests comments on whether an extended period of 35 days is appropriate for transfer facilities storing used oil in containers. (See discussion on Accumulation Limit in section VIII.F.8 of this notice)

b. *Storage in Aboveground and Underground Tanks.* In 1985, EPA proposed that transporters storing used oil in tanks for more than 10 days be subject to the requirements of 40 CFR part 265, subpart J, including secondary containment (50 FR 49254, November 25, 1985). The Agency is now considering adopting the tank standards proposed in the 1985 rule (40 CFR part 265, subpart J), minus secondary containment for aboveground tank storage at used oil transfer facilities and eliminating the 10-day storage exemption for tank storage. These standards are the same as those currently applicable to small quantity hazardous waste generators (40 CFR 265.201).

EPA is considering adopting the tank storage standards without the requirement for secondary containment due to the Agency's concern that many independent transporters are small businesses and therefore the viability of these operations may be put in jeopardy by the secondary containment provision proposed in 1985.

Since the Agency may eliminate the proposed requirement for secondary containment, EPA is proposing that owners and operators of transfer facilities conduct inspections of aboveground tanks for releases and spills of used oil and conduct appropriate spill response to cleanup

and mitigate the contamination of the surrounding area. This will provide alternate assurance of protection of human health and the environment. EPA requests comment on the aboveground storage tank standards presented here and on their potential impact on the used oil recycling business.

As noted in the preamble to the proposed rule, there is presently no permitting exemption for tank storage at transfer facilities in the hazardous waste regulations (50 FR 49233). Under subtitle C, hazardous waste transfer facilities with tank storage are required to obtain a storage permit and comply with all applicable standards in 40 CFR parts 264 and 265. The Agency is now considering eliminating the 10-day permitting exemption for tank storage at transfer facilities. The Agency is concerned that the storage exemption period allowed for containers is not protective for tank storage since the tanks remain at the facility and may always contain used oil. In the case of containers, the container is removed from the facility when the used oil is shipped off-site.

To assure that adequate protection of human health and the environment is provided, EPA believes that a level of protection beyond the technical standards alone may be necessary for used oil tank storage at transfer facilities. EPA is therefore proposing that transfer facilities storing used oil in tanks or in containers for a period longer than 35 days comply with the permit-by-rule provisions. The Agency believes that requiring facilities to comply with the permit-by-rule provisions will facilitate compliance with the technical standards since noncompliance could lead to the requirement to obtain an individual subtitle C permit. Therefore, the Agency, in addition to requiring transfer facilities storing used oil in tanks to meet the 40 CFR part 265, subpart J (minus secondary containment) and 40 CFR part 280 UST requirements, is considering requiring used oil transfer facilities with storage tanks to comply with the used oil facility and permit-by-rule standards.[44]

The Subtitle I requirements (40 CFR part 280) for underground storage tanks apply to USTs at transfer facilities. Transfer facilities storing used oil in USTs that are in compliance with the part 280 standards will be in compliance with the permit-by-rule provisions for tank storage.

The Agency requests comment on the regulatory restrictions proposed for tank and container storage at used oil transfer facilities, including the proposed permit-by-rule requirements for all tank storage at used oil transfer facilities. EPA reiterates that transfer facilities storing used oil in tanks would also be required to comply with the SPCC standards, if applicable.

2. Transporter Discharge Cleanup

Today, EPA is considering applying provisions similar to those proposed in 1985 for cleanup of releases during transport. Used oil transporters may be required to comply with the 40 CFR part 263, subpart C standards. These provisions require that discharges of hazardous wastes during transportation be reported to DOT and cleaned up immediately. Reference to the part 263 requirements was made in the 1985 proposal because EPA was proposing to list all used oils as hazardous. The provisions contemplated today are essentially the same as those proposed, but would apply to all used oils, regardless of whether or not they are identified as hazardous. Additionally, transporters storing used oil in containers at transfer facilities for a period longer than 35 days, may be subject to the same corrective action standards (release detection and cleanup) being proposed today for recycling facilities (see section IX.D.3). Transfer facilities storing used oil in aboveground tanks may be subject to permit-by-rule requirements and to the corrective action standards of part 265, subpart J and the general inspection requirements of § 265.15(c). Transfer facilities storing used oil in USTs may have to comply with the used oil permit-by-rule requirements, but would remain subject to the corrective action requirements of 40 CFR part 280, subparts E and F (standards for release response and corrective action for underground storage tank systems containing petroleum or hazardous substances).

3. Transporter Tracking of Used Oil

EPA is considering two alternatives for tracking used oils. Both alternatives involve the maintenance of a collection log by used oil transporters. Table IX.B.2. (above) provides a summary of the two options under consideration for used oil tracking.

Option 1: Transporters would keep records in a collection log to document all pickups. Used oil transporters would be required to keep a copy of the recycling facility owner or operator's dated signature acknowledging receipt. The recycling facility owner or operator would have to keep a copy of the transporter's collection log. In lieu of keeping the collection log, transporters may elect to use the hazardous waste manifest (see discussion in IX.B.4. of today's notice).

Option 2 is to have generators keep the same records described above, with the transporter responsible for initiating a used oil tracking form at the conclusion of a "milk run" and prior to delivering the full shipment to a used oil recycling facility. Under this approach, the transporter would complete the "generator" portion of the tracking form. Transporters and recyclers would be required to keep copies of the signed forms. This approach is consistent with RCRA section 3014(c) in that generators with recycling agreements in place need not fill out a manifest or similar tracking document. This approach provides a single tracking document that records the oil's movement. In addition, problems with multiple tracking forms originated by different generators are minimized under this approach.

The advantages of tracking records and/or collection logs compared to manifest reports for used oil handlers are as follows: A generator does not have to (a) prepare a tracking form every time he/she ships a batch of used oil off-site, (b) maintain a separate accounting system for quantities and types (i.e., hazardous and nonhazardous) of used oil generated, quantities and types of used oil stored in a particular storage device, and quantities and types of used oil picked up by a transporter. The generator merely has to maintain one document with multiple entries. Every time a shipment of used oil is picked up, the transporter acknowledges the pickup on the generator's log with a dated signature. Similarly, a transporter maintains a collection log that identifies the quantities of used oil picked up per generator along with the name and address of each used oil generator he is serving. A used oil generator acknowledges the pickup of used oil with a dated signature on the transporter's log. The transporter, when delivering used oil to a recycler, submits a copy of his collection log to the facility owner or operator. Both transporter and recycler must sign the collection log to acknowledge delivery and acceptance of used oil. Each party would maintain a copy of the record of the used oil transaction on file for three years.

As discussed above, EPA is considering promulgating a presumption of recycling for all used oils. Under this

[44] Note that the 10 day permitting exemption proposed for container storage is *not* applicable to tank storage. EPA is proposing that all tank storage at used oil transfer facilities be in compliance with the permit-by-rule requirements, and the accumulation of used oil will be limited to 35 days.

approach, all used oils would be subject to the tracking system outlined here, unless the person successfully rebuts the presumption. Procedures for rebutting the recycling presumption were discussed above.

4. Transporter Recordkeeping and Reporting Requirements

In 1985, EPA required transporters to document all records of acceptance and delivery of recycled used oil by identifying the name, address, and ID number of the generator or recycling facility; the quantity of used oil received or delivered; and the date of acceptance or delivery (50 FR 49254). Transporters were required to maintain these records for three years from the date of acceptance or delivery. No reporting requirements for transporters were proposed in 1985.

As stated in VIII.F.8., EPA is considering limiting the transport period for used oil (period of time from transporter pickup at generator to acceptance at a recycling facility) to 35 days. This storage limit of 35 days is similar to the 35-day limit applicable to the transport of hazardous waste (§§ 262.42(a) and 263.21). The initial day of the 35-day period will begin when the used oil is collected from a used oil generator. Transporters and recycling facilities can document that used oil is delivered to the recycler within the 35-day period through the use of collection logs or tracking forms, as discussed below. In the event a transporter is unable to deliver a shipment of used oil to a recycling facility within the 35-day period, the transporter will be required to file an exception report with the Regional Administrator explaining the reasons for the delay. EPA requests comment on the 35-day shipment period being proposed today.

D. Used Oil Recycling Facilities

Table IX.D.1 provides a brief summary of the used oil recycling facility requirements that EPA is considering adopting under Phase I of the used oil management standards (if the Agency decides to promulgate the management standards in two phases). Table IX.D.1 also compares the requirements that the Agency is considering now with those proposed in 1985. In addition to the requirements discussed below, all used oil recyclers must comply with all applicable generator and transporter requirements discussed in previous sections of today's proposal. A more detailed discussion of the specific recycling facility requirements is provided below.

1. Recycler Storage

EPA believes that there is a need to assure that the storage practices at used oil recycling facilities are protective of human health and the environment. EPA may regulate used oil storage in the manner described below regardless of whether the used oil is determined to be a hazardous waste or not, since EPA believes that the potential for used oil to be released into the environment and the potential damages from such leaks is not necessarily dependent upon whether the used oil is a hazardous waste, but is dependent upon the way in which the used oil is managed.

TABLE IX.D.1.—PROPOSED REQUIREMENTS FOR USED OIL RECYCLING FACILITIES

1985	Today
Storage	
Container Storage: 40 CFR Part 264, Subpart I	Container Storge: 40 CFR Part 264, Subpart I. (same as proposed).
Aboveground Tanks: 40 CFR Part 265, Subpart J	Aboveground Tanks: 40 CFR Part 264, Subpart J (or SPCC).
Underground Storage Tanks: 40 CFR Part 265, Subpart J	Underground Storage Tanks: 40 CFR Part 280. See Table IX.B.2.
Corrective Action	
Remove leaking tanks from use; releases must be remedied	Containers: § 264.171.
Replace leaking container(s) and stop leaks	Aboveground tanks: § 264.197.
	USTs: 40 CFR Part 280, Subparts E and F.
Closure	
Remove all tank systems' wastes, and meet all various technical and financial requirements of Subparts G and H of Part 265.	Aboveground tanks: Same as proposed for closure, defer financial responsibility. USTs: 40 CFR Part 280, Subparts G and H.
Preparedness and Prevention	
40 CFR Part 264, Subparts C and D	40 CFR Part 264, Subparts C and D.
Tracking	
Recordkeeping if a contract is in place with the generator, Hazardous Waste Manifest requirements, including exception reporting when there is no contract.	Sign Transporter's Collection Log and maintain separate log at the facility. (Two additional options under consideration.)
Recordkeeping and Reporting	
Analysis records, manifests, operating record, retention and accessibility, biennial and additional reports.	Maintain copies of collection logs; prepare and submit Used Oil Management Report.
Hazardous Waste Mixtures	
Rebuttable presumption—used oil containing more than 1,000 ppm total halogens is presumed to have been mixed with hazardous waste. Mixtures of oil and hazardous waste must be managed as hazardous waste. 40 CFR 266.40(c)	Same as proposed, but extend application of rebuttable presumption to all used oils. Test all used oils for halogen content.
Permitting	
Permit-by-rule unless excluded and require individual permit (surface impoundments); or modify existing Subtitle C permit to handle used oil for co-management facilities.	Same as proposed in 1985.

EPA is proposing that used oil recycling facilities storing used oil on-site prior to recycling it be in compliance with the technical requirements listed below, the permit-by-rule provisions proposed in 1985, and in addition, EPA is considering requiring compliance with the speculative accumulation provision of § 261.1(c)(8). To ensure that used oils are being accumulated for the purpose of recycling them and not being stored indefinitely, used oil recycling facilities may have to demonstrate that 75 percent of the used oil accumulated at the beginning of a one-year period is recycled within the one-year period.

a. *Container Storage.* EPA is retaining the container standards proposed in 1985 for used oil recycling facilities. EPA is proposing that used oil recycling facilities comply with 40 CFR part 264

subpart I standards when storing used oil in containers (50 FR 49256). EPA is retaining this provision, which requires a containment system around the containers, for used oil recycling facilities to assure adequate protection of human health and the environment from potential leaks and releases of used oil.

b. *Aboveground Tank Storage.* In 1985, EPA proposed to require recycling facilities storing used oil in aboveground tanks to comply with part 265 subpart J standards (50 FR 49256). At that time, modifications to the subpart J standards to add full secondary containment had been proposed and since then have been promulgated. EPA is now proposing to require used oil aboveground tank systems at recycling facilities to meet the current requirements of part 265 subpart J, including secondary containment. These standards include freeboard and overflow controls for uncovered and continuously-fed tanks, inspections, secondary containment, response to leaks, and closure requirements. As explained earlier in this notice, EPA is considering allowing used oil recycling facilities to comply with the SPCC requirements for aboveground storage tank areas in lieu of the part 265 secondary containment requirements.

The Agency requests comment on the proposed requirements for aboveground tank and container storage at used oil recycling facilities.

c. *Underground Tank Storage.* In the 1985 proposal, EPA indicated that all used oil storage tanks at recycling facilities would be subject to the proposed part 265, subpart J storage requirements for hazardous wastes stored in tanks. The subpart J standards for hazardous waste storage tanks have since been promulgated (51 FR 25422) and require secondary containment for both aboveground and underground tanks. Today, however, EPA is proposing that used oil recycling facilities storing used oil in underground tanks be subject to the UST regulations, including the corrective action requirements for leaking underground tanks, that were promulgated in 1988 at 40 CFR part 280. EPA will not be proposing additional section 3014 tank standards for used oils stored in underground tanks.

EPA requests comment on the tank and container storage requirements under consideration for used oil recycling facilities.

d. *Storage in Surface Impoundments.* In the November 29, 1985 proposal, EPA specified management standards and required permits for surface impoundments used by recycling facilities (50 FR 49255). Even though, as discussed above, all used oils may not be listed or identified as hazardous wastes, their storage can pose health and environmental hazards associated with the release of oil and its toxic constituents. In fact, many of the damage cases cited earlier in this notice involved impoundments. It is EPA's understanding that surface impoundment storage is very unusual at modern used oil recycling facilities. To the extent impoundments are used, EPA is very concerned about the potential for ground-water contamination.

EPA is considering three ways to control the use of surface impoundments for storing used oil. First, as proposed in 1985, EPA could use section 3014 authorities to require surface impoundment standards similar to or identical to those found in 40 CFR part 264 or 265 subpart K for hazardous wastes and require the facility to obtain a subtitle C permit for their use (as proposed in 1985) whether or not the used oil being stored or recycled is hazardous. In addition, the Agency requests comment on two alternatives for regulating surface impoundments used to store used oils. EPA could ban the use of surface impoundments under sections 1008, 3014, and 4005 authorities since the Agency believes that the placement of used oils in unlined surface impoundments is not environmentally protective and may constitute open dumping. If EPA decides to ban the use of surface impoundments for used oil storage, those surface impoundments currently used to store used oil will have to close prior to the effective date of the section 3014 management standards. After the effective date of the used oil management standards, any surface impoundments still in use for used oil storage will have to be closed in compliance with 40 CFR subparts K and G.

Finally, EPA could require used oil recyclers to obtain a subtitle C permit, but allow used oil recyclers to petition the Regional Administrator for an exclusion to the permitting requirements upon demonstrating that the facility's site-specific conditions allow for safe storage and/or treatment in surface impoundments.[45] A facility filing a petition for a permitting exclusion may have to demonstrate that the used oil will not migrate from the unit and will not contaminate ground-water or surface water receptors.

[45] In the case of listed or characteristic hazardous used oils, the used oil recycler will have to comply with all applicable LDR and BDAT standards prior to placing the used oils in a surface impoundment.

EPA requests comments on the options presented for the regulation of surface impoundments at used oil recycling facilities. In particular, EPA requests comments regarding whether or not used oil can be safely managed in surface impoundments, and if so, under what conditions.

2. Recycler Tracking of Used Oil

In the 1985 proposal, used oil recycling facilities were required to comply with the hazardous waste manifest system for shipments of used oil when a recycling agreement was not in place between a generator and the recycler (50 FR 49255). In lieu of the requirements proposed in 1985, EPA is considering two options for tracking mechanisms for used oil shipments (see Table IX.B.2). These options are explained in detail in section IX.C.3. in the discussion of transporter requirements. Used oil recyclers would have to acknowledge the receipt of each used oil shipment by signing and dating the transporters log or the accompanying manifest. If EPA chooses to promulgate Option 1 of the tracking requirements described above, used oil recyclers may have to provide documentation to confirm receipt of used oil shipments within the proposed 35–day shipment period, if a generator requests such documentation. If the Agency chooses to promulgate Option 2 of the tracking requirements described above, the transporter would retain a copy of the signed used oil tracking form and would provide a copy of the signed tracking form to the recycling facility (and generator, if requested). The recycling facility would use this information to prepare the necessary reports discussed later and maintain a copy for recordkeeping purposes.

3. Recycler Release Response and Cleanup

Under the 1985 proposed rule, used oil recycling facilities would be subject to release response requirements for containers and tanks (50 FR 49256). EPA is considering requiring the same corrective action/release response standards as proposed in 1985 for recycling facilities that store used oil in aboveground tanks and containers. Leaking containers would be required to be replaced and visible releases from containers and tanks "immediately" contained. An owner/operator may also be required to remedy any deterioration or malfunction discovered during an inspection of a tank system. However, due to the promulgation of the UST standards in 1988 (53 FR 37173 and 37189), underground tanks storing used

oil at recycling facilities are subject to the corrective action requirements for USTs in part 280, subpart F. EPA is not proposing, at this time, that used oil recycling facilities undertake full facility corrective action, unless required to obtain a full Subtitle C permit. Instead, used oil recycling facilities may be required to clean up all visible and detected releases of used oil in accordance with either the cleanup requirements proposed in 1985 (in the case of containers and aboveground tanks) or those provided in 40 CFR part 280 subpart F (in the case of underground storage tanks). Due to the fact that the UST regulations were not promulgated until 1988, the approach proposed today for response and cleanup of releases from underground tanks storing used oil are different than the requirements proposed in 1985. EPA requests comment on the appropriateness of retaining the UST release response and clean up requirements for used oil recycling facilities storing used oils in underground tanks. The Agency also requests comment on the release response requirements being considered for aboveground tank and container storage at used oil recycling facilities.

4. Recycler Closure and Financial Responsibility

In the 1985 proposed rule, used oil recycling facilities were subject to the closure and post-closure and financial responsibility requirements of subparts G and H of part 265 (50 FR 49256). EPA believes that all units used for used oil storage, treatment, and in certain cases, disposal (e.g., surface impoundments) at these recycling facilities must be closed in a manner that will minimize risk to human health and the environment. EPA is retaining the proposed requirements for closure and post-closure for aboveground tanks. However, facilities storing used oil in underground tanks will be subject to the UST closure requirements in part 280 in lieu of the closure requirements proposed in 1985. EPA requests comment on the closure requirements described above for used oil recycling facilities.

EPA is considering deferring financial responsibility requirements for aboveground tanks until a later date. Comments were received after the 1985 proposed rule was published, claiming that financial responsibility is not needed for recycling facilities and that most recyclers may not be able to obtain coverage and may therefore go out of business if the Agency promulgated the financial responsibility requirements proposed in 1985. Commenters claimed that financial responsibility requirements would have serious detrimental effects on the used oil recycling market, and that recycling facilities should be subject to less rigorous financial responsibility requirements than treatment, storage, and disposal facilities. One commenter also questioned how financial responsibility requirements would be implemented at permit-by-rule facilities.

EPA is now proposing to require used oil recycling facilities to comply with the speculative accumulation provision applicable to hazardous waste recycling facilities (§ 261.1(c)(8)). EPA believes that the speculative accumulation provision will reduce the potential for releases associated with long-term storage and therefore may minimize the need for financial assurance at used oil recycling facilities. The Agency will, however, continue to evaluate the need for financial responsibility requirements at used oil recycling facilities and may propose financial requirements at a later date. The Agency is concerned that financial responsibility requirements may place a significant economic burden on used oil recycling facilities and may result in a decrease in the quantity of used oil that is recycled. The financial responsibility requirements given in subpart H of part 280 concerning underground tanks are applicable, however, to facilities storing used oil in underground tanks.

EPA requests comments on the deferral of financial responsibility requirements for facilities storing used oil in aboveground tanks and containers.

5. Recycler Recordkeeping and Reporting Requirements

Used oil recyclers engaged in marketing or burning used oil fuel are required to comply with the 40 CFR part 266, subpart E recordkeeping requirements. EPA is now considering modifying these requirements. In 1985, EPA proposed additional recordkeeping and reporting requirements, beyond those required by 40 CFR part 266, subpart E, for recycling facilities (40 CFR 266.43(f), 50 FR 49256). These requirements were more extensive than those proposed for used oil generators and transporters and were similar to those established for hazardous waste management facilities. These included the following:

—Operating records (§ 264.73)
—Availability, retention, and disposition of records (§ 264.74)
—Biennial reports (§ 264.75)
—Additional reports (§ 264.77).

a. *Recordkeeping.* As discussed above, EPA is considering several options for used oil tracking (see Table IX.B.2.). Under each option, the maintenance of collection logs by transporters and recycling facilities is required to confirm the receipt of used oil shipments from a used oil generator at a recycling facility. The log maintained by recyclers would fulfill a portion of the operating record requirements that EPA proposed in 1985. Information recorded in the used oil tracking log would not have to be duplicated in a facility's operating record (the log will be considered to be a part of the operating record).

b. *Reporting.* EPA has re-evaluated the biennial reporting requirements proposed in 1985 for used oil recycling facilities (50 FR 49258) and determined that some elements of the biennial report are not appropriate for used oil recyclers, particularly in light of the fact that all used oils may not be identified as hazardous wastes and EPA may defer other requirements (e.g., facility financial responsibility requirements).

EPA is therefore considering, in lieu of the use of the biennial report designed for hazardous waste TSD facilities, a separate reporting system for used oil recycling facilities that would parallel the hazardous waste biennial report. The used oil recycling report may have data elements more applicable to used oil recycling activities. The used oil recycling report would have to be prepared and submitted to EPA biennially using the same schedule as that established for the hazardous waste biennial reporting requirements, however, EPA may consider changing the required submission date. Under this approach, EPA may develop a form with reporting requirements for used oil recycling facilities that may include:

- The average quantity of used oil typically stored on-site prior to recycling;
- The quantity of used oil recycled as lube oils or petroleum fractions annually;
- The annual quantity of used oil shipped off-site as specification fuel;
- The annual quantity of used oil marketed as off-spec used oil;
- The annual quantity of used burned as off-specification used oil fuel burned;
- The annual quantity of used oil disposed on-site;
- The quantity of used oil sent off-site for subtitle C disposal annually; and
- The quantity of used oil sent off-site for subtitle D disposal annually.

EPA may require used oil recyclers to report annual quantities of used oil handled by category of used oil generator (if EPA promulgates Tracking Option 1). EPA may use the generator-specific information obtained from recyclers' biennial reports to evaluate

the impacts of the Phase I management standards on used oil generators and to assess the need for EPA to develop non-regulatory incentives to encourage used oil recycling. EPA may also use this information to determine what percentage of the total quantity of used oil generated annually enters the used oil management system, is used to produce burner fuel, and is used as feedstock for lube oil.

EPA requests comment on the suggested reporting alternatives to the proposed requirement for biennial reports discussed above.

6. Analytical Requirements

In 1985, under proposed § 264.73, EPA required analysis of used oil to determine halogen content, ignitability, fuel specification, and additional parameter testing for used oil recycling facilities that also manage hazardous wastes. EPA still believes that testing for indicator parameters (e.g., part 261, appendix VIII constituents) is necessary to ensure used oil and other hazardous wastes are not mixed. EPA believes that the indicator parameter testing requirement, in addition to the halogen content analysis, will discourage mixing at co-management facilities. Therefore, the analytical requirements proposed in 1985 will remain unchanged.

In addition, used oil that is mixed with hazardous waste is a hazardous waste by virtue of the "mixture rule" (40 CFR 261.3(a)). Such mixtures of used oil and hazardous waste would have to be managed in compliance with 40 CFR part 266, subpart D. To ensure that used oil and hazardous waste mixtures are not either sold as blended used oil fuels or rerefined to manufacture lube oil feedstock, EPA is considering requiring recycling facilities to test each shipment of used oil for halogen content and, in the case of co-management facilities, test for part 261, appendix VIII constituents (indicator parameters), prior to shipment of the recycled product to end users.

EPA requests comment on the testing requirements discussed here.

7. Recycler Permits

In the 1985 proposed rule, EPA used the authority of RCRA section 3014 to propose permitting requirements for used oil recycling facilities (50 FR 49255, 49257). RCRA section 3014(d) provides that owners and operators of used oil recycling facilities are deemed to have a permit for their recycling activities and associated tank and container storage, provided they comply with the used oil management standards promulgated by EPA. Under the 1985 proposal, used oil recycling facilities would qualify for permits-by-rule by complying with 40 CFR 266.43 and 266.44, the proposed requirements for used oil recyclers and burners. The Agency is considering retaining the 1985 proposed permit-by-rule requirements. Although EPA proposed financial responsibility requirements for used oil recyclers in 1985, EPA is not including such requirements for aboveground tank and container storage in today's proposed standards. Financial responsibility standards for these used oil recycling facilities are being deferred until the Phase II management standards are promulgated.

EPA believes that the permit-by-rule requirements proposed in 1985 are appropriate for all used recycling facilities, even if some used oils are determined not be hazardous wastes. As discussed earlier in today's notice, potential hazards to human health and the environment exist regardless of whether or not the used oil is a hazardous waste.

Certain types of used oil recycling facilities were excluded from permit-by-rule eligibility in the 1985 proposal. These include facilities that recycle or store used oil in surface impoundments and facilities that manage other hazardous wastes in addition to used oil (co-management facilities). These types of facilities may be required to obtain an individual subtitle C permit or modify their existing permit, in the case of co-management facilities. In addition, as proposed, the Regional Administrator or the director of an approved state program may have the discretion to require individual permits for other facilities that could pose a substantial potential or present hazard. The Agency will also require used oil recycling facilities that accumulate used oil speculatively (i.e., are not in compliance with the speculative accumulation provision of § 261.1(c)(8)) to obtain a full subtitle C permit. These facilities would be subject to the § 3004(u) corrective action provisions for permitted facilities. EPA is not proposing any changes to the exclusions to permit-by-rule eligibility proposed in 1985.

If EPA promulgates used oil management standards in two phases, used oil recycling facilities that are eligible for a permit-by-rule will be deemed to have a permit-by-rule when the owner or operator is in compliance with all of the Phase I management standards. Then later, when EPA promulgates any Phase II management standards, the owner or operator will have to be in compliance with both the Phase I and Phase II management standards on the effective date of the Phase II standards to keep the facility's permit-by-rule status.

E. Used Oil Marketers

In 1985, EPA proposed to replace the existing Part 266 Subpart E requirements with the proposed generator and transporter requirements (50 FR 49239 November 25, 1985). Under the proposed scheme, marketers were intended to become subject to the generator standards. That proposed requirement remains unchanged in the case of generators who market specification fuel. Recyclers who market specification used oil fuel must be in compliance with the recycling facility standards (including the permit-by-rule provisions) included in today's notice and those proposed in 1985.

The 1985 proposed regulations were unclear as to the status of the marketer notification requirements and the requirements relating to one-time notices to be received from the burners to which the marketer sells used oil. EPA wishes to clarify in this notice that the final requirements in § 266.43(b)(3), relating to notification to EPA of used oil marketing activities and in § 266.43(b)(5), requiring that marketers obtain a one-time written and signed notice from burners that the off-specification used oil fuel will be burned only in industrial boilers or furnaces, will still apply to marketers. These regulations will be moved to the newly-created section on used oil, part 279.

As proposed in 1985, marketers will become subject to the generator and transporter regulations, including the provision relating to maintaining records of shipments in a logbook. Marketers will also be required to comply with whatever tracking option is selected. EPA believes that since used oil marketers are the first party to determine the disposition of used oil and since marketers generally store used oil prior to shipping it to burners, used oil marketers may be required to comply with all applicable generator and transporter standards proposed today and/or discussed in the 1985 proposal. In addition, marketers are responsible for conducting analytical tests to document that used oil being sold as specification fuel does not exceed any of the specification parameters.

EPA requests comments on the appropriateness of subjecting marketers to the generator and transporter standards proposed for Part 279. Readers should note that, as proposed in 1985, marketers blending used oil fuel would be subject to the recycling facility standards.

F. Burners of Specification Used Oil

In 1985, EPA promulgated a specification for used oil fuel (50 FR 49205, 40 CFR 266.40 and 266.43(b)(1) and (6)). Used oil fuel meeting these specifications can be burned without regulation in non-industrial boilers such as those in apartment or office buildings, provided an analysis is conducted and records are kept by the first person who claims that the fuel meets the specification (i.e., the marketer). The specification was intended to be protective under virtually all circumstances. EPA believed that used oil fuels meeting the specification would not pose hazards significantly greater than virgin fuel oil when burned. In fact, the specification levels for arsenic, cadmium and chromium were selected to be equivalent to virgin fuel levels. The specification for lead was set at 100 ppm, which was about 10 times greater than lead levels found in virgin fuel oils, and was intended as an interim measure until the Phase II burning rules were promulgated.

When EPA developed the used oil fuel specification levels in 1985, the Agency based the constituent levels for the specification on the possible human health effects from an urban burning scenario (50 FR 49180). EPA performed a risk assessment to identify constituents that may pose increased risks to human health given that used oil could be burned in highly populated urban areas. When the constituents of concern were typically found in used oil at levels greater than in virgin fuel oils, they were included in the specification at their 95th percentile levels in virgin fuel oils. EPA reasoned that higher levels could pose substantial risk, and levels lower than those found for the same constituents in virgin fuel oils would not provide protection of human health and the environment given that used oil fuels could replace virgin oil fuels.[46]

EPA continues to believe that there is little protection to be gained by regulating processed used oil fuels that meet the specification levels any more stringently than virgin oil fuels, since these used oil fuels essentially present no greater risk to human health and the environment than virgin oil fuels. Also, the Agency believes that the costs associated with the regulation of used oil fuels that meet the specification limits (that are essentially the same as the virgin oil fuel specification) may result in burners substituting virgin oil fuels, which are unregulated, for used oil fuels. Therefore, EPA is considering providing a regulatory exemption from the used oil management standards for those used oil fuels that meet the used oil fuel specification in 40 CFR 266.40(e). As explained above, the specification was developed to provide virtually the same level of protection from the burning of used oil fuels as that exhibited by the burning of virgin oil fuels. Therefore, EPA sees no reason to regulate used oil fuels that meet the specification levels beyond requiring the marketer to test the fuel and document that it meets the specification levels for each constituent and comply with the recordkeeping requirements of 40 CFR 266.43.

In 1985, EPA set the specification limit for total halogens at 4,000 ppm (based upon emission standards modelling). EPA also promulgated a rebuttable presumption for mixtures of used oil and hazardous wastes in 1985. The rebuttable presumption limit for halogen content was set at 1,000 ppm (based upon probable mixing scenarios). The Agency believes (due to enforcement experience) that used oils exhibiting a total halogen level greater than 1,000 ppm have most likely been mixed with chlorinated hazardous wastes.

The Agency wants to discourage all mixing of used oils and hazardous wastes. However, EPA understands that some used oils (e.g., metalworking oils with chlorinated additives) may exceed the 1,000 ppm total halogen limit without having been mixed with hazardous waste. In these cases, the generator can rebut the presumption of mixing and the used oil would be regulated under the § 3014 management standards and not as a hazardous waste. However, even if the presumption of mixing is rebutted, if the total halogen level in the used oil exceeds 4,000 ppm, the used oil will not meet the used oil specification limit for halogens. Therefore, if the used oil is to be burned for energy recovery, the used oil will have to undergo further processing to meet the used oil fuel specification (to lower the total halogen level) or the used oil must be burned as off-specification used oil fuel (in which case the marketer of the used oil fuel must be in compliance with the current part 266 subpart E requirements).

However, EPA is considering eliminating the total halogen level of 4,000 ppm from the used oil fuel specification. The deletion of the total halogen level in the specification criteria may eliminate any current confusion regarding the difference in the 4,000 ppm level of the used oil specification and the 1,000 ppm level of the rebuttable presumption. The result of establishing only one limit for total halogen content would be that the specification level for used oil fuels would contain only concentration limits for metals and the halogen limit for the presumption of mixing would remain at 1,000 ppm total halogens. EPA believes that industry currently complies with the 1,000 ppm total halogen limit for used oil fuels. Therefore, it may be unnecessary to include a total halogen limit in the used oil fuel specification. The Agency requests comment on the need for and consequences of eliminating the total halogen limit in the used oil fuel specification.

Used oil recyclers commonly test used oil samples prior to accepting used oil to determine whether the used oil was mixed with hazardous waste or not. Many times recyclers, if the presence of halogens is detected, perform additional testing (e.g., EPA SW–846 test method 8010) to determine the quantity and the type of hazardous waste that may have been mixed with the used oil. If mixing is confirmed, then the shipment is many times rejected or the generator is advised to send the contaminated used oil to a hazardous waste incinerator. On occasion, the quantities of used oil rejected, and therefore required to be incinerated (or otherwise burned as a hazardous waste fuel), are not large enough to warrant the handling and transportation costs associated with sending them to an incinerator. In these cases, the generator may consider handling the mixture differently than sending it to an incinerator or other permitted hazardous waste burner facility. To discourage mismanagement of such mixtures, EPA is considering allowing recyclers to accept this mixture if it is accompanied by proper manifest forms and provided the recycler agrees to ship the used oil mixture to a permitted hazardous waste burner to be burned as a hazardous waste fuel. EPA requests comment on what additional requirements may be necessary to ensure that a recycler does not conduct any mixing with other unadulterated used oils to lower the halogen content and market the mixture as a used oil fuel.

EPA solicits comment on the Agency's proposal to allow used oil fuels meeting the specification levels to be burned without regulation under the section 3014 management standards.

EPA received a correspondence from the National Oil Recyclers Association (NORA) requesting an interpretation of the current regulations concerning mixtures of used oil and characteristic hazardous waste (in this case mineral spirits that exhibit the characteristic of

[46] See PEDCo Environmental Inc., A Risk Assessment of Waste Oil Burning in Boilers and Space Heaters, August 1984.

ignitability).[47] Mineral spirits, when mixed with used oil, no longer exhibit the characteristic of ignitability and the resultant mixture is subsequently burned for energy recovery. Since the mixture no longer exhibits the characteristic of ignitability, the burning of such a mixture for energy recovery is subject to part 266, subpart E as a used oil fuel, and is not subject to part 266 subpart D as a hazardous waste fuel.

G. Burners of Off-Specification Used Oil

In November 1985, EPA proposed that burners of off-specification used oil fuel would be subject to regulation as recycling facilities, and as such would have to comply with the proposed storage and other management requirements (see proposed § 266.43(a)(1) and 50 FR 49239). Comments were received indicating that these requirements would be too costly, and would discourage the use of used oil fuel. This section discusses some possible changes to the proposal for off-specification used oil burners. If not discussed here, provisions proposed under § 266.43 and § 266.44 are still under consideration for used oil burners.

Table IX.G.1 provides a brief summary of the used oil burner requirements that EPA is currently considering for promulgation. These standards will be included under Phase I if the used oil management standards are promulgated in two phases. Table IX.G.1 also compares the requirements that the Agency is now considering with those proposed in 1985. A more detailed discussion of the proposed used oil burner requirements is provided below.

TABLE IX.G.1.—USED OIL BURNERS

1985	Today
Storage	
Container Storage: 40 CFR Part 264 Subpart I	Container Storage: 40 CFR Part 265, Subpart I. Coverage same as generators (container condition and management, inspections for releases and cleanup, etc.).
Aboveground Tanks: 40 CFR Part 265, Subpart J	Aboveground Tanks: Same as generators (tank condition, inspections for releases and cleanup, closure requirements, etc.).
Underground Storage Tanks: 40 CFR Part 265, Subpart J	Underground Storage Tanks: 40 CFR Part 280. Storage time: Limited to 180 days.
Corrective Action	
Remove leaking tanks from use; releases must be remedied.	Same as proposed for containers and aboveground tanks.
Replace leaking container(s) and stop leaks.	USTs: 40 CFR Part 280, Subparts E and F.
Closure	
Remove all tank systems' wastes, and meet all various technical and financial requirements of Subparts G and H of Part 265.	Aboveground tanks: 40 CFR Part 265, Subpart J; defer financial responsibility. USTs: 40 CFR Part 280, Subparts G and H.
Tracking	
Shipment of off-spec used oil to receiving facility accompanied by invoice giving identification numbers and addresses of marketer and facility and quantity and dates of shipment.	Burners may be required to sign a transporters collection log. Existing invoice system.

1. Burner Storage

In 1985, EPA proposed specific requirements for tank and container storage, and accompanying preparedness and prevention and emergency procedures. EPA is concerned that the 1985 proposed storage requirements (which were similar to those proposed for used oil recycling facilities) may be too stringent and unnecessarily expensive for used oil burners. EPA believes that used oil burners store used oil merely to meet their fuel needs and generally not to stockpile used oils for an extended period of time. Therefore, in lieu of the storage requirements proposed, EPA is now considering requiring the same on-site storage requirements for burners as those outlined above for generators. These provisions are essentially the same as those proposed in 1985 for aboveground tanks and containers, except for the secondary containment requirement, and include inspection of tanks for corrosion and leaks, closure, special provisions for ignitable oil, cleanup of visible releases, leaks, and drips, labelling of tanks and containers used for storage, and overflow and freeboard controls. In the case of underground tanks used to store used oil fuels, EPA is proposing to retain the current 40 CFR part 280 requirements for used oil burners. Also, to ensure against potential hazards from extensive accumulation and storage of used oil at burning facilities, EPA is considering limiting the storage period at burning facilities to 180 days. Burners storing used oil for a period longer than 180 days may have to comply with the recycling facility storage and permit-by-rule requirements. EPA requests comments on the proposed storage standards for burners of non-specification used oil fuels. As discussed above, the SPCC regulations would continue to apply independently to the section 3014 standards for used oil burners.

2. Burner Analysis Requirements

EPA proposed that all recycling facilities, including burners, analyze the used oil managed at the facility for total halogens, ignitability, and indicator parameters (when other hazardous wastes are also managed at the facility). Commenters stated that the analysis requirements were duplicative since such a determination has already been made by a used oil recycler or marketer. As one commenter pointed out, marketers have already performed analyses to determine if the used oil meets the specification and to determine if the oil has been mixed with hazardous waste. EPA is aware that, at a minimum, most reputable used oil handlers conduct relatively simple analyses using test kits to determine if the used oil has been mixed with hazardous waste.

EPA is considering allowing burners to use information provided by marketers (e.g., certification or analytical results) in lieu of requiring the burner to perform analyses for halogen

[47] Letter to Mr. David Bussard, Director, Characterization and Assessment Division of EPA's Office of Solid Waste, from Mr. Chris Harris, National Oil Recyclers Association of June 5, 1991.

content and ignitability. Where information is not available from the marketer, however, the burner would still be required to perform the analyses. EPA believes that when the oil is provided by a non-marketer (i.e., generator or transporter transporting directly from the generator's site(s)), there is a potential for contamination of the used oil prior to delivery to the burner. Therefore, in such cases, EPA believes the only way that a burner can ensure that the oil has not been mixed with hazardous waste (or the oil meets the specification, if the burner wishes to burn specification fuel) is to perform an analysis for halogens and ignitability (or specification parameters). The burner would have to keep records of the fuel specification certification on-site as part of the operating record. EPA requests comments on the analytical requirements proposed for used oil burners.

3. Space Heaters

EPA's proposal in November, 1985 inadvertently omitted the conditions on space heaters currently required in part 266, subpart E. When the used oil management standards are promulgated, EPA will clarify that continued use of used oil-fired space heaters under the conditions specified in § 266.41(b)(2)(iii) is still allowed (even if used oil is listed as a hazardous waste.)

4. Burner Permitting and Corrective Action

The 1985 proposal required off-specification used oil burners to comply with the permit-by-rule provisions proposed for used oil recycling facilities. Many commenters stated that the permitting requirements were too burdensome for burners and would discourage the recycling of used oil as fuel. EPA is hence concerned that such a large outlet for used oil may be restricted. At the same time, EPA recognizes the need to provide for the safe handling of used oil and to control against possible releases during the storage of used oil. Therefore, EPA is proposing a limited set of requirements for used oil burners that will provide a necessary level of protection while minimizing the adverse impacts on the used oil fuel market.

In light of the fact that all used oils may not be classified as hazardous, EPA is proposing to apply the permit-by-rule provisions to burners, but with a reduced set of standards. These standards are as follows: (a) The tank storage standards would be the same as those discussed above for generators; (b) the burner would not be required to perform analyses for halogen content and ignitability if that information is provided by the marketer; (c) EPA may require that a log indicating the dates, quantities, and types of used oil accepted for burning be maintained (as required for other types of recycling facilities); (d) reduced closure requirements, the unit specific closure requirements in part 265, subpart J would apply to burners, rather than the closure requirements proposed for the other types of recyclers; and (e) EPA may require biennial reporting for burners as discussed above for recycling facilities, especially when used oil fuel is accepted directly from used oil generators. Burners may also be subject to the same unit-specific corrective action/release response requirements as other recycling facilities. Therefore, requirements for burners relating to tank storage, analysis (if analytical results are provided by the marketer), and closure are less stringent than those requirements for other types of used oil recycling facilities.

To date, EPA has not proposed regulations covering technical burning requirements for used oil burners. Also, today's proposal does not add emission standards for devices that burn used oil for energy recovery. EPA requests comments and supporting data on emissions from used oil burners and the need for development of emission standards for burners as part of the Phase II requirements.

EPA requests comments on the reduced permitting standards including storage, analytical, and recordkeeping and reporting requirements for used oil burners of off-specification oil.

H. Facilities Using Distillation Bottoms or Baghouse Dust to Produce Asphalt Products

EPA does not generally view the residues from processing and re-refining of used oil as within the scope of section 3014. As discussed earlier in this notice, these residues may be subject to listings, characteristic determinations, and the hazardous waste management regulations under subtitle C. An exception, however, may be the use of distillation bottoms and baghouse dust to make asphalt products (e.g., road-paving material, roofing tiles, etc.). Re-refineries produce substantial amounts of distillation bottoms (approximately 21 million gallons annually) and EPA has been told that the revenues from the sale of these residues are important to the viability of re-refineries. To meet the statutory goal of a protective and viable used oil recycling system, EPA considers the use of distillation bottoms as an ingredient in asphalt products, where the starting material is used oil and it becomes an integral part of the asphalt, to be within the scope of the universe of recycled used oils governed by RCRA section 3014. (See discussion in VII.A. of the notice.) Similarly, asphalt plants burning used oil as a fuel may incorporate baghouse dust from air pollution control devices used to control emissions from used oil combustion into asphalt products. This process also seems to be closely related to used oil recycling (i.e., it may be integral to the use of used oil as a fuel at asphalt plants) and so it may also be within the scope of section 3014 authority.

In 1985, EPA proposed a special exemption from the proposed used oil management standards for asphalt paving materials containing distillation bottoms from used oil re-refining or baghouse dusts from air pollution control devices used to control emissions from recycled used oil combustion. Persons using the distillation bottoms or baghouse dusts into the asphalt would have been regulated as used oil recycling facilities. EPA asked for comments on the hazards associated with these residuals and the need for controls over asphalt products made from used oil residues in the 1985 proposal. Very little information was received in answer to this request.

EPA may propose regulations for hazardous waste-derived products that are placed on the land (e.g. aggregates, asphalt, cement). Under such proposal, producers of hazardous waste-derived products may have to demonstrate that their products are no less protective than non-waste-derived products. EPA requests comment on whether such an approach is applicable to asphalt products derived from used oil residuals, or as an alternative, whether other means (i.e., a limit on the percentage of used oil that the asphalt can contain, or a leach test such as the TCLP, etc.) could ensure the safety of such products.

Finally, EPA is proposing a change from the 1985 proposal for the facilities that make asphalt using used oil residuals. Instead of regulating asphalt plants as used oil recycling facilities, EPA is considering regulating such facilities in a manner identical to that outlined above for burners of off-specification used oil fuels. EPA is considering regulating asphalt plants in the same manner as burners of off-specification used oil fuel because the Agency believes that the used oil is, in both cases, being used for its inherent characteristics (e.g., BTU value). These facilities would be subject to:

- Inspection and spill response for aboveground tank storage;

• The 40 CFR part 280 requirements for underground tank storage;

• Analysis and documentation of no mixing with hazardous waste (which the marketer of the residues may provide); and

• Recordkeeping associated with a collection log or invoice system.

These requirements would help ensure proper management of the used oil residuals prior to their incorporation into the asphalt. Facilities making such products would also have to obtain a permit by rule (i.e., as proposed for used oil burners).

Comments are requested on the appropriateness of including these residues in the scope of the section 3014 regulations and on the approach outlined above for regulating this type of recycling activity.

I. Road Oilers

In 1985, EPA proposed a ban on the use of used oil for dust suppression based on the premise that all used oils would be listed as hazardous waste. RCRA section 3004(l) prohibits the use of materials containing hazardous waste for dust suppression. As discussed previously in this notice (Section VIII.F.4), EPA is still considering using section 3014 authority to ban road oiling. Alternatively, EPA may allow some road oiling under certain conditions (e.g., when used oil is applied to land in compliance with the LDR standards and the disposal guidelines that EPA may develop in the future). If that is the case, EPA may subject road oilers to analytical requirements to document that the oil is safe for road application (e.g., testing each batch prior to use). In addition, EPA may regulate road oilers the same as recycling facilities, requiring compliance with the permit-by-rule provisions (including storage, closure, release response requirements, and recordkeeping and reporting) for their storage units. EPA requests comment on this alternative regulatory scheme to allow for limited road oiling. EPA also requests comments on what analyses will demonstrate that the used oil is safe for road application.

J. Disposal Facilities

In 1985, because EPA proposed to list all used oils, the disposal of used oils would have been regulated under Subtitle C.[48] The approach currently under consideration may not list or identify all used oils as hazardous, however. EPA is therefore considering special requirements (e.g., analyses, recordkeeping, and reporting) for disposal of nonhazardous used oils. The party intending to dispose of used oil must prove that it is non-recyclable before determining whether it is hazardous. For non-hazardous used oil disposal, EPA may develop disposal criteria under the authorities provided to the Agency under RCRA sections 1008, 3007, and 4005. RCRA authorizes EPA to provide technical descriptions of the level of performance that provides protection of public health and the environment and to provide minimum criteria defining those practices which constitute open dumping.

The options for disposal of nonhazardous used oil are discussed extensively in section VIII.E. The Agency requests comments on the appropriateness of codifying the chosen option in the new part 279, rather than in part 257 or 258 (relating to solid waste facilities).

The disposal guidelines developed by EPA could establish design and operation steps for:

• Controlling down-gradient migration of used oil or generation of oil plumes that could reach drinking water sources;

• Locating certain sites or designating/dedicating other sites as acceptable used oil disposal sites based on:

—Simple site-specific factors such as soil type, annual rainfall, proximity to surface water and/or ground water sources, proximity to the nearest human population, and proximity to ecologically sensitive habitats (aquatic and terrestrial); or

—Other site-specific prevention and detection measures.

X. Economic Impact Screening Analysis Pursuant to Executive Order 12291

Executive Order 12291 (46 FR 13193) requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis (RIA) be conducted. A major rule is defined as a regulation that is likely to result in one or more of the following impacts:

(1) Annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Consistent with Executive Order 12291, the Agency has completed a preliminary economic impact screening analysis for the regulatory options discussed in today's Supplemental Notice, including those pertaining to listing of used oil as a hazardous waste and related land disposal restrictions as well as the proposals for Phase I alternative management standards for used oil under section 3014 of the Used Oil Recycling Act.

The Agency's analysis suggests that the various management practices proposed for the storage, handling and effective tracking of used oil are similar to or the same as those required by other existing federal and State regulations or current business practices for most of the facilities in the industry segments potentially affected by the proposed rule. Because of this, although the total number of facilities that could potentially be affected by these standards is large (approximately 640,000 used oil generator, collector, transporter, processing, rerefining, marketing, and burning facilities), incremental costs to most of the affected facilities would be quite modest. Household "do-it-yourself" (DIY) used oil activity would not be regulated as such until after the oil enters the collection system.

The Agency's best estimate is that the range of likely annual costs of compliance with various combinations of the options being considered in today's Notice, including Phase I of the section 3014 management standards, imposing bans on road oiling and land disposal of used oil, and listing processor and rerefiner used oil residuals, would not much exceed $60 million and could be less than $10 million per year, depending on the combination of options selected for the final rulemaking. Thus, based on this cost screening analysis, the Agency does not believe that the regulatory options presented in today's preamble would constitute a major rule according to the first criterion of E.O. 12291.

Additional analysis of potential effects on individual sectors also leads the Agency to conclude that there would not be a substantial increase in costs or prices for consumers or a significant effect on international trade or employment, even if all options were implemented in their entirety. Certain of the listing options could have substantial effects on a small but significant segment of the recycling

[48] Used oil that is determined to be hazardous (by a listing or because it exhibits one or more of the characteristics of a hazardous waste) must continue to be disposed in accordance with Subtitle C requirements.

industry. On balance, however, the Agency does not believe that today's proposed rule constitutes a major rule as defined by E.O. 12291.

Several elements of EPA's cost screening are, however, subject to uncertainty due to insufficient data. In addition, the Agency has not been able to evaluate fully the costs and recycle market implications of certain of the used oil listing options related to boiler and furnace markets for "derived from" used oil fuels or the listing of distillation bottoms on rerefiners' distillation asphalt product markets. The Agency therefore solicits additional data and comments pertinent to any aspects of this cost screening analysis, and, in particular, on the effects of the "derived-from rule" on processor fuel markets and effects of listing distillation bottoms on rerefiner asphalt markets and their implications for used oil recycling.

As stated above, based on work to date the Agency does not believe that any combination of today's proposed listing alternatives and/or management standard options would constitute a major rule requiring a Regulatory Impact Assessment under E.O. 12291. However, if EPA's further work or public review comments lead to substantial reassessment of this position, and depending on the options selected in the final rulemaking, the Agency will appropriately update the 1985 RIA in support of the final rulemaking.

The following paragraphs of this section lay out in greater detail the Agency's approach and findings from the economic impact screening analysis, as well as some background on the assumptions made to arrive at the cost estimates. For further detail, the reader is referred to the supporting technical background document "Cost and Economic Impact Screening Analysis for the 1991 Used Oil Proposal" available in the docket.

A. Scope and Approach for Impact Screening

1. Overview of Used Oil Generation and Management

Used crankcase oils and other used oils are a very common and pervasive byproduct of a highly mobile, industrial society. Every mode of transportation, every machine, and virtually every industrial process which relies on oil for lubrication, hydraulic fluid, insulation, or other processing generates used oil. For 1988 the Agency estimates that about 1.35 billion gallons of used oil was generated in the United States by households, and industrial and non-industrial generators. The Agency has also estimated that approximately 640,000 industrial and non-industrial generators, and several thousand collectors, handlers, processors, rerefiners, marketers and burners could potentially be regulated under various options included in this Notice. Household generators would not be regulated under any of the used oil regulatory proposals. Table X.A.1 presents in greater detail the variety of business sectors potentially subject to these regulatory options, including the total number of facilities estimated to be operating in each sector. The number of facilities in each sector potentially affected by various options discussed in today's Notice is discussed below.

TABLE X.A.1.—TOTAL NON-HOUSEHOLD FACILITIES HANDLING USED OIL IN 1990

Facility type	Total No. of facilities
Generators Total	640,413
Non-Industrial Subtotal	282,413
Service Stations	45,000
Repair Shops	100,000
New & Used Dealers	56,000
Fleets	72,500
Non-service Retailers	400
Air/Marine/RR	7,513
Public Collection Centers	1,000
Industrial Subtotal	358,000
Collectors/Transporters Total	383
<=10 Days	345
>10 Days	38
Processors and Rerefiners Total	186
Major Processors	112
Minor Processors	70
Re-refiners	4
Subtotal Facilities	640,982
Marketers not already counted [1]	?
Burners [2]	
Off-Spec	1,121
Space Heaters	60,000
On-Spec	?

[1] According to the Hazardous Waste Data Management System (HWDMS), 1,567 facilities marketing off-specification used oil have notified EPA of this practice. However, this figure includes collectors, processors, rerefiners and some generators. The total number of marketers not already counted remains unclear. Marketers of on-specification used oil may include any general fuel oil dealers, and are not regulated under this proposal.

[2] According to HWDMS, 1,121 off-specification burners of used oil have notified EPA of this practice. An additional 60,000 facilities are estimated to burn used oil for fuel in space heaters; however, used oil burned for this use is exempted from regulation under this proposal. Burners of on-spec used oil include general fuel oil customers, and are also not regulated under this proposal.

Used oil is currently managed to a substantial degree by an established recycling and reuse system of oil accumulation, collection, transportation, processing, rerefining and marketing to end users. In 1988, 70 percent or 949 million gallons of the used oil generated were recycled through the used oil management system of collectors, processors, and end users, or were reused on-site by the generators themselves; approximately 34 million gallons were reused for the purpose of road oiling. Of the 1.35 billion gallons generated in 1988, 58 percent or 784 million gallons were burned for energy recovery, either on site by the generator space heaters or in industrial boilers, or off-site in boilers and furnaces, cement kilns, and diesel engines. At each stage of the process, used oil is accumulated and stored and may be subject to mismanagement in handling or storage. The Phase I management standards seek to safeguard against mismanagement of the used oil at each step in the process.

B. Section 3014 Management Standards for Recycled Used Oil

1. Background Assumptions and Regulatory Options Analyzed for Phase I Management Standards

The regulatory options analyzed for this cost screening analysis are those described previously in the preamble. For the purpose of conducting this screening analysis, the costs attributable to the alternative management standards are understood to apply to generators and handlers of used oil regardless of the decision to list all used oil or any subcategory of used oil as a hazardous waste. All used oils except those generated by households are presumed to be bound for recycling, and all non-household generators and other facilities could be subject to the Phase I Standards. However, most generators would be exempted under the small quantity generator exemption option discussed in sections VIII and IX of today's notice. Used oil not bound for recycling would have to be tested to demonstrate non-recyclability due to its physical characteristics (e.g., low heat content or high water content).

The Phase I alternative management standards for generators, handlers, processors and end users of used oil, as described earlier in today's preamble, would describe basic management practices for used oil storage, preparedness and spill prevention, spill response and cleanup, recordkeeping and reporting, and testing (for those facilities that want to dispose of their used oil). The individual requirements vary by facility type. In general, however, compliance costs for the affected facilities relate primarily to additional labor hours required to provide regular tank inspections, provide training, maintain records or compile reports.

Specific assumptions and features significant to the cost analysis are described briefly below:

- Storage requirements for drums and containers, above-ground tanks,

underground tanks, and surface impoundments apply uniformly to all non-household generators, collectors and transporters, processors, rerefiners, marketers, and burners. All such facilities are assumed to be required to apply "good housekeeping" standards of regular inspection of the tanks to ensure tank integrity, and clean up all drips and small leaks as soon as they are detected. In addition, all storage facilities are assumed to be required to label tanks as "used oil storage." Based on interviews with association and other industry representatives of each of the categories of facilities affected, we estimate that approximately 10 percent of generators and burners would require additional measures to comply with the storage and spill response requirements. However, used oil storage identification labels may be required at every facility and on every tank and storage container, since these labels are not common among either generators, or used oil processing or management facilities. Secondary containment for used oil collector and processor facilities has not been explicitly included at this time, but because of the Spill Prevention, Control, and Countermeasures program (SPCC), incremental costs are likely to be minimal.

- Spill response and cleanup standards would apply to all facility types in order to ensure that, in the event that a spill occurs, the spill be contained and cleaned up as rapidly as possible. It is assumed that any failed tank, container, or equipment would have to be drained of remaining oil and either repaired or replaced. With the exception noted below, costs for spill response and cleanup materials are assumed to be already accounted for at all or most facilities in the used oil generating and handling sectors as a matter of common business practice due to local fire code regulations and insurance requirements. Major spills that could involve the cleanup and removal of contaminated soils, pumping or treating of groundwater, or surface water oil containment are not addressed by today's proposal.
- Preparedness and prevention standards also apply to all facilities and are the same as those contained in 40 CFR subpart C and subpart D, including installation of an internal communications or alarm system, fire extinguishers, adequate water supply, and emergency training plans and procedures. We have assumed, based on interviews with industry representatives, that facilities in only two generator subcategories (nonservice retailers and public collection centers) comprising less than one percent of all generators, will require additional measures for preparedness and prevention.
- Used oil tracking, recordkeeping and reporting requirements. All facilities, including generators, would be required to keep a record of used oil shipments and/or deliveries for a period of three years in the form of a log. In addition, transporters would be required to initiate a separate paper tracking system of the used oil they handle, with information on both the origin and destination of the used oil. Transporters, fuel processors and rerefiners, and burners of used oil which fails to meet the fuel oil specification would be required to report biennially on the volumes of recycled products handled, by categories. We have assumed that all industrial generators and handlers and 97 percent of non-industrial generators already have standard business recordkeeping systems in place which could be supplemented or revised at no measurable incremental cost. For biennial reporting, we have assumed that all collectors/transporters, processors, and rerefiners would incur modest additional costs.
- Testing for generators (for BTU content, viscosity, total halogens, or water content) would be necessary only for that subset of generators who choose to utilize disposal options instead of recycling their used oil. We believe that only a very small portion of facilities would generate used oil that is characteristically non-recyclable. Accordingly, we have estimated that only 5 percent of industrial generators and an additional 5 percent of the air/marine/railroad non-industrial subcategory would be required to test for non-recyclability. No additional testing requirements are assumed for used oil management facilities.
- Permitting requirements are assumed to apply to all transporters, processors and rerefiners, as well as to marketers and burners of used oil fuel which fails to meet the existing used oil fuel specification standards, with such permits to be issued by rule at no cost. Hazardous waste co-management facilities, however, would be required to file for a modification of their existing Subtitle C permit, and would therefore incur a modest one-time cost.

2. Existing (Baseline) Regulations and Practices That Limit Incremental Impacts of Phase I Management Standards

The Agency estimates that only a small fraction of facilities storing, handling, and burning used oil will incur additional costs attributable to the Phase I Management Standard alternatives, because the administrative and other facility standards are already substantially in place due to other federal, State, and local requirements, and standard industry practices. The alternative management standards that are under consideration and described in today's Phase I proposal were developed to ensure that used oil is adequately stored and handled to protect public health and the environment while imposing a minimal burden on the existing used oil collection and recycling system. Since the storage, handling, and management of all wastes has become a major issue, many used oil facilities have incorporated protective measures in response.

The alternative management standards proposed today incorporate or overlap with portions of three federal statutes already promulgated: The Underground Storage Tank rule (UST, 40 CFR part 280), the Spill Prevention, Control, and Countermeasures program (SPCC, 40 CFR part 112), and regulations and guidelines promulgated under the Occupational Safety and Health Act (29 CFR part 1910). Since the UST regulations have been incorporated in today's rulemaking to cover all underground used oil storage requirements for leak detection, containment, and spill response, today's rule imposes no additional requirements or costs attributable to underground storage.

In addition, the federal SPCC aboveground tank inspection and containment requirements substantially overlap today's storage regulations and effectively preclude additional burdens for large generators as well as collectors, processors, rerefiners, marketers, and burners that store oil above ground in tanks larger than 660 gallons or combinations of tanks and containers with aggregate capacity of greater than 1,320 gallons. SPCC is designed to protect against petroleum spills into navigable waterways; however, the statute has been broadly interpreted by the federal government as well as by the regulated sectors to apply to virtually all large facilities, regardless of geographic location. These requirements, described earlier in the preamble, stipulate management practices for storing and monitoring of oil in aboveground tanks, spill response and cleanup, and preparedness and prevention to an extent which we believe would require no additional compliance cost.

Finally, the requirements for worker training and protection against hazards in the workplace issued by OSHA, require training for workers engaged in the handling of hazardous materials, although the requirements are not specific to used oil facilities. Even if many or all categories of used oil are non-hazardous, used oil is typically generated in facilities where other hazardous materials such as degreasers, paint thinners, and other solvents are handled. We believe that preexisting OSHA-mandated training programs for other materials handled at used oil facilities can be expanded to include used oil handling considerations at no additional cost.

At the State level, seven States regulate used oil as a hazardous waste,

controlling the storage, handling and management of used oil. Four States (California, Missouri, Rhode Island and Vermont) have set the small quantity generator exception threshold low enough that hazardous waste management regulations cover even very small generators such as small service stations and community collection facilities. The other three States (Massachusetts, New Jersey, Oklahoma), have SQG thresholds high enough to exempt small generators, but do regulate other used oil management facilities. Depending on the States in question, we have assumed that no additional compliance costs for management standards are incurred by the covered facilities in these States.

At the local level, fire code regulations typically mandate equivalent physical preparedness and prevention equipment such as alarm or communications systems and spill absorbent materials. Also, on an individual facility basis, management guidelines stipulating "good housekeeping" management standards imposed by insurers are common among processors, marketers, and burners.

One additional factor may limit the incremental costs below what is presented here. As mentioned earlier, the majority of costs estimated for the management standards are labor- rather than capital- dependent. Some of the labor requirements are so low (e.g. daily inspection time for storage) that the cost may be absorbed into the amount of "down time" of unallocated flexible time available in most businesses. They can also be absorbed by providing proper training and education to workers and emphasizing the need for inspection and cleanup to minimize the potential hazards to human health and the environment associated with used oil releases and spills and improper disposal.

3. Summary of Potentially Affected Activities and Facilities Under Phase I Management Standards With no Small Business Generator Exemption

After accounting for existing requirements and standard industry practices dictating storage, monitoring, and handling of used oil compelled by the provisions of UST regulations, SPCC program requirements, OSHA requirements and guidelines, existing state regulations, and local fire codes, and insurance requirements, only a much smaller subset of the total number of potentially affected facilities remains. Table X.B.1 shows that, of the total population of approximately 642,000 facilities potentially affected by Phase I management standards, approximately 60,000 will bear additional costs for storage measures, 1,200 for preparedness and prevention, 9,400 for tracking, recordkeeping and/or reporting, and just over 18,000 for testing. The vast majority of these facilities are generators. Since permit by rule would be applied for the majority of used oil handling and recycling facilities except for used oil generators, no additional permitting cost is assumed in the majority of cases. However, additional permitting costs for permit modifications would be borne by approximately twenty rerefiners and other used oil processors that are currently permitted subtitle C co-management facilities.

The numbers of facilities shown in table X.B.1 assumed to incur additional costs are those facilities which have non-standardized regular storage inspections, have no OSHA training programs because no other hazardous materials are handled on site (as in the case of public collection centers and non-service retailers), do not keep records of the used oil transported off site, or are used oil generators, processors, or rerefiners who are required to test used oil before disposing of it (i.e. if the oil is not recyclable). Although collectors, transporters, and processors all have in place invoice and tracking systems as a matter of standard industry accounting and billing practice, they are not currently required to report the volumes of used oil picked up from generators, accumulated and processed on site, and delivered to end users.

TABLE X.B.1.—NUMBER OF FACILITIES ASSUMED TO INCUR INCREMENTAL COST WITH SMALL QUANTITY GENERATOR EXEMPTION

Facilities	Total No.	Storage standards	Preparedness and prevention standards	Spill cleanup response standards	Record-keeping tracking and reporting standards	Permitting standards	Disposal presumption testing standards
Generators	640,413	60,238	1,200	0	8,868	0	18,276
Transportation	282,413						
—with SQG Exemption		2,400	1,200		8,868		376
—without SQG Exemption		26,861	1,200	0	8,868	0	376
Industrial	358,000						
—with SQG Exemption		0	0	0	0	0	1,215
—without SQG Exemption		33,377	0	0	0	0	17,900
Collectors/Transporters	383	0	0	0	383	0	0
Processors/Re-Refiners	186	0	0	0	186	[3] 19	0
Marketers [1]	?	0	0	0	0	0	0
Burners [2]	1,121	112	0	0	0	0	0
Total With SQG Exemption		2,512	1,200	0	9,437	19	1,591
Total Without SQG Exemption		60,350	1,200	0	9,437	19	18,276

[1] Marketers include general fuel dealers assumed to handle only specification fuel which are exempt from the Section 3014 Management Standards under today's Notice.
[2] Burners of off-specification used oil
[3] Permitted hazardous waste co-management facilities will incur additional costs for modifying their Subtitle C permit.

For the facilities that do incur incremental costs, Table X.B.2 presents the annual cost per facility for each of the components of the management standards. Generators are subject to the highest unit cost for these requirements. Additional detail on the numbers of affected facilities and unit cost of compliance is available in the technical background documentation available in the docket.

TABLE X.B.2.—NATIONWIDE INCREMENTAL ANNUAL COSTS ATTRIBUTABLE TO SECTION 3014 MANAGEMENT STANDARDS

Sectors	Storage [1]	Spill prepared-ness and prevention	Spill response	Tracking/ recordkeep-ing and reporting	Permitting	Testing	Overall cost
Generators	$18,071,280	$154,440	$0	$422,028	$0	$5,555,904	$24,200,000
Non-Industrial	8,058,180	154,440	0	422,028	0	114,304	8,750,000
Service Stations	2,966,580	0	0	0	0	0	2,970,000
Repair Shops	2,197,500	0	0	0	0	0	2,200,000
New & Used Dealers	246,000	0	0	0	0	0	246,000
Fleets	2,360,400	0	0	374,438	0	0	2,730,000
Non-Service Retailers	0	51,480	0	0	0	0	51,500
Air/Marine/Railroad	137,700	0	0	9,518	0	114,304	262,000
Public Collection Centers	150,000	102,960	0	38,072	0	0	291,000
Industrial	10,013,100	0	0	0	0	5,441,600	15,500,000
Collectors/Transporters	0	0	0	99,275	0	0	99,300
Processors/Re-Refiners	0	0	0	92,870	[2] 50,000	0	143,000
Marketers	0	0	0	0	0	0	0
Burners	33,600	0	0	0	0	0	33,600
Total [3]	18,100,000	154,000	0	614,000	50,000	5,560,000	24,500,000

[1] Storage costs for labels will be borne by all facilities. Annualized at approximately 50 cents per year, lables add approximately $300,000 to the total cost.
[2] Permitted hazardous waste co-management facilities will incur additional costs for modifying the Subtitle C permit.
[3] Totals are rounded to three significant digits.

Table X.B.3 provides the Agency's best present estimates of the total national costs, by sector, for each of the Phase I Management Standards discussed in relation to today's proposed rule. In the absence of a small business generator exemption, the Agency's best estimate is that today's proposed Section 3014 Management Standards would result in a total annual compliance cost of approximately $25 million.

TABLE X.B.3.—ANNUAL COSTS PER FACILITY FOR FACILITIES ASSUMED TO INCUR COSTS AS A RESULT OF SECTION 3014 MANAGEMENT STANDARDS

[Dollars per year]

Sectors	Storage	Preparedness & prevention	Tracking/ recordkeeping & reporting	Permitting	Testing
Generators:					
Transportation	$300	$129	$48	$0	$304
Industrial	300	0	0	0	304
Collectors/transporters	0	0	259	0	0
Processors/re-refiners	0	0	407–555	[1] 0	0
Marketers	0	0	0	0	0
Burners	300	0	0	0	0

[1] Approximately 20 already permitted hazardous waste co-management facilities will incur a one-time permit modification cost for modifying their Subtitle C permit. This could amount to as much as a few thousand dollars per year on an annualized basis.

The greatest part of this cost is attributable to additional inspection requirements for used oil storage at generator facilities. The next highest cost is for testing used oil for the small percentage of industrial facilities that would test to be able to dispose of their used oil under the rebuttable presumption for disposal, estimated at approximately $5.6 million. As a sector, industrial generators are estimated to bear the greatest costs, with an annual cost of $15.4 million. Together, industrial and non-industrial generators combined bear over 90 percent of the total cost of compliance with the proposed management standards.

Allowing a small quantity generator exemption changes both the total cost and the distribution of the cost of Phase I of the management standards significantly. As Table X.B.3 shows, total compliance costs for the management standards drops from $24.5 million to $2.1 million when a SQG exemption is included.

4. Summary of Potentially Affected Facilities Given a Small Business Generator Exemption

The original 1985 proposal included an exemption from management standards for small quantity generators (SQG). Today's proposal also discusses two SQG options, based either on oil generation of less than 1,000 kg/month (about 280 gallons) or based on storage capacity equivalent to the SPCC minimum for above ground storage. Because of data limitations, we were able to analyze only the 1,000 kg limit.

The net effect of exempting facilities generating less than 1000 kg/month of used oil would be to significantly reduce the number of industrial and non-industrial generators affected by the management standard requirements. The Agency believes that 91 percent of the non-industrial generators and all of the industrial generators that would bear additional storage requirements (shown in Table X.B.1) would be eliminated, leaving only about 2,400 generators and 112 used oil fuel burners with additional storage costs.

The Agency estimates conservatively that the generator facilities bearing additional compliance costs for preparedness and prevention, tracking, and recordkeeping would remain unchanged, as would the number of non-industrial generators required to test. The number of industrial facilities that would be exempted from testing requirements is also significant. The Agency estimates that 93 percent of otherwise affected industrial facilities

would be exempt, leaving about 1,200 industrial facilities with additional testing requirements, and reducing total compliance costs for generators to about $1.2 million per year from over $24 million per year.

C. Listing and Related Land Disposal Options

Today's Notice discusses several listing and related land disposal regulatory options. These proposals range from listing all used oil as a RCRA hazardous waste (the 1985 proposal) to listing specific waste oil type/sources (internal combustion crankcase, for example), to not listing any used oils (and relying on section 3014 management standards and the Toxicity Characteristics Rule to assure proper management). Related to these is the possibility of imposing a ban on any direct land applications of used oil (road oiling, landfill, surface impoundment, land farming). In addition, and separate from the above, is a proposal to list four categories of used oil processing residuals as RCRA hazardous wastes, including a sub-option to regulate rerefiner distillation bottoms sold as an asphalt extender as a section 3014 recycled used oil product, similar to off-specification used oil fuel, rather than as a listed hazardous waste.

All of these options and alternatives involve various and complex implications for direct compliance costs of waste management as well as potential indirect market repercussions on the oil recycling sectors. The Agency has not evaluated all the individual options separately in detail. However, we have evaluated what we believe to be the major economic cost aspects of these options under the following 5 headings:

- Road oiling ban effects
- Land ban effects
- Effects of listing processing residuals (excluding the special case of distillation bottoms)
- Effects of regulating distillation bottoms, either as a hazardous waste or as a recycled used oil product.
- Combustion residuals "derived-from" burning listed used oil fuels.

The Agency has estimated the direct costs of each of these possible regulatory approaches, as discussed in the following paragraphs.

1. Ban on Road Oiling

For the purpose of this cost screening analysis, we have assumed the extreme case that spreading used oil on roads for the purpose of dust suppression or for any other purpose would be totally banned, either as an outcome of listing all used oil as a hazardous waste or as a separate banned activity. EPA has previously estimated that 33 million gallons of used oil was used as a dust suppressant in 1988. At the time, 18 states prohibited this practice. Since then, the number of states prohibiting its use has climbed to 28 and these states include 60 percent of the population. An additional 15 states regulate this application of used oil. Given this change, EPA now believes only 24 million gallons of used oil is used for road oiling. Thirteen million gallons are used by firms that are paid to provide this service (i.e., commercial road oilers). The remaining 11 million gallons are used on-site by generators.

EPA believes that much of the generator road oiling is designed to provide an inexpensive disposal option for the generator. It is likely that if road oiling were banned, these generators would simply divert the oil into the used oil management system and pay collectors (if necessary) to pick-up the oil.

Commercial road oilers, however, will still be called upon to provide their services and will utilize alternative dust suppression materials. Based on discussions with highway departments, public works officials, and general contractors around the country, EPA believes that the most common alternative to used oil would be water. In some places, salts such as calcium chloride may be applied, particularly in cold weather, but this is a relatively expensive alternative.

To estimate total costs associated with a ban on road oiling, we have assumed that generators or collectors simply divert the oil from road oiling into the used oil recycling system and incur no incremental costs for dust suppression. Currently, prices paid for used oil for recycling are very close to $0 (i.e., the generator neither pays nor is paid for used oil), although considerable regional variation exists. Therefore, as a national average, we have assumed no incremental management costs, either. As a best estimate, commercial or public sector road oilers that continue to provide dust suppression services are assumed to replace half of their used oil with calcium chloride and half with water. At this substitution rate, the total Nationwide annual cost would be $7.4 million per year for 13 million gallons per year of diverted used oil. To show the sensitivity of the estimate to this assumption, the annual cost would range between $3.7 million and $11.1 million if the replacement fraction were 25 percent salts or 75 percent salts, respectively. Again, these estimates assume no incremental cost for generators, who divert their oil into the used oil management system at an average price of $0.

2. Ban on Land Disposal

Today's notice also discusses the possibility of banning the land disposal of any used oil (equivalent to listing at the point of disposal). Since residuals from fuel processing and rerefining would be separately listed as hazardous wastes (discussed below), only oil land disposed by industrial and other non-household generators would be directly affected by this provision. In 1988, 71 million gallons of used oil was land disposed by industrial generators and 6 million gallons by non-industrial generators. Used oil illegally dumped by generators or collectors was assumed to be unaffected by this provision. Some of the legally-disposed oil was disposed in States that have listed used oil as a hazardous waste. Based on populations residing in those seven States, 16 million gallons (21 percent of the used oil) would thus already be precluded from land disposal because of State regulations. In addition, some of the oil is hazardous under the Toxicity Characteristic Leaching Procedure (TCLP) and would already be legally required to be managed as a hazardous waste. Based on sampling data provided earlier in the preamble, about 20 percent of industrial samples and 50 percent of transportation engine samples tested exhibited the toxicity characteristic. Allowing for these two factors, the Agency estimated the adjusted total quantity of land disposed oil that would be newly subject to Subtitle C disposal by the proposed land disposal ban (or as a result of hazardous waste listing) at about 46 million gallons (175 thousand tons).

We can approximate the current disposal cost for this oil based on typical subtitle D disposal costs of approximately $30 per ton or $0.12 per gallon. If the oil were recyclable, we assumed that collectors would charge $0.30 per gallon to pick it up (a high current price for collection for recycled used oils, to allow for possible smaller quantities and/or longer haul distances). This would result in an incremental cost of $0.18 per gallon to recycle the oil instead of dispose of it. Alternatively, some fraction of this oil may not be recyclable by used oil processors using conventional oil cleaning technologies and would have to be sent to a hazardous waste treatment facility such as a cement kiln, at an average price of $1.00 per gallon ($240 per ton drummed waste). The latter alternative implies an incremental disposal cost of $0.88 per gallon over the current baseline.

To compute a range of total National compliance costs for the ban on land disposal of used oil, the Agency assumed three scenarios. For the lower bound, all 46 million gallons are assumed directly recyclable at an incremental cost of $0.18 per gallon over current subtitle D practices, for a total of $8.3 million per year. As a reasonable upper bound, we assumed that half of the oil was recyclable (at $0.18) and half was sent to hazardous waste treatment or recovery at an incremental cost of $0.88 per gallon, yielding a cost per year of $24.4 million. For a more reasonable scenario, we assumed that only 25 percent of the disposed oil was sent to a cement kiln for energy recovery, and 75 percent to the recycling system, for a best estimate of incremental national cost of $16.3 million per year.

3. Listing Processing and Rerefining Residuals

This Supplemental Notice identifies four waste streams resulting from used oil processing that are proposed to be listed as hazardous wastes. These include residuals from separation processes (K152), spent polishing media (K153), distillation bottoms (K154), and residues from oil/water/solids separation in wastewater treatment (K155). To the extent that these residuals are not reused onsite or already recycled or disposed of as hazardous wastes, the processors or rerefiners would incur incremental management costs as a result of the listing. This section considers all of these residuals except distillation bottoms which are addressed separately in the next section.

The quantity of residuals produced by facilities in the used oil management system varies dramatically with the type of oil handled and the processes used. Many facilities report generating no residuals since their tanks are routinely pumped dry and any settled material is blended with the oil and is ultimately burned as fuel. At the same time, processors of certain types of industrial oil may extract and dispose of a substantial amount of solids (3 to 5 percent of dry oil weight) from the oil they process. Also, based on the literature and interviews with companies and industry associations, many facilities already manage or market these residuals as hazardous waste, even in states where used oil is not already listed as a hazardous waste.

To estimate the total quantity of processing residuals (other than distillation bottoms), we applied an average residuals generation rate to the flow of oil into the used oil management system. According to EPA estimates, 770 million gallons of used oil was handled in the system in 1988; 21 percent was handled in states where used oil is already a hazardous waste, leaving 608 million gallons. We applied a range of average residual content estimates of between 0.5 percent and 1 percent of the oil based on currently reported actual experience at used oil management facilities. The resulting range of estimated national residual generation is 3.0 million gallons to 6.1 million gallons per year. As a final adjustment, we eliminated from consideration the share of estimated residuals attributable to the Breslube plant in Ontario, which rerefines approximately 4 percent of all oil entering the used oil management system and which would not be subject to U.S. regulations. After the 4 percent reduction the estimated range of residuals is 2.9 million gallons to 5.9 million gallons per year, not including distillation bottoms.

For the lower bound cost, we assumed that 75 percent of these residuals are currently managed as hazardous wastes and would thus have no incremental compliance cost attributable to the proposed option. Incremental costs would apply to only 0.73 million gallons of residuals (25 percent of 2.9 million gallons). Virtually all of the processors and rerefiners contacted reported that their residuals were already handled in cement kilns or hazardous waste landfills. For the upper bound cost, we assumed that only 25 percent of the residuals are already managed as hazardous waste, so incremental costs are based on the remaining 75 percent of 5.9 million gallons (the upper bound volume), or 4.4 million gallons of residuals per year.

The waste management options for these residuals are assumed to be used as fuel in a cement kiln or disposal in a hazardous waste landfill depending on waste heat value characteristics. The price for drummed material at cement kilns is set at $1.00 per gallon (see note 5); taking away the cost of Subtitle D land disposal leaves an incremental cost of $0.88 per gallon. This price is applied to the total estimated quantity of residuals in the lower bound for a national cost of $0.64 million (0.73 million gallons at $0.88 per gallon).

For the upper bound cost, we assumed that only half of the residuals would be sent to cement kilns with the remainder going to hazardous waste landfills. Based on estimates received from several used oil processors, we used a disposal price of $200 per drum or about $3.60 per gallon for disposal in hazardous waste landfills. Subtracting the baseline disposal cost of $0.12 per gallon leaves an incremental cost of $3.48 per gallon. The average management cost for the upper bound is therefore $2.18 per gallon (the average of $0.88 and $3.48). Applying this average price to the upper bound residuals estimate of 4.4 million gallons yields an upper bound annual cost of $9.6 million.

The midpoint and best estimate is $5.1 million per year. The wide range of costs reflects uncertainty over the quantity of residuals generated, the costs of current management practices, and the costs of alternative, hazardous waste management.

4. Regulation of Used Oil Distillation Bottoms

One of the residuals proposed for listing is distillation bottoms from used oil rerefining. The proposal also discusses regulating distillation bottoms used in asphalt production as recycled used oil. Because of the substantial revenue value of these distillation bottoms to used oil rerefiners, any regulation on the uses of these bottoms will have economic consequences.

Through phone interviews with industry members, we identified five rerefining facilities that currently process used oil originating in the U.S., using distillation technology and marketing the distillation bottoms as asphalt flux. Based on current practices, these five rerefineries produce about 26 million gallons of asphalt flux per year from 114 million gallons of dry used oil.[49] One rerefiner is a Canadian operation, Breslube, which would not be subject to these restrictions if the asphalt were sold in Canada. As it produces about 20 percent of this asphalt flux, the cost estimates are based on only 21 million gallons of distillation bottoms.

The facilities interviewed estimated the average price received for these bottoms at about $0.30 per gallon, as sold to paving and roofing asphalt plants near the rerefineries. The asphalt flux from used oil is sold at a price discount relative to primary refinery asphalt, and it could be easily replaced with virgin materials by the market.

a. Option 1: Distillation Bottoms Listed As Hazardous Waste. Under the first option, if the distillation bottoms were subject to hazardous waste management (either through listing or regulation of waste-derived products), rerefiners would be adversely affected.

[49] Four of the five plants produce an average of 15 percent asphalt, emphasizing the production of base lube stock. The fifth facility uses a slightly less complex distillation process and produces just over 50 percent asphalt flux and very little base lube.

To estimate worst-case, short-run impacts, we assumed that the residuals would all shift from a revenue generating product to a waste burned as fuel in cement kilns. As an asphalt extender product, rerefiners currently receive about $0.30 per gallon. The price for bulk shipments of this type of material as a hazardous waste at cement kilns is approximately $0.30 per gallon. The net price differential to rerefiners under this worst-case scenario would thus be approximately $0.60 per gallon, or an annual revenue loss of about $13 million across these four domestic rerefiners.

This estimate overstates the real resource cost associated with this option, however, because the material still has substantial fuel value: The cement kilns would be receiving a valuable fuel source and would be paid to take it. Most of the $0.60 per gallon price swing would thus represent a transfer of wealth from the rerefiners to the cement kilns, but not a real resource cost. Whether rerefiners could continue to survive under this extreme case is questionable.

The low-cost scenario assumes that the asphalt plants that purchase the distillation bottoms continue to accept them, but do so as hazardous waste recycling facilities. This would require these companies to incur permitting and other costs to bring them into compliance with subtitle C standards. We estimated that these four rerefineries might serve, at most, 30 asphalt plants. At a compliance cost of about $30,000 per year per asphalt facility, the total cost for this option would be approximately $1 million.[50] This scenario assumes that this $1 million would be passed back to rerefiners as a lower price received for the bottoms, although rerefiners could experience a market price reduction greater than the costs incurred by the asphalt plants.

The most likely estimate falls somewhere between these two boundary scenarios. Since asphalt plants have a ready substitute for distillation bottoms (virgin asphalt), they could easily shift away from these materials, although at a slightly higher cost. Because the distillation bottoms from rerefiners account for such a small share of total supply, however, the effect on the paving or roofing markets would be negligible. Some rerefiners could make arrangements with cement kilns or other facilities permitted to burn hazardous waste and still earn something for the residuals (i.e., instead of facing a loss of $0.60 per gallon, reduce the loss to $0.20 or $0.30). Finally, rerefiners could alter their processes somewhat to produce fewer bottoms and change the characteristics of their other products. As a most likely cost estimate for this option, we chose the midpoint between the bounds: an annual cost of $7 million. The midpoint still represents a relatively high cost—about 8 cents per gallon of dry oil throughput at the four rerefineries, on average.

b. *Option 2: Distillation Bottoms Regulated as Recycled Used Oil.* Under this option distillation bottoms would be regulated as a recycled used oil product. The bottoms could still be sold if the asphalt purchasers complied with the Phase I management standards appropriate for other purchasers of recycled used oil products (i.e., purchasers of off-specification used oil fuel). This option would impose lower costs than Option 1 and would not result in the large transfer payments from rerefiners to hazardous waste management facilities.

To estimate costs under this option, we used compliance costs for burners of off-specification used oil fuel as a proxy for asphalt plant compliance costs. As shown in the facility cost summary in chapter IV (Table IV–1) the annual cost for burners would be no higher than $1,200 per facility. With approximately 30 asphalt plants affected, the incremental national cost would likely be less than $40,000. (If each rerefiner marketed to only one or two asphalt plants, aggregate nationwide costs would be less than $10,000 per year on an annualized basis).

5. Residuals Derived From Burning Used Oil

EPA has proposed several options for listing all or some categories of used oil. If any used oil were listed as hazardous waste, any other oil mixed with it and any residual "derived from" treating or burning it would also be a hazardous waste (40 CFR 261.3(c)(2)). The economic consequence of this issue is its effect on burning, the major end use of recycled used oil. Any air pollution control or other ash or sludge produced from the combustion of this oil (and all fuels mixed with it) would become hazardous waste.

The total quantity of used oil fuel and resulting ash that might be subject to incremental costs as a result of the derived from rule is difficult to estimate. EPA has estimated that in 1988 about 680 million gallons was burned in boilers and furnaces which would produce ash. Much of this oil meets the fuel specification described in 40 CFR part 266 and would therefore be exempt from any further regulation as long as current part 266 requirements were observed. Further, some of this oil is burned in States where used oil is a hazardous waste already, so no incremental cost would be attributable to this proposal in those States. Finally, some of the ash may fail the TCLP and be subject to hazardous waste regulations because of its characteristic toxicity, although we have not factored this into an quantitative estimates.

Based on the best available information, we calculated a rough estimate of the oil and residuals that might incur additional cost as a result of listing. Overall, 79 percent of the 682 million gallons burned (or 539 million gallons) was burned in States where used oil is not already a hazardous waste. At most, 36 percent of this oil would fail the specification or a total of 194 million gallons, based on earlier 1985 estimates of average specification levels. The ash from this quantity of oil would be about 9,900 tons per year (51 tons per million gallons burned times 194 million gallons of off-specification used oil burned) which is certainly an overestimate for three reasons:

- A far smaller fraction of used oil fuel would fail the specification today because of lower lead levels and improved process or quality control.
- All ash is assumed to be captured.

A more reasonable estimate would be that only 54 million gallons (10 percent of the 539 million gallons) currently fails the specification, producing 2,800 tons of ash per year (51 tons per million gallons times 54 million gallons). For a lower bound, we assumed all fuel could meet the specification so that no residuals would be handled as hazardous wastes. Given that additional blending with virgin fuel oils might be required to achieve this, some small cost would be incurred by marketers or burners, but we have assumed this cost to be negligible.

As a hazardous solid waste, the ash would require stabilization and landfilling in a subtitle C landfill. A typical commercial price for stabilization and disposal is $400 per ton. The current disposal in subtitle D landfills is assumed to cost $30 per ton, so the incremental cost would be $370 per ton.

The annual national cost of managing this ash as hazardous waste would be approximately $1.0 million in the most

[50] This estimate is very rough and was developed for illustrative purposes only. It assumes initial Subtitle C treatment facility permitting costs of $100,000 for a previously unpermitted asphalt plant and annual costs for financial responsibility, reporting, and other requirements of about $15,000 per year for an annualized total cost of $30,000 per facility.

likely scenario, which assumes that 10 percent of used oil fuel would fail the fuel specification (2,800 tons of ash at $370 per ton). The upper bound annual cost would be $3.7 million (9,900 tons at $370 per ton) and the lower bound would be approximately $0. Of course, if no used oils were listed as hazardous wastes or if residuals were exempt from the derived from rule, all costs would be eliminated.

Several other factors could also reduce the incremental cost associated with this option. First, burners may be exempt from hazardous waste management costs for ash as a result of the small quantity generator exemption. Given an ash generation rate of 51 tons per million gallons of used oil burned (at an average blending rate of 60 percent virgin oil to 40 percent used oil), a facility would have to burn about 50,000 gallons of blended fuel per month to generate 1,000 kilograms (one ton) of ash. Second, fly ash from use of used oil fuel recycled at asphalt plants may also be exempt from hazardous waste regulation under another option in this proposal. If this were the case, asphalt plants, which account for a substantial share of off-specification fuel use, might incur no incremental cost from this provision. Third, a significant fraction of used oil fuel may be burned at facilities that also burn hazardous waste already, so the ash would already be subject to hazardous waste management. Fourth and finally, the Bevill Amendment to RCRA (56 FR 7196 et seq.) allows for exemption from hazardous waste regulation certain ash from boilers and furnaces burning fossil fuels. Cement kilns, industrial furnaces, and coal-fired boilers that use virgin fuel for more than half of their fuel can self-exempt their ash from hazardous waste management subject to testing of the ash. All of these factors would reduce the costs attributable to this option.

D. Summary of Costs and Economic Impacts

The total national cost estimates for each of the components of the proposal and the proposal in aggregate, including all listing options, indicate the proposal is not likely to constitute a major rule. Similarly, the results of a screening analysis of economic impacts on specific industry sectors indicate that per-facility costs will be $0 for most facilities. For the majority of facilities that do incur costs, they will typically pay on the order of several hundred dollars per year, with a small number of larger, more complex, facilities experiencing compliance costs of up to several thousand dollars per year, depending on regulatory option scenarios. The principal exception is the possibility of larger effects on at least some narrow segments of the used oil processing and rerefining sectors under the proposals to list various processing residuals.

1. National Costs

Table X.D.1 presents the Agency's total national cost estimates for each of the component parts of the cost screening analysis: the Phase I management standards, road oiling and land disposal bans, and costs associated with listing processing residuals, distillation bottoms, and residuals derived from burning used oil. Using the "most likely" cost estimates from previous sections, the Table shows the costs for each component part of the proposal with and without a small quantity generator exemption for the 3014 management standards, and arranges the cost components into three possible regulatory scenarios for the supplemental proposal as a whole.

TABLE X.D.1.—TOTAL ANNUAL COST OF PHASE I MANAGEMENT STANDARDS AND LISTING OPTIONS

[Dollars in millions]

	With SQG exemption—best estimate	Without SQG exemption—best estimate
(1) Phase I Mgmt. Standards	2.1	24.5
Listing/Ban Options		
(2) Road Oiling Ban	7.4	7.4
(3) Land Disposal Ban	16.3	16.3
Subtotal: Bans	23.7	23.7
Other Listing Costs		
(4) Listing Residuals (K152, K153, K155)	5.1	5.1
(5) Listing Asphalt Distillation Bottoms (K154)	7.0	7.0
Subtotal: Residuals Listing	12.1	12.1
(6) Listing "Derived-from" Fuel Combustion Residuals	1.0	1.0
Subtotal: Other Listing Costs	13.1	13.1
A. Alternative Scenario A All Options (1) thru (6)	38.9	61.3
B. Alternative Scenario B Phase I + Bans + List 3 Process Residuals (1) thru (4)	30.9	53.3
C. Alternative Scenario C Phase I + List 3 Process Residuals (1) and (4) only	7.2	29.6

If the most stringent scenario for the rule were adopted (Scenario A), imposing Phase I management standards, banning land disposal and road oiling, listing process residuals, distillation bottoms, and residuals derived from burning used oil, with no exemption for small quantity generators, we estimate the total annual cost for the proposal would be $61.3 million. Exempting small quantity generators would reduce the annual cost by more than one third, to a total of $38.9 million.

The least comprehensive combination of these options (Scenario C) would involve promulgation of only the Phase I management standards and listing of processing residuals (except distillation bottoms). In this case, the incremental cost per year would be $29.6 million with no small quantity generator exemption and $7.2 million with the exemption.

The actual costs will be determined by the mix of options selected for promulgation. Several assumptions that affect the magnitude of the estimates are important to reiterate at this time. First, the options that involve land disposal (listing processing residuals, distillation bottoms, and derived-from ash) were costed out assuming compliance with BDAT for the disposed materials, even though BDAT is not yet established for these wastes. Some other form of hazardous waste disposal that is less expensive may be appropriate for some of these residuals, so our cost estimates may be overstated somewhat. Similarly, some of the costs, especially for distillation bottoms, reflect private, not social, costs. Transfer payments between rerefiners and hazardous waste management facilities do not represent social costs, but rather a redistribution of income.

2. Facility- and Sector-Specific Costs

Table X.D.2 summarizes the incidence of section 3014 management standard costs as well as the listing and related land disposal options discussed in the previous sections. Because typical facilities handle relatively small volumes, the generator sector may include a small proportion of facilities that would incur high costs. First, however, we should reiterate that over 90 percent of the generators would incur no incremental costs as a result of the management standards. (If generators smaller than 1,000 kilograms per month were exempt from the regulation, approximately 99 percent of the generators would incur no incremental costs.) For those generators that do incur costs, the annual facility costs for management standards range from $129 to $652. The transportation-related generators that face the maximum cost of $652 for management standards include larger transportation installations, such as aircraft/marine/railroad facilities, that incur costs for storage inspections, recordkeeping, and testing to allow disposal of some used

oil. These are large facilities that would not be significantly affected by costs of this magnitude.

All other affected generators (mostly automotive services) incur management standard costs of less than $500 per facility per year, and over two-thirds of these incur costs for storage inspections and labeling only ($300 per year). Given the diversity of the generator population, it is difficult to assess the impact of a $300 cost. For transportation-related generators such as an automobile dealership or a fleet operator, the costs would likely be insignificant. For a small machine shop, however, the costs could be somewhat more important. The incidence of these impacts is very infrequent, however, relative to the size of the overall population.

TABLE X.D.2.—INDIVIDUAL FACILITY COMPLIANCE COST RANGES PER FACILITY AND PER GALLON

	Total facilities	Total affected [a] facilities	Range of Annual Cost Per Affected Facility						Total Range across all affected facilities	Worst-case cost per gallon
			Management standards	Ban land disposal	List process residuals	Regulate distillation bottoms		Burning residuals		
						Option A	Option B			
Generators:										
Transportation	282,400	28,400	$129–$652	$830	NA	NA	NA	NA	$129–$1,480	$0.630
Industrial	358,000	59,700	300–604	$550	NA	NA	NA	NA	300–1,150	0.737
Indep.Collectors/Transporters	383	383	259	0	$1,700	NA	NA	NA	1,960	0.007
Processors:										
Minor	70	70	407–2,907	0	5,700	$0	$0	$0	6,100–8,600	0.009
Major	112	112	555–3,055	0	29,000	0	0	0	29,600–32,100	0.006
Rerefiners	4	4	555–3,055	0	120,000	1,700,000	8,000	0	129,000–1,820,000	0.087
Burners (Off-Spec)	1,121	1,121	300	0	0	0	0	900	300–1,200	?

Notes:
[a] Facilities may be affected by one or more cost elements.
[1] Estimates refer to most-likely scenarios for listing and related options.
[2] Management standard range for processors and rerefiners assumes annualized cost of permit modification of $2,500 for 10 percent of these facilities.
[3] Rerefiner estimates exclude Breslube facility in Ontario.

Two categories of used oil generators may also bear additional costs for disposal with the imposition of a ban on land disposal of used oil: Air/marine/railroad facilities and industrial facilities who test and dispose of the oil due to non-recyclability. If a ban on land disposal is included as a part of the final rule, those air/marine/railroad facilities testing and disposing the oil on land would face additional costs of up to $830 per facility; industrial facilities testing and disposing of the oil on land would face additional costs of up to $550. Since both of these facility types are characteristically large facilities, the additional cost is not expected to have a significant impact on operations.

For the independent collector/transporters, fuel processors, rerefiners, and burners, the incremental costs of the management standards are very small given the scale of the operations. The most significant costs result from costs to modify permits at 10 percent of the processors and rerefiners that co-manage hazardous waste with used oil. The other facilities all face very low compliance costs for these management requirements. The regulatory options to list or regulate processing and rerefining residuals may in certain instances have larger impacts, especially under the listing option for distillation bottoms (Option A). The annual facility costs range from $1,700 for collectors (if process residuals are listed) to $1.7 million per rerefiner if all residuals including distillation bottoms are listed as hazardous wastes.

In general, the impacts on most individual used oil management facilities are limited since they typically handle between 300,000 gallons of used oil per year (independent collectors) up to a few million gallons (most fuel processors). The facility costs in the Table imply costs of less than 0.1 cents per gallon of used oil handled by collectors and fuel processors. If distillation bottoms are regulated as a hazardous waste (Option A), rerefiners (which typically handle 10 to 40 million gallons per year of used oil and produce 1 to 10 million gallons distillate bottoms) could face a significant loss of revenue from the sale of these materials (nearly 9 cents per gallon of used oil throughput, worst case). (As noted above these lost revenues largely represent private transfer payments from rerefiners to hazardous waste management facilities rather than direct social costs of compliance.) This increase would be large enough to affect the rerefiners' operating margins and their ability to compete for used oil in the marketplace.

Burners of off-specification fuel also handle large quantities of used oil. A typical asphalt plant burning oil might use 150,000 gallons of used oil as fuel each year, so an incremental fuel cost of up to $1,200 would be insignificant compared to the total fuel bill. The $1,200 cost would be less than $0.01 per gallon of used oil purchased. Given that the used oil is blended with other fuels, the cost per gallon of fuel would be still lower.

Even though direct social costs may be somewhat overstated in Table X.D.2, these transfer payments and other costs imposed on used oil recyclers and end users may have indirect effects on the markets for used oil. In the case of rerefiners in particular, the cost of compliance with the Option A listing scenario for distillation bottoms could adversely affect the rerefining sector compared to other end-use markets (e.g., burning). Any requirements which increase operating costs for used oil recycling facilities, whether they are collectors, processors, burners, or rerefiners, have the potential to raise the price that generators must pay to have their used oil collected.

Therefore, this proposal has the potential to alter the mix of end-use markets to which used oil flows by affecting rerefiners more than processors. It may also change the quantity of oil that is recycled, by raising prices paid by generators for collection. As shown in Table X.D.2, however, the overall costs are quite low for most facilities so the effect on the overall market for used oil is expected to be minimal.

XI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–345), which amends the Administrative Procedures Act, requires Federal agencies to consider "small entities" throughout the regulatory process. The RFA requires, in Section 603, an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by the regulation. If so, regulatory alternatives which eliminate or mitigate the impacts must be considered.

Based on employment or sales, the vast majority of all used oil generators, collectors, and processors are small businesses; rerefiners and burners are rather less likely to be small businesses. Overall, the economic analysis indicates that impacts are not significant for well over 90 percent of the generators and all of the other facility types affected, with the possible exception of rerefiners under certain options.

A small fraction of the small business used oil generators may face incremental costs up to $477 per year for storage and recordkeeping, preparedness and prevention. We believe this is not an unreasonable cost burden borne only by a very small fraction of affected small businesses. The small quantity generator exemption would virtually eliminate significant impacts for any small business sectors. Other generators may incur higher costs if they dispose of their used oil and that practice is banned. While we generally expect these facilities to be large, we have no basis for characterizing the types of facilities that dispose of their oil.

Most rerefiners, who stand to face the greatest impacts under the distillation bottom listing option, are not small businesses and if the full listing option is not chosen, any potential for significant impacts disappears.

In general, given the large population of small businesses subject to various provisions of this proposal, only a very small fraction of these business will incur any compliance costs and those that do will typically face relatively small costs. Therefore the Agency certifies that the supplemental proposal will not have significant economic impacts on substantial numbers of small businesses or entities.

XII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paper Reduction Act, 44 U.S.C. 3501 *et seq.* An information Collection Request document has been prepared by EPA (ICR No. 1286) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, S.W.

Public reporting burden for this collection of information averages from 8 to 54 hours annually per respondent, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

Dated: September 3, 1991.

William K. Reilly,

Administrator.

Appendix A—Status of Proposed Provisions

Note: Federal Register citations refer to the November 29, 1985 Proposed Rule, unless otherwise indicated. Section citations refer to today's notice.

Proposed provisions	Status as of today's notice	Citations
General:		
Recycling Presumption.	New	Section VIII.D.
Controls on Used Oil Disposal.	New	Section VIII.E.
Amendment to Current Exemption for Characteristic Recycled Oil.	Modified	Section VIII.F.1.
Application of the 1,000 ppm Halogen Rebuttable Presumption to All Used Oils.	As Proposed in 1985.	Section VIII.F.2; (50 *FR* 49217).
Ban on Road Oiling.	As Proposed in 1985.	Section VIII.F.4 (50 *FR* 49239).
Conditional Exemption for Primary Oil Refiners.	New	Section VIII.F.5.
Regulation of Used Oil Stored in Underground Tanks.	Modified	Section VIII.F.6.
Mixtures of Used Oil and Absorbent Materials.	New	Section IX.A 2.
Management of CFC-contaminated Used Oils.	New	Section IX.A.3.
Regulation of Oil/Water Mixtures.	Modified	Section IX.A.4.
Regulation of Used Oil Filters.	New	Section IX.A.5.
Used oil used as fuel in incinerators and combustors.	New	Section IX.A.6.
Generators:		
EPA ID Numbers.	Modified	Section IX.B.3.
Storage Provisions (tank and container standards).	Modified	Section IX.B.1.
Corrective Action.	Modified	Section IX.B.2.
Preparedness and Prevention.	As Proposed in 1985.	(50 *FR* 49253).
Shipments Off-site (tracking).	Modified	Section IX.B.4.
Recordkeeping.	Modified	Section IX.B.5.a.
Reporting Used Oil Disposal.	New	Section IX.B.5.b.
Exemption from CERCLA Liability.	New	Section IX.B.2.b.
Transporters:		
Storage	Modified	Section IX.C.1 (50 *FR* 49254).
Closure	As Proposed in 1985.	(50 *FR* 49254).
Permitting	As Proposed in 1985.	(50 *FR* 49254).
Discharge Cleanup.	Modified	Section IX.C.2.
Tracking	Modified	Section IX.C.3.
Recordkeeping.	Modified	Section IX.C.4.
Exception reports.	New	Section IX.C.4.
EPA ID Numbers.	As Proposed in 1985.	(50 *FR* 49254).
Recyclers:		
EPA ID Number and General Facility Standards.	As Proposed in 1985.	(50 *FR* 49255).
Analysis Requirements.	Modified	Section IX.D.6 (50 *FR* 49255).

Proposed provisions	Status as of today's notice	Citations
Written Analysis Plan.	As Proposed in 1985.	(50 *FR* 49255).
Preparedness and Prevention.	As Proposed in 1985.	(50 *FR* 49255)
Tracking	Modified	Section IX.D.2.
Recordkeeping/ Reporting.	Modified	Section IX.D.5.
Storage in Containers.	Modified	Section IX.D.1.a.
Storage in Above-ground Tanks.	Modified	Section IX.D.1.b.
Storage in Underground Tanks.	Modified	Section IX.D.1.c.
Storage in Surface Impoundments.	Modified	Section IX.D.1.d.
Corrective Action.	Modified for underground tanks.	Section IX.D.3.
Closure/Post-closure.	As Proposed in 1985.	(50 *FR* 49256).
Financial Responsibility.	Deferred	Section IX.D.4.
Permitting	As Proposed in 1985.	Section IX.D.7; (50 *FR* 49256–58).
Marketers:		
Replacement of 266 Subpart E with Section 3014 Generator and Transporter Standards.	As Proposed in 1985.	(50 *FR* 49239).
Burners:		
Storage in Tanks and Containers.	Modified	Section IX.G.1.
EPA ID Number.	As Proposed in 1985.	(50 *FR* 49255).
Analysis Requirements.	Modified	Section IX.G.2.
Space Heater Requirements.	As Proposed in 1985.	(50 *FR* 49205; final burning & blending rule).
Corrective Action.	Modified for USTS.	Section IX.G.4; (50 *FR* 49256).
Permitting	As Proposed in 1985.	Section IX.G.4; (50 *FR* 49256).
Tracking	Modified	Section IX.G.2.
Closure	Modified	Section IX.G.2.
Recordkeeping/ Reporting.	Modified	Section IX.G.2.
Hazardous Waste Mixtures.	As Proposed in 1985.	(50 *FR* 49205; final burning & blending rule).
Road Oilers	Modified	Section IX.H; Section VIII.F.4.
Disposal Facilities:		
Listed or characteristic used oil.	As proposed in 1985.	(50 *FR* 49239).
Nonhazardous used oil and disposal guidelines.	New	Section IX.I; Section VIII.E.

[FR Doc. 91–22482 Filed 9–20–91; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
September 23

Part III

Harry S. Truman Scholarship Foundation

45 CFR Part 1801
Harry S. Truman Scholarship Regulations; Final Rule

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

45 CFR Part 1801

Harry S. Truman Scholarship Regulations

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Final rule.

SUMMARY: The following are the regulations governing the annual competition for Harry S. Truman Scholarships. The regulations reflect modifications in the program adopted by the Harry S. Truman Scholarship Foundation on September 13, 1991. Modifications were made to clarify and make explicit policies of the Foundation in administering the Truman Scholarship Program. Amendments provide for a parallel competition for second year full time students at community and junior colleges. In addition a number of clarifying changes are being made to the last complete edition of these regulations published in the Federal Register on June 25, 1990 (55 FR 25940).

EFFECTIVE DATE: October 1, 1991.

ADDRESSES: Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Louis H. Blair, (202) 395–4831.

SUPPLEMENTARY INFORMATION:

List of Subjects in 45 CFR Part 1801

Grant programs-education, Scholarships and fellowships.

Dated: September 13, 1991.

Louis H. Blair,

Executive Secretary.

Elmer B. Staats,

Chairman, Board of Trustees.

Title 45 of the Code of Federal Regulations is amended by revising part 1801 to read as follows:

PART 1801—HARRY S. TRUMAN SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

Subpart B—Nominations

Subpart C—The Competition

Subpart D—Graduate Study and the Work Experience Program

Subpart E—Payments to Finalists and Scholars

Subpart F—Payment Conditions and Procedures

Subpart G—Duration of Scholarship

Authority: Pub. L. 93–642,88 Stat. 2276 (20 U.S.C. 2001–2012).

Subpart A—General

§ 1801.1 Annual Truman Scholarship competition.

Each year, the Harry S. Truman Scholarship Foundation carries out a nationwide competition to select students to be Truman Scholars.

§ 1801.2 Truman Scholars are selected from qualified applicants from each State.

(a) At least one Truman Scholar is selected each year from each State in which there is a resident applicant who meets eligibility criteria in § 1801.3. In addition, the Board of Trustees may select additional Scholars-at-Large.

(b) As used in this part, *State* means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, and considered as a single entity: Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 1801.3 Students eligible for nomination.

A student is eligible to be nominated for a Truman Scholarship if he or she:

(a) Is a junior level student pursuing a bachelor's degree as a full-time student at an accredited institution of higher education and will receive a baccalaureate degree the following academic year; or, is a full-time sophomore level student at an accredited community or junior college who will be a full-time junior the following year at an accredited four year institution;

(b) Has an undergraduate field of study that permits admission to a graduate program leading to a career in public service;

(c) Ranks in the upper quarter of his or her class; and

(d) Is a U.S. citizen, a U.S. national, or a permanent resident of the Commonwealth of the Northern Mariana Islands.

§ 1801.4 Definitions.

As used in this part:

Academic year means the period of time, typically 8 or 9 months in which a full-time student would normally complete two semesters, three quarters, or the equivalent.

Foundation means the Harry S. Truman Scholarship Foundation.

Full-time student means a student who is carrying a sufficient number of credit hours or their equivalent to secure the degree or certificate toward which he or she is working, in no more time than the length of time normally taken at the institution of higher education.

Graduate study means the courses of study beyond the baccalaureate level which lead to an advanced degree.

Institution of higher education has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Junior means a student who following completion of the current academic year has one more year of full-time course work to receive a baccalaureate degree.

President means the principal official responsible for the overall direction of the operations of an institution of higher education.

Public service means employment in: governments at any level, the uniformed services, public interest organizations, non-governmental research and/or educational organizations, and non-profit organizations such as those whose primary purposes are to help needy or disadvantaged persons or to protect the environment.

Resident means a person who has legal residence in the State, recognized under State law. If a question arises concerning the State of residence, the Foundation determines, for the purposes of this program of which State the person is a resident, taking into account place of registration to vote, parent's place of residence, and eligibility for "in-State" tuition rates at public institutions of higher education.

Scholar means a person who has been selected by the Foundation as a Truman Scholar, has accepted the Scholarship and agreed to the conditions of the award, and is eligible for Scholarship stipend(s).

Senior means the academic level recognized by the institution of higher education as being in the last year of study before receiving a baccalaureate degree.

Sophomore means the academic level recognized by the institution of higher education as having second year standing.

Term means the period which the institution of higher education uses to divide its academic year: Semester, trimester, or quarter.

Work-experience program means employment that involves an intensive period of practical work in a Federal, State, or local government office or in some other type of public service organization.

Subpart B—Nominations

§ 1801.10 Nomination by institution of higher education.

To be considered in the competition a student must be nominated by the institution of higher education that he or she attends.

§ 1801.11 Annual nomination.

(a) Except as provided in §§ 1801.11 (b), 1801.12, and 1801.24, each institution of higher education may nominate up to three students annually. If an institution chooses to nominate three students, the three may have legal residence in the same State as the institution or in different States.

(b) The Foundation may announce each year in its Bulletin of Information special circumstances under which each institution may nominate one or more additional candidates.

(c) All nominations must be made by the President of the institution or the designated Faculty Representative.

§ 1801.12 Institutions with more than one campus.

If an institution of higher education has more than one component separately listed in the current edition of the Directory of Postsecondary Institutions published by the U.S. Department of Education, each may nominate up to three students. However, a component that is organized solely for administrative purposes and has no students may not nominate a student.

§ 1801.13 Two-year institutions.

If an institution of higher education does not offer education beyond the sophomore level, the institution may nominate only students who will be full-time juniors the following year at other accredited institutions of higher education.

§ 1801.14 Submission of application to the Foundation.

To nominate a student for the competition, the institution must send the students's application to the Foundation.

§ 1801.15 Faculty Representative.

(a) Each instituion which nominates a student must give the Foundation the name, business address, and business telephone number of a member of the faculty who will serve as liaison between the institution and the Foundation.

(b) It is the role of this Faculty Representative to publicize the Truman Scholarship on campus, solicit recommendations of potential nominees from members of the faculty, and insure that the institution's nomination, with all required supporting documents, is forwarded to the Foundation to arrive by the required deadline.

§ 1801.16 Closing date for receipt of nominations.

The Foundation publishes an annual notice in the **Federal Register** of the date, usually December 2, by which time the Foundation must receive nominations at the address specified in the nominations materials in order to be considered by the Foundation.

§ 1801.17 Contents of application.

(a) The Foundation provides a form that must be used as the application.

(b) Each application must include the following:

(1) A certification of nomination and eligibility signed by the Faculty Representative;

(2) A completed Nomination and Supporting Information Form signed by the nominee;

(3) An analysis of a public policy issue written by the nominee;

(4) A current official college transcript;

(5) Four letters of recommendation including one from the Faculty Representative; and a

(6) Statement that the student is willing to participate in a Truman Scholars Leadership seminar sponsored by the Foundation and to attend the awards ceremony.

Subpart C—The Competition

§ 1801.20 Selection of Finalists.

The Foundation selects finalists from the students who are nominated.

§ 1801.21 Evaluation criteria.

(a) The Foundation selects finalists from the students nominated primarily on the basis of the following criteria:

(1) Leadership abilities and potential;

(2) Suitability of the nominee's proposed program of study and its appropriateness for a leadership career in public service with substantial impact on public policies;

(3) Writing and analytic skills;

(4) Academic performance and potential to perform well in graduate school; and

(5) Quality and extent of public and community service and government involvement.

(b) The Foundation evaluates each student solely on the basis of the information required under § 1801.17.

§ 1801.22 Interview of finalists with panel.

The Foundation invites each finalist to an interview with a regional review panel or a special panel to interview supplemental finalists. Panels evaluate Truman Finalists primarily on:

(a) Leadership potential including vision, sensitivity, and communications skills;

(b) Commitment to a career in government or elsewhere in public service; and

(c) Intellectual strength, analytical abilities, and prospects of performing well in graduate school.

§ 1801.23 Recommendation by panel.

(a) Each Panel is asked to recommend to the Board of Trustees the name of one candidate from each state in the region to be appointed as a Truman Scholar and an alternate from each state in the event the recommended finalist from the state does not accept appointment. The Foundation may authorize each regional review panel to recommend additional "Scholars-at-Large" from the States in its region.

(b) The recommendations are based on the material required under § 1801.17 and, as determined in the interview, the panel's assessment of each finalist in terms of criteria presented in § 1801.22.

§ 1801.24 Supplemental nominations.

(a) In the event that a regional review panel determines that none of the finalists from a state meet all the requirements expected of a Truman Scholar, it does not have to provide a recommendation. The Foundation may ask institutions that nominated candidates for the competition to submit an additional nominee from that state. The nominee may be a person previously nominated who was not selected as a finalist or a newly nominated individual. In the event that supplemental nominations are needed from more than two states, each institution shall be limited to a maximum of two nominees for the supplemental competition. The Foundation shall convene a special panel to interview supplemental finalists and to recommend finalist(s) to be appointed as Truman Scholar(s).

(b) If additional nominations are made under paragraph (a) of this section, the applications must meet the requirements of subpart B—Nominations of this part, and are considered under the procedures of this subpart.

§ 1801.25 Selection of Truman Scholars by the Foundation.

(a) The Foundation names Truman Scholars after receiving recommendations from the regional review panels and the special supplemental panel if convened.

Subpart D—Graduate Study and the Work Experience Program

§ 1801.30 Continuation into graduate study.

(a) The Foundation will not conduct a new and separate competition for graduate scholarships, nor will it add new Truman Scholars at the graduate level.

(b) Only Scholars who satisfactorily complete their undergraduate education and who comply with § 1801.31 shall be eligible for continued Foundation support for an approved program of graduate study.

§ 1801.31 Approval of graduate programs by the Foundation.

(a) By December 1, Scholars desiring Foundation support for graduate study the following academic year must submit a proposed program of graduate study to the Foundation for approval. The graduate program proposed for approval may differ from that proposed by the Scholar when nominated for a Truman Scholarship. Factors to be used by the Foundation in considering approval include being consistent with:

(1) Field of study initially proposed in the Scholar's Nomination and Supporting Information Form;

(2) Graduate school programs given priority in the current Bulletin of Information;

(3) Undergraduate educational program and work experience of the Scholar; and

(4) Preparation specifically for a career in public service.

(b) Foundation approval in writing of the Scholar's proposal is required before financial support is granted for graduate work.

(c) Scholars must include in their submission to the Foundation a statement of interest in a career in public service that specifies in detail how their graduate program and their overall educational and work experience plans will realistically prepare them for their chosen career goal in government or elsewhere in the public service. The Foundation issues guidelines to help Scholars prepare their proposals.

(d) After completing his or her undergraduate studies, a Scholar each year may request in writing a deferral of support for graduate studies. Deferrals must be requested no later than June 15 for the succeeding academic year. Scholars failing to request a year's deferral and to receive written approval from the Foundation will lose one year of funding support for each year for which they fail to request and receive deferrals. Total deferrals may not exceed four years unless an extension is approved by the Foundation.

§ 1801.32 Eligible colleges and degree programs.

(a) Truman Scholars at the graduate level may use Foundation support to study at any accredited college or university that offers graduate study appropriate and relevant to their public service career goals.

(b) They may enroll in any relevant graduate program for a career in public service. A wide variety of fields of study can lead to careers in public service including—but not limited to—agriculture, biology and environmental sciences, engineering, mathematics, physical and social sciences as well as traditional fields such as economics, education, government, history, international relations, law, medicine and public health, political science, and public administration and public policy.

(c) Foundation support for graduate study is restricted to three years of full-time study for Scholars selected in 1991 and subsequent years from four year institutions and to two years for all other Scholars.

§ 1801.33 Public service internships and employment prior to graduate study.

The Foundation encourages all Scholars to consider participating in paid internships, regular employment, or in voluntary programs of work experience in the government or in other public service organizations before attending graduate school. The Foundation may give preference in its selection process to nominees planning such internships and employment. The Foundation assists Scholars in finding internships and regular employment in Federal agencies and departments.

Subpart E—Payments to Finalists and Scholars

§ 1801.40 Travel expenses of finalists.

The Foundation will provide tickets for intercity round trip air, train or bus transportation from the finalist's nominating institution to the interview site. The Foundation does not reimburse finalists for lodging, meals, local transportation, or other expenses. Finalists wishing to drive to the interview will be reimbursed for mileage according to Federal Travel Regulations. Mileage reimbursement may not exceed the costs to the Foundation of airline transportation. If, at the time of the interview, the finalist is spending the semester abroad under a program recognized for academic credit towards graduation, the Foundation will arrange for air transportation at government contract rates and reimburse the finalist for three quarters of the costs for air transportation.

§ 1801.41 Scholarship stipends.

The award covers eligible expenses in the following categories: Tuition, fees, books, and room and board. Payments from the Foundation may be received to supplement, but not to duplicate, benefits received by the Scholar from the educational institution or from other foundations or organizations. The benefits received from all sources combined may not exceed the costs of tuition, fees, books, and room and board as determined by the Foundation.

(a) Scholars selected in 1990 and prior years are eligible to receive annually up to $7,000.

(b) Scholars selected in 1991 and in subsequent years are eligible to receive a total of no more than $30,000.

(1) Each Scholar selected from a four year institution is eligible to receive up to $3,000 for the senior year of undergraduate education. Scholars in graduate programs planning to receive degrees in one to two years are eligible to receive up to $13,500 per year or

$10,000 (adjusted annually from January, 1985 to reflect increases, if any, in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics), whichever is less. Scholars in graduate programs requiring three or more years of academic study are eligible to receive up to $9,000 per year for a maximum of three years.

(2) Scholars selected in their sophomore year in 1992 and succeeding years are eligible to receive up to $6,000 per year for the junior and senior years of college. Upon graduation, they will be eligible to receive up to $9,000 per year for a maximum of two years of graduate school.

§ 1801.42 Definition of "fee".

As used in this part, *fee* means a typical and usual nonrefundable charge by the institution of higher education for a service, a privilege, or the use of property which is required for a Scholars' enrollment and registration.

§ 1801.43 Allowance for books.

The cost allowance for a Scholar's books is $400 per year. This figure may be increased by the Foundation with the new figure published in the Bulletin of Information.

§ 1801.44 Allowance for room and board.

The cost allowed for a Scholar's room and board is the amount the institution of higher education reports to the Foundation as the average cost of room and board for the Scholar's institution, given the type of housing the Scholar occupies.

§ 1801.45 Deduction for benefits from other sources.

The cost allowed for a Scholar's tuition, fees, books, room and board must be reduced to the extent that the cost is paid by another organization or provided for or waived by the Scholar's institution.

Subpart F—Payment Conditions and Procedures

§ 1801.50 Acceptance of the scholarship.

To receive any payment, a Scholar must sign an acceptance of the scholarship and acknowledgement of the conditions of the award and submit it to the Foundation.

§ 1801.51 Report at the beginning of each term.

(a) To receive a Scholarship stipend, a Scholar must submit a current Payment Request Form containing the following:

(1) A statement of the Scholar's costs for tuition, fees, books, room and board;

(2) A certification by an authorized official of the institution that the statement of those costs is accurate;

(3) A certification of the amounts of those costs that are paid or waived by the institution or paid by another organization.

(4) A certification by an authorized official of the institution that the Scholar is a full-time student and is taking a course of study, training, or other educational activities to prepare for a career in public service; and is not engaged in gainful employment that interferes with the Scholar's studies.

(5) A certification by an authorized official of the institution of whether the Scholar is in academic good standing.

(b) At the beginning of the academic year, the Scholar must have his or her institution submit a certified Educational Expense Form showing the charges for tuition, fees, books, room and board and other expenses required for the academic year in which the Scholar will request Foundation support.

§ 1801.52 Payment schedule.

The Foundation will pay the Scholar a portion of the award after each report submitted under § 1801.51.

§ 1801.53 Postponement of payment.

(a) A Scholar may request the Foundation to postpone one or more payments because of sickness or other circumstances.

(b) If the Foundation grants a postponement, it may impose such conditions as necessary.

§ 1801.54 Annual report.

(a) Scholars with remaining eligibility for scholarship stipends must submit no later than July 15 an annual report to the Foundation.

(b) The annual report should be in narrative form and cover: Courses taken and grades earned; courses planned for the coming year if Foundation support will be requested; public service and school activities; part-time or full-time employment and summer employment or internships; and achievements, awards and recognition, publications or significant developments.

(c) Newly selected Scholars are required to submit an annual report updating the Foundation on their activities and accomplishments since the time they submitted their applications for the Truman Award.

(d) Deferred Scholars not engaged in academic studies are requested to discuss in detail their employment and public service activities and their future public service goals.

Subpart G—Duration of Scholarship

§ 1801.60 Renewal of scholarship.

It is the intent of the Foundation to provide scholarship awards for a period not to exceed a total of four academic years, only in accordance with the regulations established by its Board of Trustees, and subject to an annual review for compliance with the requirements of this part.

§ 1801.61 Termination of scholarship.

(a) The Foundation may suspend or terminate a scholarship under the following specific conditions.

(1) Unsatisfactory academic performance for two terms, failure to pursue preparation for a career in public service, or loss of interest in a career in public service. Unsatisfactory academic performance is considered failure as an undergraduate to maintain a B or better term average for two terms.

(2) Failure to meet the criteria in §§ 1801.3(d), 1801.31(b), or § 1801.51.

(3) Providing false, misleading, or materially incomplete information on any report, payment request or other submission to the Foundation.

(b) Before it terminates a scholarship, the Foundation will notify the Scholar of the proposed action and will provide an opportunity to be heard with respect to the grounds for termination.

§ 1801.62 Recovery of scholarship funds.

(a) When a Truman Scholarship is terminated for any reason, the Scholar must return to the Foundation any stipend funds which have not yet been spent or which the Scholar may recover.

(b) A Scholar who fails for any reason to complete as a full-time student a school term for which he or she has received a Foundation stipend, must return the amount of that stipend to the Foundation. The Foundation may waive this requirement upon application by the Scholar showing good cause for doing so.

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federal register

Monday
September 23, 1991

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 101 and 103

Loans to Indians From the Revolving Loan Fund Loan Guaranty, Insurance, and Interest Subsidy; Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 101 and 103

RIN 1076-AC38

Loans to Indians From the Revolving Loan Fund Loan Guaranty, Insurance, and Interest Subsidy

September 16, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Indian Financing Act Amendments of 1988 increased the maximum amounts of loans to individuals which can be guaranteed and liberalized provisions for the sale of guaranteed loans so that they may be purchased by "any person." These amendments require changes in subchapter G, parts 101 and 103, for the Code of Federal Regulations, which are set out below.

Other changes comply with OMB Circulars A–129, Managing Federal Credit Programs, and A–70, Federal Credit Policy.

Other changes reflect the current policies in the administration for the Revolving Loan Fund and the Loan Guaranty Programs.

DATES: Comments must be received on or before October 23, 1991.

ADDRESSES: Send written comments to the Director, Office of Trust and Economic Development, Attention: Division of Financial Assistance, room 4060 MIB, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Woodrow B. Sneed, Division of Financial Assistance, Bureau of Indian Affairs, telephone number (202) 208–4796.

SUPPLEMENTARY INFORMATION: These amendments are published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the **ADDRESSES** section of this preamble.

The Department of the Interior has determined that this document is not a major action under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Department has further determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The collections of information contained in §§ 101.4, 103.15, and 103.34 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076–0020. The information is being collected to implement the requirements of 25 U.S.C. 1451 et seq. and 25 U.S.C. 1418 et seq. and will be used to establish eligibility for loans or loan guarantees. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451 et seq. and 1481 et seq.

Public reporting burden for this information is estimated to average 15 minutes to 3 hours per response to part 101 collections and 30 minutes per response to part 103 collections. This is the same burden as estimated in the rules being amended and includes 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 to Information Clearance Officer; Bureau of Indian Affairs; Washington, DC 20240; and to the Office of Management and Budget; Paperwork Reduction Project (1076–0020); Washington, DC 20503.

Amendments to part 103 increase the amount of a loan to individual Indians which can be guaranteed and provide that guaranteed loans can be purchased by "any person." These changes reflect changes in the Indian Financing Act by the 1988 amendments.

Other changes comply with OMB Circular A–129, Managing Federal Credit Programs, and A–70, Federal Credit Policy. The section on use of tribal funds for lending programs and economic development is deleted because the disposition of tribal funds is the business of the tribes and should not be restricted unnecessarily by excessive regulation.

A provision that tribes may mortgage their unrestricted lands is deleted because there is no authority for it.

Amendments clarify that the lender of guaranteed or insured loans retains responsibility for administering loans even if the guaranty certificate is coveyed to another party. To this end, most references to holders of guaranty certificates are deleted.

Amendments provide that interest subsidies on guaranteed or insured loans will be discontinued any time a guaranty or insurance agreement terminates for any reason.

The prohibition on points, finders fees, loan origination fees, bonuses, and commissions under the loan guaranty and insurance program is emphasized.

Amendments provide that lenders will share pro rata in proceeds from the liquidation of a borrower's assets upon default after the United States has recovered its costs in managing and disposing of the collateral.

A requirement that borrowers must provide at least 20 percent equity in the business being financed with a direct or guaranteed loan is added. Premium payments are required in a lump sum at the beginning of a loan.

The primary author of this document is Woodrow B. Sneed, Division of Financial Assistance, Bureau of Indian Affairs, telephone number (202) 208–4796.

List of Subjects in 25 CFR Parts 101 and 103

Indians—business and finance, Loan programs—Indians, Loan programs—business.

For the reasons set out in the preamble, amendments to parts 101 and 103 of title 25, chapter I, of the Code of Federal Regulations are proposed as set forth below:

PART 101 [AMENDED]

1. The authority citation for 25 CFR part 101 is revised to read as follows:

Authority: 25 U.S.C. 1469.

2. Section 101.1 is revised to read as follows:

§ 101.1 Definitions.

As used in this part 101:

Applicant means an applicant for a United States Direct Loan from the revolving loan fund or a loan from a relending organization.

Commissioner means the Commissioner of Indian Affairs or his authorized representative.

Cooperative association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distribution or allocated to patrons who are members of the organization.

Corporation means an entity organized as a corporation pursuant to state, Federal, or tribal law, with or

without stock, for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to:

(1) Make scheduled payments on a loan when due,

(2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan, or

(3) Comply with the covenants, obligations, or other provisions of a loan agreement.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

Equity means the borrower's residual claim to business assets after deducting all business debt.

Financing statement means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

Indian means a person who is a member of an Indian tribe as defined in this part.

Organization means the governing body of any Indian tribe, or entity established or recognized by such governing body for the purpose of the Indian Financing Act.

Other organization means any non-Indian individual, firm, corporation, partnership, or association.

Partnership means a form of business organization in which two or more legal persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain, organized pursuant to tribal, state, or Federal law.

Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Revolving loan fund means all funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1968) and the Act of April 19, 1950 (64 Stat. 44), as amended and supplemented including sums received in settlement of debts for livestock pursuant to the Act of May 24, 1950, (64 Stat. 190) and sums collected in repayment of loans made, including interest or other charges on loans, and any funds appropriated pursuant to section 108 of the Indian Financing Act of 1974 (88 Stat. 77).

Secretary means the Secretary of the Interior.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), as amended, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

3. Section 101.3 is amended by adding a sentence at the end of paragraph (a) as follows:

§ 101.3 Eligible borrowers under United States direct loan program.

(a) * * * In addition, the applicant will be required to have equity equal to 20 percent of the total costs of a new enterprise, or 20 percent of total costs of expansion of an existing enterprise.

* * * * *

4. Section 101.4 is amended by removing the second sentence and by adding three new sentences in its place as follows:

§ 101.4 Applications.

* * * Applications shall include the name, current address and telephone number of the applicant(s); current and prior Taxpayer Identification Number—Employer Identification Number if a business entity, Social Security Number if an individual; and current employer's name, address, and telephone number; amount of the loan requested; purpose for which loan funds will be used; and security to be offered; period of the loan, assets, liabilities and repayment capacity of the applicant; budgets reflecting income and expenditures of the applicant; and any other information necessary to adequately evaluate the application. The borrower must sign a statement declaring no delinquency on Federal taxes or other Federal debt and borrower's good standing on dealings in procurement or non-procurement with the Federal Government. The Bureau will obtain a current credit bureau report and prescribe procedures to be used in handling loan proceeds. * * *

5. Section 101.6 is amended by adding the following sentence at the end of paragraph (a):

§ 101.6 Modification of loans.

(a) * * * In addition, a current credit bureau report, obtained by the Bureau of Indian Affairs, will be made a part of the modification request.

* * * * *

6. Section 101.11 is amended by revising paragraphs (b) and (c) as follows:

§ 101.11 Interest.

* * * * *

(b) Additional charges to cover loan administration costs, including credit reports and loan origination fees, may be charged to borrowers.

(c) Education loans may provide for deferral of interest while the borrower is in school full time or in the military service.

* * * * *

7. Section 101.15 is amended by adding new paragraphs (j)–(s) as follows:

§ 101.15 Penalties on default.

* * * * *

(j) Report the name and account information of a delinquent borrower to a credit bureau.

(k) Assess additional interest and penalty charges for the period of time that payment is not made.

(l) Assess charges to cover additional administrative costs incurred by the Government to service the account.

(m) Offset amounts owed the borrower under other Federal programs including other programs administered by the Bureau of Indian Affairs.

(n) Refer the account to a private collection agency to collect the amount due.

(o) Refer the account to the U.S. Department of Justice for collection by litigation.

(p) If the borrower is a current or retired Federal employee, take action to offset the borrower's salary or civil service retirement benefits.

(q) Refer the debt to the Internal Revenue Service for offset against any amount owed the borrower as an income tax refund.

(r) Report any written-off debt to the Internal Revenue Service as taxable income to the borrower.

(s) Recommend suspension or debarment from conducting further business with the Federal Government.

§ 101.20 [Removed]

§§ 101.21–101.26 [Redesignated as §§ 101.20–101.25]

8. Section 101.20 is removed and §§ 101.21 through 101.26 are redesignated as §§ 101.20 through 101.25.

§ 101.20 [Amended]

9. Newly redesignated § 101.20 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

PART 103 [AMENDED]

10. The authority citation for 25 CFR part 103 is revised to read as follows:

Authority: 25 U.S.C. 1498.

11. Section 103.1 is revised to read as follows:

§ 103.1 Definitions.

As used in this part:

Applicant means one who applies for a guaranteed or insured loan.

Borrower means the Indian organization or individual Indian receiving a guaranteed or insured loan.

Commissioner means the Commissioner of Indian Affairs or his authorized representative.

Cooperative association means an association of individuals organized pursuant to state, Federal, or tribal law for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized as a corporation pursuant to state, Federal, or tribal law, with or without stock for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to:

(1) Make scheduled payments on a loan, when due,

(2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan, or

(3) Comply with the covenants, obligations, or other provisions of a loan agreement.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

Equity means the borrower's residual claim to business assets after deducting all business debt.

Financing statement means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

Guaranty means the obligation assumed by the United States to repay a specific percentage of a loan upon default of the borrower pursuant to the regulations in this part.

Indian means a person who is a member of an Indian tribe as defined in this part.

Insured loan means a loan made pursuant to an agreement approved by the Assistant Secretary with a financial institution, under which an obligation is assumed by the United States to indemnify the lender for a percentage of a loss on loans, pursuant to the regulations in this part.

Interest subsidy means payments which may be made by the United States to lenders making guaranteed or insured loans to reduce the interest rate which borrowers pay the lenders to the rate established pursuant to section 104 of the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.).

Mortgage means a mortgage or deed of trust evidencing an encumbrance of land, a mortgage or security agreement executed as evidence of a lien against crops and chattels, and a mortgage or deed of trust evidencing a lien on leasehold interests.

Organization means the governing body of any Indian tribe or entity established or recognized by such governing body for the purpose of the Indian Financing Act.

Partnership means a form of business organization in which two or more persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain organized under tribal, state, or Federal law.

Premium means the charges paid by lenders for the guaranty or insurance of loans under provisions for reimbursement of lenders by the United States for a percentage of losses incurred.

Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Secretary means the Secretary of the Interior.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, or urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) as amended which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

12. Section 103.7 is amended by removing the first sentence and adding two sentences in its place as follows:

§ 103.7 Eligible organizations.

Tribes and Indian organizations having a form of organization satisfactory to the Commissioner and recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs, and indicating reasonable assurance of repayment, are eligible for guaranteed or insured loans. If Indian ownership of an economic enterprise falls below 51 percent, the borrower shall be in default and the guaranty shall cease and the interest subsidy shall be discontinued. * * *

13. Section 103.10 is amended by adding a new paragraph (e) as follows:

§ 103.10 Ineligible loans.

* * * * *

(e) Loans which are linked to Federally tax-exempt bond obligations.

14. Section 103.13 is amended by revising paragraph (a) to read as follows:

§ 103.13 Amount of guaranty.

(a) The percentage of a loan that is guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90 percent of the unpaid principal and interest. After September 30, 1991, the percentage of a loan that is guaranteed shall not exceed 80 percent. The liability under the guaranty shall increase or decrease pro rata with an increase or decrease in the unpaid portion of the principal amount of the obligation. No loan to an individual Indian, partnership, or other non-tribal organization may be guaranteed for an unpaid principal amount in exceed of $500,000 or such maximum amount provided in any amendments to the Indian Financing Act of 1974.

* * * * *

15. Section 103.15 is amended by revising the heading of the section and paragraphs (a) and (c) as follows:

§ 103.15 Applications for loan guaranties or insurance.

(a) Applicants for loans will deal directly with lenders for both guaranteed and insured loans. The form of loan applications will be determined by the lender. The application for a loan guaranty or insurance, or attachments thereto, must include or show the following:

(1) The name and address of the borrower with the tax identification number if the borrower is a business entity or the social security number if an individual;

(2) A statement signed by the borrower that the borrower is not delinquent with any Federal tax or other obligations;

(3) The plan of operation for the economic enterprise including an identified target market for the goods or services being offered;

(4) Purpose(s) and the amount of the loan;

(5) Security to be given which shall be itemized with valuations of such collateral and the method used to value the collateral, the date of such valuation, who performed the valuation, and the creditor priority positions;

(6) Hazard and liability insurance to be carried;

(7) Interest rate;

(8) Repayment schedule;

(9) Repayment source(s);

(10) How title to the property to be purchased with the loan will be taken;

(11) Current financial statements of the loan applicant;

(12) Description and dollar value of the equity or personal investment to be made by the applicant;

(13) Charges pursuant to § 103.44;

(14) Pro forma balance sheets, operating statements and cash flow statements for at least three years;

(15) Balance sheets and operating statements for the two preceding years or applicable period thereof if already in operation;

(16) The lender's evaluation of the economic feasibility of the enterprise and internal credit memorandum, and;

(17) A current credit bureau report on the borrower. Applications will also show the percentage of guaranty requested.

* * * * *

(c) The Commissioner may review applications for guaranteed loans individually and independently from the lending institution.

16. Section 103.16 is revised to read as follows:

§ 103.16 Loan otherwise available.

If the information in an application for a guaranteed or insured loan indicates that the applicant may obtain the loan without a guaranty or insurance, the Commissioner may deny the request for a guaranty or insurance.

17. Section 103.17 is amended by revising the second sentence of paragraph (a) and adding a new sentence at the end of paragraph (a) as follows:

§ 103.17 Refinancing.

(a) * * * applications to refinance loans to an economic enterprise will be accompanied by financial and cash flow statements required in § 103.15(a) (1)–(17). A guaranty of a loan to refinance existing indebtedness will be considered only if the loan will result in a significantly lower lender's interest rate to the borrower, or provide a substantially longer term for repayment of the loan, or decrease the loan-to-asset value ratio of the business being financed.

* * * * *

18. Section 103.23 is amended by revising the last sentence of paragraph (b) as follows:

§ 103.23 Increase in principal of loans.

* * * * *

(b) * * * If the financing involves an economic enterprise, the application must be accompanied by the information required in §§ 103.15(a) (4)–(15).

* * * * *

19. Section 103.27 is amended by adding a sentence at the end as follows:

§ 103.27 Amount of security.

* * * The lender shall itemize and describe the collateral given as security as described in section 103.15(a) (5) and (10) of this part.

20. Section 103.30 is amended by revising paragraph (a) as follows:

§ 103.30 Land.

(a) Indian individuals may execute mortgages or deeds of trust on nontrust or unrestricted land as security without the approval of any Federal official.

* * * * *

21. Section 103.34 is amended by adding a new sentence after the first sentence to read as follows:

§ 103.34 Restrictions.

* * * Lenders will document any and all prior security interests of record with respect to proposed collateral.* * *

22. Section 103.36 is revised to read as follows:

§ 103.36 Default on guaranteed loans.

(a) Within 45 calendar days after the occurrence of a default, the lender shall notify the Commissioner by certified or registered mail showing the name of borrower, guaranty certificate number, amount of unpaid principal, amount of principal delinquent, amount of interest accrued and unpaid to date of notice, amount of interest delinquent at time of notice, and other failure of the borrower to comply with provisions of the loan agreement. Within 60 calendar days after default on a loan, the lender shall proceed as prescribed in either paragraph (b), (c), or (d) of this section, unless an extension of time is requested by the lender and approved by the Commissioner. The request for an extension shall explain the reason why a delay is necessary and the estimated date on which action will be initiated. Failure of the lender to proceed with action within 60 calendar days or the date to which an extension is approved by the Commissioner shall cause the guaranty certificate to cease being in force or effect. If the Commissioner is not notified of the failure of a borrower to make a scheduled payment or of other default within the required 45 calendar days, the Commissioner will proceed on the assumption that the scheduled payment was made and that the loan agreement is current and in good standing. The Commissioner will then decrease the amount of the guaranty pro rata by the amount of the due installment and the lender will have no further claim for guaranty as it applied to the installment, except for the interest subsidy on guaranteed loans which may be due.

(b) The lender may make written request that payment be made pursuant to the provisions of the guaranty certificate or guaranty agreement. If the Commissioner finds that a loss has been suffered, the lender may be paid the pro rata portion of the amount guaranteed including unpaid interest.

(c) The borrower and the lender may agree upon an extension of the repayment terms or other forbearance for the benefit of the borrower. The lender may extend all reasonable forbearance if the borrower becomes unable to meet the terms of a loan. However, such forbearance will not be extended if it will increase the likelihood of a loss on a loan. Agreements between a lender and a borrower shall be in writing and will require approval by the Commissioner.

(d) The lender may advise the Commissioner in writing that suit or foreclosure is considered necessary and proceed to foreclosure and liquidation of all security interests. On completion of foreclosure and liquidation, if the Commissioner determines that a loss has been suffered, the lender will be reimbursed for the pro rata portion of the amount of unpaid principal and interest guaranteed. A lender will submit a claim for reimbursement for losses on a form furnished by the Commissioner and will furnish any additional information needed to establish the amount of the claim. On reimbursement of a lender for the pro rata amount of the loss guaranteed as provided in the guaranty certificate, the lender will subrogate its right and interest in the loan to the United States and assign the loan obligations and security for the loan to the United States. The Commissioner may establish the date on which accrual of interest or charges shall cease. This date may not be later than the date of judgment and decree of foreclosure or sale. The Commissioner will take any action necessary to protect the interest of the

United States. Subsequent to subrogation and assignment, any collections shall be for the account of the United States up to the amount paid on the guaranty plus any costs or expenses incurred by the United States. Collections will be deposited in the loan guaranty and insurance fund established pursuant to this part. Any amounts collected in excess of those necessary to reimburse the United States for amounts paid under the guaranty plus costs or expenses shall be paid to the lender up to the amount of the lender's losses. Any residue from collection shall go to the borrower.

§ 103.38 [Amended]

23. Section 103.38 is amended by removing the word "deems" in the first sentence and adding "deemed."

24. Section 103.42 is amended by revising the introductory text of paragraph (a); adding a new paragraph (a)(5); removing the second sentence in paragraph (c); and adding a sentence at the end of paragraph (c); as follows:

§ 103.42 Interest subsidy.

(a) The Commissioner may pay an interest subsidy to lenders on loans which are guaranteed or insured under this part 103 at rates which are necessary to reduce the interest rate payable by the borrowers to a rate determined in accordance with title I, section 104, of the Indian Financing Act of 1974 (Pub. L. 93–262, 83 Stat. 77). The rate of subsidy will be established by the Commissioner at the time of issuance of a guaranty certificate or insurance agreement on loans requiring approval by the Commissioner. Interest subsidy payments by the United States shall be discontinued on such loans if the lender elects to discontinue the guaranty or insurance or causes the termination of the guaranty or insurance by failure to make premium payments as required by section § 103.43, or when one of the following occurs:

* * * * *

(5) Cash flow from the business being financed appears sufficient to pay for full debt service based on periodic review by the Commissioner. Cash flow shall be deemed sufficient to pay debt service when earnings before interest and taxes, after adjustments for extraordinary items, equal or exceed industry norms.

* * * * *

(c) * * * The interest subsidy rate established by the Commissioner will be in effect for three years. At the end of the third year the need for subsidy will be reviewed and extended on an annual basis for the next two years, if justified.

25. Section 103.43 is revised as follows:

§ 103.43 Premium charges.

A premium of 2.0 percent of the guaranteed portion of a loan will be charged to lenders. The lender may increase the principal amount of the loan by the cost of the premium and charge it to the borrower. The lender shall pay the premium within 90 days of the date of approval of the loan guaranty. If the guaranty premium is not paid within this time period, the Assistant Secretary will send the lender a notice of non-payment. If the premium is not paid within 30 days of the receipt of this notice, the guaranty shall be subject to termination.

26. Section 103.44 is amended by revising the last sentence as follows:

§ 103.44 Other charges.

* * * Payment by the borrower of points, finders fees, loan origination fees, bonuses or commissions for loans guaranteed under this part is prohibited.

27. Section 103.46 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) as follows:

§ 103.46 Loan servicing.

* * * * *

(b) Loan servicing must meet the following standards regarding billing and documentation. Payments must be routinely invoiced, in most cases on a monthly basis. Invoices should include the date the payment is due and the date the payment will be considered late (i.e., grace period). Borrowers should be encouraged to use pre-authorized debits or credit cards when making payments. Loan files must contain current information on payment history, including delinquencies and defaults, and any subsequent loan action concerning deferrals, refinancing, or rescheduling. In delinquent cases, lenders should follow their standard operating procedures in notifying those borrowers about their status. Such notifications should state the lenders' intent to report the delinquent debts to credit bureaus or to refer debts to collection agencies if the borrowers do not promptly remit payments. There should be a record of the time and outcome of each contact with the delinquent borrowers.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–22745 Filed 9–20–91; 8:45 am]

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federal register

Monday
September 23, 1991

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Inapplicability of Basic VFR Weather Minimums for Helicopter Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 24722, Amendment No. 91-224]

RIN 2120-AE19

Inapplicability of Basic VFR Weather Minimums for Helicopter Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; interpretive amendment.

SUMMARY: This action corrects an unintended restriction on helicopter operations conducted outside of controlled airspace below 1,200 feet above the surface. Section 91.155 of the Federal Aviation Regulations, as amended, technically requires the pilot of a helicopter conducting such operations to maintain greater distances from clouds when the visibility is at or above the minimum required than when the visibility is less than the minimum required. This was not the intent of the amendment. The intent of § 91.155 is to allow helicopters to operate under visual flight rules (VFR), regardless of flight visibility, provided the other criteria of that section are met. This action clarifies the intent of the rule.

EFFECTIVE DATE: September 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron I. Boxer, (202) 267-9241, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1989, the Federal Aviation Administration (FAA) published a final rule that revised cloud clearance minimums for fixed-wing aircraft in uncontrolled airspace (54 FR 40324). Helicopters, under the previous rule, were permitted to fly clear of clouds, regardless of flight visibility, provided the flight was conducted outside controlled airspace below 1,200 feet above the surface. The language used in the revised rule was intended to provide the same level of exemption to helicopters as existed under the old rule. Section 91.155(b)(1), provided that when the visibility is below 1 mile during the day and below 3 miles at night, helicopters may fly clear of clouds outside of controlled airspace, and below 1,200 feet above the surface, if operated at a speed that allows the pilot adequate opportunity to see any air traffic or obstruction in time to avoid a collision. It was brought to the FAA's attention by the U.S. Army that the wording of § 91.155(b)(1) appears to restrict helicopters to the same cloud clearance criteria as airplanes when flight visibility is above 3 miles at night. This interpretation of the rule is not intended. The change to § 91.155 was made to restrict fixed-wing aircraft to the same cloud clearance and visibility requirements in uncontrolled airspace as in controlled airspace. The FAA did not intend to remove the then-existing exceptions provided to helicopters under the rule.

Helicopters have the ability to operate at lower speeds and with a significantly higher degree of maneuverability than airplanes. These qualities allow a helicopter to be operated at lower visibility and cloud clearance distances while maintaining the same degree of safety as fixed-wing aircraft flying under more restrictive minima. The exception incorporated in § 91.155 is designed to allow the pilot of a helicopter to take advantage of the aircraft's abilities while maintaining the same degree of safety. Therefore, when a helicopter operates in uncontrolled airspace below 1,200 feet above the surface the pilot need only remain clear of clouds regardless of flight visibility.

Reason for No Notice and Immediate Adoption

This amendment is adopted as a final rule to clarify the intent of an agency regulation. Accordingly, this amendment is excepted from the general notice and comment requirements pursuant to 5 U.S.C. 553 (B). Because this amendment simply clarifies the intent of an existing regulation, I find that good cause exists for making the amendment effective upon publication.

Economic Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal Agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each proposed change outweigh potential costs.

There are no costs associated with this amendment. It merely clarifies the original intent to continue to allow helicopters, operating in uncontrolled airspace below 1,200 feet above the surface, to remain clear of clouds only, regardless of flight visibility.

The FAA finds that this interpretive amendment is covered by the regulatory evaluation for the final rule published September 22, 1989, and further regulatory evaluation is not required. A copy of that regulatory evaluation is filed in the FAA Rules Docket 24722.

International Trade Impact Statement

This rule will not impose a competitive disadvantage to either U.S. air carriers doing business abroad or foreign air carriers doing business in the United States. This assessment is based on the fact that this rule will not impose additional costs on either U.S. or foreign air carriers.

Regulatory Flexibility Determination

In accordance with the Regulatory Flexibility Act of 1980, the FAA has determined that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. This assessment is based on the regulatory evaluation of the final rule published on September 22, 1989, and on the fact that this amendment will not impose any additional cost on aircraft operators.

Federalism Implications

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

Paperwork Reduction Act

This action clarifies an agency regulation and does not change any reporting requirements.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under the Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Air traffic control, Aviation safety, Flight visibility, Terminal control areas, Visual flight rules corridor.

The Amendment

Part 91 of the Federal Aviation Regulations (14 CFR part 91) is amended as follows:

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100–228) through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514; Pub. L. 100–202; 49 U.S.C. 100(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 91.155(b)(1) is revised to read as follows:

§ 91.155 Basic VFR weather minimums.

* * * * *

(b) * * *

(1) *Helicopter.* A helicopter may be operated clear of clouds if operated at a speed that allows the pilot adequate opportunity to see any air traffic or obstruction in time to avoid a collision.

* * * * *

Issued in Washington, DC, on September 16, 1991.

James B. Busey,

Administrator.

[FR Doc. 91–22803 Filed 9–20–91; 8:45 am]

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Monday
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Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Ketchikan International Special Airport Traffic Rule; Final Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Part 93

[Docket No. 26653; Amendment No. 93-63]

RIN 2120-AC90

Ketchikan International Special Airport Traffic Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the special air traffic rule at Ketchikan, Alaska, by establishing rule applicability in all portions of the Ketchikan Control Zone. The rule formerly excluded certain portions of the airspace below 600 feet mean sea level (MSL). This action also clarifies the original intent of the rule by specifying that pilots must comply with certain traffic advisory and self-announcement procedures while operating in the control zone. The FAA believes that the level of safety provided for aircraft operations in the Ketchikan area will be enhanced by this amendment.

EFFECTIVE DATE: October 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP-230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

Before 1973 when Ketchikan International Airport was opened adjacent to Ketchikan Harbor, wheeled aircraft with passengers or cargo destined for Ketchikan landed at Annette Island, about 18 miles southeast of Ketchikan International Airport, and transferred payloads to float aircraft. Float aircraft would then ferry passengers and cargo to Ketchikan and land in the harbor. Wheeled aircraft, including large turbojet aircraft, began using Ketchikan International Airport when it opened. Float aircraft continued to operate in substantial numbers in the vicinity of Ketchikan, using the harbor for surface operations.

A control zone was established at Ketchikan on May 24, 1973, and on April 8, 1976 the FAA promulgated an amendment to part 93 of the Federal Aviation Regulations (FAR) which established the Ketchikan International Airport Traffic Rule (Amendment No. 93-33, 41 FR 14879). That action affected all of the Ketchikan Control Zone excluding that airspace below 600 feet above sea level and (a) more than 3 miles from the nearest point on Ketchikan International Airport; (b) east of a line through the center of Pennock Island, extending to the end of the ferry slip at Ketchikan International Airport, thence through Channel Island; or (c) west of a line extending from Granina Point to Vallemar Point.

On April 25, 1990, the FAA proposed to expand rule applicability to all portions of the Ketchikan Control Zone and to clarify the original intent of the rule by requiring aircraft operators to make announcements concerning their positions via two-way radio while operating in the control zone (Notice No. 90-15, 55 FR 17564). This requirement emulates established voluntary procedures that are detailed in the Airman's Information Manual (AIM) and are called "Traffic Advisory Practices at Airports Without Operating Control Towers." These procedures are customarily referred to as "Common Traffic Advisory Frequency (CTAF) procedures."

The comment period for this proposal closed on May 29, 1990. One comment was received in the docket.

Discussion of Comment

The commenter stated that the Ketchikan Control Zone is adequate as it is and need not be changed.

The FAA did not propose to alter the description of the control zone at Ketchikan. The FAA did propose to expand applicability of the existing special air traffic rule to those portions of the control zone which had been excluded from its provisions. The proposal also would require pilots operating within the affected airspace to comply with CTAF procedures. It should be noted that the AIM procedures identified above advises pilots to monitor and communicate on the CTAF from 10 miles from the airport until landing. The FAA believes that the level of safety provided for aircraft operations in the Ketchikan area will be enhanced by this amendment.

Regulatory Evaluation Summary

Introduction

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this final rule. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not major as defined in the executive order; therefore, a full regulatory analysis, that includes the identification and evaluation of cost-reducing alternatives to the final rule has not been prepared. Instead, the agency has prepared a more concise document, termed a regulatory evaluation, that analyzes only this final rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Costs

The FAA estimates that no monetary costs will accrue from implementing this rule. However, some aircraft operators may incur non-monetary (or qualitative) costs in the form of an inconvenience of having to comply with procedures for making announcements concerning their positions via two-way radio on the CTAF.

For the FAA, this rule will not impose any additional administrative costs for either personnel or equipment. Any additional operations workload generated by this rule will be absorbed by current personnel and equipment resources that are already in place at the Ketchikan Flight Service Station (FSS).

The only potential monetary costs to aircraft operators will be the purchase of two-way radio equipment. However, all aircraft operators who taxi onto the runway at Ketchikan International Airport or use the Ketchikan Control Zone, including the area of exclusion, are assumed to have the necessary operational two-way radio equipment to

comply with the CTAF procedures. This assumption is based on the fact that the vast majority of aircraft that fly in and out of Ketchikan are operated commercially and already have operational two-way radios to maintain contact with their companies. Furthermore, all aircraft operators, commercial or not, who taxi onto the runway at Ketchikan International Airport or operate within the Ketchikan Control Zone above 600 feet MSL are required to establish two-way radio communications and receive a traffic advisory from the FSS. Thus, they already must have operational two-way radios to comply with current regulations.

On a non-monetary basis, the FAA does recognize that potential costs could accrue from this rule in the form of inconvenience to aircraft operators who do not routinely comply with CTAF procedures at all times while inside the control zone. The potential inconvenience to aircraft operators will be the requirement to comply with CTAF procedures at all times when they would prefer not to do so. There also is the potential for inconvenience for those aircraft operators who operate within the area of exclusion since current regulations do not require them to comply with CTAF procedures. The FAA solicited comments and information in the notice to this rule regarding the extent that potential costs, both monetary and non-monetary, might be imposed. Only one commenter responded to the notice. The commenter did not address the potential costs that could be imposed by the notice. As the result of this rule, the FAA contends that the potential cost of inconvenience will more than likely be negligible.

Benefits

This rule is expected to accrue potential benefits primarily in the form of enhanced safety to the aviation community. Such safety, for example, will take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions. This increase in aviation safety within the Ketchikan Control Zone will be achieved in two ways: (1) By eliminating the 600-foot MSL area of exclusion and (2) by establishing two-way radio communications in accordance with CTAF Procedures. Both areas of safety improvement are discussed in detail below.

Two-way Radio Communications

This action is expected to enhance aviation safety by requiring aircraft operators to engage in two-way radio communications in accordance with CTAF procedures while in the Ketchikan Control Zone. Combined flight operations at Ketchikan International Airport and at Ketchikan Harbor have reached over 100,000 annually. This large volume of air traffic includes a mixture of general aviation aircraft (both wheeled and float) and large turbojet-type aircraft. Enhanced aviation safety will be achieved by requiring anyone who operates any of these types of aircraft in any airspace below 3,000 feet MSL within the Ketchikan Control Zone or taxis onto the runway at Ketchikan International Airport to monitor the advisory frequency at all times while operating within the specified airspace. This action will ensure the safety of all aircraft operating within the Ketchikan Control Zone by providing aircraft operators with enough traffic and other advisory information necessary to navigate safely within the entire perimeter of the control zone.

Elimination of the Area of Exclusion

Enhanced aviation safety is expected to accrue because this rule will eliminate the 600-foot MSL area of exclusion of the Ketchikan Control Zone. The current exclusion of aircraft operating below 600 feet MSL from participating in the special air traffic rules and communication requirements of the control zone is a concern among the Ketchikan aviation community and the FAA. This area of exclusion poses an unnecessary and unwarranted decline in the margin of safety, as evidenced by a midair collision that occurred on August 12, 1987, between a Hughes helicopter and a Cessna 185 within the area of exclusion. During the ensuing investigation, it was revealed that some pilots inbound to Ketchikan make initial contact with the FSS to receive advisories and then change frequencies to communicate with their companies.

This practice is dangerous because of the potential risk to aviation resulting from pilots leaving themselves unaware of changing air traffic information. The air traffic information is pertinent to the safety of pilots as well as other aircraft operators. The AIM cautioned pilots against this unsafe practice. Company communications can be adequately accomplished before entering the congested area or after landing.

The FAA believes that this rule to eliminate the area of exclusion, coupled with the requirement to comply with CTAF Procedures, will increase the safety level of the Ketchikan Control Zone. It is difficult to forecast this safety increase in monetary terms. Since October 1, 1982, one actual midair collision and one near midair collision have occurred in the Ketchikan area. Although it was not determined whether one or both pilots involved in the midair collision had discontinued monitoring the FSS frequencies, the accident investigation revealed that this unsafe practice was done routinely by local pilots to communicate with their companies. For the purpose of this evaluation, the Ketchikan accident will serve as the FAA's best indication, over the next 10 years, of the potential benefits of this rule.

The potential benefits, in monetary terms, associated with avoiding a midair collision similar to the one that occurred in Ketchikan could amount to an estimated $3.4 million ($2.1 million discounted) in 1989 dollars. This figure represents $3 million for the two fatalities and $392,000 for property damage, namely the Hughes helicopter that was destroyed. (To provide public and government officials with a benchmark comparison of expected safety benefits of rulemaking actions with estimated costs and benefits in dollars, the DOT currently uses a value of $1.5 million to statistically represent a human fatality avoided.)

The FAA strongly believes this rule will help to reduce the probability of a midair collision, especially in an area of increasing traffic levels. The FAA believes there is a lower likelihood that an accident of the magnitude that occurred in Ketchikan, which amounted to an estimated $3.4 million in monetary damages, will happen again within the next 10 years. This figure represents a conservative estimate due to uncertainty, but it can be viewed as the equivalent of saving at least two lives and one aircraft.

Conclusion

The estimated cost of this rule is negligible over the next 10 years because no costs will be incurred due to additional equipment or personnel on the part of either the FAA or aircraft operators. In non-monetary terms, aircraft operators are expected to incur negligible inconvenience cost as a result of the requirement to comply with CTAF procedures.

The potential benefits of this rule will be the enhancement of safety by requiring aircraft operators to be more aware, via compliance with CTAF procedures, of traffic and other advisory information necessary to navigate safely within the Ketchikan Control Zone. Another form of enhanced safety will be the elimination of the area of exclusion that exists from the ground up to 600 feet

MSL. The potential benefits, in monetary terms, associated with avoiding a midair collision during the next 10 years similar to the one that occurred in Ketchikan could amount to an estimated $3.4 million ($2.1 million, discounted 10 percent).

On balance, the FAA has determined that this rule is cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The small entities that could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire that own, but do not necessarily operate, nine or fewer aircraft.

Only those small entities without operational two-way radios will potentially be affected by this amendment. However, the FAA assumes that all potentially affected aircraft are already equipped with operational two-way radios. This assumption is based on the fact that these small aircraft operators routinely fly in and out of the Ketchikan Control Zone, where they are required by the present air traffic rule, to establish two-way radio communications with the Ketchikan FSS. Therefore, the FAA believes this amendment will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This amendment will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. The amendment will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that will result in a competitive disadvantage to either.

Federalism Determination

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

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A regulatory evaluation of the final rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

The Rule

Effectively, the FAA is amending the Ketchikan International Special Airport Traffic Rule by applying it to all portions of the control zone. Additionally, when the Ketchikan FSS is not operating, pilots will be required to comply with certain CTAF procedures while operating in the Ketchikan Control Zone.

List of Subjects in 14 CFR Part 93

Airports, Air traffic control, Alaska, Aviation safety, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 93 of the Federal Aviation Regulations (14 CFR part 93) as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 is revised to read as follows:

Authority: 49 U.S.C. App. 1302, 1303, 1348, 1354(a), 1421(a), and 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97–449, January 12, 1983).

2. Section 93.151 is revised to read as follows:

§ 93.151 Applicability.

This subpart prescribes special air traffic rules and communication requirements for persons operating aircraft under VFR—

(a) To, from, or in the vicinity of the Ketchikan International Airport or Ketchikan Harbor.

(b) Within the airspace below 3,000 feet MSL within the perimeter defined for the Ketchikan Control Zone, regardless of whether that control zone is in effect.

3. Section 93.153 is revised to read as follows:

§ 93.153 Communications.

(a) When the Ketchikan Flight Service Station is in operation, no person may operate an aircraft within the airspace specified in § 93.151, or taxi onto the runway at Ketchikan International Airport, unless that person has established two-way radio communications with the Ketchikan Flight Service Station for the purpose of receiving traffic advisories and continues to monitor the advisory frequency at all times while operating within the specified airspace.

(b) When the Ketchikan Flight Service Station is not in operation, no person may operate an aircraft within the airspace specified in § 93.151, or taxi onto the runway at Ketchikan International Airport, unless that person continuously monitors and communicates, as appropriate, on the designated common traffic advisory frequency as follows:

(1) *For inbound flights.* Announces position and intentions when no less than 10 miles from Ketchikan International Airport, and monitors the designated frequency until clear of the movement area on the airport or Ketchikan Harbor.

(2) *For departing flights.* Announces position and intentions prior to taxiing onto the active runway on the airport or onto the movement area of Ketchikan Harbor and monitors the designated frequency until outside the airspace described in § 93.151 and announces position and intentions upon departing that airspace.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, if two-way radio communications failure occurs in flight, a person may operate an aircraft within the airspace specified in § 93.151, and land, if weather conditions are at or above basic VFR weather minimums.

Issued in Washington, DC, on September 16, 1991.

James B. Busey,

Administrator.

[FR Doc. 91–22804 Filed 9–20–91; 8:45 am]

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Reader Aids

Federal Register

Vol. 56, No. 184

Monday, September 23, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

43547-43688.....3
43689-43860.....4
43861-43994.....5
43995-45880.....6
45881-46106.....9
46107-46220.....10
46221-46364.....11
46365-46522.....12
46523-46718.....13
46719-46976.....16
46977-47122.....17
47123-47350.....18
47351-47670.....19
47671-47898.....20
47899-48094.....23

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6329.....43991
6330.....45879
6331.....45881
6332.....46221
6333.....46365
6334.....46719
6335.....46721
6336.....47123
Administrative Orders:
No. 91-48 of August 17, 1991.....43861
Presidential Determinations:
No. 91-49 of Aug. 24, 1991.....46977
No. 91-50 of Aug. 24, 1991.....46979
No. 91-51 of Aug. 29, 1991.....46981

5 CFR

351.....43995
831.....43863, 43865, 43866, 45883
842.....43865, 43866
890.....47899
Proposed Rules:
410.....44012

7 CFR

2.....43689
301.....46107
354.....46721
701.....46367
910.....46223
915.....46224
916.....45884
917.....46368, 46983
929.....46984
955.....46724
993.....43547
1007.....43690
1124.....46226
1405.....47125
1421.....46369, 47125
1435.....47125, 47351
1485.....46108
1712.....47832
1739.....47832
1930.....47375
1944.....47375
3403.....47882
Proposed Rules:
51.....47832
180.....43558
273.....46127
277.....46127
301.....46737
916.....46739
917.....46739
959.....43559
981.....46242
987.....46243
1413.....46574
1755.....46132, 46575
1940.....46576

8 CFR

217.....46716
280.....45885

9 CFR

78.....46108
Proposed Rules:
308.....46354

10 CFR

13.....47132
73.....47671
1705.....47144
Proposed Rules:
2.....46739
40.....46739
50.....46739
51.....46739, 47016
70.....46739
75.....46739
110.....46739
140.....46739
150.....46739
170.....46739

12 CFR

19.....46667
207.....46109, 46110, 46227
220.....46109
221.....46110, 46227
611.....46111
620.....46111
621.....46111
741.....44128
1507.....43997
Proposed Rules:
203.....47703
323.....47035
584.....47919
613.....45902
618.....45902
1608.....47164

13 CFR

108.....43867
121.....43869
Proposed Rules:
121.....43891, 47920

14 CFR

21.....45886, 45888, 47900
23.....47900
25.....45886, 45888
39.....43548-43550, 45891-45893, 46112, 46228-46233 46725, 46985, 47376-47378, 47671, 47672, 47901

61.....43970, 47833
71.....43691, 46113, 46523, 46727, 47902, 47903
73.....46523
75.....46113
91.....48088
93.....43692, 43965, 46235, 48092
121.....43974
135.....43974
221.....44000
1214.....47146-47148
1217.....47148

Proposed Rules:
Ch. I.....46585
39.....45904, 46587, 46588
71.....45906, 47036
75.....46747
93.....46674

15 CFR

Proposed Rules:
925.....47836

16 CFR

305.....43693, 46524, 46728
1000.....46235
1501.....46986

Proposed Rules:
Ch. II.....47166
435.....46133

17 CFR

5.....43694
15.....43694
33.....43694
249.....45894

Proposed Rules:
5.....43726
32.....43560
240.....44014, 46748
249.....44014, 44029

18 CFR

Proposed Rules:
1312.....46259, 46261

19 CFR

Ch. I.....46114, 47268
146.....46371
177.....46372

Proposed Rules:
177.....46134

20 CFR

10.....47674
367.....46374

Proposed Rules:
10.....47713
255.....47426
335.....47430

21 CFR

172.....46667
173.....46667
178.....43697
310.....46823
510.....43698
520.....43698
529.....43698
878.....47150

Proposed Rules:
101.....43964

22 CFR

40.....43551
41.....46716
43.....46904
302.....43699

Proposed Rules:
41.....43565
120.....43894
121.....43894, 43896, 46753, 46754

24 CFR

203.....46964
291.....46952-46964
577.....46952
578.....46952
905.....46356, 47852
906.....47852
965.....46356
990.....46356

Proposed Rules:
905.....45814
990.....45814

25 CFR

Proposed Rules:
83.....47320
101.....48082
103.....48082

26 CFR

1...47379, 47524-47659, 47904
35a.....47904
602.....47379

Proposed Rules:
1.....43571, 47921-47928
20.....46244, 46245
25.....46244, 46245
31.....47929
53.....43571
602.....47928

27 CFR

178.....43649

Proposed Rules:
4.....46393
5.....46393
9.....46135, 47039, 47044

28 CFR

Proposed Rules:
16.....44049
76.....45907

29 CFR

92.....46116
541.....45824
1910.....43699
1926.....43699
2619.....46525
2676.....46526

Proposed Rules:
541.....45828
1910.....47348, 47892
1926.....47348

30 CFR

56.....46500
57.....46500
206.....46527
705.....46987
706.....46987
916.....46531
917.....47907

Proposed Rules:
Ch. II.....47049
218.....46396
230.....46396
701.....44049, 45780
740.....46396
761.....46396
772.....46396
773.....45780
778.....45780
780.....44049
784.....44049
816.....44049
817.....44049
840.....45780
843.....45780
901.....44050
914.....47051
934.....47929
935.....46588

31 CFR

505.....45894
520.....45894

32 CFR

163.....43871
199.....44001
619.....45895
706.....47151-47153

Proposed Rules:
229.....46259, 46261
312.....46137

33 CFR

1.....43700
100.....46376, 47911
117.....43649, 43871
165.....43701

Proposed Rules:
64.....47930
117.....47932
157.....44051
402.....47431

34 CFR

668.....43701
682.....43701

Proposed Rules:
222.....46670
682.....43978

36 CFR

211.....46549
217.....46549
242.....43552
1191.....45500
1192.....45530

Proposed Rules:
13.....46589
296.....46259, 46261

37 CFR

1.....46823
2.....46376
202.....47402

38 CFR

21.....44007

Proposed Rules:
21.....46140

39 CFR

111.....46551

Proposed Rules:
265.....43736

40 CFR

35.....47403
52.....45896, 46116, 46555
61.....46380, 47404
80.....46119
81.....43872, 46116
136.....43702
228.....47410
248.....43702
252.....43702
253.....43702
262.....43704
265.....47912
266.....43874
271.....43704, 47153, 47675
300.....46121
721.....43877, 46728, 47677
799.....43878, 47912

Proposed Rules:
Ch. I.....46756
52.....46590
60.....46396
61.....46252
80.....43682
82.....43842, 46041
85.....45866
86.....43682
141.....43573
142.....43573
180.....43737, 46257
186.....46257
228.....47173, 47432
260.....46396
261.....48000
264.....43574, 46396
265.....43574, 46396
266.....48000
270.....46396
271.....46396
281.....46756
300.....46142
280.....43574
600.....43682
721.....47714
744.....47717
761.....43574
795.....43574
798.....43574
799.....43574, 43897

41 CFR

302-1.....46988
302-3.....46988
302-7.....46988

42 CFR

57.....43648
405.....43706, 46559
410.....43706
413.....43706
414.....43706
417.....46562
433.....46380

Proposed Rules:
405.....45926

43 CFR

12.....45897
426.....43553
5400.....47915
5420.....47915
5450.....47915
5460.....47915
9230.....47915

Public Land Orders:
3776 (Revoked in Part by PLO 6882).....47677

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 22, 1991

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$12.00	Jan. 1, 1991
3 (1990 Compilation and Parts 100 and 101)	14.00	[1] Jan. 1, 1991
4	15.00	Jan. 1, 1991
5 Parts:		
1-699	17.00	Jan. 1, 1991
700-1199	13.00	Jan. 1, 1991
1200-End, 6 (6 Reserved)	18.00	Jan. 1, 1991
7 Parts:		
0-26	15.00	Jan. 1, 1991
27-45	12.00	Jan. 1, 1991
46-51	17.00	Jan. 1, 1991
52	24.00	Jan. 1, 1991
53-209	18.00	Jan. 1, 1991
210-299	24.00	Jan. 1, 1991
300-399	12.00	Jan. 1, 1991
400-699	20.00	Jan. 1, 1991
700-899	19.00	Jan. 1, 1991
900-999	28.00	Jan. 1, 1991
1000-1059	17.00	Jan. 1, 1991
1060-1119	12.00	Jan. 1, 1991
1120-1199	10.00	Jan. 1, 1991
1200-1499	18.00	Jan. 1, 1991
1500-1899	12.00	Jan. 1, 1991
1900-1939	11.00	Jan. 1, 1991
1940-1949	22.00	Jan. 1, 1991
1950-1999	25.00	Jan. 1, 1991
2000-End	10.00	Jan. 1, 1991
8	14.00	Jan. 1, 1991
9 Parts:		
1-199	21.00	Jan. 1, 1991
200-End	18.00	Jan. 1, 1991
10 Parts:		
0-50	21.00	Jan. 1, 1991
51-199	17.00	Jan. 1, 1991
200-399	13.00	[4] Jan. 1, 1987
400-499	20.00	Jan. 1, 1991
500-End	27.00	Jan. 1, 1991
11	12.00	Jan. 1, 1991
12 Parts:		
1-199	13.00	Jan. 1, 1991
200-219	12.00	Jan. 1, 1991
220-299	21.00	Jan. 1, 1991
300-499	17.00	Jan. 1, 1991
500-599	17.00	Jan. 1, 1991
600-End	19.00	Jan. 1, 1991
13	24.00	Jan. 1, 1991
14 Parts:		
1-59	25.00	Jan. 1, 1991
60-139	21.00	Jan. 1, 1991
140-199	10.00	Jan. 1, 1991
200-1199	20.00	Jan. 1, 1991
1200-End	13.00	Jan. 1, 1991
15 Parts:		
0-299	12.00	Jan. 1, 1991
300-799	22.00	Jan. 1, 1991
800-End	15.00	Jan. 1, 1991
16 Parts:		
0-149	5.50	Jan. 1, 1991
150-999	14.00	Jan. 1, 1991
1000-End	19.00	Jan. 1, 1991
17 Parts:		
1-199	15.00	Apr. 1, 1991
200-239	16.00	Apr. 1, 1991
240-End	23.00	Apr. 1, 1991
18 Parts:		
1-149	15.00	Apr. 1, 1991
150-279	15.00	Apr. 1, 1991
280-399	13.00	Apr. 1, 1991
400-End	9.00	Apr. 1, 1991
19 Parts:		
1-199	28.00	Apr. 1, 1991
200-End	9.50	Apr. 1, 1991
20 Parts:		
1-399	16.00	Apr. 1, 1991
400-499	25.00	Apr. 1, 1991
500-End	21.00	Apr. 1, 1991
21 Parts:		
1-99	12.00	Apr. 1, 1991
100-169	13.00	Apr. 1, 1991
170-199	17.00	Apr. 1, 1991
200-299	5.50	Apr. 1, 1991
300-499	28.00	Apr. 1, 1991
500-599	20.00	Apr. 1, 1991
600-799	7.00	Apr. 1, 1991
800-1299	18.00	Apr. 1, 1991
1300-End	7.50	Apr. 1, 1991
22 Parts:		
1-299	25.00	Apr. 1, 1991
300-End	18.00	Apr. 1, 1991
23	17.00	Apr. 1, 1991
24 Parts:		
0-199	25.00	Apr. 1, 1991
200-499	27.00	Apr. 1, 1991
500-699	13.00	Apr. 1, 1991
700-1699	26.00	Apr. 1, 1991
1700-End	13.00	[5] Apr. 1, 1990
25	25.00	Apr. 1, 1991
26 Parts:		
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§§ 1.61-1.169	28.00	Apr. 1, 1991
§§ 1.170-1.300	18.00	Apr. 1, 1991
§§ 1.301-1.400	17.00	Apr. 1, 1991
§§ 1.401-1.500	30.00	Apr. 1, 1991
§§ 1.501-1.640	16.00	Apr. 1, 1991
§§ 1.641-1.850	19.00	[5] Apr. 1, 1990
§§ 1.851-1.907	20.00	Apr. 1, 1991
§§ 1.908-1.1000	22.00	Apr. 1, 1991
§§ 1.1001-1.1400	18.00	[5] Apr. 1, 1990
§§ 1.1401-End	24.00	Apr. 1, 1991
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300-499	17.00	Apr. 1, 1991
500-599	6.00	[5] Apr. 1, 1990
600-End	6.50	Apr. 1, 1991
27 Parts:		
1-199	29.00	Apr. 1, 1991
200-End	11.00	Apr. 1, 1991
28	28.00	July 1, 1991

Title	Price	Revision Date
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166–199	14.00	Oct. 1, 1990
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

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