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WHO: The Office of the Federal Register.

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Contents

Federal Register
Vol. 59, No. 40
Tuesday, March 1, 1994

Federal Register / Vol. 59, No. 40 / Tuesday, March 1, 1994 / Contents

Administrative Conference of the United States
NOTICES
Agency information collection activities under OMB review, 9725

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farmers Home Administration
See Federal Crop Insurance Corporation
See Food Safety and Inspection Service
See Forest Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 9733

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Harry S Truman Animal Import Center (HSRAIC), 9617–9622
Ports of embarkation and export inspection facilities—Stockton, CA, 9616–9617
Plant Protection and Quarantine Treatment Manual; incorporation by reference, 9613–9614
PROPOSED RULES
Exportation and importation of animals and animal products:
Goats from Mexico for immediate slaughter and horse quarantine facilities, 9679–9681
Viruses, serums, toxins, etc.:
Analogous products—
Inactivated bacterial products general requirements, 9681–9682

Antitrust Division
NOTICES
National cooperative research notifications:
Portland Cement Association, 9771

Army Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
HIV negative-strand transcripts, 9733

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
Association of State and Territorial Public Health Laboratory Directors, 9745–9746

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
NOTICES
Agency information collection activities under OMB review, 9727

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Brazil, 9729–9730
Philippines, 9730–9731

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Upland cotton user marketing certificate program, 9674–9678

Commodity Futures Trading Commission
RULES
Reparation proceedings, 9631–9638
PROPOSED RULES
Commodity Exchange Act:
Risk assessment for holding company systems, 9689–9718
NOTICES
Contract market proposals:
New York Mercantile Exchange—
New York Harbor unleaded regular gasoline, 9731–9732
Meetings; Sunshine Act, 9803

Copyright Office, Library of Congress
NOTICES
Digital audio recording royalty funds for 1992 and 1993; ascertainment of controversy, 9773–9774

Defense Department
See Air Force Department
See Army Department
See Defense Logistics Agency
See Navy Department
NOTICES
Agency information collection activities under OMB review, 9732
Meetings:
Wage Committee, 9732–9733

Defense Logistics Agency
RULES
Privacy Act; implementation, 9667–9668
NOTICES
Privacy Act:
Computer matching programs, 9733–9735

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act; correction, 9805

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Minority students teaching programs, 9735–9736

Meetings:
Educational Research and Improvement National Advisory Council, 9736

Employment and Training Administration
NOTICES
Job Training Partnership Act:
Performance management system and performance standards (1994 and 1995 PYs), 9910–9916

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
PROPOSED RULES
Review of existing significant regulation for modification or elimination; inquiry, 9682–9687
NOTICES
Grant and cooperative agreement awards:
Kentucky, 9736
Manufacturing Sciences Corp., 9737

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 9737

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Wisconsin, 9668–9671
Solid wastes:
Degradable plastic ring carriers, 9866–9870
PROPOSED RULES
Hazardous waste:
Identification and listing—
Carbamate production, 9808–9864
NOTICES
Superfund; response and remedial actions, proposed settlements, etc.:
Idaho Pole Co. Site, MT, 9742
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 9742–9743

Executive Office of the President
See Trade Representative, Office of United States

Farm Credit Administration
RULES
Conflict of interests:
Federal Agricultural Mortgage Corporation, 9622–9627

Farmers Home Administration
RULES
Program regulations:
Rural rental housing assistance; cost containment and vulnerability
Correction, 9805

Federal Aviation Administration
RULES
Class C airspace, 9627–9630

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Fig crop provisions, 9614–9616

Federal Deposit Insurance Corporation
PROPOSED RULES
Assessments:
Subtraction of liabilities arising under depository institution investment contracts, 9687–9688

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
New Jersey et al., 9671–9673
NOTICES
Disaster and emergency areas:
Mississippi, 9743–9744

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Citizens Utilities Companies, 9738–9739
Preliminary permits surrender:
GSA International Corp., 9738
Applications, hearings, determinations, etc.:
ANR Pipeline Co. et al., 9738
CMS Generation S.A., 9739
Columbia Gas Transmission Corp., 9739–9740
Delmarva Power & Light Co., 9740
MDU Resources Group, Inc., 9740
Northern Border Pipeline Co., 9740–9741
Northern Natural Gas Co., 9741
Northwest Pipeline Corp., 9741

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Briceno, Guillermo E., et al., 9744
Posada International Cargo, 9744

Federal Reserve System
NOTICES
Federal Open Market Committee:
Domestic policy directives, 9744–9745
Meetings:
Consumer Advisory Council, 9745

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Pacific pocket mouse, 9720
Periodic reviews of significant regulations; request for comments, 9718–9719
NOTICES
Endangered and threatened species permit applications 9767
Environmental statements; availability, etc.:
Incidental take permits—
Baldwin County, AL; Alabama beach mouse, 9767–9768

Food and Drug Administration
RULES
Human drugs:
Antibiotic drugs—
Doxorubicin hydrochloride, 9638–9642
NOTICES
Harmonisation International Conference; guidelines availability:
Drugs intended for long-term treatment of non-life-threatening conditions; population exposure extent required to assess clinical safety, 9746–9748

Pharmaceuticals; analytical procedures validation, 9750–9752
Pharmaceuticals; dose selection for carcinogenicity studies, 9752–9755
Repeated dose tissue distribution studies, 9748–9750
Toxicity studies; systemic exposure assessment, 9755–9760
Meetings:
Advisory committees, panels, etc., 9760

Food Safety and Inspection Service
NOTICES
Meetings:
Microbiological Criteria for Foods National Advisory Committee, 9725

Foreign Assets Control Office
NOTICES
Nickel and nickel-bearing materials from Soviet Union or its successor states; termination of importation restrictions and certification requirements; correction, 9805

Forest Service
NOTICES
Boundary establishment, description, etc.:
Fifteenmile Creek Purchase Unit, OR, 9725–9726
Environmental statements; availability, etc.:
Allegheny National Forest, PA, 9726–9727

Geological Survey
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 9718–9719

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Public Health Service

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 9761–9764
Grants and cooperative agreements; availability, etc.:
Low income housing—
Resident groups, community groups, community-based nonprofit organizations, and resident councils; technical assistance planning program, 9764
Organization, functions, and authority delegations:
Acting General Counsel; order of succession, 9766
Assistant Secretary for Public and Indian Housing, 9764–9765
Director, Native American Programs Office, et al., 9765–9766
General Counsel Office, 9761
Regional offices, etc.; order of succession—
New Orleans, 9766–9767

Indian Affairs Bureau
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 9718–9719

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Mines Bureau
See National Civilian Community Corps
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 9718–9719

Internal Revenue Service
RULES
Employment taxes and collection of income taxes at source:
Railroad Retirement Act regulations—
Supplemental annuity tax, 9664–9667
Estate and gift taxes:
Marital deduction, 9642–9664

International Trade Administration
NOTICES
Countervailing duty orders and suspended investigations; intent to revoke or terminate, 9727–9728

International Trade Commission
NOTICES
Meetings; Sunshine Act, 9803

Interstate Commerce Commission
NOTICES
Motor carriers:
Declaratory order petitions—
Oshkosh, WI, et al., 9770–9771
Railroad operation, acquisition, construction, etc.:
Morris, Gordon, 9771

Justice Department
See Antitrust Division
See Justice Programs Office

Justice Programs Office
NOTICES
Privacy Act:
Systems of records, 9771–9772

Labor Department
See Employment and Training Administration

Land Management Bureau
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 9718–9719

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 9718–9719

Mines Bureau
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 9718–9719

National Aeronautics and Space Administration
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Universal Propulsion Co., Inc., 9774–9775

National Civilian Community Corps
NOTICES
Grants and cooperative agreements; availability, etc.:
Summer national service program; youth camp set-up and organization by nonprofit organization, 9775–9780

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeast multispecies, 9872–9908
PROPOSED RULES
Fishery conservation and management:
Atlantic billfish, 9720–9721
Gulf of Mexico shrimp, 9724
South Atlantic snapper-grouper, 9721–9724
Oil Pollution Act:
Natural resource damage assessments
Meetings, 9688
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 9728–9729
Mid-Atlantic Fishery Management Council, 9729

National Park Service
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 9718–9719
NOTICES
National Register of Historic Places:
Pending nominations, 9768–9770

National Telecommunications and Information Administration
NOTICES
Privacy issues relating to private sector use of telecommunications-related personal information; inquiry, 9729

Navy Department
NOTICES
Environmental statements; availability, etc.:
Naval Submarine Base (SUBASE), Bangor, Silverdale, WA; additional family housing construction, 9735

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 9803

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Georgia Power Co. et al., 9780–9781
Meetings:
Reactor Safeguards Advisory Committee, 9781–9782
Meetings; Sunshine Act, 9803–9804
Reports; availability, etc.:
Class A low-level radioactive waste 1986–1996; characterization, 9782
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 9782–9785
Duke Power Co., 9785–9786
Michigan Technological University, 9786–9788
Pacific Gas & Electric Co., 9789–9790

Office of United States Trade Representative
See Trade Representative, Office of United States

Postal Rate Commission
NOTICES
Meetings:
Remote video bar coding program; briefing, 9790–9791
Visits to facilities, 9791

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
NOTICES
Meetings:
National Vaccine Advisory Committee, 9761

Reclamation Bureau
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 9718–9719

Resolution Trust Corporation
NOTICES
Residential units previously subject to rent and securities regulations; disposition; policy statement; correction, 9805

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Securities Clearing Corp.; correction, 9805
Pacific Stock Exchange, Inc., 9791
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 9791–9792
Chicago Stock Exchange, Inc., 9792
Cincinnati Stock Exchange, Inc., 9792
Pacific Stock Exchange, Inc., 9792–9793
Philadelphia Stock Exchange, Inc., 9793
Applications, hearings, determinations, etc.:
Great American Reserve Insurance Co. et al., 9793–9795
Sierra Trust Funds et al., 9795–9798

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 9798–9799
Applications, hearings, determinations, etc.:
Exeter Venture Lenders, L.P., 9799–9800

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Periodic reviews of significant regulations; request for comments, 9718–9719

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Committees; establishment, renewal, termination, etc.:
U.S. tobacco measures; dispute settlement panel, 9801–9802
Uruguay Round Agreements; environmental issues report, 9802

Transportation Department
See Federal Aviation Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 9800
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 9800

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 9800–9801

Veterans Affairs Department
PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc.:
Line of duty, service connection of disabilities incurred or aggravated in, 9719

Separate Parts In This Issue

Part II
Environmental Protection Agency, 9808–9864

Part III
Environmental Protection Agency, 9866–9870

Part IV
Department of Commerce, National Oceanic and Atmospheric Administration, 9872–9908

Part V
Department of Labor, Employment and Training Administration, 9910–9916

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.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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.

7 CFR
300....9613
457....9614
1924....9805
1930....9805
1944....9805
Proposed Rules:
1427....9674

9 CFR
91....9616
92....9617
Proposed Rules:
92....9679
101....9681
113....9681

10 CFR
Proposed Rules:
Ch. II....9682
Ch. III....9682
Ch. X....9682

12 CFR
650....9622
Proposed Rules:
327....9687

14 CFR
71....9627

15 CFR
Proposed Rules:
990....9688

17 CFR
12....9631
Proposed Rules:
1....9689

18 CFR
Ch. I....9682

21 CFR
450....9638

25 CFR
Proposed Rules:
Ch. I....9718

26 CFR
20....9642
22....9642
25....9642
31....9664
602....9642

30 CFR
Proposed Rules:
Ch. II....9718
Ch. IV....9718
Ch. VI....9718
Ch. VII....9718

32 CFR
323....9667

36 CFR
Proposed Rules:
Ch. I....9718

38 CFR
Proposed Rules:
3....9719

40 CFR
52....9668
238....9866
Proposed Rules:
261....9808
271....9808
302....9808

43 CFR
Proposed Rules:
Subtitle A....9718
Ch. I....9718
Ch. II....9718

44 CFR
64....9671

48 CFR
Proposed Rules:
Ch. 9....9682
Ch. 14....9718

50 CFR
651....9872
Proposed Rules:
Ch. I....9718
Ch. IV....9718
17....9720
644....9720
646....9721
658....9724

Rules and Regulations

Federal Register
Vol. 59, No. 40
Tuesday, March 1, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 93–028–2]

Incorporation by Reference; Plant Protection and Quarantine Treatment Manual

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: This rule will allow the use of high temperature forced air treatments for grapefruit and mangoes imported from Mexico. The treatments will be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations.

DATES: This rule will be effective on May 2, 1994, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before March 31, 1994.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date and publish a proposed rule for public comment.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your submission refers to Docket No. 93–028–2. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Cooper, Senior Operations Officer, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6799.

SUPPLEMENTARY INFORMATION:

Background

The "Plant Protection and Quarantine Treatment Manual" (PPQ Treatment Manual) of the Animal and Plant Health Inspection Service is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. The PPQ Treatment Manual contains treatment schedules and information on procedures for applying treatments to allow the movement of articles under domestic and foreign plant quarantines and regulations. Unless we receive written adverse comments or written notice of intent to submit adverse comments, this document will amend 7 CFR 300.1 to show that the PPQ Treatment Manual has been revised to include high temperature forced air treatments as additional treatments for grapefruit and mangoes from Mexico.

Treatments

The high temperature forced air treatments described below were developed by the Agricultural Research Service of the U.S. Department of Agriculture as effective alternative treatments against the Mexican fruit fly in grapefruit imported from Mexico and against the Mexican, West Indian, and black fruit flies in mangoes imported from Mexico.

Both treatments are administered in sealed, insulated chambers. The air may be heated in the chambers or hot air may be introduced into the chambers.

Grapefruit

Size of grapefruit—9 to 9.5 inches
Weight of grapefruit—.5 to 1 pound
Initial pulp temperature of grapefruit—77 °F or above

These steps must occur in order:

(1) Place the grapefruit in a chamber and seal the chamber.

(2) Heat air in the chamber to 104 °F for 120 minutes.

(3) Heat air in the chamber to 122 °F for 90 minutes.

(4) Heat air in the chamber to 126 °F and maintain temperature until the grapefruit center reaches 118 °F.

Mangoes

Size of mangoes—3.15 to 5.5 inches (sizes 8 to 14)
Weight of mangoes—Must not exceed 1.5 pounds

These steps must occur in order:

(1) Probe several representative mangoes at the seed's surface. Insert the probes into the thickest portion of the mangoes' pulp.

(2) Place the mangoes in a chamber and seal the chamber.

(3) Record temperatures at least once every 2 minutes until the treatment is concluded.

(4) Heat air in the chamber to 122 °F.

(5) Conclude the treatment once the temperature at the seed's surface (based on the coolest part of the mango) reaches 118 °F.

Note: Treatment time will vary depending on the size of the mangoes and the number of boxes of mangoes treated.

Effective Date

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register.**

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date and publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days

following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule will provide an additional treatment option, high temperature forced air, for grapefruit and mangoes imported from Mexico. Because this new treatment will be optional, this rule should have no significant economic impact on entities using the currently prescribed hot water and vapor heat treatments.

Also, since high temperature forced air treatment provides for longer fruit shelf life than do hot water and vapor heat treatments, we anticipate that some private treatment enterprises will convert their facilities to employ this treatment. We believe, though, that any costs of facility conversion would be offset through the production of higher quality fruit. Therefore, we anticipate no significant change in the price or production of grapefruit and mangoes as a result of this rule.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects in 7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

Accordingly, 7 CFR part 300 is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 is revised to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, 167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) is revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through June 1993, has been approved for incorporation by reference in this chapter by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4488 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Fig Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation hereby issues additional regulations for provisions to insure figs. This action will add a second set of fig regulations, the Fig Crop Insurance Provisions, to the crop insurance regulations. The present regulations are based on the Marketing Order for Dried Figs that was in effect at the time the regulations were promulgated. This marketing order has since been amended which severely reduces the amount of indemnity to which the insured may otherwise have been entitled. These new regulations will provide quality adjustment provisions and reflect the lower prices received for figs based on the grades contained in the amended marketing order. The intended effect of this action is to offer insurance on figs with added coverage for quality adjustment that is not in the current Fig Endorsement.

DATES: This rule was effective on February 1, 1994. Comments, data, and opinions must be received by May 2, 1994.

ADDRESSES: Written comments on this rule should be sent to Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This rule has been determined not significant for purposes of Executive Order 12866 and therefor has not been reviewed by the Office of Management and Budget.

This rule does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paper Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This action requires no more of the reinsured company or sales and service contractor than is considered normal in the ordinary conduct of business. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought. The rule is retroactive to February 1, 1994 so as to allow insureds the opportunity to purchase this policy prior to the sales closing date. Because the Corporation has publicized the policy and the

provisions of the rule to all companies and fig policyholders, those persons have actual notice of the contents of the rule and will not be adversely affected by the rule's retroactivity.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Expedited publication of this additional fig insurance policy is necessary in order for FCIC to be responsive to the effects that the amended California Marketing Order for Dry Figs has upon fig producers insured by FCIC. It is necessary to promulgate the new policy so that insureds will be fully compensated from any loss under the 1994 crop year policy, therefore, good cause is found to make this rule final upon publication.

Background

During the 1992 crop year the California Fig Advisory Board amended the State Marketing Order for Dried Figs. Prior to the amendment, figs were graded merchantable or substandard. The amended marketing order provides three grades: regular dried figs (previously merchantable); manufacturing grade (new grade added); and substandard.

The current fig endorsement contained in 7 CFR 401.125 specifies in subsection 7.(b) that the total production to be counted for a unit will include all harvested and appraised marketable figs as defined by the Marketing Order for Dried Figs, as amended. Paragraph 7.(b)(1) of the current fig endorsement further specifies that substandard production will not be counted as production if such production is inspected by the insurer and the insurer gives written consent to the insured to deliver the figs to the substandard pool. If substandard production is not inspected or written consent is not given prior to delivery to the substandard pool, all such production will be counted as marketable production.

Figs which now grade manufacturing under the new marketing order would have graded substandard under the previous marketing order and would not have counted as production if written consent was given prior to delivery to the substandard pool. However, due to the new marketing order, manufacturing grade figs are sold through normal marketing outlets and therefore, consistent with the current fig crop insurance regulations, are considered production to count. The price received for manufacturing grade figs is considerably lower than the price received for regular dried figs. In 1992, manufacturing grade figs sold for 35 cents a pound and regular dried figs sold for 82 cents per pound. Under the current figs endorsement, manufacturing grade and regular dried figs are counted equally as production to count. The new Fig Crop Insurance Provisions provide a method to allow an insured to sell his manufacturing grade figs while also providing the insurer with a method to include the sale as a part of the insured production.

This rule is being promulgated to provide for a quality adjustment on production to count in order to offset the lower price received for manufacturing grade figs resulting from an insurable cause of loss.

List of Subjects in 7 CFR Part 457

Crop insurance, Figs.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457) in the following instances:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 457 is amended by adding a new section, § 457.110 Fig Crop Insurance Provisions, to read as follows:

§ 457.110 Fig Crop Insurance Provisions.

The Fig Crop Insurance Provisions for the 1994 and subsequent crop years are as follows:

United States Department of Agriculture—Federal Crop Insurance Corporation

Fig Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Good farming practices*—The cultural practices necessary for the insured crop to make usual and normal progress toward maturity and which can be expected to produce at least the yield used to determine the production guarantee. Good farming practices are generally those in use in the county for production of the insured crop and are recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(b) *Harvest*—The picking of the figs from the trees or ground by hand or machine for the purpose of removal from the orchard.

(c) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage for the insured crop.

(d) *Manufacturing grade production*—Production that meets the minimum grade standards and is defined as "manufacturing grade" by the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

(e) *Marketable figs*—Figs that grade manufacturing grade or better in accordance with the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

(f) *Noncontiguous land*—Land which is not touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

(g) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(h) *Substandard production*—Production that does not meet minimum grade standards and is defined as "substandard" by the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

2. Unit Division

In addition to the provisions of subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), a unit will consist of all the insurable acreage of an insurable type of fig in the county. Unless limited by the Special Provisions, these units may be further divided into optional units if, for each optional unit you claim, all the conditions of subsections 2.(a), and (b) are met, or if we agree in writing. Optional units must be established at the time you file your report of acreage for each crop year.

(a) You must have verifiable records of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) The acreage of insured figs must be located on noncontiguous land. Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these conditions, we will combine all optional units which are not established in compliance with these provisions into the basic unit from which they were formed. We may do this at any time we discover that you have failed to comply with these conditions. If failure to comply with these provisions is determined to be inadvertent, and if the optional units are recombined, the premium paid for electing optional units will be refunded to you.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements under section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8), you may select only one price election for each fig type designated in the Special Provisions, and insured in the county under this policy.

4. Contract Changes

The contract change date is October 31 preceding the cancellation date (see the provisions under section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

The cancellation and termination dates are February 28.

6. Report of Acreage

By applying for fig crop insurance, you authorize us to have access to and to determine or verify your production and acreage from records maintained by the California Fig Advisory Board and the fig packer.

7. Insured Crop

The crop insured will be all the commercially grown dried figs that are grown in the county on insurable acreage, and for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for harvest as dried figs;

(c) That are irrigated;

(d) That have reached the seventh growing season after being set out; and

(e) For which acceptable production records for at least the previous crop year are provided;

(f) That are not figs:

(1) Grown on acreage with less than 90 percent of a stand based on the original planting pattern unless we agree, in writing, to insure such figs;

(2) Which we inspect and consider not acceptable;

(3) Grown for the crop year the application is filed unless inspected and accepted by us; or

(4) Grown on acreage acquired for the crop year unless such acreage has been inspected and accepted by us.

8. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), insurance attaches on each unit the later of the date you submit your application or March 1 of the crop year and ends at the earliest of:

(a) Total destruction of the fig crop;

(b) The date harvest of the figs (by type) should have started on any acreage that will not be harvested;

(c) Harvest of the figs;

(d) Final adjustment of a loss;

(e) Abandonment of the crop; or

(f) October 31 of the crop year.

9. Causes of Loss

(a) In addition to the provisions under section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), any loss covered by this policy must occur within the insurance period. The specific causes of loss for figs are:

(1) Adverse weather conditions;

(2) Earthquake;

(3) Fire;

(4) Volcanic eruption;

(5) Wildlife; or

(6) Failure of the irrigation water supply.

(b) In addition to the causes of loss not insured against contained in section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), we will not insure against:

(1) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove; or

(2) The inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include all harvested and appraised marketable figs.

(1) Figs, which due to insurable causes, grade manufacturing grade will be adjusted by:

(i) Dividing the value per pound of the manufacturing grade production by the highest price election available for the insured type; and

(ii) Multiplying the result (not to exceed 1) by the number of pounds of such manufacturing grade production.

(2) Figs, which due to insurable causes, grade substandard and are delivered to the substandard pool will not be considered production to count, provided all the insured's substandard production is inspected by us and we give written consent to such delivery prior to delivery. If we do not give written consent prior to the delivery to the substandard pool, all production will be counted as undamaged marketable production. Substandard production for which we give written consent to you prior to delivery to the substandard pool, which is not delivered to the substandard pool, and is sold by you, will be considered production to count and adjusted as follows:

(i) Dividing the value per pound received for such substandard production by the highest price election available for the insured type; and

(ii) Multiplying the result (not to exceed 1) by the number of pounds of such substandard production.

(3) Appraised production to be counted will include:

(i) Potential production lost due to uninsured causes and failure to follow recognized good fig farming practices;

(ii) Not less than the production guarantee for the figs on any acreage:

(A) That is abandoned without our consent;

(B) Damaged solely by uninsured causes;

(c) If the figs are destroyed by you without our consent; or

(D) For which you fail to provide records of production that are acceptable to us;

(iii) Unharvested production which would be marketable if harvested; and

(iv) Potential production on insured acreage that you want to abandon and no longer care for if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you abandon the crop. If agreement on the appraised amount of production is not reached:

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production. You must notify us within three days of the date harvest should have started if the crop is not harvested; or

(B) You may elect to continue to care for the crop. We will determine the amount of production to count for the acreage using the harvested production or our reappraisal if the crop is not harvested.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–4551 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–08–M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 93–150–1]

Ports Designated for Exportation of Animals, Stockton, CA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by removing the listing for the Hemet Flying Service, Stockton, CA, export inspection facility, which is no longer operating. Also, we are removing Stockton, CA, as a port of embarkation. These actions will update the regulations.

DATES: This rule will be effective on May 2, 1994 unless we receive written

adverse comments or written notice of intent to submit adverse comments on or before March 31, 1994.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your submission refers to Docket No. 93–150–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Morgan, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.14(a) contains a list of designated ports of embarkation and export inspection facilities.

This rule will amend § 91.14(a) in accordance with the procedures explained below under "Dates." The amendments will remove the listing for the Hemet Flying Service, Stockton, CA, export inspection facility, which has ceased operations. Also, because Stockton, CA, does not have any other export inspection facility, the amendments will remove Stockton, CA, as a port of embarkation.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule was reviewed under Executive Order 12866.

Currently, the State of California is served by designated ports of embarkation in Los Angeles, San Francisco, and Stockton. This rule will remove Stockton as a port of embarkation for the State of California. Because this export inspection facility has already ceased operating as an animal export inspection facility, its deletion from the regulations will have no economic impact. Further, two ports of embarkation located in San Francisco, CA, approximately 60 miles west of Stockton, CA, are available to animal exporters who had used the Hemet Flying Service animal export inspection facility.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. In § 91.14, paragraph (a)(1)(iii) is removed.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4591 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 92

[Docket No. 91–165–2]

RIN 0579–AA56

Harry S Truman Animal Import Center (HSTAIC); Exclusive Use

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the use of the Harry S Truman Animal Import Center (HSTAIC): To require a $32,000 deposit in the form of a certified check or money order, payable in U.S. funds, for each application; to change the application and lottery dates; to require the lottery winner to pay the costs of maintaining HSTAIC for certain periods when it is reserved for the lottery winner and not available to other importers; to state that we will not accept applications from or enter into HSTAIC cooperative-service agreements with persons with outstanding debts to

the Animal and Plant Health Inspection Service; and to discontinue the practice of "tiering" the lottery that currently gives certain categories of animals priority to use HSTAIC. These changes are necessary to discourage frivolous applications, to help ensure that there is adequate time to assemble necessary information prior to each lottery, and to minimize financial losses incurred by the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: This regulation is effective August 31, 1994. This rule will first apply to the lottery to be held in 1994 for importations during calendar year 1995, then to all subsequent lotteries.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Staff Veterinarian, Import Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 767, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, subparts D and E, govern the importation of animals into the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, Florida. Under the regulations, the Animal and Plant Health Inspection Service (APHIS) holds an annual lottery to allocate space in HSTAIC for each calendar year. To participate in the lottery, prospective importers must submit an application for each importation.

On July 14, 1993, we published in the **Federal Register** (58 FR 37878–37884, Docket No. 91–165–1) a proposal to amend the regulations: (1) To require a $32,000 deposit in the form of a certified check or money order, payable in U.S. funds, for each application; (2) to change the application and lottery dates; (3) to require the lottery winner to pay the costs of maintaining HSTAIC for certain periods when it is reserved for the lottery winner and not available to other importers; (4) to state that we will not accept applications from or enter into HSTAIC cooperative-service agreements with persons with outstanding debts to APHIS; and (5) to discontinue the practice of "tiering" the lottery that currently gives certain categories of animals priority to use HSTAIC. We proposed to apply the changes to the regulations first to the lottery to be held in 1994 for importations during calendar year 1995.

We solicited comments concerning our proposal for a 60-day period ending September 13, 1993. We received one comment by that date, from an importer who expressed concerns regarding certain provisions of the proposed rule. We carefully considered this comment and discuss it below.

In our proposal, we proposed to require that applicants for the HSTAIC lottery deposit with APHIS $32,000 in the form of a certified check or money order payable in U.S. funds prior to the date of the lottery. This provision was proposed as a replacement for the existing requirement that an application for the lottery be accompanied by a deposit in the form of a $50,000 irrevocable letter of credit. We proposed the change to allow small businesses to compete more equitably with large importers, who can more easily obtain multiple letters of credit for multiple applications.

The commenter disagreed that the proposed change would benefit small importers. According to the commenter, under the requirement for a $50,000 letter of credit, a small importer would be most likely either to utilize his or her credit line with a bank, or to post the funds in a certificate of deposit and borrow against those funds for a letter of credit. According to the commenter, if the latter option were chosen, the applicant would pay the financial institution only the difference between the rate of return on the certificate of deposit and the lending rate. The commenter stated that the proposed change would make it more difficult for a small importer to submit multiple applications, by tying up the importer's funds with USDA for up to a year with no interest, and removing those funds from the bank, thereby reducing the importer's collateral.

We are making no changes based on the comment. While we agree that a $32,000 deposit represents more of a financial commitment than a $50,000 letter of credit, we disagree that the proposed change would be less advantageous to small importers than are the existing regulations. We continue to believe, as we stated in the proposal, that large importers, because of their stronger credit and deposit relationship with banks, can obtain letters of credit significantly more easily than can small importers. Our experience with the HSTAIC lottery has been that a number of these multiple applications have been frivolous, with the applicants having no intention of using their "winning" slots in the lottery to import animals. We expect that requiring a $32,000 deposit in the form of a check or money order will reduce the number of multiple applications received and will minimize frivolous applications.

Although we expect significantly fewer applications under the new regulations, we anticipate that the applications that are received will in most cases be from applicants actually intending to import animals through HSTAIC. With fewer applicants in the lottery, and with those that are chosen serious about importing animals, applicants will have a better idea than at present what their chances are of importing animals through HSTAIC in a given year. This will enable the applicants to decide whether it is worthwhile to leave their deposit with APHIS after the lottery results are announced. Those that have little chance of importing animals could choose to withdraw their money shortly after the lottery.

The commenter also expressed concern that the proposed requirement that the lottery winner pay the costs of maintaining HSTAIC for certain periods when it is reserved for the lottery winner and not available to other importers would put the winner of the lottery at a disadvantage compared to the applicants drawn later in the lottery. Under the provisions of the proposal, we would draw upon the $32,000 deposit of the winner of the lottery from the day the winner receives a cooperative-service agreement for the use of HSTAIC from us, and we would continue drawing on it either until we receive a signed cooperative-service agreement from the applicant or until the applicant provides written notification to us that he or she does not intend to sign the cooperative-service agreement, up to a maximum of 30 days.

The commenter stated that this provision would require the winner of the lottery to rush to put his or her import together, while the third or fourth applicants chosen would have extra time while we negotiate with the applicants chosen earlier in the lottery. According to the commenter, it is impossible for any importer to determine the feasibility of a high security animal import in less than 30 days.

We are making no changes based on this comment. The very purpose of the proposed change was to discourage applicants who are not seriously considering importing animals through HSTAIC, and therefore to minimize unnecessary "downtime" at HSTAIC. We believe that applicants seriously interested in importing animals through HSTAIC should already have closely examined the feasibility of a particular importation before submitting an application. Further, once the cooperative-service agreement is signed, the importer has 42 days to complete

arrangements with responsible officials in the country from which the animals are to be exported. We consider this a reasonable period of time to make such arrangements.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule with only minor nonsubstantive changes.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than $100 million; (2) will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

In the past we have received approximately 230 applications to use HSTAIC during a particular calendar year. However, many of these applications were duplicative. Therefore, when the provisions in this rule become effective, we expect that number to drop significantly. Although we cannot determine precisely how many importers will submit applications, based on past experience we believe only approximately 5 percent will be small entities.

We expect that requiring a deposit of $32,000 in the form of a certified check or money order with each application will reduce the number of multiple applications by large importers and discourage applications from importers who are not sure whether they will use HSTAIC. We expect this final rule to have the ultimate effect of increasing the possibility that small entities will use HSTAIC.

The regulations prior to the effective date of this rule require that applicants for the importation of certain animals through HSTAIC deposit an irrevocable letter of credit for $50,000. Requiring a deposit in the form of a certified check or money order will have an impact on potential importers, in that earnings will be foregone on the deposit while it is held by APHIS. Under this rule, the deposit will have to be "received by APHIS at least 7 calendar days prior to the date of the lottery." Prospective importers can minimize the time their money is on deposit by submitting their deposit as close to this deadline as possible. We have calculated that, based on a rate of return of from 5–7 percent, the interest foregone on a deposit will be approximately $4.10 to $6.15 per day. The minimum amount of time applicants will forego interest will be for the week before the lottery and for at least one week following the lottery until notification of the lottery results. Therefore, all applicants will forego approximately $61.60 to $86.10 in interest. This compares with an average cost to import one animal through HSTAIC of $3,747.

Of the parties that will submit applications for importations through HSTAIC in 1995, most of whom will probably not be small entities, we expect that only approximately 5 will be picked high enough in the lottery to provide them a reasonable chance of bringing animals through HSTAIC. If these applicants choose to stay on the lottery list, they will lose interest for each day they remain on the list until their deposit is applied toward an importation, or until they choose to remove their name from the list. How long they remain on the list will be their decision, and we are unable to calculate at this time the interest they will forego.

Changing application and lottery dates will impose no financial burden on prospective importers. The current regulations require that importers wishing to import in the next calendar year submit their application no earlier than September 1 and no later than September 15 for the lottery held during the first seven days of October of the current calendar year. Shifting these dates to October and December, respectively, would likely shorten the waiting period between application and actual import dates.

Requiring the lottery winner to pay the costs of maintaining HSTAIC for periods when it is maintained in readiness for that importer, and not available to other importers, will shift the burden of operating costs from APHIS, and ultimately the taxpayer, to persons offered the right to use HSTAIC. According to the regulations prior to the effective date of this rule, a lottery winner has 30 days from the date of the receipt of the cooperative-service agreement to either accept or reject the cooperative-service agreement regarding the importation of animals. During that time, the facility is reserved, and APHIS prepares and maintains it in readiness for that importer's animals. Charging the importer for this time, on a daily basis, will increase the importer's costs by approximately $1,067 per day, up to a maximum of $32,000. This compares with an average total cost for an importation through HSTAIC of $857,000. The length of time that expires before the cooperative-service agreement is accepted or rejected will be up to the lottery winner.

Under this rule, APHIS will not accept applications from, or enter into HSTAIC cooperative-service agreements with, entities with outstanding debts to APHIS. If a prospective applicant has not paid outstanding debts, they will not be allowed to use HSTAIC. However, this provision will not necessarily impose a financial burden on prospective applicants because the decision whether to pay off debts will be entirely the prospective applicant's.

We are also eliminating the practice of giving certain types of animals, and animals from certain locations, priority in the lottery. This amendment, which will simplify the drawing for the lottery, will not affect a substantial number of importers. In the past we have received approximately 230 applications to use HSTAIC during a particular year. As stated above, we expect fewer applicants when this rule takes effect. Of the total number of applicants, only two to three will actually be able to use HSTAIC in any given year. Additionally, as we stated above, we expect the great majority of applicants to be other than small entities, so the chances are small that each of the two or three importers using HSTAIC will be small entities.

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule will be submitted for approval

to the Office of Management and Budget.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.430 [Amended]

2. Section 92.430 is amended as follows:

a. Paragraph (a) is amended by adding, immediately after the first sentence, "Applications for the HSTAIC lottery will not be accepted from, and a cooperative-service agreement to use HSTAIC will not be offered to or entered into with, any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to the person. Any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to that person will be removed from the current priority list."

b. Paragraph (a) is amended by adding, immediately after the fourth sentence, "The animal qualification process begins on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, for the importer's signature, if HSTAIC is not available to other importers, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or the importer refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable."

c. Paragraph (b)(1)(ii) is revised to read as set forth below.

d. Paragraph (b)(2)(i) is amended by removing "October" both times it appears, and by adding "December" in its place; and by removing "September" where it appears in the second sentence, and adding "October" in its place.

e. In paragraph (b)(2)(i), footnote 12 is amended by removing "October" and adding "December" in its place.

f. Paragraph (b)(2)(ii) is amended by removing the last sentence and adding in its place "Deposits required by paragraph (b)(1)(ii) of this section must be received by APHIS at least 7 calendar days prior to the date of the lottery."

g. Paragraph (b)(3)(i) is removed.

h. Paragraph (b)(3)(ii) is redesignated as paragraph (b)(3) and is revised to read as set forth below.

i. Paragraph (b)(4) is amended by revising the first sentence to read as set forth below; removing "October" in the fifth sentence and adding "December" in its place; and removing "September" where it appears in the fifth and sixth sentences, and adding "October" in its place.

j. Paragraph (b)(5) is amended by removing "October" both times it appears and adding "December" in its place; and by removing "September" both times it appears and adding "October" in its place.

k. In paragraph (b)(6), the second sentence is amended by removing ", in lieu of an irrevocable letter of credit,"; and by removing "$50,000" and adding "$32,000 by certified check or money order, payable in U.S. funds" in its place.

l. In paragraph (b)(6), footnote 13 is amended by removing "September" and adding "October" in its place.

m. In paragraph (c) introductory text, the third and fourth sentences are revised to read as set forth below, and the fifth sentence is removed.

n. In paragraph (c)(1), the second sentence is amended by adding "any portion of" immediately before "the importer's deposit" and by adding "that has not been expended" immediately before the period.

o. In paragraph (c)(3), the second sentence is amended by adding "expenses for preparing and maintaining HSTAIC in readiness for the importation;" immediately after "must assume responsibility includes:".

p. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 2 is revised to read as set forth below.

q. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 3 is removed, and paragraphs 4 through 13 are redesignated as paragraphs 3 through 12, respectively.

r. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 4, the first sentence is amended by adding "preparing and maintaining HSTAIC in readiness for the importation, and to" immediately after "all costs (except capital expenditures at HSTAIC) attributable to".

s. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 12 is revised to read as set forth below.

§ 92.430 Importation of ruminants through the Harry S Truman Animal Import Center (HSTAIC).

* * * * *

(b) * * *

(1) * * *

(ii) Each applicant for the importation of animals through HSTAIC must make a deposit of $32,000 in the form of a certified check or money order, payable in U.S. funds. The deposit of each applicant who is not given the opportunity to use HSTAIC will be returned to the applicant at the end of the calendar year of the prospective importation, or whenever the applicant removes his or her name from the priority list described in paragraph (b)(4) of this section. The Animal and Plant Health Inspection Service will draw on the deposit of the applicant whose application is selected, to pay for the costs of preparing and maintaining HSTAIC in readiness for the applicant's animals. A charge of $1,067 will be made for each day that HSTAIC is not available to another importer, starting on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, and ending either with the day that APHIS receives the signed cooperative-service agreement or the day the applicant notifies APHIS in writing that he or she does not intend to sign the cooperative-service agreement, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable.

* * * * *

(3) The priority list established by the annual December lottery will remain effective from January 1 through December 31 of the next calendar year, superseding all previous lists. Which year's list is used is governed by the date exclusive use of HSTAIC is offered and not by the date the applicant's

animals are scheduled to arrive at HSTAIC.

(4) The names of all applicants whose applications have reached the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 (see paragraphs (b)(1) and (2) of this section), and whose deposits have reached APHIS at least 7 calendar days prior to the date of the lottery, will be drawn during the December lottery. * * *

* * * * *

(c) * * * The cooperative-service agreement must be accompanied by a certified check or money order, or an irrevocable letter of credit (the letter of credit having an effective date 90 days after the animals' scheduled release date from HSTAIC), payable in U.S. funds, for the amount specified in the cooperative-service agreement. Any funds remaining from the $32,000 deposit will be applied to the quarantine costs, and will be deducted from the balance due with the cooperative-service agreement. * * *

* * * * *

(d) * * *

The importer agrees:

* * * * *

2. To remit with the cooperative-service agreement a certified check, money order, or irrevocable letter of credit having an effective date that extends 90 days beyond the animals' scheduled release from HSTAIC, payable in U.S. funds to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of $_____. (This amount represents the estimated cost (except capital expenditures at HSTAIC) of qualifying the animals for importation through HSTAIC, less any unused portion of the $32,000 deposited in conjunction with the application for the exclusive right to use HSTAIC.

* * * * *

12. To pay, upon receipt, post-quarantine billings incurred during this importation, for costs exceeding the amount remitted with this cooperative-service agreement plus the initial $32,000 deposit.

* * * * *

§ 92.522 [Amended]

3. Section 92.522 is amended as follows:

a. Paragraph (a) is amended by adding, immediately after the first sentence, "Applications for the HSTAIC lottery will not be accepted from, and a cooperative-service agreement to use HSTAIC will not be offered to or entered into with, any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to the person. Any person who has debts owing to APHIS that have not been paid by the date specified in APHIS's original billing notification to that person will be removed from the current priority list."

b. Paragraph (a) is amended by adding, immediately after the fourth sentence, "The animal qualification process begins on the date the cooperative-service agreement is delivered to the address listed on the importer's HSTAIC application, for the importer's signature, if HSTAIC is not available to other importers, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or the importer refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable."

c. Paragraph (b)(1)(ii) is revised to read as set forth below.

d. Paragraph (b)(2)(i) is amended by removing "October" both times it appears and adding "December" in their place; and by removing "September" both times it appears in the second sentence, and adding "October" in its place.

e. In paragraph (b)(2)(i), footnote 11 is amended by removing "October" and adding "December" in its place.

f. Paragraph (b)(2)(ii) is amended by removing the last sentence and adding in its place "Deposits required by paragraph (b)(1)(ii) of this section must be received by APHIS at least 7 calendar days prior to the date of the lottery."

g. Paragraph (b)(3)(i) is removed.

h. Paragraph (b)(3)(ii) is redesignated as paragraph (b)(3) and is revised to read as set forth below.

i. Paragraph (b)(4) is amended by revising the first sentence to read as set forth below; removing "October" in the fifth sentence and adding "December" in its place; and removing "September" where it appears in the fifth and sixth sentences and adding "October" in its place.

j. Paragraph (b)(5) is amended by removing "October" both times it appears and adding "December" in its place; and by removing "September" both times it appears and adding "October" in its place.

k. In paragraph (b)(6), the second sentence is amended by removing ", in lieu of an irrevocable letter of credit,"; and by removing "$50,000" and adding "$32,000 by certified check or money order, payable in U.S. funds" in its place.

l. In paragraph (b)(6), footnote 12 is amended by removing "September" and adding "October" in its place.

m. In paragraph (c) introductory text, the third and fourth sentences are revised to read as set forth below, and the fifth sentence is removed.

n. In paragraph (c)(1), the second sentence is amended by adding "any portion of" immediately before "the importer's deposit" and by adding "that has not been expended" immediately before the period.

o. In paragraph (c)(3), the second sentence is amended by removing the word "Expenses" and adding in its place "expenses"; and by adding "Expenses for preparing and maintaining HSTAIC in readiness for the importation;" immediately after "must assume responsibility includes:".

p. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 2 is revised to read as set forth below.

q. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", paragraph 3 is removed and paragraphs 4 through 13 are redesignated as paragraphs 3 through 12, respectively.

r. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 4, the first sentence is amended by adding "preparing and maintaining HSTAIC in readiness for the importation, and to" immediately after "all costs (except capital expenditures at HSTAIC) attributable to".

s. In paragraph (d), sample cooperative-service agreement, under "The importer agrees:", redesignated paragraph 12 is revised to read as set forth below.

§ 92.522 Importation of swine through the Harry S Truman Animal Import Center (HSTAIC).

* * * * *

(b) * * *

(1) * * *

(ii) Each applicant for the importation of animals through HSTAIC must make a deposit of $32,000 in the form of a certified check or money order, payable in U.S. funds. The deposit of each applicant who is not given the opportunity to use HSTAIC will be returned to the applicant at the end of the calendar year of the prospective importation, or whenever the applicant removes his or her name from the priority list described in paragraph (b)(4) of this section. The Animal and Plant Health Inspection Service will draw on the deposit of the applicant whose application is selected, to pay for the costs of preparing and maintaining HSTAIC in readiness for the applicant's animals. A charge of $1,067 will be made for each day HSTAIC is not available to another importer, starting

on the date the cooperative-service agreement is delivered to the address listed on the HSTAIC application, and ending either with the day that APHIS receives a signed cooperative-service agreement from the applicant or the day the applicant notifies APHIS in writing that he or she does not intend to sign the cooperative-service agreement, up to a maximum of 30 days. A cooperative-service agreement will be deemed to have been delivered when the importer signs the U.S. Postal Service domestic return receipt, or refuses delivery of the cooperative-service agreement by the U.S. Postal Service, or the cooperative-service agreement is returned by the U.S. Postal Service as either unclaimed or undeliverable.

* * * * *

(3) The priority list established by the annual December lottery will remain effective from January 1 through December 31 of the next calendar year, superseding all previous lists. Which year's list is used is governed by the date exclusive use of HSTAIC is offered, and not by the date the applicant's animals are scheduled to arrive at HSTAIC.

(4) The names of all applicants whose applications have reached the Import-Export Animals Staff, Veterinary Services, no earlier than October 1 and no later than October 15 (see paragraphs (b) (1) and (2) of this section), and whose deposits have reached APHIS at least 7 days prior to the date of the lottery, will be drawn during the December lottery. * * *

* * * * *

(c) * * * The cooperative-service agreement must be accompanied by a certified check, a money order, or an irrevocable letter of credit (the letter of credit having an effective date 90 days after the animals' scheduled release date from HSTAIC), payable in U.S. funds, for the amount specified in the cooperative-service agreement. Any funds remaining from the $32,000 deposit will be applied to the quarantine costs, and will be deducted from the balance due with the cooperative-service agreement. * * *

* * * * *

(d) * * *

The importer agrees:

* * * * *

2. To remit with the cooperative-service agreement a certified check, money order, or irrevocable letter of credit having an effective date that extends 90 days beyond the animals' scheduled release from HSTAIC, payable in U.S. funds to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of $_____. (This amount represents the estimated cost (except capital expenditures at HSTAIC) of qualifying the animals for importation through HSTAIC, less any unused portion of the $32,000 deposited in conjunction with the application for the exclusive right to use HSTAIC.)

* * * * *

12. To pay, upon receipt, post-quarantine billings incurred during this importation, for costs exceeding the amount remitted with this cooperative-service agreement plus the initial $32,000 deposit.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4593 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 650

RIN 3052–AB49

Federal Agricultural Mortgage Corporation; Conflicts of Interest

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board, adopts a new regulation relating to reporting and disclosure of conflicts of interest by directors, officers, and employees of the Federal Agricultural Mortgage Corporation (Corporation). The regulation is adopted in response to section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992. Section 514 directs the FCA to ensure that its regulations require the disclosure of financial information and the reporting of potential conflicts of interest by directors, officers, and employees of all Farm Credit System (System) institutions and that such requirements are adequate to fulfill the purposes of the section.

The regulation requires the Corporation to adopt a conflict-of-interest policy that defines the types of relationships, transactions, or activities that might reasonably be expected to give rise to a potential conflict of interest. The regulation also requires the reporting of sufficient information about financial interests, transactions, relationships, and activities to inform the Corporation about potential conflicts of interest. The regulation further requires disclosure to shareholders, investors, and potential investors of any unresolved conflicts of interest involving its directors, officers, and employees identified by the Corporation under the policy. Such disclosure is in addition to disclosures already required under the Federal securities laws.

EFFECTIVE DATE: The regulation shall become effective 180 days after publication in the **Federal Register** or on such later date as may be necessary to comply with the statutory requirement for a delayed effective date of 30 days after **Federal Register** publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Suzanne J. McCrory, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090 (703) 883–4280, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On October 14, 1993, the FCA published for comment conflict-of-interest regulations (58 FR 53161) for the Corporation. The regulations were proposed in response to section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992, Pub. L. 102–552, 106 Stat. 4102 (1992 Act). The 1992 Act directed the FCA to review its current regulations regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of System institutions to determine whether the regulations: (1) Are adequate to fulfill the purpose of section 514 and other purposes determined by the FCA to be necessary or appropriate, consistent with the Farm Credit Act of 1971, as amended (1971 Act); (2) require the disclosure of financial information and reporting of potential conflicts of interest by the directors, officers, and employees of all System institutions; and (3) require such disclosure of all of the appropriate directors, officers, or employees of System institutions. The 1992 Act further directed the FCA to amend its current financial disclosure and conflict-of-interest regulations to carry out the purpose of section 514, which is to ensure that FCA regulations require the disclosure of financial information and the reporting of potential conflicts of interest to provide sufficient information for: (1) Stockholders to make informed decisions regarding the operation of the institutions; (2) investors and potential investors to make informed investment decisions; and (3) the FCA to examine and regulate all System institutions effectively and efficiently.

The comment period closed on November 15, 1993. Comments were received from the Corporation and from

The Farm Credit Council (FCC), a trade association for the banks and associations of the System. The Farm Credit Bank of Baltimore submitted a letter endorsing the comments of the FCC.

The Corporation supported the regulatory approach to conflicts of interest, but made a number of substantive and clarifying comments. Most notably, the Corporation asserted that the definition of "employee" is broader than necessary to effectuate the stated purpose of the 1992 Act and will result in irrelevant or immaterial reporting by receptionists, secretaries, bookkeepers, clerks, and other employees without regard to their functions or duties at the Corporation. The Corporation noted that its existing policies also define "employee" broadly, but reporting requirements are tailored to screen out reporting by employees who are not in a position to influence activity with respect to their financial interests.

The Corporation suggested that the term "employee" be replaced with the term "key employee," defined to mean "any salaried manager or supervisor or part-time, full-time, or temporary salaried employee who is involved in any significant activity related to the processing, analysis, or guarantee of loan pools or other significant financial activity or who is engaged in any policy-making, managerial, supervisory, or professional function for the Corporation." This definition would apply only to employees other than officers and directors, who are already specifically referenced in the regulation.

The FCA is opposed to removing groups of employees from the regulation's applicability. Although the proposed regulation broadly defines potential conflicts of interest to apply to all employees, it requires the Corporation to define the types of specific transactions, relationships, and activities that reasonably could be expected to give rise to potential conflicts of interest and to require reporting of sufficient information to inform the Corporation of these potential conflicts of interest. The FCA believes that the regulation gives the Corporation sufficient latitude to tailor its reporting requirements based upon the function various employees perform for the Corporation. The FCA believes that each employee, no matter what his or her function, should be subject to a requirement to report any matter that might adversely affect impartiality in the performance of his or her duties. Accordingly, the FCA declines to replace the term "employee" with the term "key employee" in the definition of "potential conflict of interest." However, because officers are separately defined, the FCA has amended the definition of "employee" to exclude officers.

The Corporation and the FCC requested that the language of the regulation be amended to clarify that only material conflicts need to be resolved to avoid disclosure. The FCA confirms that this is the intended result and adopts minor language changes to the definition of "resolved" and to § 650.3 to make this point clearer.

The Corporation requested that the regulation be modified to provide a defined period of time for the development of the conflict-of-interest policy by the Corporation and suggested that a reasonable time period would be 180 days from the effective date of the final rule, noting that developing such a policy will involve issues that must be decided by the Corporation's Board (Board).

The FCA recognizes that the policy required by the regulation may be different from the Corporation's existing policy and that Board participation in its development is required. Indeed, in requiring the Corporation to adopt a conflict-of-interest policy, the FCA contemplated that the Corporation must act through its board of directors. The FCA views the request as a reasonable one, but believes that 180 days from the date of publication of the final rule should be a sufficient period to develop a policy. Consequently, the FCA has adopted a delayed effective date of 180 days after publication in the **Federal Register** or such later date as may be necessary to comply with the statutory requirement for a delayed effective date of 30 days during which either or both Houses of Congress are in session. In the interim, the FCA expects that employees of the Corporation and its subsidiaries will adhere to high standards of honesty, integrity, impartiality, loyalty, and care consistent with applicable law and regulation in furtherance of the Corporation's public purpose. The FCA further expects that the Corporation will be vigilant in monitoring and resolving potential conflicts of interest under its existing policy.

The Corporation also suggested adding a requirement to establish procedures for resolving material conflicts of interest and for maintaining adequate records of non-material conflicts of interest and resolutions of material conflicts of interest. The FCA believes that these requirements are fairly implied from the requirement to disclose unresolved conflicts of interest and the requirement to retain, for a period of 6 years, reports and statements on potential conflicts of interests and documentation of materiality determinations and resolutions of conflict of interests. However, an express requirement to develop procedures for resolving material conflicts of interest has been added as paragraph (e) of § 650.2 of the final regulation and succeeding paragraphs have been renumbered.

The FCC expressed general agreement with the rationale underlying the FCA's decision to treat the Corporation differently from System banks and associations, but expressed reservations about the extent of delegation granted to the Corporation to define its own conflict-of-interest policy, especially with regard to standards that may be established for members of the Board. In particular, the FCC asserted that the emphasis in the preamble on the fiduciary duties of directors to all of the shareholders ignores the representative character of the board of directors.[1] Although the FCC agrees that traditional concepts of fiduciary responsibility apply, it asserts that System and non-System directors are under no obligation to disregard the interests of the shareholders who elected them, and that to prohibit participation by System directors or non-System directors in board deliberations and voting on matters potentially affecting the interests of System institutions or non-System institutions would be contrary to congressional intention.

In addition, the FCC asserted that it would be inappropriate for the Corporation to adopt a policy that prohibits directors from discussing matters deemed confidential by Corporation management with anyone other than Board members and employees of the Corporation, as it would impede directors in the exercise of their independent business judgment if they were unable to disclose information to their own advisors. The FCC noted that "legitimately confidential" information would, of course, be disclosed to advisors on a confidential basis. In addition, the FCC asserted that System directors must be free to discuss information with a reasonable number of other individuals who represent System institutions, subject to strict guarantees of confidentiality.

The principles of statutory construction require that all of a statute's provisions be interpreted

[1] The Corporation's Board is composed of 15 directors—5 elected by class A shareholders (non-System financial institutions such as commercial banks and insurance companies), 5 elected by class B shareholders (System institutions), and 5 appointed by the President.

together. As the FCC has noted, the representative character of the Corporation's Board must be reconciled with its corporate structure and associated principles of corporate governance. In the FCA's opinion, such a reconciliation can be achieved by: (1) Interpreting "representative" to be a qualification for office; and (2) recognizing that directors owe fiduciary duties to the Corporation and all its shareholders (rather than to the electing class of shareholders exclusively or primarily). The FCA's interpretation of "representative" does not require elected directors to disregard the perspectives of the electing class. Rather, directors should share these perspectives with the Board at large so that each director can act in the best interests of the Corporation and all of its shareholders.

The FCA believes that the statutory term "representative" means that elected directors must have an official affiliation with a class A or class B institution in order to serve as a Corporation director. The FCA views an official affiliation as a substantial and visible connection such as serving as director, officer, or employee of a class A or class B institution. This interpretation of "representative" stems in part from the vacancy and continuation of membership provisions of sections 8.2(a)(4) and 8.2(b)(5)of the 1971 Act. Vacancy of an elected Board seat is filled by the permanent Board "from among persons eligible for election to the position for which the vacancy exists," suggesting that some objective eligibility criterion exists other than being elected by the shareholder class. The continuation provision has the effect of terminating the term of a director when he or she ceases to be "a representative." By contrast, were "representative" interpreted broadly to mean anyone who is selected by the institutions to act as a delegate, everybody would be eligible for election when a vacancy occurred and the automatic termination provisions would not work. Taken together, these provisions suggest that elected directors must have an official affiliation that is visible and substantial so that the presence and termination of this affiliation can be readily ascertained.

Although the Board is representative in nature, Congress chose a corporate structure to govern the operations of the Corporation. Common law corporate principles affirm the fiduciary duty of directors to act in the best interests of the Corporation and all of its shareholders. The FCA believes that the representative character of the Board does nothing to alter this fiduciary duty of directors.[2] That is, irrespective of the manner of appointment or election, each director has a duty to act in the best interests of the Corporation and all of its shareholders. The legislative history supports this interpretation by indicating, "There is to be no distinction between the three categories of directors in terms of their duties and responsibilities as directors to the Mortgage Corporation and all stockholders."[3]

When "representative" is interpreted as a qualification that directors must satisfy to be elected, directors can discharge their fiduciary duties in the context of a representative Board. Although directors may attain Board seats through different processes, each needs the same opportunity to understand the perspectives of different shareholders and secondary market participants on an issue to properly discharge his or her fiduciary duties to the Corporation. With an official affiliation, elected directors are authoritatively able to bring the perspectives of the class to the Board's deliberations. When the elected directors convey such perspectives to the Board at large, each director gets the information needed to discharge his or her fiduciary duties to the Corporation and all of its shareholders.

The FCA believes that "representative" should not be interpreted to mean a delegate elected solely to further the viewpoints of the electing class without regard to the impact on the Corporation and all its shareholders. Such an interpretation implies that directors need not consider the interests of any class of Corporation shareholders lacking authority to elect them—a result inconsistent with corporate common law principles of a director's fiduciary duties and congressional intent.

Specifically, the FCA responds to the FCC's comment by noting that the use of information gained in private consultations with class members about Corporation matters to inform only a director's personal judgments but not the Board deliberations would systematically prevent class A directors from learning the views of class B institutions and class B directors from learning the views of class A institutions. The "public directors" would have neither perspective. This withholding of information would likely lead to factional voting patterns because no director would be able to understand and weigh the many and different views of all shareholders. Because each director is obliged to act in the best interests of the Corporation and all of its shareholders, the FCA believes that withholding from Board deliberations useful perspectives and pertinent information gained from private consultations could undermine the ability of directors to carry out their fiduciary duties.

In light of its interpretation of the "representative" nature of the Corporation's Board, the FCA makes the following determinations about three amendments requested by the FCC related to the representative character of the Board.

First, the FCC requested that the definition of "potential conflict of interest" be modified to recognize that it is not a conflict of interest for Corporation directors to consider or act on matters that affect the financial interests of the class of shareholders that elected them if the matter is one of general applicability that affects all the shareholders in that class and does not have its effect exclusively or disproportionately on the particular shareholder with which that director is affiliated.

The FCA agrees that "potential conflict of interest" should not be so broadly defined as to make it impermissible for any of the 10 elected directors to participate in matters affecting the financial interests of the class or the institution with which he or she is affiliated. To regard participation by an elected director in such matters as impermissible would render the Board nonfunctional since such decisions are unavoidable and large blocs of directors would be disenfranchised on certain general questions being deliberated by the Board. However, the FCA believes that no change is needed to respond to the FCC's concerns because the regulation does not disqualify directors from participating in deliberations affecting the electing class of institutions.

The FCA believes that matters affecting class institutions as secondary market participants would not likely constitute potential conflicts of interests. Therefore, the regulatory definition of "potential conflict of interest" does not impute the interests of the class to the directors elected from

[2] Some public companies have boards with representative features analogous though not identical to the Corporation's. For example, public companies may have seats designated to be elected by minority shareholders or seats designated to be filled by a union representative. However, the fiduciary responsibilities of directors are unchanged by the representational aspects of these boards, according to an official from the Securities and Exchange Commission with whom the FCA consulted. Each director owes fiduciary duties to the Corporation and its shareholders collectively.

[3] Senate Report 100–230, p. 52 (November 20, 1987).

that class. However, FCA notes that any Board action having differential effects on the class as shareholders may constitute a breach of fiduciary duties by directors. A director must act in the best interest of the Corporation and all of its shareholders.

Second, the FCC requested that the regulation be modified to provide that Corporation directors may discuss with representatives of the shareholder class that elected them the implications of a proposed action that has general applicability and that such activity not be considered a conflict of interest.

The regulation neither permits nor prohibits consultations by Corporation directors with outside parties. The appropriateness of such consultations depends on the facts and circumstances at hand. FCA declines to create a safe harbor for director consultations in order to avoid sanctioning consultations that might be inconsistent with a director's fiduciary duties.

While the FCA agrees with the FCC that directors have a duty to exercise informed independent judgment on Corporation matters, and may from time to time need to consult knowledgeable advisors, the FCA also recognizes the right of the Corporation's Board to maintain the confidentiality of the Corporation's business matters. Consequently, the consultation of advisors in order to make an independent judgment must be undertaken with due regard for the Corporation's interest in maintaining confidentiality. Any advisors consulted by a director on a confidential matter would be bound by the Board's confidentiality constraints and could, by virtue of the consultation, become insiders of the Corporation subject to the prohibitions of the Securities Exchange Act of 1934 and rules thereunder. The director should make every effort to ensure that the confidentiality of consultations can and will be maintained. Fiduciary duty to the Corporation requires the director to share with the Board any material information in his or her possession that is germane to Board decisions, regardless of its source.

Third, the FCC requested that the regulation be modified to recognize that the Corporation's directors are free to vigorously advance the interest of the institutions they represent, provided they make clear that they are not acting in their capacity as Corporation directors.

The FCA declines to modify its regulation as requested because it believes that such a modification might sanction actions inconsistent with a director's fiduciary duties. As the FCC's comment letter noted, inherent within the organizational framework of the Corporation's Board is the potential for perceived conflicts of interest. Elected directors typically have simultaneous responsibilities to the Corporation and to a competing class A or B institution.

The FCA agrees with the FCC's comment that such directors are not agents of the Corporation in all their doings and may also owe fiduciary duties to other institutions. However, the FCA believes a Corporation director who advances the interests of another institution must be mindful of his or her fiduciary duties to the Corporation and its shareholders, including System and non-System shareholders. Where directors have fiduciary duties to competing institutions, they must balance these duties to avoid harming either institution. To advance the interests of one corporation to which a director owes duties in a manner that injures another corporation to which he also owes fiduciary duties could heighten shareholder concern about the good faith and fair dealing of the director. The difficulty of balancing fiduciary duties to competing institutions has previously led the FCA to prohibit directors of Farm Credit banks and associations from serving as directors of competing institutions. While the FCA cannot prohibit such dual responsibilities, it is reluctant to sanction by regulation those actions by directors to advance the interests of one institution that are potentially at the expense of the Corporation's interests.

As in the previous matter, the FCA believes that the appropriateness of a director's action must be evaluated in light of the specific circumstances. In some cases, action might be considered improper; in others it might not. As a result, the FCA declines to exclude from the definition of "potential conflict of interest" those actions by the Corporation's directors to "advance vigorously the interests" of a competing institution. The effect of declining to make such a change will be to continue to subject such actions to scrutiny as potential conflicts of interest.

In addition to its general comments, the FCC made a number of specific suggestions regarding particular sections of the regulation.

The FCC suggested that the definition of "potential conflict of interest" be changed to parallel the definition of "conflict of interest" in the regulations proposed for System banks and associations. Specifically, the FCC recommended changing "might adversely affect or appear to adversely affect" to "actually affects or appears to affect."

The change proposed by the FCC would narrow the reportable conflicts to those that an individual believes would affect or would appear to affect the individual's impartiality. The FCA believes that it would be inappropriate to adopt the FCC's suggestion in light of the fact that the approach taken for Farm Credit banks and associations differs from the regulatory approach for the Corporation. Specifically, the FCA has prohibited certain activities for employees and directors of Farm Credit banks and associations. Because most conflicts are banned in the regulation, a narrower definition of reportable conflicts of interest seems appropriate. By contrast, Corporation directors, officers, and employees are not subject to similar regulatory prohibitions. In the absence of specific prohibitions, the FCA believes it important to have reporting requirements that establish the broadest possible net so that the actual existence of a conflict is determined by the Corporation rather than the reporting individual. The regulation allows the Corporation to review all potential conflicts of interest for materiality before determining that an actual conflict must be resolved or disclosed. Because the FCA believes the different regulatory approaches warrant different reporting requirements, the FCA declines to make the change requested by the FCC.

The FCC asserted that the regulation should be extended to agents in a manner similar to that currently in effect for agents of System banks and associations, especially since many of the various aspects of the Corporation's business are accomplished through agents, and recommended a definition similar to that used for banks and associations.

Although responding to the direction of the 1992 Act does not require that the regulation address conflicts of interest of agents, the FCA considered this suggestion in light of how the Corporation's business activities are structured. Since the statute permits the activities of the Corporation to be carried out through affiliates chartered under state law, the FCA concluded that the intention of section 514 could be subverted were the requirements of the regulation not applied to such affiliates. Accordingly, the final regulation clarifies that the Corporation policy required by the regulation must also apply to officers, directors, and employees of any affiliates the Corporation establishes to carry out its function. The clarification is accomplished by expanding the definition of "Corporation" to include

affiliates established under section 8.3(b)(13) of the 1971 Act.

Similarly, with respect to agents that are not affiliates, the final regulation would require the Corporation's policy to address potential conflicts of interest by agents. The FCA recognizes that the Corporation has less control over agents that are not affiliates. The FCA believes the regulation is sufficiently flexible to permit the Corporation to make reasonable distinctions. Definitions of "agent" and "affiliate" have been added in the final regulation.

The FCC suggested that the same basic due process and other protections set forth in the recently proposed System bank and association regulation be incorporated in the final regulation for the Corporation. The FCC deems this especially important in view of the fact that the penalties of part C of title V of the 1971 Act are available to enforce the policy. Specifically, the FCC suggested adding the following:

(1) A requirement that all directors and employees be informed of the regulatory and policy requirements;

(2) A requirement that the policy establish various criteria for business relationships and transactions to provide guidance to directors and employees;

(3) A requirement that there be a reasonable time during which directors and employees may terminate prohibited transactions;

(4) A requirement for recusal procedures;

(5) A requirement for a standards-of-conduct officer and documentation of his or her actions; and

(6) A requirement for appeal procedures.

The FCA has considered each of these suggestions in light of the different approaches taken in the proposed regulations for the Corporation and for System banks and associations. Because of the different approach, the FCA believes that the specific requirements outlined in the proposed bank and association regulation are appropriate in some cases but not others. Specifically:

(1) The FCA agrees that all directors and employees should be informed of the conflict-of-interest requirements and has added § 650.2(g) to accomplish this.

(2) Because § 650.2(a) already requires the Corporation to define the types of activities, transactions, and relationships that could give rise to potential conflicts of interests, criteria for permissible business relationships and transactions will be established, at least by exclusion. Consequently, the FCA finds changing the regulation unnecessary.

(3) The FCA agrees with the FCC that directors, officers, and employees should have an opportunity to bring themselves into compliance when the policy changes and has added language to that effect in § 650.2(g).

(4) In response to a Corporation comment, the FCA added a requirement that the Corporation's policy establish procedures for resolving and disclosing material conflicts of interest. The FCA has not specifically included a requirement that recusal procedures be established because recusal is just one way in which a conflict of interest can be resolved.

(5) The FCA finds it unnecessary to require a standards-of-conduct officer, although the Corporation is free to appoint one, and believes that documentation requirements are already fairly implied from the recordkeeping requirement.

(6) The Corporation may opt to establish appeals procedures as part of its resolution methods. However, the FCA declines to add such a requirement by regulation because procedures for conflict resolution are to be specified by the Corporation. The FCA believes that the appropriateness of appeal procedures can only be evaluated in light of the policy and procedures, which are yet to be developed. Finally, since the Corporation's policy must be adopted by the Board, directors will have an opportunity to address the concerns expressed in the FCC's letter as they deem appropriate.

At the request of the FCC, the FCA changed "highest standards" to "high standards" in § 650.4(a)(1) to achieve consistency with the regulation governing Farm Credit banks and associations. The FCA finds it unnecessary to define "director" as the FCC requested. The FCA previously eliminated the definition in its proposed rules for Farm Credit banks and associations, making both regulations consistent.

List of Subjects in 12 CFR Part 650

Agriculture, Banks, Banking, Conflicts of interest, Rural areas.

For the reasons stated in the preamble, a new part 650 of chapter VI, title 12 of the Code of Federal Regulations is added to read as follows:

PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION

Subpart A—Conflicts of Interest

Sec.
650.1 Definitions.
650.2 Conflict-of-interest policy.
650.3 Implementation of policy.
650.4 Director, officer, employee, and agent responsibilities.

Subpart B—[Reserved]

Authority: Secs. 5.9, 5.17, 8.11 of the Farm Credit Act; 12 U.S.C. 2243, 2252, 2279aa–11; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

Subpart A—Conflicts of Interest

§ 650.1 Definitions.

(a) *Agent* means any person (other than a director, officer, or employee of the Corporation) who represents the Corporation in contacts with third parties or who provides professional services such as legal, accounting, or appraisal services to the Corporation.

(b) *Affiliate* means any entity established under authority granted to the Corporation under section 8.3(b)(13) of the Farm Credit Act of 1971, as amended.

(c) *Corporation* means the Federal Agricultural Mortgage Corporation and its affiliates.

(d) *Employee* means any salaried individual working part-time, full-time, or temporarily for the Corporation.

(e) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution.

(f) *Material*, when applied to a potential conflict of interest, means the conflicting interest is of sufficient magnitude or significance that a reasonable observer with knowledge of the relevant facts would question the ability of the person having such interest to discharge official duties in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation.

(g) *Officer* means the salaried president, vice presidents, secretary, treasurer, and general counsel, or other person, however designated, who holds a position of similar authority in the Corporation.

(h) *Person* means individual or entity.

(i) *Potential conflict of interest* means a director, officer, or employee of the Corporation has an interest in a transaction, relationship, or activity that might adversely affect, or appear to adversely affect, the ability of the director, officer, or employee to perform his official duties on behalf of the Corporation in an objective and impartial manner in furtherance of the interest of the Corporation and its statutory purposes. For the purpose of determining whether a potential conflict of interest exists, the following interests shall be imputed to a person subject to

this regulation as if they were that person's own interests:

(1) Interests of that person's spouse;

(2) Interests of that person's minor child;

(3) Interests of that person's general partner;

(4) Interests of an organization or entity that the person serves as officer, director, trustee, general partner or employee; and

(5) Interests of a person, organization, or entity with which that person is negotiating for or has an arrangement concerning prospective employment.

(j) *Resolved*, when applied to a potential conflict of interest that the Corporation has determined is material, means that circumstances have been altered so that a reasonable observer with knowledge of the relevant facts would conclude that the conflicting interest would not adversely affect the person's performance of official duties in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation.

§ 650.2 Conflict-of-interest policy.

The Corporation shall establish and administer a conflict-of-interest policy that will provide reasonable assurance that the directors, officers, employees, and agents of the Corporation discharge their official responsibilities in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation. The policy shall, at a minimum:

(a) Define the types of transactions, relationships, or activities that could reasonably be expected to give rise to potential conflicts of interest.

(b) Require each director, officer, and employee to report in writing, annually, and at such other times as conflicts may arise, sufficient information about financial interests, transactions, relationships, and activities to inform the Corporation of potential conflicts of interest;

(c) Require each director, officer, and employee who had no transaction, relationship, or activity required to be reported under paragraph (b) of this section at any time during the year to file a signed statement to that effect;

(d) Establish guidelines for determining when a potential conflict is material in accordance with this subpart;

(e) Establish procedures for resolving or disclosing material conflicts of interest.

(f) Provide internal controls to ensure that reports are filed as required and that conflicts are resolved or disclosed in accordance with this subpart.

(g) Notify directors, officers, and employees of the conflict-of-interest policy and any subsequent changes thereto and allow them a reasonable period of time to conform to the policy.

§ 650.3 Implementation of policy.

(a) The Corporation shall disclose any unresolved material conflicts of interest involving its directors, officers, and employees to:

(1) Shareholders through annual reports and proxy statements; and

(2) Investors and potential investors through disclosure documents supplied to them.

(b) The Corporation shall make available to any shareholder, investor, or potential investor, upon request, a copy of its policy on conflicts of interest. The Corporation may charge a nominal fee to cover the costs of reproduction and handling.

(c) The Corporation shall maintain all reports of all potential conflicts of interest and documentation of materiality determinations and resolutions of conflicts of interest for a period of 6 years.

§ 650.4 Director, officer, employee, and agent responsibilities.

(a) Each director, officer, employee, and agent of the Corporation shall:

(1) Conduct the business of the Corporation following high standards of honesty, integrity, impartiality, loyalty, and care, consistent with applicable law and regulation in furtherance of the Corporation's public purpose;

(2) Adhere to the requirements of the conflict-of-interest policy established by the Corporation and provide any information the Corporation deems necessary to discharge its responsibilities under this subpart.

(b) Directors, officers, employees, and agents of the Corporation shall be subject to the penalties of part C of title V of the Farm Credit Act of 1971, as amended, for violations of this regulation, including failure to adhere to the conflict-of-interest policy established by the Corporation.

Subpart B—[Reserved]

Dated: February 23, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–4536 Filed 2–28–94; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–AWA–11]

Alteration of Class C Airspace; Bangor International Airport, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment and disposition of comments.

SUMMARY: This action amends the final rule published in the **Federal Register** on February 9, 1993, that established an airport radar service area (ARSA) (now, Class C airspace area) at Bangor International Airport, Bangor, ME. The final rule differed from the notice of proposed rulemaking (NPRM) wherein the final rule included the Brewer Airport within the surface area of the Bangor Class C airspace. Subsequently, the final rule was published and comments were solicited concerning the change to the surface area. This action represents the FAA's analysis of the comments and the final determination and rationale for modifying the Bangor Class C airspace area.

EFFECTIVE DATE: 0901 u.t.c., March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On April 23, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish an ARSA (now, Class C airspace) at Bangor International Airport, ME (56 FR 6584). The NPRM stated that the Brewer Airport would be excluded from the surface area. The original cutout for Brewer Airport excluded that airspace below 700 feet mean sea level (MSL) and extended from the Bangor Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility 111° radial clockwise to the Bangor 141° radial. The final rule on this action was published on February 9, 1993, with an effective date of April 1, 1993 (58 FR 7738). The rule cited concerns for aircraft operating under visual flight rules (VFR) in close

proximity, in and out of the Brewer Airport, with instrument flight rules (IFR) traffic on approach to the Bangor International Airport. This concern prompted the FAA to remove the cutout for Brewer Airport, thereby placing the airport within the surface area of the Bangor Class C airspace area. To ascertain how changing the Bangor Class C airspace area would impact the airspace users, the FAA solicited comments on this issue. Fourteen comments were received during the comment period which closed on April 5, 1993.

Discussion of Comments

Most of the comments recommended that the FAA reconsider the design of the surface area for the Bangor Class C airspace to provide a cutout for the Brewer Airport as originally proposed.

Comments were received from the Brewer Airport Association (BAA) encouraging the FAA to reconsider the cutout, citing the meritorious history of safe aviation activity in the Bangor area. The association wrote that the Brewer Airport and the Bangor International Airport have co-existed without incident or near-incident for 50 years. BAA states that this unblemished track record for safety does not support the FAA's assertion that IFR operations at Bangor International Airport would be adversely affected by operations at Brewer Airport.

The Aircraft Owners and Pilots Association (AOPA) recommended that the FAA sign letters of agreement with the aircraft owners based at Brewer Airport and examine alternatives that would allow the Brewer Airport to be removed from the surface area.

Several of the commenters wrote to emphasize that operations under IFR are not common practice and not anticipated in the future at Brewer Airport.

Many of the commenters stated that they believe a 600-foot ceiling would allow for a 500-foot separation or buffer below the instrument landing system (ILS) glidepath on Runway 33 for approaches to Bangor. In the commenters' opinion, the 500-foot separation or buffer should be adequate to support operations at Bangor.

One commenter stated that he opposes a cutout for the Brewer Airport and does not believe it is in the best interest of the flying public or the residents of Brewer.

Each of the comments were fully considered. In response to these recommendations the FAA has reevaluated the Bangor Class C airspace area and reached the conclusion that the airspace can be safely modified to allow for a cutout to exclude the Brewer Airport from the surface area. The new cutout for the Brewer Airport is not the same as published in the NPRM. That NPRM proposed to exclude the airspace below 700 feet MSL between the 3- to 5-mile radius of the Bangor International Airport, from the Bangor VORTAC 111° radial clockwise to the Bangor VORTAC 141° radial. The new cutout area for Brewer Airport is slightly smaller in size than the original proposal, but only excludes that airspace below 700 feet MSL between the 3- to 5-mile radius of the Bangor International Airport extending between the Bangor VORTAC 122° radial to the Bangor VORTAC 142° radial.

While the Bangor Class C airspace will be modified to exclude the Brewer Airport from the surface area, the remainder of the Class C airspace area will not change.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class C airspace area at the Bangor International Airport, Bangor, ME. Bangor International Airport is a public airport with an operating control tower serviced by a Level II Radar Approach Control Facility.

During the rulemaking process and review, changes were made to include the Brewer Airport in the surface area for the Bangor Class C airspace area. The FAA had concluded that excluding Brewer Airport as proposed in the NPRM could adversely effect IFR traffic at Bangor International Airport. The rule stated that the potential for an unsafe condition existed because of the runway orientation at Brewer Airport in association with operations at Bangor Airport. This condition was intensified because aircraft would have been allowed to operate in and out of Brewer Airport without communications with the Bangor Air Traffic Control Tower (ATCT). The potential impact from the change affecting the Brewer Airport was recognized during the final review process and comments were solicited in the final rule. In reaching a final determination on this issue, the FAA reevaluated the airspace in the Bangor Class C airspace area, all of the user comments and, in particular, the changes affecting the Brewer Airport. The conclusion reached is that the Bangor Class C surface area can be safely modified to accommodate a cutout for the Brewer Airport without impacting operations or safety at the Bangor International Airport yet still meeting the needs of the users at the Brewer Airport. In addition, this modified cutout was aligned along prominent geographical landmarks to help pilots operate and navigate safely and easily within the boundaries of the cutout. These changes will allow aircraft to operate into, at, and out of the Brewer Airport, under VFR, below 700 feet MSL. This modified cutout closely mirrors the previous operating airspace at the Brewer Airport without impacting the approaches into the Bangor International Airport. This airspace, and the associated operations, has existed accident and incident free as noted by the Brewer Airport Association. Aircraft on an instrument approach to the Bangor International Airport pass directly over the top of, and perpendicular to, the Brewer Airport, well above the 700 foot ceiling imposed by the cutout, while aircraft operating at the Brewer Airport would be approaching or departing the airport perpendicular to, and below, the approach path of the large aircraft going into Bangor. Aircraft flying in the pattern at Brewer would be restricted to remain under 700 feet MSL, and would be remaining south of the Brewer Airport, further away from the Bangor International Airport, which further increases the altitude separation between them and any arriving aircraft on a descent going into the Bangor International Airport. Removing Brewer Airport from the Class C surface area also allows aircraft to operate at the Brewer Airport without communicating with the Bangor ATCT, particularly those local based aircraft without radio capabilities.

Although this airspace design differs from the NPRM and the final rule, the FAA believes that the changes to the Bangor Class C airspace area can, and will, accommodate all of the airspace user's needs and not compromise safe operations at either Bangor International, the primary airport, or the Brewer Airport. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9A date June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class C airspace designation listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

The FAA has determined that this rulemaking is not a "significant rulemaking action" as defined by Executive Order 12866 (Regulatory Planning and Review) and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The anticipated costs and benefits associated

with this action are summarized below. (A detailed discussion of costs and benefits is contained in the full regulatory evaluation contained in the docket for this action.)

Costs

The potential costs of amending the final rule that established the Bangor Class C airspace area could be the revision of aeronautical charts. However, the FAA has determined that these airspace revisions will not impose any costs. The FAA's rationale for this determination are discussed below.

Revising Aeronautical Charts

Modifying the Bangor Class C airspace area will make it necessary to revise the Bangor sectional chart to incorporate the modified Class C airspace boundaries. The FAA currently revises this sectional every six months. Changes of the type required to depict Class C airspace areas are made routinely during charting cycles, and can be considered an ordinary operating cost. Therefore, the FAA does not expect to incur any additional charting costs as a result of modifying the Bangor Class C airspace area. Pilots should not incur any additional costs obtaining current charts depicting Class C airspace because they should be using current charts.

Benefits

The benefits of providing a cutout in the Bangor Class C airspace surface area will be the added convenience and increased operational efficiency. The cutout for the Brewer Airport will generate added convenience for pilots by providing airspace in which they can land and depart from that airport without having to participate in Bangor Class C airspace procedures.

This amendment will increase the operational efficiency for air traffic controllers at Bangor International Airport. Controllers will not have to maintain radio contact with aircraft operating at Brewer Airport in order to provide separation from other aircraft operating in the Bangor Class C airspace area.

Conclusion

Amending the final rule that established the Bangor Class C airspace area will not result in any charting costs. The amendment will provide an added convenience to pilots and increased operational efficiency to air traffic controllers. Thus, the FAA has determined that amending the final rule that established the Bangor Class C airspace area would be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The FAA contends that amending the Bangor Class C airspace area final rule will not result in a significant economic impact on a substantial number of small entities. This determination is based on the fact that the amendment will not impose any costs and on the fact that the benefits of added convenience are qualitative in nature.

International Trade Impact Assessment

The amendment will only affect U.S. terminal airspace operating procedures at and in the vicinity of Bangor, ME. The amendment will not impose a competitive trade advantage or disadvantage on foreign firms in the sale of either foreign aviation products or services in the United States. In addition, domestic firms will not incur a competitive trade advantage or disadvantage in either the sale of United States aviation products or services in foreign countries.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ANE ME C Bangor, ME [Revised]
Bangor International Airport, ME
(lat. 44°48′27″ N., long. 68°49′41″ W.)
Bangor (BGR) VORTAC
(lat. 44°50′31″ N., long. 68°52′26″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Bangor International Airport, excluding that airspace below 700 feet MSL from the intersection of the 122° radial of the BGR VORTAC and 5-mile radius of the airport, to lat. 44°47′08″ N., long. 68°44′57″ W.; to lat. 44°46′43″ N., long. 68°46′07″ W.; to lat. 44°46′19″ N, long. 68°46′19″ W; to the intersection of the 142° radial of the BGR VORTAC and the 5-mile radius of the airport, thence counterclockwise on the 5-mile radius of the airport to the point of origin; that airspace extending upward from 2,000 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport from the 111° radial of the BGR VORTAC clockwise to the 232° radial of the BGR VORTAC; and that airspace extending upward from 1,500 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport from the 232° radial of the BGR VORTAC clockwise to the 111° radial of the BGR VORTAC.

* * * * *

Issued in Washington, DC, on February 18, 1994.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

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

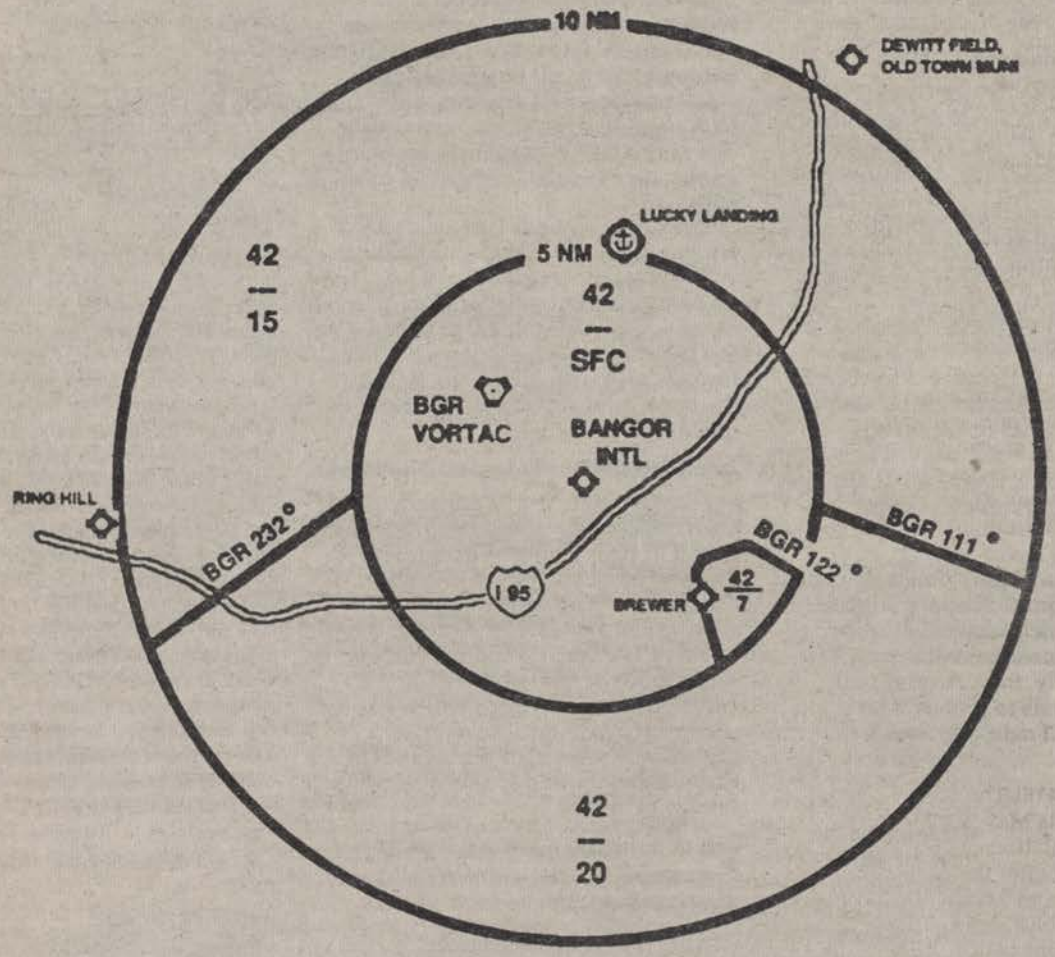
Appendix to Preamble—Bangor, Maine, Class C Airspace

BILLING CODE 4910–13–M

BANGOR, MAINE
CLASS C AIRSPACE

BANGOR INTERNATIONAL AIRPORT
FIELD ELEVATION - 192 FEET

(Not to be used for navigation)



Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
(ATP - 220)

[FR Doc. 94–4468 Filed 2–28–94; 8:45 am]
BILLING CODE 4910–13–C

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Rules Relating to Reparation Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the Futures Trading Practices Act of 1992, the Commodity Futures Trading Commission ("Commission" or "CFTC") published for comment a notice of proposed rulemaking setting forth new regulations (the "Class Action Proposal"),[1] to implement class action suits against registered persons. The Commission also invited the public to respond to specific questions. Upon consideration of the comments received and the Commission's own review of the proposed rule, it has determined not to adopt the Class Action Proposal.

In order to update and streamline Commission procedures in light of its experience, the Commission published for comment a notice of proposed rulemaking to amend and correct its rules relating to reparation proceedings (the "Reparation Rules Proposal").[2] This notice sets forth the regulations in final form.

Additionally, the Commission has received inquiries about punitive damages which suggest that the current regulations need to be clarified. Consequently, the Commission clarified the regulations to reflect Section 222 of the Futures Trading Practices Act of 1992.

EFFECTIVE DATE: The effective date of the regulations is May 2, 1994 and the revised regulations apply only to cases filed on and after that date. The Commission will consider comments from the public about the revisions of the regulations concerning punitive damages until the effective date.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–9880.

[1] 58 FR 17369 (April 2, 1993).

[2] 58 FR 44623 (August 24, 1993).

SUPPLEMENTARY INFORMATION:

I. Background

In reviewing the reparations proposals, the Commission carefully considered all of the comments and the pertinent regulatory and legislative history. In addition, the Commission evaluated the proposals in light of the National Performance Review ("NPR"), which among other things, requires government agencies to develop a clear sense of mission, inject competition into the conduct of government business, and to measure success by customer satisfaction. To further the goals of NPR, the Commission has engaged in an effort to streamline its bureaucracy, to cut costs, and serve the public in the best way possible. As a part of this effort, the Commission identified the reparations program as one area of review. With the promulgation of these rules, the Commission's purpose is to improve the rules so as to facilitate efficient and just deliberations of reparations complaints in accordance with the Commission's regulatory mission to protect the public and the markets from price manipulation and fraud.

A. The Class Action Proposal

1. Proposed Rules

Section 224 of the Futures Trading Practices Act of 1992 (102 Cong., 2d Sess., Pub. L. 102–546) authorizes an action in reparations to be brought by any one or more persons for and in behalf of such person or persons and other persons similarly situated, if the Commission permits such actions pursuant to a final rule issued by the Commission.

The Futures Trading Practices Act does not mandate that the Commission adopt final rules providing for class actions unless the Commission decides such a rule should be permitted after considering "the potential impact of such actions on resources available to the reparations system * * * and the relative merits of bringing such actions in Federal court." Because the Commission was unsure of the desirability and need for class action suits in reparations it sought comments on the Class Action Proposal and raised several questions to which it requested responses.

2. Comments Received

The Commission received six written comments in response to the Class Action Proposal. The commenters included futures industry associations, bar associations, a law firm, and a futures commission merchant. None of the participants favor the implementation of class action suits in reparations, although their reasons differ.

Overall, the commenters agree that given the ability to pursue class actions in federal court, there would be no benefit to the public by the adoption of procedures to implement class actions before the Commission. While the parties agree that the Commission has more expertise in administering the Commodity Exchange Act than do federal courts, this advantage is considered insignificant compared to the resources and procedural advantages available in the federal courts.

Some parties point out that the highly individualized, fact-intensive cases in reparations are the type of case which courts have often refused to certify for class actions. One commenter notes that because class action suits settle only liability issues and individual hearings would still be required for each class member, judicial economy would not be furthered. Other participants contend that the procedural and administrative requirements of class action suits would increase both the costs to the Commission and the time necessary for resolution of such cases. The parties consider class actions out of place in the reparation forum because it was designed for quick and inexpensive resolution of disputes whereas class action litigation must be conducted with formality and strict attention to procedural issues and is often lengthy.

3. Disposition

The Commission has carefully considered all the comments received in response to the Class Action Proposal and the issues involved. The Commission finds that it should not implement class action suits in reparations at this time because its resources would be used more effectively elsewhere and because the Commission cannot offer a useful alternative to the federal courts. Further, this result is consistent with the NPR because it appears that class actions would not improve service to futures customers and would result in unnecessary spending by the Commission and litigants. Accordingly, the Commission has decided not to adopt the proposed rules implementing class action suits against registered persons.

B. The Reparation Rules Proposal

1. Introduction

In light of the passage of the Futures Trading Practices Act of 1992 and its experience with the reparation rules since they were last amended in 1984, the Commission reexamined the

regulations governing reparation proceedings and found a need for certain corrections. Some references are outdated and need to be deleted or updated. Commission practice has disclosed that certain time limits can be compressed and procedures streamlined. Additionally, the Commission considered raising jurisdictional and fee levels and whether the voluntary decisional procedure should be retained. The Commission's notice of proposed rulemaking set forth the needed corrections and revisions and requested public comment.

2. Comments Received

The Commission received 14 written comments in response to the Reparation Rules Proposal. Commenters included futures industry associations, an investor protection organization, two Commission Administrative Law Judges, a Commission Judgment Officer, a professor of law, attorneys representing both claimants and registrants in reparation cases, and registrants which have participated in reparation actions as respondents. The Commission has reviewed each of these comments and, based upon that review, is adopting the rules as proposed with certain modifications.

The Commission is also modifying its rules to clarify any questions arising from implementation of section 222 of the Futures Trading Practices Act of 1992. That section amended Section 14 of the Commodity Exchange Act to provide for punitive damages in a limited class of reparation cases.

II. Reparation Rules

A. Corrections to Regulations

The current regulations became applicable to matters filed on or after April 23, 1984. Since there are no matters pending before the Commission which date back to April 23, 1984, the date reference is unnecessary and is being deleted.

The definitional section was not in alphabetical order. The Commission believes that re-ordering the definitions alphabetically will make it easier for the user and facilitate adding or deleting definitions in the future. Consequently, the definitional section is re-ordered alphabetically.

The Office of Government Ethics established uniform standards of ethical conduct for officers and employees of the Federal Government (57 FR 35006, Aug. 7, 1992). These were published as new government-wide regulations superseding certain individual agency regulations. Consequently, the reference in § 12.7 to 17 CFR 140.735–3(b)(3) is updated to 5 CFR 2635.101(b).

Additionally, the current regulations refer to the "Chief of the Opinions Section." There is no longer an "Opinions Section." Consequently, references to the "Chief of the Opinions Section" are changed to the "Deputy General Counsel for Opinions" and references to "Opinions Section" have been changed to "Office of the General Counsel."

There were no comments regarding the proposed corrections. Accordingly, the Commission is making the corrections as indicated in its prior notice. Typographical errors also have been corrected.

B. Revision of Rules

1. Response to Complaint

Rule 12.16 affords a respondent 45 days to respond to a reparation complaint and permits the Director of the Office of Proceedings to extend the filing deadline for an additional 15 days. In providing such a lengthy period, the Commission had expected parties to pursue early settlement discussions. Unfortunately, this has not been the case.[3]

In contrast to the 45 day period in the Commission rule, Rule 12(a) of the Federal Rules of Civil Procedure requires that an answer to a complaint be filed within 20 days after service of the summons and complaint. The Commission reviewed the relative generosity of the length of time for filing a response in its rules, and found that adjudicating reparation claims could be expedited. Thus, to further the express purpose of the reparation procedures "to provide a just, speedy and inexpensive determination of the issues" (§ 12.1(a)), the Commission proposed to reduce the time for filing the response to the complaint set forth in § 12.16 to 25 days, and the additional time that the Director of the Office of Proceedings could extend that deadline to ten days. The Commission believed that this would reduce the amount of total time in which to file a response from a maximum of 60 days to about half that time without infringing on the ability of the parties to present their cases. Moreover, this reduction also would shorten the total time for adjudicating claims. The Commission proposed to revise § 12.16 to compress the filing deadlines accordingly.

a. *Comments received.* Only two parties commented on this issue. They disagree as to whether reducing the time for response to a complaint afforded by Rule 12.16 would infringe upon a respondent's ability to defend an action.

b. *Disposition.* The Commission has considered the comments and has determined that since defendants in federal court are required to respond in 20 days, affording respondents in reparations 25 days to respond is not onerous, especially since an extension of ten days is available. Consequently, for the reasons set forth in the Reparation Rules Proposal, and because it should improve service by compressing overall time for adjudicating complaints, the Commission has decided to adopt the time frame proposed.

2. Discovery

Section 12.30(d) provides that all discovery notices and requests be served within 40 days after the Proceedings Clerk notifies the parties of the commencement of a proceeding. Because the Commission believes that the disposition of proceedings can be expedited by compressing the discovery period, it proposed to amend § 12.30(d) to reduce the time for serving discovery notices and requests to 20 days after notification by the Proceedings Clerk of the commencement of a proceeding.

a. *Comments received.* Only three persons expressed an opinion. One contends that the present rules do not cause significant delays and another points out that extra time is needed when respondents and their attorneys reside in different states and rely on the postal system. The parties point out that defendants, who do not know beforehand that a complaint will be filed, will be disadvantaged if there is too little time to prepare discovery requests. The third commenter argues that the reduction in time is too drastic and would invite an increase in motions for extensions of time and untimely discovery requests. It suggests reducing the time for serving discovery notices and requests to 30 days.

b. *Disposition.* The Commission has reconsidered its proposal to reduce the time for serving discovery requests from 40 days to 20 days after notification by the Proceedings Clerk of the commencement of a proceeding and has decided to amend Rule 12.30(d) to reduce that period to 30 days. The Commission believes that this compromise responds to the needs of the public as expressed in the comments and will reduce the total time to adjudicate a significant number of cases without inviting an increase in the number of motions for extensions of time.

[3] See 41 FR 3994, 3995 (January 27, 1976).

3. The Voluntary Decisional Procedure

At the time it was instituted, the voluntary procedure was seen as meeting the desires of customers for an arbitration style forum. In the Reparation Rules Proposal, the Commission discussed the voluntary procedure at length. It pointed out the advantages of the voluntary procedure and compared it to the arbitration programs of NFA, the exchanges, and other private forums. At the same time, the Commission questioned the continuing need for the voluntary procedure and sought public comment as to its usefulness.

The public was encouraged to focus attention on the general nature of the reparation program as one of the significant antifraud tools and customer protections created by Congress in the Commodity Exchange Act. The Commission also invited comment on whether the elimination of voluntary proceedings as an option in reparations would shift cases away from the public record to private decisionmakers, and if so, what the impact would be on the benefits and costs of these proceedings.

a. *Comments received.* Virtually all of the parties addressed this issue: about half favor retention of the voluntary procedure and half are opposed. Several of the parties who favor elimination of the voluntary procedure also question the continuing need for the entire reparations program.

Those who favor retention of the program are primarily those who use it. A respondent with experience in several voluntary proceedings asserts that proceedings before Judgment Officers compare favorably to private arbitrations. The parties who favor retention of the program contend that the voluntary procedure is vital to preserving the confidence of small investors who harbor doubts about the fairness of industry-sponsored arbitration. Others note that reparation proceedings in general as well as voluntary proceedings are an effective tool for monitoring registrants' behavior and keeping complaints about the industry in the public eye.

Several parties contend that industry sponsored arbitration is fair and at least as efficient as the voluntary procedure. These parties assert that the Commission resources invested in the voluntary procedure could be put to better use without harming customers. They point to statistics which, they argue, show that complainants have as good a chance, if not better, of prevailing before industry arbitration as before the Commission. These parties also suggest that the Commission evaluate the continuing need for the entire reparations program in light of the alternative fora available to customers.

b. *Disposition.* The Commission reviewed all the comments carefully and has decided to retain the voluntary procedure. In the Commission's view retention of the program is consistent with the goals of NPR. Members of the public who use the voluntary procedure appear pleased with it and are not in favor of being forced to rely on the private sector for redress of their complaints. Thus, the goal of customer satisfaction would be furthered by retention of the voluntary procedure.

In addition, the Commission's Mission Statement includes oversight of the commodity futures industry and protection of the public and the markets from price manipulation and fraud. The reparation program and the voluntary procedure specifically address fraud committed upon futures customers. Consequently, retention of the program is important to carry out this mandate. Moreover, industry proceedings are confidential whereas complaints brought before the Commission and its decisions are on the public record. Accordingly, the Commission is able to influence industry behavior and thereby further its mandate to oversee the industry. For all of these reasons, the Commission has determined to retain the voluntary procedure.

4. Filing Fees

Filing fees of $25 for the voluntary decisional procedure, $100 for the summary decisional procedure, and $200 for the formal decisional procedure were set in 1984 (49 FR 6602, February 22, 1984). In the Reparation Rules Proposal, the Commission proposed raising the filing fees for the voluntary decisional procedure to $50, for the summary decisional procedure to $125, and to $250 for the formal decisional procedure and to amend § 12.25 accordingly. Additionally, the Commission proposed to amend § 12.106 to authorize Judgment Officers to assess the cost of the filing fee as part of the damage award in voluntary proceedings.

a. *Comments received.* Only a few parties addressed this proposal. These parties contend that the fees should be raised even higher in order to discourage frivolous claims. One party urges the Commission to adopt fees more commensurate with the cost of administering the reparation program.

b. *Disposition.* The purpose of the reparation program is to provide a service to commodity futures customers and, at the same time, to exercise oversight of the industry. Thus, it is in the Commission's interest to assess fees which reimburse costs to some extent. However, the Commission recognizes that if fees are too high they may discourage customers from seeking redress with the Commission, thereby impeding its important oversight mission. The Commission believes that the proposed fee structure will address its twin goals of service and oversight. Accordingly, the Commission is adopting the fees as proposed.

5. Summary Decisional Procedure

The summary decisional procedure was created by the Commission based upon the belief that parties with smaller claims should be entitled to a less expensive, more expeditious procedure which offers a greater likelihood of an early damage award and recovery. The Reparation Rules Proposal sets forth a brief history of the ceiling for damage claims eligible for summary proceedings. In short, the ceiling was originally $2,500, was raised to $5,000, and is now $10,000.

Upon examination of the workload of the Office of Proceedings, the Commission proposed raising the ceiling from $10,000 to $30,000 in order to increase the efficiency of that office. In its notice, the Commission stated: "Allowing Judgment Officers to hear a greater number of cases will free the Administrative Law Judges to concentrate on enforcement proceedings and cases in which the damages claimed are greater than $30,000. Should the Judgment Officers become overburdened, ALJ's can be assigned cases below $30,000." 58 FR 44623, 44625.

Cases under the summary decisional procedure are usually decided based upon the written submissions of the parties. The current rules allow a Judgment Officer to order a hearing only upon motion of a party. The Commission proposed modifying the rules to authorize Judgment Officers to order oral hearings on their own motion. Hearings are conducted by telephone unless the parties agree to a hearing in Washington, DC.

Currently, the rules require that the parties be given 60 days notice prior to a hearing. The proposed rules require that the Judgment Officers schedule the hearing with consideration for the convenience of the parties and allow for 15 days notice for telephonic hearings and 30 days notice for in-person hearings. The proposed rules also make it clear that failure to appear at telephonic and in-person hearings or to provide correct telephone numbers is

subject to sanctions, including possible default or dismissal.

a. *Comments received.* Only the proposal to raise the ceiling from $10,000 to $30,000 inspired comments. Both Administrative Law Judges object. One party even suggests lowering the ceiling to $2,500.

Some parties express the opinion that raising the ceiling will have a significant detrimental impact on the ability of a respondent to adequately defend an action. They argue that parties to a proceeding are entitled to the greatest procedural protection which includes an in-person hearing.

On the other hand, one commenter contends that it is unlikely that there will be any significant negative impact on affected claimants and respondents because the continued availability of an oral hearing will safeguard against any infringement on a fair fact-finding process.

b. *Disposition.* Since there were no objections to the proposal to improve telephonic hearings under the summary decisional procedure by authorizing Judgment Officers to order a telephonic hearing on their own motion, compressing the notice period, and providing for sanctions, these modifications are adopted as proposed. As explained in the Reparation Rules Proposal, the modifications will give the Judgment Officers needed flexibility and accelerate the disposition of proceedings. Because the new rules provide for telephonic hearings upon the initiation of the Judgment Officer, the Commission believes that summary proceedings will provide due process more efficiently than in the past. The Commission anticipates some cost savings from this. Further, telephonic hearings save money for the litigants since no one has to travel to the hearing site. Thus, consistent with NPR, the Judgment Officers are given enhanced powers, customers are better served, and efficiency is promoted.

The parties which oppose raising the ceiling do not address the matter directly. Rather, they generally call into question the adequacy of the procedural protections available in a summary decisional proceeding. The Commission determined that telephonic hearings are consistent with the requirements of fundamental fairness when it instituted this procedure in 1984. See 49 FR 6602, 6614 (February 22, 1984). As the Commission explained in adopting this regulation (*id.*):

> * * * The Commission is confident that a Judgment Officer will be able to assess the demeanor of witnesses from listening to their voices. Because the Judgment Officer can be expected to hold doubts about the credibility of any telephone witness whose testimony does not sound genuine, because he has the authority to conduct his own examination of such witnesses to confirm or dispel those doubts, and because telephone assertions can be measured against the documentary evidence of record, the Commission does not believe that the potential for the coaching of witnesses will have any effect on the Judgment Officer's ability to discern the truth.

The Commission recognizes that fundamental fairness requires a process that safeguards the reliability of the fact-finding process. Telephonic hearings include representation by counsel and cross-examination. Frequently the presiding officers clarify the factual record through their examination of witnesses. The Commission's experience has shown that telephonic hearings provide for fair and reliable fact-finding and an adequate and appropriate basis for a credibility determination. *Compare, Sterling* v. *District of Columbia Department of Social Services*, 513 A. 2d 253, 255 (D.C. 1986) ("[W]e believe that telephone hearings are a reasonable means of conserving fiscal and administrative resources."). See also, *Casey* v. *O'Bannon*, 536 F. Supp. 350, 353 (E.D. Pa. 1982) (refusing to enjoin a telephonic hearing program on due process grounds and holding that "hearing officers can effectively judge credibility over the phone by noting voice responses, pauses, levels of irritation and other factors").

As the Commission said in 1984 (49 FR 6602, 6614 *supra*):

> * * * [T]he Commission believes that its Judgment Officers will possess the ability to comprehend the often complex factual contexts of commodity-related disputes, to recognize critical issues of fact and law in the proceeding, to evaluate oral testimony and to conduct oral examination, and to render a well-considered initial decision in the proceeding. Accordingly, the Commission believes that there is no basis for precluding Judgment Officers from exercising any functions performed by Administrative Law Judges.

Since the Judgment Officers have demonstrated their competence to decide cases from the time the summary procedure was instituted, neither the Commission nor the parties should be deprived of the savings in both cost and time which will inure to their benefit by raising the ceiling from $10,000 to $30,000.

Accordingly, in order to increase the efficiency of the Office of Proceedings, the Commission is raising the ceiling from $10,000 to $30,000.

C. Clarification

Section 222 of the Futures Trading Practices Act of 1992 amended Section 14 of the Commodity Exchange Act to provide for punitive damages in reparation cases. Section 14 of the Commodity Exchange Act, as amended, provides that any person complaining of any violation of any provision of this Act or any rule, regulation, or order issued pursuant to this Act by any person who is registered under this Act may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—(A) actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and (B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a contract market, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

On its face, this statutory provision appears to be self-executing. However, some questions have arisen regarding its implementation. Consequently, the Commission has determined that it should clarify its regulations in order to notify the public as to how it intends to administer this provision.[4]

The first question is whether punitive damages will affect the type of proceeding accorded under the regulations. For example, in a case with claimed actual damages of $20,000 and claimed punitive damages of $40,000,

[4] In this connection, the Commission wishes to make clear that it does not view this provision as requiring actual execution of an order before punitive damages may be awarded.

which level of proceeding would be instituted? The Commission has determined that the governing factor in all cases should be total damages claimed; therefore, in the example above, the case would be assigned to the formal decisional procedure. Sections 12.2, 12.13, 12.18, 12.25, 12.204, 12.210, and 12.314 have been revised accordingly.

Second, in order to put a claimant on notice as to the prerequisites for such an award, and assure that respondents have requisite notice to defend claims for punitive damages, the Commission has revised sections 12.2 and 12.13. As a prerequisite to an award of punitive damages, a complainant must claim actual and punitive damages, prove actual damages, and demonstrate that punitive damages are appropriate. Claimants will thus be on notice as to the requirements; respondents will have requisite notice to defend claims for punitive damages.

The Administrative Procedure Act, 5 U.S.C. 553(b) requires in most instances that a notice of proposed rulemaking be published in the **Federal Register** and that opportunity for comment be provided when an agency promulgates new regulations or changes to existing regulations. Section 553(b) sets forth an exception, however, for rules of agency organization, procedure, or practice. The Commission has determined that these revisions to its reparation rules to clarify its interpretation of the punitive damage provision of the Act constitute rules of agency practice or procedure and, accordingly, that notice and comment procedures are not required.

III. Related Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1988), requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The Commission has previously determined that part 12 reparation rules are not subject to the provisions of RFA because they relate solely to agency organization, procedure, and practice.[5] Nevertheless, because they do not impose regulatory obligations on commodity professionals and small commodity firms, and because the corrections and amendments will expedite and improve the reparation procedures, the Commission does not expect the rule to have a significant economic impact on a substantial number of small business entities.

[5] 49 FR 6602, 6621 (February 22, 1984).

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Acting Chairman, on behalf of the Commission, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Commission received no comments concerning its determination in this regard.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchanges, Commodity futures, Reparations

PART 12—RULES RELATING TO REPARATIONS

Part 12 of chapter I of title 17 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 12 is revised to read as follows:

Authority: 7 U.S.C. 4a(j), 12(a)(5), and 18.

§ 12.1 [Corrected]

2. In the first sentence of § 12.1(c) the comma after "complaints" is removed; the comma after "thereto" is removed and a period is added in its place. The rest of the paragraph is removed.

3. Section 12.2 is revised to read as follows:

§ 12.2 Definitions.

For purposes of this part:

Act means the Commodity Exchange Act, as amended, 7 U.S.C. 1, *et seq.*;

Administrative Law Judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

Commission means the Commodity Futures Trading Commission;

Commission decisional employee means an employee or employees of the Commission who are or may reasonably be expected to be involved in the decisionmaking process in any proceeding, including, but not limited to: A Judgment Officer; members of the personal staffs of the Commissioners, but not the Commissioners themselves; members of the staffs of the Administrative Law Judges, but not an Administrative Law Judge; members of the staffs of the Judgment Officers; members of the Office of the General Counsel; members of the staff of the Office of Proceedings; and other Commission employees who may be assigned to hear or to participate in the decision of a particular matter.

Complainant means a person who, individually or jointly with others, has applied to the Commission for a reparation award pursuant to section 14(a) of the Act, but shall not include a cross claimant or any other type of third party claimant. The term "complainant" under these rules applies equally to two or more persons who have applied jointly for a reparation award;

Complaint means any document which constitutes an application for a reparation award pursuant to section 14(a) of the Act, regardless of whether it is denominated as such;

Counterclaim means an application for a reparation award by a respondent against a complainant which satisfies the requirements of § 12.19. A counterclaim does not mean a cross claim or other type of third party claim;

Director of the Office of Proceedings means an employee of the Commission who serves as the administrative head of that Office, with responsibility and authority to assure that these part 12 Reparation Rules are administered in a manner which will effectuate the purposes of section 14(b) of the Act. The Director is authorized to convene meetings of all personnel in the Office of Proceedings, including Administrative Law Judges and their personally assigned law clerks. The Director shall have the authority to delegate his duties to administer §§ 12.15, 12.24, 12.26 and 12.27, and, shall have the authority to assign and, if necessary, reassign the duties of, and set reasonable standards for performance for, all personnel in the Office, including the Judgment Officers, but not including Administrative Law Judges and their personally assigned law clerks;

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include:

(1) A discussion, after consent has been obtained from all of the named parties, between a party and a Judgment Officer or Administrative Law Judge, or the staffs of the foregoing, pertaining solely to the possibility of settling the case without the need for a decision;

(2) Requests for status reports, including questions relating to service of the complaint, and the registration status of any persons, on any matter or proceeding covered by these rules; or

(3) Requests made to the Office of Proceedings or the Office of the General Counsel for interpretation of these rules.

Formal decisional procedure means, where the amount of total damages claimed exceeds $30,000, exclusive of interest and costs, a procedure elected by the complainant or a respondent where the parties may be granted an oral hearing. A formal decisional proceeding is governed by subpart E;

Hearing means that part of a proceeding which involves the submission of proof, either by oral presentation or written submission;

Interested person means any party, and includes any person or agency permitted limited participation or to state views in a reparation proceeding, or other person who might be adversely affected or aggrieved by the outcome of a proceeding (including the officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives of such persons), and any other person having a direct or indirect pecuniary or other interest in the outcome of a proceeding;

Judgment Officer means an employee of the Commission who is authorized to conduct the proceeding and render a decision in a summary decisional proceeding or a voluntary decisional proceeding. In appropriate circumstances, the functions of a Judgment Officer may be performed by an Administrative Law Judge;

Office of the General Counsel refers to the members of the Commission's staff who provide assistance to the Commission in its direct review of any proceeding conducted pursuant to these rules;

Office of Proceedings means that Office within the Commission comprised of the Administrative Law Judges, Judgment Officers, the Director of that Office, the Proceedings Clerk, and members of the staffs of the foregoing, which administers these part 12 Reparation Rules, other than the rules authorizing direct review by the Commission;

Order means the whole or any part of a final procedural or substantive disposition of a reparation proceeding by the Commission, an Administrative Law Judge, a Judgment Officer, or the Proceedings Clerk;

Party means a complainant, respondent or any other person or agency named or admitted as a party in a reparation matter;

Person means any individual, association, partnership, corporation or trust;

Pleading means the complaint, the answer to the complaint, any supplement or amendment thereto, and any reply to the foregoing;

Proceeding means a case in which the pleadings have been forwarded and in which a procedure has been commenced pursuant to § 12.26;

Proceedings Clerk means that member of the Commission's staff in the Office of Proceedings who shall maintain the Commission's reparation docket, assign reparation cases to an appropriate decisionmaking official, and act as custodian of the records of proceedings;

Punitive damages means damages awarded (no more than two times the amount of actual damages) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a contract market. An order does not have to be actually executed to render a violation subject to punitive damages. As a prerequisite to an award of punitive damages, a complainant must claim actual and punitive damages, prove actual damages, and demonstrate that punitive damages are appropriate;

Registrant means any person who—

(1) Was registered under the Act at the time of the alleged violation;

(2) Is subject to reparation proceedings by virtue of section 4m of the Commodity Exchange Act, regardless of whether such person was ever registered under the Act; or

(3) Is otherwise subject to reparation proceedings under the Act;

Reparation award means the amount of monetary damages a party may be ordered to pay;

Respondent means any person or persons against whom a complainant seeks a reparation award pursuant to section 14(a) of the Act;

Summary decisional procedure means, where the amount of total damages claimed does not exceed $30,000, exclusive of interest and costs, a procedure elected by the complainant or the respondent wherein an oral hearing need not be held and proof in support of each party's case may be supplied in the form and manner prescribed by § 12.208. A summary decisional proceeding is governed by subpart D;

Voluntary decisional procedure means, regardless of the amount of damages claimed, a procedure which the complainant and the respondent have chosen voluntarily to submit their claims and counterclaims, allowable under these rules, for an expeditious resolution by a Judgment Officer. By electing the voluntary decisional procedure, parties agree that a decision issued by a Judgment Officer shall be without accompanying findings of fact and shall be final without right of Commission review or judicial review. A voluntary decisional proceeding is governed by subpart C of these rules.

§ 12.6 [Corrected]

4. In § 12.6(b) the word "the" is added between "expiration of" and "time".

§ 12.7 [Corrected]

5. In § 12.7(b) introductory text, the phrase "communication prohibited by paragraph (b)" is revised to read "communication prohibited by paragraph (a)".

6. In § 12.7(c)(3) the reference to "17 CFR 140.735–3(b)(3)." is revised to read "5 CFR 2635.101(b).".

§ 12.10 [Corrected]

7. In § 12.10(a)(1) add "a" between "course of" and "proceeding".

8. In § 12.10(a)(3) the phrase "Chief of the Opinions Section" is revised to read "Deputy General Counsel for Opinions".

§ 12.13 [Corrected and Amended]

9. In § 12.13(a) the phrase "(as defined in § 12.2(y))" is revised to read "(as defined in § 12.2)".

10. § 12.13(b)(1)(v) and (viii) are revised to read as follows:

§ 12.13 Complaint; election of procedure.

* * * * *

(b) * * *

(1) * * *

(v) The amount of damages the complainant claims to have suffered and the method by which those damages have been computed, the amount of punitive damages (no more than two times the amount of such actual damages) the complainant claims, if any, and how complainant plans to demonstrate that punitive damages are appropriate;

* * * * *

(viii) An election of a decisional procedure pursuant to subpart C, D, or E. (A procedure pursuant to subpart D may be elected only if the total amount of damages claimed, exclusive of interest and costs, does not exceed $30,000. A procedure pursuant to subpart E may be elected only if the total amount claimed as damages, exclusive of interest and costs, exceeds $30,000); and

* * * * *

11. In § 12.13(b)(2) the phrase "believes that" is revised to read "believes the".

12. § 12.16 is revised to read as follows:

§ 12.16 Response to complaint.

Within 25 days after the complaint has been served by the Office of Proceedings on the registrant, or within such additional time (not to exceed 10 days absent extraordinary circumstances) as the Director of the Office of Proceedings, or his/her delegee may grant, for good cause shown, each registrant shall either—

(a) Satisfy the complaint in accordance with § 12.17 of these rules; or

(b) Answer the complaint in the manner prescribed by § 12.18 of these rules.

13. § 12.18(a)(7) is revised to read as follows:

§ 12.18 Answer; election of procedure.

* * * * *

(a) * * *

(7) An election of an alternative decisional procedure pursuant to subparts C, D, or E of these rules. (A proceeding pursuant to subpart D may be elected only if the amount of actual damages claimed in the complaint or as counterclaims, exclusive of interest, costs, and punitive damages, does not exceed $30,000. A procedure pursuant to subpart E may be elected only if the amount of actual damages claimed in the complaint or as counterclaims, exclusive of interest, costs, and punitive damages exceeds $30,000;

* * * * *

§ 12.25 [Amended]

14. In § 12.25(a)(1) "$25.00;" is revised to read "$50.00;".

15. In § 12.25(a)(2) "$10,000," is revised to read "$30,000," and "$100.00." is revised to read "$125.00.".

16. In § 12.25(a)(3) "$10,000," is revised to read "$30,000," and "$200.00." is revised to read "$250.00."

17. In § 12.25(b)(1) "$10,000" is revised to read "$30,000".

18. In § 12.25(b)(2) "$10,000" is revised to read "$30,000", and "$175.00." is revised to read "$200.00.".

19. In § 12.25(c) "$175.00" is revised to read "$200.00".

§ 12.26 [Amended]

20. In § 12.26(a) "within 60 days thereafter." is revised to read "within 50 days thereafter.".

21. In § 12.26(b) "$10,000," is revised to read "$30,000,", and "within 60 days thereafter." is revised to read "within 50 days thereafter.".

22. In § 12.26(c) "$10,000," is revised to read "$30,000", "within 60 days thereafter." is revised to read "within 50 days thereafter.", and the words "forward the pleadings and materials of record to a Proceedings Officer for discovery purposes, and" are removed.

§ 12.30 [Amended]

23. In § 12.30(d) the phrase "within forty (40) days (and all discovery shall be completed within sixty (60) days" is revised to read "within 30 days (and all discovery shall be completed within 50 days)" and the last sentence is removed.

§ 12.106 [Amended]

24. In § 12.106(c) the phrase "(other than costs assessed as a sanction for abuse of discovery)" is revised to read "(other than the filing fee and costs assessed as a sanction for abuse of discovery)".

25. Section 12.201(g) is revised to read as follows:

§ 12.201 Functions and responsibilities of the Judgment Officer.

* * * * *

(g) If an oral hearing is ordered, to preside at the hearing, which shall include the authority to receive relevant evidence, to administer oaths and affirmations, to examine witnesses, and to rule on offers of proof;

* * * * *

§ 12.204 [Amended]

26. In § 12.204(a) "$10,000" is revised to read "$30,000".

27. In § 12.204(b) "$10,000" is revised to read "$30,000".

28. Section 12.208(b) is revised to read as follows:

§ 12.208 Submissions of proof.

* * * * *

(b) *Oral testimony and examination.* The Judgment Officer may order an oral hearing for the presentation of testimony and examination of the parties and their witnesses when appropriate and necessary for the resolution of factual issues, upon motion by either a party or the Judgment Officer. An oral hearing held under this section will be convened by conference telephone call as provided in § 12.209(b), except that an in-person hearing may be held in Washington, D.C., under the circumstances set forth in § 12.209(c).

29. § 12.209 is revised to read as follows:

§ 12.209 Oral testimony.

(a) *Generally.* When the Judgment Officer determines that an oral hearing is necessary and appropriate, such oral hearing will be held either by telephone or in person in Washington, D.C., as set forth below. The Judgment Officer, in his or her discretion with consideration for the convenience of the parties and their witnesses, will determine the time and date of such hearing. During an oral hearing, in his or her discretion, the Judgment Officer may regulate appropriately the course and sequence of testimony and examination of the parties and their witnesses and limit the issues.

(b) *Telephonic hearings.* When a Judgment Officer has determined to hold an oral hearing by telephone, an order to that effect will be issued at least 15 days prior to the hearing notifying the parties of the date and time of the hearing. The order will direct the parties to confirm, at least 48 hours in advance of the hearing, that the correct telephone numbers for the parties and their witnesses are on file with the Office of Proceedings, and warn that failure to provide correct telephone numbers may be deemed waiver of that party's right to participate in the hearing, to present evidence, or to cross-examine other witnesses. If a party is unavailable by telephone at the appointed time, any other party in attendance may present testimony, and the Judgment Officer also may impose any appropriate sanction listed in § 12.35. All telephonic hearings will be recorded electronically but will be transcribed only upon direction of the Judgment Officer (if necessary) or in the event of Commission review. The parties may secure a copy of the recording of the hearing from the Proceedings Clerk upon written request and payment of the cost of the recording.

(c) *Washington, D.C. hearings.* In exceptional circumstances and when an in-person hearing is determined to be necessary in resolving the issues, the Judgment Officer may order an in-person hearing in Washington, D.C. upon written request by a party and the agreement of at least one opposing party. The Judgment Officer will issue notice of the time, date, and location of an in-person hearing to the parties at least 30 days in advance of the hearing. Except as otherwise provided herein, an in-person hearing will be held and recorded in the manner prescribed in § 12.312(c) through (f) of these rules. A party not agreeing to appear at the hearing in Washington, D.C., may be ordered to participate by telephone. Any party not appearing in person or by telephone will be deemed to have waived the right to participate in the hearing, to present evidence, or to cross-examine other witnesses; further, that party may be subject to such action under § 12.35 as the Judgment Officer may find appropriate. The Judgment Officer may order any party who requests or agrees to appear at a hearing in Washington, D.C. and fails to appear without good cause, to pay any reasonable costs unnecessarily incurred by parties appearing at such a hearing.

(d) *Compulsory process.* An application for a subpoena requiring a non-party to participate in a telephonic hearing or to appear at an in-person hearing in Washington, D.C., may be made in writing to the Judgment Officer without notice to the other parties. The standards for issuance or denial of an application for a subpoena, the service and travel fee requirements, and the method for enforcing such subpoenas are set forth at § 12.313 of these rules.

§ 12.210 [Corrected and Amended]

30. In § 12.210(a) the phrase "pay reparation award" is revised to read "pay a reparation award".

31. In § 12.210(b)(4) "respondent's violations, which" is revised to read "respondent's violations, the amount of punitive damages, if any, for which respondent is liable to complainant, which" and "$10,000," is revised to read "$30,000," both times that it appears.

§ 12.314 [Amended]

32. In § 12.314(b)(4) "violations, and the amount," is revised to read "violations, the amount of punitive damages if warranted, and the amount,"

§ 12.315 [Amended]

33. In the heading of § 12.315 "$10,000." is revised to read "$30.000.".

34. In § 12.315 "$10,000," is revised to read "$30,000," both times that it appears.

§ 12.404 [Corrected]

35. In § 12.404 the phrase "of proceeding on appeal of review before" is revised to read "of proceedings on appeal before".

§ 12.408 [Corrected]

36. The heading of § 12.408 is revised to read "Delegation of authority to the Deputy General Counsel for Opinions."

37. In the first sentence of § 12.408 revise the phrase "Chief of the Opinions Section" to read "Deputy General Counsel for Opinions".

38. In § 12.408(b) revise the phrase "Chief of the Opinions Section" to read "Deputy General Counsel for Opinions".

Issued by Order of the Commission.

Dated: February 23, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4574 Filed 2–28–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 450

[Docket No. 89N–0440]

Antibiotic Drugs; New Tests and Specifications for Doxorubicin Hydrochloride and its Dosage Forms

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by revising the accepted standards for doxorubicin hydrochloride bulk and its dosage forms to reflect advances in analytic chemistry and improvements in the manufacturing technology of this antibiotic drug. These actions are being taken at the request of a manufacturer and will provide better quality control of this product.

DATES: Effective March 1, 1994; written comments, notice of participation, and request for a hearing by March 31, 1994; data, information, and analyses to justify a hearing by May 2, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0335.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 3, 1990 (55 FR 18617), FDA proposed to amend the antibiotic drug regulations for doxorubicin hydrochloride bulk and its dosage forms to reflect the significant improvement in the extraction and chromatographic separation methods since the original promulgation of regulations for doxorubicin hydrochloride in 1976. This improvement in manufacturing technology and analytical testing methodology has resulted in the production of highly purified drug substances and finished dosage forms.

Specifically, FDA proposed to amend the regulations for doxorubicin hydrochloride bulk to: (1) Revise the doxorubicin hydrochloride content limits from 900 to 1,100 micrograms per milligram (µg/mg) on the anhydrous basis to 970 to 1,020 µg/mg on the anhydrous and solvent-free basis; (2) revise the high-pressure liquid chromatography (HPLC) test currently specified for determining the content of doxorubicin hydrochloride; (3) revise the pH range limits from a range of 3.8 to 6.5 to a range of 4.0 to 5.5; (4) add a total solvent residue test with an upper limit of not more than 2.5 percent; (5) add a chromatographic purity test with a total impurity specification of not more than 3.0 percent; (6) delete the microbiological agar diffusion assay for determining microbiological activity; and (7) revise the solution used for the disposition of waste material from synthetic detergent to dilute sodium hypochlorite.

FDA also proposed to amend the regulations for doxorubicin hydrochloride for injection to: (1) Revise the HPLC test currently specified for determining the content of doxorubicin hydrochloride; (2) revise the pH range limits from a range of 3.8 to 6.5 to a range of 4.5 to 6.5; (3) add a provision to the product description permitting the product to contain methylparaben; (4) replace the pyrogen test with the U.S. Pharmacopeia (U.S.P.) Bacterial Endotoxin Test with an upper limit of not more than 2.2 U.S.P. endotoxin units/mg of doxorubicin hydrochloride; (5) delete the microbiological activity specification for the doxorubicin hydrochloride used in making the product; (6) delete the depressor substances test for the product and add the depressor substances specification for the doxorubicin hydrochloride used in making the product; and (7) revise the solution used for the disposition of waste material from synthetic detergent to dilute sodium hypochlorite.

FDA also proposed to the amend the regulation for doxorubicin hydrochloride injection to: (1) Revise the HPLC test currently specified for determining the content of doxorubicin hydrochloride; (2) replace the pyrogen test with the U.S.P. Bacterial Endotoxin Test with an upper limit of not more than 2.2 U.S.P. endotoxin units/mg of doxorubicin hydrochloride; (3) delete the microbiological activity specification for the doxorubicin hydrochloride used in making the product; and (4) revise the solution used for the disposition of waste material from synthetic detergent to dilute sodium hypochlorite.

Interested persons were given until July 2, 1990, to submit written comments on this proposal and until June 4, 1990, to submit requests for an informal conference. One comment was received from the manufacturer requesting the proposed changes. This comment involved the description of the preparation of the resolution test solution and the system suitability requirements for the new HPLC method. The manufacturer requested that the preparation method in U.S.P. XXII, supp. I, be used and that the system suitability requirements be those in U.S.P. XXII, supp. I.

FDA believes that both the method in the proposal and the U.S.P. method of preparation for the resolution test solution give satisfactory production of doxorubicinone and, therefore, will present both methods in this final rule. FDA believes that the term "asymmetry factor" is the correct one because measurements are being made on both sides of the HPLC peak and not just the

tailing side. This final rule will, therefore, use the term "asymmetry factor" and will not be the same as the U.S.P., which uses the term "tailing factor." To be consistent with the U.S.P., however, this final rule will use limits of not less than 0.7 and not more than 1.2 instead of not less than 0.9 and not more than 1.2 that were proposed. FDA also believes that column efficiency should be stated as absolute column efficiency (h_r) and not as theoretical plates (n), because the number of theoretical plates varies with the length and particle size of the packing in the column. If the column is packed with 10-micrometer (µm) particles and is 25 centimeters (cm) long, then a column efficiency of not greater than 10.0 is equivalent to 2,500 theoretical plates which is close to the 2,250 plates stated in the U.S.P. The efficiency of the column, which will be stated in the final rule as absolute column efficiency (h_r), is satisfactory if it is not greater than 10.0, equivalent to 2,500 theoretical plates for a 25-cm column of 10–µm particles. To be consistent with the U.S.P., the proposed resolution of not less than 8.0 between the peaks of doxorubicin and doxorubicinone has been changed in the final rule to not less than 5.5.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Economic Impact

The agency has considered the economic impact of this final rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the final rule would impose an insubstantial amendment to existing requirements and would refine existing technical provisions without imposing more stringent requirements. Accordingly, the agency certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

IV. Submitting Comments and Filing Objections

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before March 31, 1994, a written notice of participation and request for a hearing, and (2) on or before May 2, 1994, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch (address above).

The procedures and requirements governing this document, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this document, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 450

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 450 is amended as follows:

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 450 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 450.24 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(v); by adding new paragraph (a)(1)(viii); by revising paragraph (a)(3)(i), the last sentence in the introductory text of paragraph (b), paragraphs (b)(1) and (b)(2); and by adding new paragraph (b)(8) to read as follows:

§ 450.24 Doxorubicin hydrochloride.

(a) * * *

(1) * * *

(i) Its doxorubicin hydrochloride content is not less than 970 micrograms and not more than 1,020 micrograms of doxorubicin hydrochloride per milligram on the anhydrous and solvent free basis.

(ii) Its total solvent residue (as acetone and alcohol) is not more than 2.5 percent.

* * * * *

(v) The pH of an aqueous solution containing 5 milligrams per milliliter is not less than 4.0 and not more than 5.5.

* * * * *

(viii) The total of any impurities detected by high-pressure liquid chromatography assay is not more than 3.0 percent.

* * * * *

(3) * * *

(i) Results of tests and assays on the batch for doxorubicin hydrochloride content, solvent residue, depressor substances, moisture, pH, crystallinity, identity, and total impurities.

* * * * *

(b) * * * Dispose of all waste material by dilution with large volumes of dilute sodium hypochlorite (bleach) solution.

(1) *Doxorubicin hydrochloride content (high-performance liquid chromatography).* Proceed as directed in § 436.216 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 254 nanometers, a 4.6-millimeter X 25-centimeter column packed with microparticulate (5 to 10 micrometers in diameter) packing material, such as trimethylsilane chemically bonded to porous silica, a flow rate of not more than 2.0 milliliters per minute, and a known injection volume of between 10 and 20 microliters. Mobile phase, working standard and sample solutions, resolution test solution, system suitability requirements, and calculations are as follows:

(i) *Mobile phase.* Prepare a suitable mixture of water, acetonitrile, methanol, and phosphoric acid (540:290:170:2). Dissolve 1 gram of sodium lauryl sulfate in 1,000 milliliters of this solution, adjust with 2*N* sodium hydroxide to a pH of 3.6±0.1. Filter through a suitable filter capable of removing particulate matter to 0.5 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(ii) *Preparation of working standard, sample, and resolution test solutions—* (A) *Working standard solution.* Dissolve an accurately weighed quantity of doxorubicin hydrochloride working

standard in mobile phase to obtain a solution having a known concentration of 0.1 milligram of doxorubicin hydrochloride per milliliter.

(B) *Sample solution.* Transfer approximately 20 milligrams of sample, accurately weighed, to a 200-milliliter volumetric flask, add mobile phase to volume, and mix. This yields a solution containing 0.1 milligram of doxorubicin hydrochloride per milliliter (estimated).

(C) *Resolution test solution.* Use either of the following preparation methods:

(*1*) To 2 milliliters of a 1.0 milligram per milliliter solution of doxorubicin hydrochloride, add 20 microliters of 1*N* hydrochloric acid. Hold for 30 minutes at 95 °C in an oil bath.

(*2*) Dissolve about 10 milligrams of doxorubicin hydrochloride in 5 milliliters of water, add 5 milliliters of phosphoric acid, and allow to stand for about 30 minutes. Adjust with 2*N* sodium hydroxide (about 37 milliliters) to a pH of 2.6±0.1, add 15 milliliters of acetonitrile and 10 milliliters of methanol, mix, and filter. (Note: Portions of this solution may be frozen until needed, then thawed and mixed before use.)

(*3*) The procedures in paragraphs (b)(1)(ii)(C)(*1*) and (b)(1)(ii)(C)(*2*) of this section generate doxorubicinone, the aglycone of doxorubicin. Use this solution to determine the resolution requirement for the chromatographic system.

(iii) *System suitability requirements*—(A) *Asymmetry factor.* The asymmetry factor (A_S) for the doxorubicin peak measured at a point 5 percent of the peak height is not less than 0.7 and not more than 1.2.

(B) *Efficiency of the column.* The absolute column efficiency (h_r) is satisfactory if it is not greater than 10.0, equivalent to 2,500 theoretical plates for a 25-centimeter column of 10-micrometer particles.

(C) *Resolution.* The resolution (R) between the peaks of doxorubicin and doxorubicinone (generated in situ) is satisfactory if it is not less than 5.5.

(D) *Capacity factor.* The capacity factor (k) for doxorubicin is satisfactory if it is in the range between 1.0 and 5.0.

(E) *Coefficient of variation.* The coefficient of variation (*relative standard of deviation* in percent) of 5 replicate injections is satisfactory if it is not more than 1.0 percent. If the system suitability parameters have been met, then proceed as described in § 436.216(b) of this chapter.

(iv) *Calculations.* Calculate the micrograms of doxorubicin hydrochloride per milligram of sample as follows:

$$\text{Micrograms of doxorubicin hydrochloride per milligram} = \frac{A_U \times P_S \times 100}{A_S \times C_U \times (100 - m - X)}$$

where:

A_U = Area of the doxorubicin hydrochloride peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_S = Area of the doxorubicin hydrochloride peak in the chromatogram of the doxorubicin hydrochloride working standard;

P_S = Doxorubicin hydrochloride activity in the doxorubicin hydrochloride working standard solution in micrograms per milliliter;

C_U = Milligrams of the sample per milliliter of sample solution;

m = Percent moisture content of the sample; and

X = Percent solvent residue determined as directed in paragraph (b)(2) of this section.

(2) *Residue solvent (as acetone and alcohol)*—(i) *Standard preparation.* Transfer to a 100-milliliter volumetric flask about 200 milligrams of acetone, 300 milligrams of dehydrated alcohol, and 1,000 milligrams of dioxane, each accurately weighed, and mix. Dilute with water to volume, and mix. Transfer 5.0 milliliters of the resulting solution to a 50-milliliter volumetric flask, dilute with water to volume, and mix. This solution contains about 0.2 milligram of acetone, 0.3 milligram of alcohol, and 1 milligram of dioxane per milliliter.

(ii) *Solvent.* Transfer about 100 milligrams of dioxane, accurately weighed to a 100-milliliter volumetric flask, dilute with water to volume, and mix.

(iii) *Test preparation.* Dissolve about 200 milligrams of doxorubicin hydrochloride sample in 3.0 milliliters of solvent.

(iv) *Chromatographic system (see United States Pharmacopeia (U.S.P.) Chromatography (621)).* The gas chromatograph is equipped with a flame-ionization detector and a 4-millimeter X 2-meter column packed with 8-percent liquid phase G16 (see U.S.P. Chromatographic Reagents—Phases) on 100- to 120-mesh support S1AB (potassium hydroxide-washed) (see U.S.P. Chromatographic Reagents—Supports). The column is maintained at about 60 °C, and helium is used as the carrier gas. Adjust the column temperature and carrier gas flow rate so that dioxane elutes in about 6 minutes. Chromatograph the standard preparation, and record the peak responses as directed under procedure; the resolution (R) between adjacent peaks is not less than 2.0; the relative standard deviations of the ratios of the peak responses of the acetone and dioxane peaks and of the alcohol and dioxane peaks for replicate injections is not more than 4.0 percent; and the tailing factor for the alcohol peak is not more than 1.5.

(v) *Procedure.* (Note: Use peak areas where peak responses are indicated.) Separately inject equal volumes (about 1 microliter) of the standard preparation and the test preparation into the chromatograph, record the chromatograms, and measure the responses for the major peaks. The relative retention times are about 0.2 for acetone, 0.5 for alcohol, and 1.0 for dioxane. Calculate the percentage, by weight, of acetone and alcohol, respectively, in the sample as follows:

X = Percent acetone or alcohol = $100(C_A/C_D)(D_U/W_U)(R_U/R_S)$

where:

C_A = Concentration of acetone or alcohol in the standard preparation in milligrams per milliliter;

C_D = Concentration of dioxane in the standard preparation in milligrams per milliliter;

D_U = Total quantity of dioxane in the test preparation, in milligrams;

W_U = Quantity of doxorubicin hydrochloride taken to prepare the test preparation, in milligrams;

R_U = Response ratio of the analyte peak (acetone or alcohol) to the dioxane peak obtained from the test preparation; and

R_S = Response ratio of the analyte peak (acetone or alcohol) to the dioxane peak obtained from the standard preparation.

The total of acetone and alcohol is not greater than 2.5 percent. Use the result obtained to calculate the doxorubicin hydrochloride content of the sample on the solvent-free basis.

* * * * *

(8) *Chromatographic purity.* Proceed as directed in paragraph (b)(1) of this section, except prepare the sample solution by dissolving the sample to be tested in mobile phase to obtain a solution containing approximately 0.5 milligram of doxorubicin hydrochloride per milliliter. Calculate the percentage of impurities as follows:

$$\text{Percent total impurities} = (100\ S)/(S + r)$$

where:
S = The sum of the responses of the minor component peaks; and
r = The response of the major doxorubicin hydrochloride peak.
The total related impurities detected is not more than 2.0 percent.

3. Section 450.224a is amended by revising paragraphs (a)(1), (a)(3)(i)(*a*), (a)(3)(i)(*b*), the last sentence in the introductory text of paragraph (b), paragraphs (b)(1) and (b)(3); and by removing and reserving paragraph (b)(4) to read as follows:

§ 450.224a Doxorubicin hydrochloride for injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Doxorubicin hydrochloride for injection is a freeze-dried powder whose components are doxorubicin hydrochloride and lactose. It may also contain methylparaben. Its doxorubicin hydrochloride content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of doxorubicin hydrochloride that it is represented to contain. It is sterile. It contains not more than 2.2 U.S.P. endotoxin units per milligram of doxorubicin hydrochloride. Its moisture content is not more than 4.0 percent. When reconstituted as directed in the labeling, its pH is not less than 4.5 and not more than 6.5. It passes the identity test. The doxorubicin hydrochloride used conforms to the standards prescribed by § 450.24(a)(1).

* * * * *

(3) * * *

(i) * * *

(*a*) The doxorubicin hydrochloride used in making the batch for doxorubicin hydrochloride content, residue solvents, depressor substances, moisture, pH, crystallinity, identity, and total related impurities.

(*b*) The batch for doxorubicin hydrochloride content, sterility, bacterial endotoxins, moisture, pH, and identity.

* * * * *

(b) * * * Dispose of all waste material by dilution with large volumes of sodium hypochlorite (bleach) solution.

(1) *Doxorubicin hydrochloride content (high-performance liquid chromatography).* Proceed as directed in § 450.24(b)(1), preparing the sample solution and calculating the doxorubicin hydrochloride content as follows:

(i) *Sample solution.* Prepare the sample solution by rinsing the contents of the vial into an appropriate sized volumetric flask with sufficient mobile phase to obtain a concentration of 0.1 milligram of doxorubicin hydrochloride per milliliter (estimated).

(ii) *Calculations.* Calculate the doxorubicin hydrochloride content per vial as follows:

$$\text{Milligrams of doxorubicin hydrochloride per vial} = \frac{A_U \times P_S \times d}{A_S \times 1{,}000}$$

where:
A_U = Area of the doxorubicin hydrochloride peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
A_S = Area of the doxorubicin hydrochloride peak in the chromatogram of the doxorubicin hydrochloride working standard;
P_S = Doxorubicin hydrochloride activity in the doxorubicin hydrochloride working standard solution in micrograms per milliliter; and
d = Dilution factor of the sample.

* * * * *

(3) *Bacterial endotoxins.* Proceed as directed in the United States Pharmacopeia (U.S.P.) Bacterial Endotoxin Test, using a solution of doxorubicin hydrochloride for injection containing 1.1 milligrams of doxorubicin hydrochloride per milliliter. The specimen under test contains not more than 2.2 U.S.P. endotoxin units per milligram of doxorubicin hydrochloride.

(4) [Reserved]

* * * * *

4. Section 450.224b is amended by revising paragraphs (a)(1), (a)(3)(i)(A), (a)(3)(i)(B), the last sentence in the introductory text of paragraph (b), and paragraph (b)(1); by removing and reserving paragraph (b)(2); and by revising paragraph (b)(4) to read as follows:

§ 450.224b Doxorubicin hydrochloride injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Doxorubicin hydrochloride injection is an aqueous solution of doxorubicin hydrochloride in an isosmotic diluent. Each milliliter contains doxorubicin hydrochloride equivalent to 2 milligrams of doxorubicin hydrochloride. Its doxorubicin hydrochloride content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams it is represented to contain. It is sterile. It contains not more than 2.2 U.S.P. endotoxin units per milligram of doxorubicin hydrochloride. Its pH is not less than 2.5 and not more than 3.5. It passes the identity test. The doxorubicin hydrochloride used conforms to the standards prescribed by § 450.24(a)(1).

* * * * *

(3) * * *

(i) * * *

(A) The doxorubicin hydrochloride used in making the batch for doxorubicin hydrochloride content, residue solvents, depressor substances, moisture, pH, crystallinity, identity, and total related impurities.

(B) The batch for doxorubicin hydrochloride content, sterility, bacterial endotoxins, pH, and identity.

* * * * *

(b) * * * Dispose of all waste material by dilution with large volumes of sodium hypochlorite (bleach) solution.

(1) *Doxorubicin hydrochloride content (high-performance liquid chromatography).* Proceed as directed in § 450.24(b)(1), preparing the sample solution and calculating the doxorubicin hydrochloride content as follows:

(i) *Sample solution.* Dilute an accurately measured volume of sample equivalent to not less than 2 milligrams of doxorubicin hydrochloride, quantitatively with mobile phase to obtain a solution containing 0.1 milligram of doxorubicin hydrochloride per milliliter (estimated).

(ii) *Calculations.* Calculate the milligrams of doxorubicin hydrochloride per milliliter of sample as follows:

$$\text{Milligrams of doxorubicin hydrochloride per milliliter} = \frac{A_U \times P_S \times d}{A_S \times 1{,}000}$$

where:
A_U = Area of the doxorubicin hydrochloride peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_S = Area of the doxorubicin hydrochloride peak in the chromatogram of the doxorubicin hydrochloride working standard;

P_S = Doxorubicin hydrochloride activity in the doxorubicin hydrochloride working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) [Reserved]

* * * * *

(4) *Bacterial endotoxins.* Proceed as directed in the United States Pharmacopeia (U.S.P.) Bacterial Endotoxin Test, using a test solution prepared by diluting doxorubicin hydrochloride injection with sterile water for injection to obtain a concentration of 1.1 milligrams of doxorubicin hydrochloride per milliliter. The specimen under test contains not more than 2.2 U.S.P. endotoxin units per milligram of doxorubicin hydrochloride.

* * * * *

Dated: February 18, 1994.

Albert Rothschild,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 94–4518 Filed 2–28–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20, 22, 25, and 602

[TD 8522]

RIN 1545–AC67

Estate and Gift Tax Marital Deduction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the estate tax and gift tax marital deduction. Changes to the applicable tax law were made by the Tax Reform Act of 1976, the Revenue Act of 1978, the Economic Recovery Tax Act of 1981, the Technical Corrections Act of 1982, the Deficit Reduction Act of 1984, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Omnibus Budget Reconciliation Act of 1989, and the Energy Policy Act of 1992. These regulations will provide the public with the guidance needed to comply with those Acts.

EFFECTIVE DATE: March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Hurwitz, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0015. The estimated annual burden per respondent varies from .1 to .5 hours depending on individual circumstances, with an estimated average of .25 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On May 21, 1984, the IRS published in the **Federal Register** proposed amendments to the Estate and Gift Tax Regulations (26 CFR part 20 and part 25) under sections 2044, 2056, 2207A, 2519, 2523, and 6019 of the Internal Revenue Code (Code) (49 FR 21350). Conforming changes were proposed for regulations under other sections of the Code. The amendments implement and provide guidance with respect to sections 2044, 2056, 2207A, 2519, 2523, and 6019 which were added or amended by the Tax Reform Act of 1976, the Revenue Act of 1978, the Economic Recovery Tax Act of 1981, and the Technical Corrections Act of 1982. This project finalizes those amendments. Additionally, revisions have been made in the final regulations to reflect certain statutory changes made since the publication of the proposed regulations by the Deficit Reduction Act of 1984, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Omnibus Budget Reconciliation Act of 1989, and the Energy Policy Act of 1992. Written comments responding to the Notice of Proposed Rulemaking were received. No public hearing was requested and none was held. After consideration of all of the comments regarding the proposed amendments, those amendments are adopted by this Treasury decision with revisions in response to those comments. The significant comments and revisions are described below.

Explanation of Provisions

In response to comments, § 20.2044–1(b), as proposed, has been revised to include a reference to section 6166. Therefore, property included in the surviving spouse's gross estate under section 2044 is treated as passing from such spouse's estate upon such spouse's later death for purposes of determining whether the estate is eligible to pay the estate tax liability in installments under section 6166.

In response to comments, § 20.2044–1(c), as proposed, has been revised to include guidance for taxpayers on the evidence that is required in order to rebut the presumption that property in which the surviving spouse had a qualifying income interest for life was deducted by the first decedent's estate under section 2056(b)(7) or by the donor spouse under section 2523(f) in determining the prior decedent's estate or gift tax liability.

Several changes were made in the final regulations regarding the definition of the term "specific portion" as used in sections 2056(b)(5), 2056(b)(7), 2523(e) and 2523(f). In general, a spousal interest qualifies for the marital deduction under section 2056(b)(5) or section 2523(e) if the spouse receives an income interest with respect to the entire interest in property or a "specific portion" of the entire interest, coupled with a general power of appointment over the entire corpus or a "specific portion" of the entire corpus. Similarly, an interest is eligible for the qualified terminable interest property (QTIP) election under section 2056(b)(7) or section 2523(f) if the spouse receives an income interest in the entire interest or a "specific portion" of the interest. Under §§ 20.2056(b)–5(c) and 25.2523(e)–1(c), in order to constitute a right to income in, or power over, a specific portion of property, the right or power must relate to a fraction or percentage share of the property.

However, in *Northeastern Pennsylvania National Bank and Trust Co. v. United States*, 387 U.S. 213 (1967), the United States Supreme Court held that, for purposes of section 2056(b)(5), a right to receive a specified periodic payment (e.g., $24,000 per year) from a trust also constitutes a right to receive the income from a specific portion of the trust corpus; i.e., the pecuniary amount of corpus that, based on the assumed rate of return used in the regulations, would generate the periodic payment. In reaching this conclusion, the Court invalidated § 20.2056(b)–5(c) to the extent it precluded characterization of a specific

periodic payment as a right to income from a specific portion of trust corpus.

In *Estate of Alexander* v. *Commissioner*, 82 T.C. 34 (1984), *aff'd without opinion* (4th Cir. 1985), the Tax Court held that a power of appointment over a pecuniary amount of trust corpus constituted a power of appointment over a "specific portion" of the trust property thus qualifying the property for the marital deduction under section 2056(b)(5). The Tax Court felt compelled to reach this decision in view of the Supreme Court's decision in *Northeastern Pennsylvania National Bank*, which applied the term in the context of the requisite spousal income interest.

The proposed regulations provided amendments to the definition of the term "specific portion" under §§ 20.2056(b)–5(c) and 25.2523(e)–1 with respect to the requisite spousal income interest that conform to the Court's decision in *Northeastern Pennsylvania National Bank*. In addition, §§ 20.2056(b)–7(c) and 25.2523(f)–1(c), and illustrative examples, adopted the *Northeastern Pennsylvania National Bank* rule with respect to interests within the purview of section 2056(b)(7) or section 2523(f).

However, section 1941 of the Energy Policy Act of 1992, Public Law 102–486, amended section 2056(b) and section 2523 (e) and (f) to limit the term "specific portion" such that it references a portion determined only on a fractional or percentage basis. The amendments are generally effective in the case of estates of decedents dying after October 24, 1992 (the date of enactment) and to gifts made after that date, subject to certain transitional rules. The legislative history underlying the amendments provides that no inference should be drawn from the legislation regarding the law prior to enactment. H.R. Rep. No. 1018, 102nd Cong. 2d Sess. 432 (1992).

The definition in the proposed regulations of "specific portion" as a fractional or percentage interest has been adopted. However, for estates coming within the purview of the transitional rule of Public Law 102–486 the definition of specific portion in the final regulations adopts the proposed amendments to §§ 20.2056(b)–5 and 25.2523(e)–1, which reflect the decision in *Northeastern Pennsylvania National Bank*. The corresponding proposed amendments to §§ 20.2056(b)–7 and 25.2523(f)–1 (and pertinent portions of the proposed amendments to §§ 20.2044–1 and 25.2519–1) have also been retained in the final regulations. In addition, the IRS recognizes that *Estate of Alexander* reflects the law prior to enactment of Public Law 102–486, with respect to interests within the purview of sections 2056(b)(5) and 2523(e) and the final regulations also incorporate this decision, subject to the Public Law 102–486 effective date and transitional rules.

The IRS recognizes that some aspects of the 1992 legislation should be the subject of separate proposed regulations under section 2056(b)(7). For example, the IRS invites comments on the application of the Energy Policy Act of 1992 to the treatment of annuities as described in the last sentence of section 2056(b)(7)(B)(ii). Send comments to: CC:DOM:CORP:T:R, room 5528, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

In response to comments, *Example 4* of § 20.2056(b)–5(c)(5) has been revised to eliminate the reference to the office building in the facts. The example, as revised, focuses on the definition of "specific portion" under section 2056(b)(5) and the amount deductible under the facts presented. A similar revision was made to *Example 4* of § 25.2523(e)–1(c)(5) which contains similar facts.

In response to comments, § 20.2056(b)–7(b)(3), as proposed, has been revised to clarify that an executor who is appointed, qualified and acting within the United States, within the meaning of section 2203, is responsible for making the QTIP election, even with respect to property that is not in the executor's possession, such as an inter vivos trust established by the decedent. If there is no executor appointed, the person in actual or constructive possession of the qualifying income interest property may make the election.

Paragraph (c) of § 20.2056(b)–7, has been added, in response to comments, to provide limited circumstances under which a protective QTIP election is recognized for estate tax purposes. In general, the protective election will be recognized only if, at the time the return is filed, a bona fide issue is presented the resolution of which is uncertain at the time the federal estate tax return is filed, that concerns whether an asset is includible in the decedent's gross estate, or the amount or nature of the property the surviving spouse is entitled to receive. Because of changes made to Schedule M of Form 706, it was deemed unnecessary to provide for a protective election for a trust that fails to meet the requirements of section 2056(b)(5). The availability of a protective gift tax QTIP election was considered but rejected because of the perceived absence of a need for such an election.

Section 20.2056(b)–7(d)(3) retains the position of the proposed regulations that an income interest does not qualify as a qualifying income interest for life if the income interest is contingent on the executor's election of QTIP treatment; for example, if the spouse is entitled to trust income only if the executor makes the QTIP election with respect to the trust. This issue has been the subject of recent litigation. Although the Tax Court has agreed with the position of the proposed regulations, the Eighth Circuit and the Fifth Circuit have reversed the Tax Court on this issue. *Estate of Robertson* v. *Commissioner*, No. 93–2488 (8th Cir. February 4, 1994), *rev'g* 98 T.C. 678 (1992); *Estate of Clayton* v. *Commissioner*, 976 F.2d 1486 (5th Cir. 1992), *rev'g* 97 T.C. 327 (1991). See also, *Estate of Spencer* v. *Commissioner*, T.C. Memo 1992–579, *appeal docketed*, No. 93–1997 (6th Cir. July 26, 1993). In *Estate of Robertson* and *Estate of Clayton*, the appellate courts found that under section 2056(b)(7)(B), qualified terminable interest property is defined *inter alia* as property for which an election is made. Thus, qualification of property as qualified terminable interest property is always contingent on the executor's election. Qualification for the marital deduction is determined as of the time of death. The IRS continues to believe, consistent with the conclusion reached by the Tax Court, that if the substantive rights and interests the spouse receives in trust property are dependent on the executor's post-death exercise of discretionary authority, the rights and interests received by the spouse cannot properly be characterized as qualifying as of the time of death, nor can the rights and interests received by the spouse be characterized as passing from the decedent to the spouse, as required under section 2056(a). The appellate courts take the position that the statutory language supports the allowance of the marital deduction if the receipt of the requisite substantive rights and interests is contingent on making the election. This is inconsistent with the fundamental principle that qualification of an interest in property for the marital deduction is determined as of the date of death. Accordingly, the Service believes that the statute does not authorize a grant of discretion to the executor to create substantive rights in the spouse, and the final regulations reflect this position.

Example (14) of § 20.2056(b)–7(e), as proposed, has not been adopted. This example illustrated that an annuity purchased by an executor pursuant to a directive of the decedent qualifies as

qualified terminable interest property under section 2056(b)(7). The example was in conflict with section 2056(b)(1)(C), which provides that a marital deduction is not allowed with respect to any terminable interest (i.e., any interest that will terminate or fail on the occurrence of a specified event, or due to lapse of time) if the interest is to be acquired by the executor for the surviving spouse pursuant to the directions of the decedent (e.g., a will direction to purchase an annuity for the spouse.) Section 2056(b)(7), which provides an exception allowing a deduction for terminable interests described in section 2056(b)(1)(A), does not provide an exception for interests described in section 2056(b)(1)(C). Section 20.2056(b)–7(c) of the final regulations reflects this fact.

Section 2056(b)(7)(C), added to the Code by the Technical and Miscellaneous Revenue Act of 1988, and amended by the Omnibus Budget Reconciliation Act of 1989, provides for an automatic section 2056(b)(7) election (and deduction) in the case of an annuity includible in the decedent's gross estate under section 2039, where only the surviving spouse has the right to receive payments before the death of the surviving spouse. With respect to the gift tax, the qualification of a spouse's interest in a joint and survivor annuity that is the subject of a gift under section 2511 is now governed by section 2523(f)(6), also added by TAMRA in 1988. This section provides for an automatic election if only the donor and the donor's spouse have a right to receive payments prior to the death of the last spouse to die. Rules governing the application of section 2056(b)(7)(C), as well as section 2523(f)(6), will be prescribed under regulations to be proposed under those sections at a later date.

Example 10 of § 20.2056(b)–7(e), as proposed, considered the treatment of a spousal annuity payable from a decedent's individual retirement account. In response to comments, this example has been retained as an illustration of an interest that qualifies as a qualifying income interest for life under section 2056(b)(7)(B)(ii), without regard to section 2056(b)(7)(C). However, the IRS recognizes that the arrangement described in the example may also qualify, at least in part, for the automatic election and deduction under section 2056(b)(7)(C), and this question will be considered in regulations to be proposed under that section at a later date.

Section 20.2056(b)–7(b), as proposed, provided that a marital trust that qualifies under section 2056(b)(7) may be divided into separate trusts to reflect a partial election with respect to the trust. This provision has been clarified to specify that the severance of the trust must occur no later than the termination of the period of estate administration. Further, the provision has been clarified to indicate that although the severed trusts must be funded based on fair market values on the date of division, the trusts need not be funded with a pro rata portion of each asset. *Example 4* of § 20.2056(b)–7(h) has been added to illustrate this provision.

Section 20.2056(b)–8, as proposed, has been revised to provide that a charitable remainder trust described in section 664 may qualify for a marital deduction under section 2056(b)(7) in situations where the surviving spouse is not the only noncharitable beneficiary of the charitable remainder trust (e.g., where the trust provides for a successive life beneficiary on the spouse's death). However, in view of the enactment of section 1941 of The Energy Policy Act of 1992 (discussed above), this provision is limited in application to those estates not subject to the 1992 amendments to the Code. A similar change (with similar limitations) was made to § 25.2523(g)–1, as proposed, providing that a charitable remainder trust in which the donor's spouse is a noncharitable beneficiary can qualify as qualified terminable interest property under section 2523(f), even if the trust fails to qualify under section 2523(g) (because, for example, the donor and the donor's spouse are not the only noncharitable beneficiaries of the trust.)

The IRS requests comments on whether the unitrust or annuity interest in a charitable remainder trust described in sections 664(d)(1) or (d)(2) qualifies as a qualifying income interest for life in view of the 1992 amendments. See, e.g., the last sentence of section 2056(b)(7)(B)(ii).

Sections 20.2056(b)–9 and 25.2523(h)–1 have been added to reflect the addition of sections 2056(b)(9) and 2523(h) (denial of double deduction) to the Code by the Technical Corrections Act of 1982.

Sections 20.2056(c)–1A and 20.2056(c)–2A, as proposed, have not been adopted by the final regulations. These sections contained comprehensive rules for computing the amount of the allowable estate tax marital deduction in the case of estates of decedents dying in 1977 through 1981. In general, the allowable marital deduction applicable to these estates was limited in amount to the greater of $250,000 or one-half of the adjusted gross estate. The section, as proposed, also contained rules promulgated under the transitional rules accompanying section 2002(d)(1) of the Tax Reform Act of 1976 (which increased the limitation on the allowable marital deduction to the greater of $250,000 or one-half of the adjusted gross estate), and the transitional rule under section 403(e) of the Economic Recovery Tax Act of 1981 (which enacted the unlimited marital deduction).

In general, the comprehensive rules discussing the computation of the amount of the marital deduction under the statutory changes enacted in 1976 will only apply to the estates of decedents who died in 1977 through 1981 and, in some cases, estates of decedents dying after 1981 if the decedent's will was executed prior to 1982. In view of the limited continuing applicability of these rules, they have not been adopted by the final regulations. Similarly, the transitional rules primarily involved estates of decedents dying after 1981 under wills or other testamentary instruments executed prior to 1982. Many of the issues involving the application of these transitional rules have been settled by litigation. See, e.g., *Estate of Niesen* v. *Commissioner*, 865 F.2d 162 (8th Cir. 1988); *Estate of Levitt* v. *Commissioner*, 95 T.C. 289 (1990); *Estate of Christmas* v. *Commissioner*, 91 T.C. 769 (1988). Accordingly, the proposed regulations discussing these rules have also not been adopted. A short reference to these rules has been added to § 20.2056(a)–1 of the regulations.

Section 22.2056–1 is removed, since this temporary regulation (which considered the requirements for a partial QTIP election) has been incorporated into the final regulations contained in this document.

Section 25.2519–1(c), as proposed, discussed the amount of the gift under section 2519 if the surviving spouse transfers all or a part of the spouse's income interest in property subject to a QTIP election under either section 2056(b)(7) or section 2523(f). Under section 2207A(b), the spouse has a right to recover from the persons receiving the transferred property any gift tax imposed on the transfer. Section 25.2519–1(a), as proposed, provided that in determining the amount of the gift under section 2519, the value of the transfer is reduced by the amount of the gift tax reimbursement. That is, the section 2519 gift was proposed to be treated as a "net gift." See, e.g., Rev. Rul. 75–72, 1975–1 C.B. 310. However, the section 2207A(b) reimbursement provision could be viewed as shifting the liability for the gift tax imposed on the transfer to the persons receiving the property. Arguably, payment by those

persons of a gift tax for which they are liable under the statute should not reduce the amount of the transfer for gift tax purposes, or otherwise result in net gift treatment. See, e.g., Rev. Rul. 80–111, 1980–1 C.B. 208. Accordingly, the reference in § 25.2519–1(c), treating the transfer as a net gift, has been deleted. The IRS anticipates that the issue regarding net gift treatment will be the subject of subsequent proposed regulations and specifically requests comments on this issue.

Section 25.2519–1(a) and *Examples 4* and *5* of § 25.2519–1(g) have been revised to reflect the application of section 2702 as added to the Code by the Revenue Reconciliation Act of 1990.

Section 25.2523(f)–1(b)(4), as proposed, discussed the manner and time for making the gift tax qualified terminable interest property election. That section has been revised in the final regulations in order to reflect the changes made to section 2523(f)(4)(A) by the Tax Reform Act of 1986. Under section 2523(f)(4)(A), as amended, the gift tax election is to be made on or before the date prescribed by section 6075(b) for filing a gift tax return (including extensions authorized under section 6075(b)(2), relating to automatic extensions of time for filing a gift tax return where the taxpayer is granted an extension of time to file the income tax return.) The section, as proposed, has also been revised to permit QTIP elections to be made on returns for which extensions have been granted pursuant to section 6081(a) of the Code.

Comments have been received suggesting that an inter vivos transfer in trust where the donor retains an income interest and the spouse receives the right to trust income on the termination of the donor's preceding life income interest should qualify as qualified terminable interest property under section 2523(f). These comments were rejected. In general, the statute requires that the spouse must be entitled to receive the trust income for the spouse's life. An income interest that commences at some time in the future, if the spouse survives until that time, is not payable to the spouse for life as required by the statute. Further, if such an interest were allowed to qualify under section 2523(f), it is problematical whether, in the event the donee spouse predeceased the donor spouse, the IRS could sustain inclusion of the trust corpus in the gross estate of the donee spouse under section 2044 (or sustain treating the assignment of the spouse's interest as a disposition under section 2519), since, as noted above, it is questionable whether such an interest constitutes a qualifying income interest for life. Accordingly, § 25.2523(f)–1(c)(2) has been added to clarify that, in order to constitute a qualifying income interest for life, the spouse must receive the immediate right to receive the income from the property.

Examples 9, 10, and *11* of § 25.2523(f)–1(f) have been added, illustrating the application of section 2523(f)(5) and § 25.2523(f)–1(d). Under these sections, where the donor spouse retains an interest in a trust subject to a section 2523(f) QTIP election (e.g., the trust provides an income interest to the spouse for life, then to the donor for life, with remainder to children), the trust corpus is not subject to inclusion in the donor's gross estate under section 2036 (by virtue of the retained life estate) if the donor predeceases the spouse. Further, any transfer of the retained interest during the donor's lifetime prior to the death of the donee spouse is not subject to gift tax. However, under section 2523(f)(5)(B), this exclusion rule does not apply if, prior to the donor's death (or the transfer of the interest), the property is included in the donee spouse's gross estate under section 2044 or is treated as a gift by the donee spouse under section 2519. The examples clarify, *inter alia*, that if the property is included in the donee spouse's gross estate (or is subject to a gift tax under section 2519), the donee spouse is treated as the transferor of the property for estate and gift tax purposes. Accordingly, on the subsequent death of the donor spouse, the donor is not treated as the transferor of the property in which the donor possesses an income interest. In such circumstances, notwithstanding section 2523(f)(5)(B), the property is not includible in the donor's gross estate under section 2036. However, the property could be subject to inclusion in the donor's gross estate under another applicable section of the Code, the application of which is not dependent on the donor's status as a transferor of the property. For example, if the donee spouse's estate made an election under section 2056(b)(7) with respect to the property, then the property would be includible in the donor spouse's gross estate under section 2044 (a so-called lifetime reverse QTIP trust).

Sections 20.2056(a)–1(a), 20.2056(b)–7(e), 25.2523(a)–(1)(a), 25.2523(a)–1(c) and 25.6019–1, as proposed, have been revised to refer to the changes made by the Technical and Miscellaneous Revenue Act of 1988 and the Omnibus Budget Reconciliation Act of 1989, in regard to the availability of the estate tax marital deduction where the surviving spouse is not a United States citizen and the gift tax marital deduction where the donee spouse is not a United States citizen.

Several minor clarifying amendments have been made to the text and the examples in the proposed regulations to better describe the intent and scope of those provisions.

Effective Dates

Except as specifically provided in §§ 20.2044–2, 20.2056(b)–5(c)(3)(ii) and (iii), 20.2056(b)–7(e)(5), 20.2056(b)–8(b), 25.2519–2, 25.2523(e)–1(c)(3), 25.2523(f)–1(c)(3) and 25.2523(g)–1(b), these regulations are effective in the case of estates of decedents dying after March 1, 1994, and to gifts made after that date. With respect to estates of decedents dying on or before March 1, 1994, or gifts made on or before that date, taxpayers may rely on any reasonable interpretation of the statutory provisions. For this purpose, the proposed regulations published in the **Federal Register** on May 21, 1984 (49 FR 21350) are considered a reasonable interpretation of the statutory provisions.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It also has 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 regulations, and therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Susan Hurwitz of the Office of Chief Counsel, Internal Revenue Service. Other personnel from the IRS and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR Part 20

Estate tax, Reporting and recordkeeping requirements.

26 CFR Part 22

Estate tax, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 20, 22, 25, and 602 are amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Section 20.2031–7 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5).

Section 20.2031–10 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5).

Section 20.2032–1 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5).

Section 20.2055–2 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(50).

Section 20.2204–1 also issued under 26 U.S.C. 6324A(a).

Section 20.2204–3 also issued under 26 U.S.C. 6324A(a).

Section 20.6324A–1 also issued under 26 U.S.C. 6324A(a).

Section 20.6324B–1 also issued under 26 U.S.C. 6324B.

Par. 1a. The authority citations immediately following §§ 20.2031–7, 20.2031–10, 20.2032–1, 20.2055–2, 20.2204–1, 20.2204–3, 20.6324A–1 and 20.6324B–1 are removed.

§ 20.0–1 [Amended]

Par. 2. In § 20.0–1(b)(1), the last sentence is amended by removing the reference "20.2056(e)–3" and adding "20.2056(d)–1" in its place.

Par. 3. Section 20.2012–1 is amended as follows:

a. In paragraph (a), the first sentence is revised to read as set forth below.

b. In paragraph (d)(2)(ii), the fourth and fifth sentences are removed.

c. Paragraph (d)(3) is removed.

§ 20.2012–1 Credit for gift tax.

(a) *In general.* With respect to gifts made before 1977, a credit is allowed under section 2012 against the Federal estate tax for gift tax paid under chapter 12 of the Internal Revenue Code, or corresponding provisions of prior law, on a gift by the decedent of property subsequently included in the decedent's gross estate. * * *

* * * * *

Par. 4. Section 20.2013–4, paragraph (b)(3)(ii) is amended by removing the second sentence.

Par. 5. Section 20.2014–3 is amended as follows:

a. The concluding text of paragraph (b) immediately following paragraph (b)(2) is revised to read as set forth below.

b. Paragraph (c), *Example (3)*(ii), second sentence, is revised to read as set forth below.

§ 20.2014–3 Second limitation.

* * * * *

(b) * * *

Any reduction described in paragraph (b)(1) or (b)(2) of this section on account of the marital deduction must proportionately take into account, if applicable, the limitation on the aggregate amount of the marital deduction contained in § 20.2056(a)–1(c). See § 20.2014–3(c), *Example 3.*

(c) * * *

Example 3. * * *

(ii) * * * Assume that the limitation imposed by section 2056(c), as in effect before 1982, is applicable so that the aggregate allowable marital deduction is limited to one-half the adjusted gross estate, or $400,000 (which is 50 percent of $800,000). * * *

* * * * *

Par. 6. Section 20.2044–1 is redesignated § 20.2045–1 and new §§ 20.2044–1 and 20.2044–2 are added to read as follows:

§ 20.2044–1 Certain property for which marital deduction was previously allowed.

(a) *In general.* Section 2044 generally provides for the inclusion in the gross estate of property in which the decedent had a qualifying income interest for life and for which a deduction was allowed under section 2056(b)(7) or 2523(f). The value of the property included in the gross estate under section 2044 is not reduced by the amount of any section 2503(b) exclusion that applied to the transfer creating the interest. See section 2207A, regarding the right of recovery against the persons receiving the property that is applicable in certain cases.

(b) *Passed from.* For purposes of section 1014 and chapters 11 and 13 of subtitle B of the Internal Revenue Code, property included in a decedent's gross estate under section 2044 is considered to have been acquired from or to have passed from the decedent to the person receiving the property upon the decedent's death. Thus, for example, the property is treated as passing from the decedent for purposes of determining the availability of the charitable deduction under section 2055, the marital deduction under section 2056, and special use valuation under section 2032A. In addition, the tax imposed on property includible under section 2044 is eligible for the installment payment of estate tax under section 6166.

(c) *Presumption.* Unless established to the contrary, section 2044 applies to the entire value of the trust at the surviving spouse's death. If a marital deduction is taken on either the estate or gift tax return with respect to the transfer which created the qualifying income interest, it is presumed that the deduction was allowed for purposes of section 2044. To avoid the inclusion of property in the decedent-spouse's gross estate under this section, the executor of the spouse's estate must establish that a deduction was not taken for the transfer which created the qualifying income interest. For example, to establish that a deduction was not taken, the executor may produce a copy of the estate or gift tax return filed with respect to the transfer by the first spouse or the first spouse's estate establishing that no deduction was taken under section 2523(f) or section 2056(b)(7). In addition, the executor may establish that no return was filed on the original transfer by the decedent because the value of the first spouse's gross estate was below the threshold requirement for filing under section 6018. Similarly, the executor could establish that the transfer creating the decedent's qualifying income interest for life was made before the effective date of section 2056(b)(7) or section 2523(f).

(d) *Amount included*—(1) *In general.* The amount included under this section is the value of the entire interest in which the decedent had a qualifying income interest for life, determined as of the date of the decedent's death (or the alternate valuation date, if applicable). If, in connection with the transfer of property that created the decedent's qualifying income interest for life, a deduction was allowed under section 2056(b)(7) or section 2523(f) for less than the entire interest in the property (i.e., for a fractional or percentage share of the entire interest in the transferred property), the amount includible in the decedent's gross estate under this section is equal to the fair market value of the entire interest in the property on the date of the decedent's death (or the alternate valuation date, if applicable) multiplied by the fractional or percentage share of the interest for which the deduction was taken.

(2) *Inclusion of income.* If any income from the property for the period between the date of the transfer creating the decedent-spouse's interest and the date of the decedent-spouse's death has not been distributed before the decedent-spouse's death, the undistributed income is included in the decedent-spouse's gross estate under this section to the extent that the income is not so included under any

other section of the Internal Revenue Code.

(3) *Reduction of includible share in certain cases.* If only a fractional or percentage share is includible under this section, the includible share is appropriately reduced if—

(i) The decedent-spouse's interest was in a trust and distributions of principal were made to the spouse during the spouse's lifetime;

(ii) The trust provides that the distributions are to be made from the qualified terminable interest share of the trust; and

(iii) The executor of the decedent-spouse's estate can establish the reduction in that share based on the fair market value of the trust assets at the time of each distribution.

(4) *Interest in previously severed trust.* If the decedent-spouse's interest was in a trust consisting of only qualified terminable interest property and the trust was severed (in compliance with § 20.2056(b)–7(b) or § 25.2523(f)–1(b) of this chapter) from a trust that, after the severance, held only property that was not qualified terminable interest property, only the value of the property in the severed portion of the trust is includible in the decedent-spouse's gross estate.

(e) *Examples.* The following examples illustrate the principles in paragraphs (a) through (d) of this section, where the decedent, D, was survived by spouse, S.

Example 1. Inclusion of trust subject to election. Under D's will, assets valued at $800,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust with income payable to S for life. Upon S's death, the trust principal is to be distributed to D's children. D's executor elected under section 2056(b)(7) to treat the entire trust property as qualified terminable interest property and claimed a marital deduction of $800,000. S made no disposition of the income interest during S's lifetime under section 2519. On the date of S's death, the fair market value of the trust property was $740,000. S's executor did not elect the alternate valuation date. The amount included in S's gross estate pursuant to section 2044 is $740,000.

Example 2. Inclusion of trust subject to partial election. The facts are the same as in *Example 1*, except that D's executor elected under section 2056(b)(7) with respect to only 50 percent of the value of the trust ($400,000). Consequently, only the equivalent portion of the trust is included in S's gross estate; i.e., $370,000 (50 percent of $740,000).

Example 3. Spouse receives qualifying income interest in a fraction of trust income. Under D's will, assets valued at $800,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust with 20 percent of the trust income payable to S for S's life. The will provides that the trust principal is to be distributed to D's children upon S's death. D's executor elected to deduct, pursuant to section 2056(b)(7), 50 percent of the amount for which the election could be made; i.e., $80,000 (50 percent of 20 percent of $800,000). Consequently, on the death of S, only the equivalent portion of the trust is included in S's gross estate; i.e., $74,000 (50 percent of 20 percent of $740,000).

Example 4. Distribution of corpus during spouse's lifetime. The facts are the same as in *Example 3*, except that S was entitled to receive all the trust income but the executor of D's estate elected under section 2056(b)(7) with respect to only 50 percent of the value of the trust ($400,000). Pursuant to authority in the will, the trustee made a discretionary distribution of $100,000 of principal to S in 1995 and charged the entire distribution to the qualified terminable interest share. Immediately prior to the distribution, the fair market value of the trust property was $1,100,000 and the qualified terminable interest portion of the trust was 50 percent. Immediately after the distribution, the qualified terminable interest portion of the trust was 45 percent ($450,000 divided by $1,000,000). Provided S's executor can establish the relevant facts, the amount included in S's gross estate is $333,000 (45 percent of $740,000).

Example 5. Spouse assigns a portion of income interest during life. Under D's will, assets valued at $800,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust with all the income payable to S, for S's life. The will provides that the trust principal is to be distributed to D's children upon S's death. D's executor elected under section 2056(b)(7) to treat the entire trust property as qualified terminable interest property and claimed a marital deduction of $800,000. During the term of the trust, S transfers to C the right to 40 percent of the income from the trust for S's life. Because S is treated as transferring the entire remainder interest in the trust corpus under section 2519 (as well as 40 percent of the income interest under section 2511), no part of the trust is includible in S's gross estate under section 2044. However, if S retains until death an income interest in 60 percent of the trust corpus (which corpus is treated pursuant to section 2519 as having been transferred by S for both gift and estate tax purposes), 60 percent of the property will be includible in S's gross estate under section 2036(a) and a corresponding adjustment is made in S's adjusted taxable gifts.

Example 6. Inter vivos trust subject to election under section 2523(f). D transferred $800,000 to a trust providing that trust income is to be paid annually to S, for S's life. The trust provides that upon S's death, $100,000 of principal is to be paid to X charity and the remaining principal distributed to D's children. D elected to treat all of the property transferred to the trust as qualified terminable interest property under section 2523(f). At the time of S's death, the fair market value of the trust is $1,000,000. S's executor does not elect the alternate valuation date. The amount included in S's gross estate is $1,000,000; i.e., the fair market value at S's death of the entire trust property. The $100,000 that passes to X charity on S's death is treated as a transfer by S to X charity for purposes of section 2055. Therefore, S's estate is allowed a charitable deduction for the $100,000 transferred from the trust to the charity to the same extent that a deduction would be allowed by section 2055 for a bequest by S to X charity.

Example 7. Spousal interest in the form of an annuity. D died prior to October 24, 1992, the effective date of the Energy Policy Act of 1992 (Pub. L. 102–486). See § 20.2056(b)–7(e). Under D's will, assets valued at $500,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust pursuant to which an annuity of $20,000 a year was payable to S for S's life. Trust income not paid to S as an annuity is to be accumulated in the trust and may not be distributed during S's lifetime. D's estate deducted $200,000 under section 2056(b)(7) and § 20.2056(b)–7(e)(2). S did not assign any portion of S's interest during S's life. At the time of S's death, the value of the trust property is $800,000. S's executor does not elect the alternate valuation date. The amount included in S's gross estate pursuant to section 2044 is $320,000 ([$200,000/$500,000] x $800,000).

§ 20.2044–2 Effective dates.

Except as specifically provided in *Example 7* of § 20.2044–1(e), the provisions of § 20.2044–1 are effective with respect to estates of a decedent-spouse dying after March 1, 1994. With respect to estates of decedent-spouses dying on or before such date, taxpayers may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 20.2044–1 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

Par. 7. Section 20.2055–6 is added to read as follows:

§ 20.2055–6 Disallowance of double deduction in the case of qualified terminable interest property.

No deduction is allowed from the decedent's gross estate under section 2055 for property with respect to which a deduction is allowed by reason of section 2056(b)(7). See section 2056(b)(9) and § 20.2056(b)–9.

Par. 8. Section 20.2056–0 is added to read as follows:

§ 20.2056–0 Table of contents.

This section lists the captions that appear in the regulations under §§ 20.2056(a)–1 through 20.2056(d)–2.

§ 20.2056(a)–1 Marital deduction; in general.

(a) In general.

(b) Requirements for marital deduction.
(1) In general.
(2) Burden of establishing requisite facts.
(c) Marital deduction; limitation on aggregate deductions.
(1) Estates of decedents dying before 1977.
(2) Estates of decedents dying after December 31, 1976, and before January 1, 1982.
(3) Estates of decedents dying after December 31, 1981.

§ 20.2056(a)–2 Marital deduction; deductible interests and nondeductible interests.

(a) In general.
(b) Deductible interests.

§ 20.2056(b)–1 Marital deduction; limitation in case of life estate or other "terminable interest."

(a) In general.
(b) Terminable interests.
(c) Nondeductible terminable interests.
(d) Exceptions.
(e) Miscellaneous principles.
(f) Direction to acquire a terminable interest.
(g) Examples.

§ 20.2056(b)–2 Marital deduction; interest in unidentified assets.

(a) In general.
(b) Application of section 2056(b)(2).
(c) Interest nondeductible if circumstances present.
(d) Example.

§ 20.2056(b)–3 Marital deduction; interest of spouse conditioned on survival for limited period.

(a) In general.
(b) Six months' survival.
(c) Common disaster.
(d) Examples.

§ 20.2056(b)–4 Marital deduction; valuation of interest passing to surviving spouse.

(a) In general.
(b) Property interest subject to an encumbrance or obligation.
(c) Effect of death taxes.
(d) Remainder interests.

§ 20.2056(b)–5 Marital deduction; life estate with power of appointment in surviving spouse.

(a) In general.
(b) Specific portion; deductible amount.
(c) Meaning of specific portion.
(1) In general.
(2) Fraction or percentage share.
(3) Special rule in the case of estates of decedents dying on or before October 24, 1992, and certain decedents dying after October 24, 1992, with wills or revocable trusts executed on or prior to that date.
(4) Local law.
(5) Examples.
(d) Meaning of entire interest.
(e) Application of local law.
(f) Right to income.
(g) Power of appointment in surviving spouse.
(h) Requirement of survival for a limited period.
(j) Existence of power in another.

§ 20.2056(b)–6 Marital deduction; life insurance or annuity payments with power of appointment in surviving spouse.

(a) In general.
(b) Specific portion; deductible interest.
(c) Applicable principles.
(d) Payments of installments or interest.
(e) Powers of appointment.

§ 20.2056(b)–7 Election with respect to life estate for surviving spouse.

(a) In general.
(b) Qualified terminable interest property.
(1) In general.
(2) Property for which an election may be made.
(3) Persons permitted to make the election.
(4) Manner and time of making the election.
(c) Protective elections.
(1) In general.
(2) Protective election irrevocable.
(d) Qualifying income interest for life.
(1) In general.
(2) Entitled for life to all income.
(3) Contingent income interests.
(4) Income between last distribution date and spouse's date of death.
(5) Pooled income funds.
(6) Power to distribute principal to spouse.
(e) Annuities payable from trusts in the case of estates of decedents dying on or before October 24, 1992, and certain decedents dying after October 24, 1992, with wills or revocable trusts executed on or prior to that date.
(1) In general.
(2) Deductible interest.
(3) Distributions permissible only to surviving spouse.
(4) Applicable interest rate.
(5) Effective dates.
(f) Joint and survivor annuities. [Reserved]
(g) Application of local law.
(h) Examples.

§ 20.2056(b)–8 Special rule for charitable remainder trusts.

(a) In general.
(1) Surviving spouse only noncharitable beneficiary.
(2) Interest for life or term of years.
(3) Payment of state death taxes.
(b) Charitable trusts where surviving spouse is not the only noncharitable beneficiary.

§ 20.2056(b)–9 Denial of double deduction.

§ 20.2056(b)–10 Effective dates.

§ 20.2056(c)–1 Marital deduction; definition of passed from the decedent.

(a) In general.
(b) Expectant interest in property under community property laws.

§ 20.2056(c)–2 Marital deduction; definition of "passed from the decedent to his surviving spouse."

(a) In general.
(b) Examples.
(c) Effect of election by surviving spouse.
(d) Will contests.
(e) Survivorship.

§ 20.2056(c)–3 Marital deduction; definition of passed from the decedent to a person other than his surviving spouse.

§ 20.2056(d)–1 Marital deduction; effect of disclaimers of post-December 31, 1976 transfers.

(a) Disclaimer by a surviving spouse.
(b) Disclaimer by a person other than a surviving spouse.

§ 20.2056(d)–2 Marital deduction; effect of disclaimers of pre-January 1, 1977 transfers.

(a) Disclaimers by a surviving spouse.
(b) Disclaimer by a person other than a surviving spouse.
(1) Decedents dying after October 3, 1966, and before January 1, 1977.
(2) Decedents dying after September 30, 1963, and before October 4, 1966.
(3) Decedents dying before October 4, 1966.

Par. 9. Section 20.2056(a)–1 is revised to read as follows:

§ 20.2056(a)–1 Marital deduction; in general.

(a) *In general.* A deduction is allowed under section 2056 from the gross estate of a decedent for the value of any property interest which passes from the decedent to the decedent's surviving spouse if the interest is a *deductible interest* as defined in § 20.2056(a)–2. With respect to decedents dying in certain years, a deduction is allowed under section 2056 only to the extent that the total of the deductible interests does not exceed the applicable limitations set forth in paragraph (c) of this section. The deduction allowed under section 2056 is referred to as the *marital deduction.* See also sections 2056(d) and 2056A for special rules applicable in the case of decedents

dying after November 10, 1988, if the decedent's surviving spouse is not a citizen of the United States at the time of the decedent's death. In such cases, the marital deduction may not be allowed unless the property passes to a qualified domestic trust as described in section 2056A(a).

(b) *Requirements for marital deduction*—(1) *In general.* To obtain the marital deduction with respect to any property interest, the executor must establish the following facts—

(i) The decedent was survived by a spouse (see § 20.2056(c)–2(e));

(ii) The property interest passed from the decedent to the spouse (see §§ 20.2056(b)–5 through 20.2056(b)–8 and 20.2056(c)–1 through 20.2056(c)–3);

(iii) The property interest is a *deductible interest* (see § 20.2056(a)–2); and

(iv) The value of the property interest (see § 20.2056(b)–4).

(2) *Burden of establishing requisite facts.* The executor must provide the facts relating to any applicable limitation on the amount of the allowable marital deduction under § 20.2056(a)–1(c), and must submit proof necessary to establish any fact required under paragraph (b)(1), including any evidence requested by the district director.

(c) *Marital deduction; limitation on aggregate deductions*—(1) *Estates of decedents dying before 1977.* In the case of estates of decedents dying before January 1, 1977, the marital deduction is limited to one-half of the value of the *adjusted gross estate*, as that term was defined under section 2056(c)(2) prior to repeal by the Economic Recovery Tax Act of 1981.

(2) *Estates of decedents dying after December 31, 1976, and before January 1, 1982*—Except as provided in § 2002(d)(1) of the Tax Reform Act of 1976 (Pub. L. 94–455), in the case of decedents dying after December 31, 1976, and before January 1, 1982, the marital deduction is limited to the greater of—

(i) $250,000; or

(ii) One-half of the value of the decedent's adjusted gross estate, adjusted for intervivos gifts to the spouse as prescribed by section 2056(c)(1)(B) prior to repeal by the Economic Recovery Tax Act of 1981 (Pub. L. 97–34).

(3) *Estates of decedents dying after December 31, 1981.* In the case of estates of decedents dying after December 31, 1981, the marital deduction is limited as prescribed in paragraph (c)(2) of this section if the provisions of § 403(e)(3) of Pub. L. 97–34 are satisfied.

Par. 10. Section 20.2056(a)–2 is amended as follows:

a. In paragraph (a), a paragraph heading is added and the last sentence is revised.

b. In paragraph (b), a paragraph heading is added.

c. The additions and revisions read as follows:

§ 20.2056(a)–2 Marital deduction; deductible interests and nondeductible interests.

(a) *In general.* * * * Subject to any applicable limitations set forth in § 20.2056(a)–1(c), the amount of the marital deduction is the aggregate value of the *deductible interests.*

(b) *Deductible interests.* * * *

* * * * *

Par. 11. Section 20.2056(b)–1 is amended as follows:

a. Paragraphs (d)(2) and (d)(3) are revised.

b. Paragraphs (d)(4) and (d)(5) are added.

c. Paragraph (e)(4) is revised.

d. In paragraph (g), the introductory text is revised.

e. The revisions and additions read as follows:

§ 20.2056(b)–1 Marital deduction; limitation in case of life estate or other terminable interest.

* * * * *

(d) * * *

(2) It is a right to income for life with a general power of appointment, meeting the requirements set forth in § 20.2056(b)–5;

(3) It consists of life insurance or annuity payments held by the insurer with a general power of appointment in the spouse, meeting the requirements set forth in § 20.2056(b)–6;

(4) It is qualified terminable interest property, meeting the requirements set forth in § 20.2056(b)–7; or

(5) It is an interest in a qualified charitable remainder trust in which the spouse is the only noncharitable beneficiary, meeting the requirements set forth in § 20.2056(b)–8.

(e) * * *

(4) The terms *passed from the decedent, passed from the decedent to his surviving spouse* and *passed from the decedent to a person other than his surviving spouse* are defined in §§ 20.2056(c)–1 through 20.2056(c)–3.

* * * * *

(g) *Examples.* The application of this section may be illustrated by the following examples. In each example, it is assumed that the executor made no election under section 2056(b)(7) (even if under the specific facts the election would have been available), that any property interest passing from the decedent to a person other than the surviving spouse passed for less than full and adequate consideration in money or money's worth, and that section 2056(b)(8) is inapplicable.

* * * * *

Par. 12. In § 20.2056(b)–2, headings are added to paragraphs (a) through (d) to read as follows:

§ 20.2056(b)–2 Marital deduction; interest in unidentified assets.

(a) *In general.* * * *

(b) *Application of section 2056(b)(2).* * * *

* * * * *

(c) *Interest nondeductible if circumstances present.* * * *

(d) *Example.* * * *

* * * * *

§ 20.2056(b)–4 [Amended]

Par. 13. In § 20.2056(b)–4, paragraph (b) is amended by removing the fifth sentence.

Par. 14. Section 20.2056(b)–5 is amended as follows:

a. Paragraph (c) is revised to read as set forth below.

b. The heading and first sentence of paragraph (d) are revised to read as set forth below.

§ 20.2056(b)–5 Marital deduction; life estate with power of appointment in surviving spouse.

* * * * *

(c) *Meaning of specific portion*—(1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, a partial interest in property is not treated as a specific portion of the entire interest. In addition, any specific portion of an entire interest in property is nondeductible to the extent the specific portion is subject to invasion for the benefit of any person other than the surviving spouse, except in the case of a deduction allowable under section 2056(b)(5), relating to the exercise of a general power of appointment by the surviving spouse.

(2) *Fraction or percentage share.* Under section 2056(b)(10), a partial interest in property is treated as a specific portion of the entire interest if the rights of the surviving spouse in income, and the required rights as to the power described in § 20.2056(b)–5(a), constitute a fractional or percentage share of the entire property interest, so that the surviving spouse's interest reflects its proportionate share of the increase or decrease in the value of the entire property interest to which the income rights and the power relate. Thus, if the spouse's right to income and the spouse's power extend to a

specified fraction or percentage of the property, or the equivalent, the interest is in a specific portion of the property. In accordance with paragraph (b) of this section, if the spouse has the right to receive the income from a specific portion of the trust property (after applying paragraph (c)(3) of this section) but has a power of appointment over a different specific portion of the property (after applying paragraph (c)(3) of this section), the marital deduction is limited to the lesser specific portion.

(3) *Special rule in the case of estates of decedents dying on or before October 24, 1992, and certain decedents dying after October 24, 1992, with wills or revocable trusts executed on or prior to that date.*

(i) In the case of estates of decedents within the purview of the effective date and transitional rules contained in paragraphs (c)(3) (ii) and (iii) of this section:

(A) A specific sum payable annually, or at more frequent intervals, out of the property and its income that is not limited by the income of the property is treated as the right to receive the income from a specific portion of the property. The specific portion, for purposes of paragraph (c)(2) of this section, is the portion of the property that, assuming the interest rate generally applicable for the valuation of annuities at the time of the decedent's death, would produce income equal to such payments. However, a pecuniary amount payable annually to a surviving spouse is not treated as a right to the income from a specific portion of the trust property for purposes of this paragraph (c)(3)(i)(A) if any person other than the surviving spouse may receive, during the surviving spouse's lifetime, any distribution of the property. To determine the applicable interest rate for valuing annuities, see sections 2031 and 7520 and the regulations under those sections.

(B) The right to appoint a pecuniary amount out of a larger fund (or trust corpus) is considered the right to appoint a specific portion of such fund or trust for purposes of paragraph (c)(2) in an amount equal to such pecuniary amount.

(ii) The rules contained in paragraphs (c)(3)(i) (A) and (B) of this section apply with respect to estates of decedents dying on or before October 24, 1992.

(iii) The rules contained in paragraphs (c)(3)(i) (A) and (B) of this section apply in the case of decedents dying after October 24, 1992, if property passes to the spouse pursuant to a will or revocable trust agreement executed on or before October 24, 1992, and either—

(A) On that date, the decedent was under a mental disability to change the disposition of the property and did not regain competence to dispose of such property before the date of death; or

(B) The decedent dies prior to October 24, 1995.

(iv) Notwithstanding paragraph (c)(3)(iii) of this section, paragraphs (c)(3)(i) (A) and (B) of this section do not apply if the will or revocable trust is amended after October 24, 1992, in any respect that increases the amount of the transfer qualifying for the marital deduction or alters the terms by which the interest so passes to the surviving spouse of the decedent.

(4) *Local law.* A partial interest in property is treated as a specific portion of the entire interest if it is shown that the surviving spouse has rights under local law that are identical to those the surviving spouse would have acquired had the partial interest been expressed in terms satisfying the requirements of paragraph (c)(2) (or paragraph (c)(3) if applicable) of this section.

(5) *Examples.* The following examples illustrate the application of paragraphs (a) through (c)(4) of this section:

Example 1. Spouse entitled to the lesser of an annuity or a fraction of trust income. The decedent, D, died prior to October 24, 1992. D bequeathed in trust 500 identical shares of X company stock, valued for estate tax purposes at $500,000. The trust provides that during the lifetime of D's spouse, S, the trustee is to pay annually to S the lesser of one-half of the trust income or $20,000. Any trust income not paid to S is to be accumulated in the trust and may not be distributed during S's lifetime. S has a testamentary general power of appointment over the entire trust principal. The applicable interest rate for valuing annuities as of D's date of death under section 7520 is 10 percent. For purposes of paragraphs (a) through (c) of this section, S is treated as receiving all of the income from the lesser of—

(i) One half of the stock ($250,000); or

(ii) $200,000, the specific portion of the stock which, as determined in accordance with § 20.2056(b)–5(c)(3)(i)(A), would produce annual income of $20,000 (20,000/.10). Accordingly, the marital deduction is limited to $200,000 (200,000/500,000 or ⅖ of the value of the trust).

Example 2. Spouse possesses power and income interest over different specific portions of trust. The facts are the same as in *Example 1* except that S's testamentary general power of appointment is exercisable over only ¼ of the trust principal. Consequently, under section 2056(b)(5), the marital deduction is allowable only for the value of ¼ of the trust ($125,000); i.e., the lesser of the value of the portion with respect to which S is deemed to be entitled to all of the income (⅖ of the trust or $200,000), or the value of the portion with respect to which S possesses the requisite power of appointment (¼ of the trust or $125,000).

Example 3. Power of appointment over pecuniary amount. The decedent, D, died prior to October 24, 1992. D bequeathed property valued at $400,000 for estate tax purposes in trust. The trustee is to pay annually to D's spouse, S, one-fourth of the trust income. Any trust income not paid to S is to be accumulated in the trust and may not be distributed during S's lifetime. The will gives S a testamentary general power of appointment over the sum of $160,000. Because D died prior to October 24, 1992, S's power of appointment over $160,000 is treated as a power of appointment over a specific portion of the entire trust interest. The marital deduction allowable under section 2056(b)(5) is limited to $100,000; that is, the lesser of—

(1) The value of the trust corpus ($400,000);

(2) The value of the trust corpus over which S has a power of appointment ($160,000); or

(3) That specific portion of the trust with respect to which S is entitled to all the income ($100,000).

Example 4. Power of appointment over shares of stock constitutes a power over a specific portion. Under D's will, 250 shares of Y company stock were bequeathed in trust pursuant to which all trust income was payable annually to S, D's spouse, for life. S was given a testamentary general power of appointment over 100 shares of stock. The trust provides that if the trustee sells the Y company stock, S's general power of appointment is exercisable with respect to the sale proceeds or the property in which the proceeds are reinvested. Because the amount of property represented by a single share of stock would be altered if the corporation split its stock, issued stock dividends, made a distribution of capital, etc., a power to appoint 100 shares at the time of S's death is not necessarily a power to appoint the entire interest that the 100 shares represented on the date of D's death. If it is shown that, under local law, S has a general power to appoint not only the 100 shares designated by D but also 100/250 of any distributions by the corporation that are included in trust principal, the requirements of paragraph (c)(2) of this section are satisfied and S is treated as having a general power to appoint 100/250 of the entire interest in the 250 shares. In that case, the marital deduction is limited to 40 percent of the trust principal. If local law does not give S that power, the 100 shares would not constitute a specific portion under § 20.2056(b)–5(c) (including § 20.2056(b)–5(c)(3)(i)(B)). The nature of the asset is such that a change in the capitalization of the corporation could cause an alteration in the original value represented by the shares at the time of D's death and, thus, it does not represent a specific portion of the trust.

(d) *Meaning of entire interest.* Because a marital deduction is allowed for each separate qualifying interest in property passing from the decedent to the decedent's surviving spouse (subject to any applicable limitations in § 20.2056(a)–1(c)), for purposes of paragraphs (a) and (b) of this section,

each property interest with respect to which the surviving spouse received any rights is considered separately in determining whether the surviving spouse's rights extend to the entire interest or to a specific portion of the entire interest. * * *

* * * * *

Par. 15. Sections 20.2056(b)–7 through 20.2056(b)–10 are added to read as follows:

§ 20.2056(b)–7 Election with respect to life estate for surviving spouse.

(a) *In general.* Subject to section 2056(d), a marital deduction is allowed under section 2056(b)(7) with respect to estates of decedents dying after December 31, 1981, for qualified terminable interest property as defined in paragraph (b) of this section. All of the property for which a deduction is allowed under this paragraph (a) is treated as passing to the surviving spouse (for purposes of § 20.2056(a)–1), and no part of the property is treated as passing to any person other than the surviving spouse (for purposes of § 20.2056(b)–1).

(b) *Qualified terminable interest property*—(1) *In general.* Section 2056(b)(7)(B)(i) provides the definition of *qualified terminable interest property.*

(i) Terminable interests described in section 2056(b)(1)(C) cannot qualify as qualified terminable interest property. Thus, if the decedent directs the executor to purchase a terminable interest with estate assets, the terminable interest acquired will not qualify as qualified terminable interest property.

(ii) For purposes of section 2056(b)(7)(B)(i), the term *property* generally means the *entire interest in property* (within the meaning of § 20.2056(b)–5(d)) or a *specific portion of the entire interest* (within the meaning of § 20.2056(b)–5(c)).

(2) *Property for which an election may be made*—(i) *In general.* The election may relate to all or any part of property that meets the requirements of section 2056(b)(7)(B)(i), provided that any partial election must be made with respect to a fractional or percentage share of the property so that the elective portion reflects its proportionate share of the increase or decrease in value of the entire property for purposes of applying sections 2044 or 2519. The fraction or percentage may be defined by formula.

(ii) *Division of trusts*—(A) *In general.* A trust may be divided into separate trusts to reflect a partial election that has been made, or is to be made, if authorized under the governing instrument or otherwise permissible under local law. Any such division must be accomplished no later than the end of the period of estate administration. If, at the time of the filing of the estate tax return, the trust has not yet been divided, the intent to divide the trust must be unequivocally signified on the estate tax return.

(B) *Manner of dividing and funding trust.* The division of the trust must be done on a fractional or percentage basis to reflect the partial election. However, the separate trusts do not have to be funded with a pro rata portion of each asset held by the undivided trust.

(C) *Local law.* A trust may be divided only if the fiduciary is required, either by applicable local law or by the express or implied provisions of the governing instrument, to divide the trust on the basis of the fair market value of the assets of the trust at the time of the division.

(3) *Persons permitted to make the election.* The election referred to in section 2056(b)(7)(B)(i)(III) must be made by the executor that is appointed, qualified, and acting within the United States, within the meaning of section 2203, regardless of whether the property with respect to which the election is to be made is in the executor's possession. If there is no executor appointed, qualified, and acting within the United States, the election may be made by any person with respect to property in the actual or constructive possession of that person and may also be made by that person with respect to other property not in the actual or constructive possession of that person if the person in actual or constructive possession of such other property does not make the election. For example, in the absence of an appointed executor, the trustee of an intervivos trust (that is included in the gross estate of the decedent) can make the election.

(4) *Manner and time of making the election*—(i) *In general.* The election referred to in section 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by section 2001 (or section 2101). For purposes of this paragraph, the term *return of tax imposed by section 2001* means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

(ii) *Election irrevocable.* The election, once made, is irrevocable, provided that an election may be revoked or modified on a subsequent return filed on or before the due date of the return, including extensions actually granted. If an executor appointed under local law has made an election on the return of tax imposed by section 2001 (or section 2101) with respect to one or more properties, no subsequent election may be made with respect to other properties included in the gross estate after the return of tax imposed by section 2001 is filed. An election under section 2056(b)(7)(B)(v) is separate from any elections made under section 2056A(a)(3).

(c) *Protective elections*—(1) *In general.* A protective election may be made to treat property as qualified terminable interest property only if, at the time the federal estate tax return is filed, the executor of the decedent's estate reasonably believes that there is a bona fide issue that concerns whether an asset is includible in the decedent's gross estate, or the amount or nature of the property the surviving spouse is entitled to receive, i.e., whether property that is includible is eligible for the qualified terminable interest property election. The protective election must identify either the specific asset, group of assets, or trust to which the election applies and the specific basis for the protective election.

(2) *Protective election irrevocable.* The protective election, once made on the return of tax imposed by section 2001, cannot be revoked. For example, if a protective election is made on the basis that a bona fide question exists regarding the inclusion of a trust corpus in the gross estate and it is later determined that the trust corpus is so includible, the protective election becomes effective with respect to the trust corpus and cannot thereafter be revoked.

(d) *Qualifying income interest for life*—(1) *In general.* Section 2056(b)(7)(B)(ii) provides the definition of *qualifying income interest for life.* For purposes of section 2056(b)(7)(B)(ii)(II), the surviving spouse is included within the prohibited class of powerholders referred to therein.

(2) *Entitled for life to all income.* The principles of § 20.2056(b)–5(f), relating to whether the spouse is entitled for life to all of the income from the entire interest, or a specific portion of the entire interest, apply in determining whether the surviving spouse is entitled for life to all of the income from the property regardless of whether the interest passing to the spouse is in trust.

(3) *Contingent income interests.* An income interest granted for a term of years, or a life estate subject to termination upon the occurrence of a specified event (e.g., remarriage), is not a qualifying income interest for life. In addition, an income interest (or life estate) that is contingent upon the executor's election under section

2056(b)(7)(B)(v) is not a qualifying income interest for life, regardless of whether the election is actually made.

(4) *Income between last distribution date and date of spouse's death.* An income interest does not fail to constitute a qualifying income interest for life solely because income between the last distribution date and the date of the surviving spouse's death is not required to be distributed to the surviving spouse or to the estate of the surviving spouse. See § 20.2044–1 relating to the inclusion of such undistributed income in the gross estate of the surviving spouse.

(5) *Pooled income funds.* An income interest in a pooled income fund described in section 642(c)(5) constitutes a qualifying income interest for life for purposes of section 2056(b)(7)(B)(ii).

(6) *Power to distribute principal to spouse.* An income interest in a trust will not fail to constitute a qualifying income interest for life solely because the trustee has a power to distribute principal to or for the benefit of the surviving spouse. The fact that property distributed to a surviving spouse may be transferred by the spouse to another person does not result in a failure to satisfy the requirement of section 2056(b)(7)(B)(ii)(II). However, if the surviving spouse is legally bound to transfer the distributed property to another person without full and adequate consideration in money or money's worth, the requirement of section 2056(b)(7)(B)(ii)(II) is not satisfied.

(e) *Annuities payable from trusts in the case of estates of decedents dying on or before October 24, 1992, and certain decedents dying after October 24, 1992, with wills or revocable trusts executed on or prior to that date*—(1) *In general.* In the case of estates of decedents within the purview of the effective date and transitional rules contained in § 20.2056(b)–7(e)(5), a surviving spouse's lifetime annuity interest payable from a trust or other group of assets passing from the decedent is treated as a qualifying income interest for life for purposes of section 2056(b)(7)(B)(ii).

(2) *Deductible interest.* The deductible interest, for purposes of § 20.2056(a)–2(b), is the specific portion of the property that, assuming the applicable interest rate for valuing annuities, would produce income equal to the minimum amount payable annually to the surviving spouse. If, based on the applicable interest rate, the entire property from which the annuity may be satisfied is insufficient to produce income equal to the minimum annual payment, the value of the deductible interest is the entire value of the property. The value of the deductible interest may not exceed the value of the property from which the annuity is payable. If the annual payment may increase, the increased amount is not taken into account in valuing the deductible interest.

(3) *Distributions permissible only to surviving spouse.* An annuity interest is not treated as a qualifying income interest for life for purposes of section 2056(b)(7)(B)(ii) if any person other than the surviving spouse may receive, during the surviving spouse's lifetime, any distribution of the property or its income (including any distribution under an annuity contract) from which the annuity is payable.

(4) *Applicable interest rate.* To determine the applicable interest rate for valuing annuities, see sections 2031 and 7520 and the regulations under those sections.

(5) *Effective dates.* (i) The rules contained in § 20.2056(b)–7(e) apply with respect to estates of decedents dying on or before October 24, 1992.

(ii) The rules contained in § 20.2056(b)–7(e) apply in the case of decedents dying after October 24, 1992, if property passes to the spouse pursuant to a will or revocable trust executed on or before October 24, 1992, and either—

(A) On that date, the decedent was under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of death; or

(B) The decedent dies prior to October 24, 1995.

(iii) Notwithstanding the foregoing, the rules contained in § 20.2056(b)–7(e) do not apply if the will or revocable trust is amended after October 24, 1992, in any respect that increases the amount of the transfer qualifying for the marital deduction or alters the terms by which the interest so passes to the surviving spouse.

(f) *Joint and survivor annuities.* [Reserved]

(g) *Application of local law.* The provisions of local law are taken into account in determining whether the conditions of section 2056(b)(7)(B)(ii)(I) are satisfied. For example, silence of a trust instrument as to the frequency of payment is not regarded as a failure to satisfy the requirement that the income must be payable to the surviving spouse annually or more frequently unless applicable local law permits payments less frequently.

(h) *Examples.* The following examples illustrate the application of paragraphs (a) through (g) of this section. In each example, it is assumed that the decedent, D, was survived by S, D's spouse and that, unless stated otherwise, S is not the trustee of any trust established for S's benefit.

Example 1. Life estate in residence. D owned a personal residence valued at $250,000 for estate tax purposes. Under D's will, the exclusive and unrestricted right to use the residence (including the right to continue to occupy the property as a personal residence or to rent the property and receive the income) passes to S for life. At S's death, the property passes to D's children. Under applicable local law, S must consent to any sale of the property. If the executor elects to treat all of the personal residence as qualified terminable interest property, the deductible interest is $250,000, the value of the residence for estate tax purposes.

Example 2. Power to make property productive. D's will established a trust funded with property valued for estate tax purposes at $500,000. The assets include both income producing assets and non-productive assets. S was given the power, exercisable annually, to require distribution of all of the trust income to herself. No trust property may be distributed during S's lifetime to any person other than S. Applicable local law permits S to require that the trustee either make the trust property productive or sell the property and reinvest in productive property within a reasonable time after D's death. If the executor elects to treat all of the trust as qualified terminable interest property, the deductible interest is $500,000. If the executor elects to treat only 20 percent of the trust as qualified terminable interest property, the deductible interest is $100,000, i.e., 20 percent of $500,000.

Example 3. Power of distribution over fraction of trust income. The facts are the same as in *Example 2* except that S is given the right exercisable annually for S's lifetime to require distribution to herself of only 50 percent of the trust income for life. The remaining trust income is to be accumulated or distributed among S and the decedent's children in the trustee's discretion. The maximum amount that D's executor may elect to treat as qualified terminable interest property is $250,000; i.e., the estate tax value of the trust ($500,000) multiplied by the percentage of the trust in which S has a qualifying income interest for life (50 percent). If D's executor elects to treat only 20 percent of the portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the deductible interest is $50,000, i.e., 20 percent of $250,000.

Example 4. Power to distribute trust corpus to other beneficiaries. D's will established a trust providing that S is entitled to receive at least annually all the trust income. The trustee is given the power to use annually during S's lifetime $5,000 from the trust for the maintenance and support of S's minor child, C. Any such distribution does not necessarily relieve S of S's obligation to support and maintain C. S does not have a qualifying income interest for life in any portion of the trust because the bequest fails

to satisfy the condition that no person have a power, other than a power the exercise of which takes effect only at or after S's death, to appoint any part of the property to any person other than S. The trust would also be nondeductible under section 2056(b)(7) if S, rather than the trustee, held the power to appoint a portion of the principal to C. However, in the latter case, if S made a qualified disclaimer (within the meaning of section 2518) of the power to appoint to C, the trust could qualify for the marital deduction pursuant to section 2056(b)(7), assuming that the power is personal to S and S's disclaimer terminates the power. Similarly, in either case, if C made a qualified disclaimer of C's right to receive distributions from the trust, the trust would qualify under section 2056(b)(7), assuming that C's disclaimer effectively negates the trustee's power under local law.

Example 5. Spouse's income interest terminable on remarriage. D's will established a trust providing that all of the trust income is payable at least annually to S for S's lifetime, provided that, if S remarries, S's interest in the trust will pass to X. The trust is not deductible under section 2056(b)(7). S's income interest is not a *qualifying income interest for life* because it is not for life but, rather, is terminable upon S's remarriage.

Example 6. Spouse's income interest contingent on executor's election. D's will established a trust providing that S is entitled to receive the income from that portion of the trust that the executor elects to treat as qualified terminable interest property. S does not have a qualifying income interest for life in any portion of the trust because the income interest is contingent upon the executor's election. Accordingly, the executor cannot elect qualified terminable interest treatment for any portion of the trust. If the decedent's will gives the surviving spouse a qualifying income interest for life in a specific portion of the trust (such as the minimum portion of the trust that is necessary to reduce the Federal estate tax to zero) and the interest is not contingent on the executor's election, the executor can elect qualified terminable interest treatment for the specified portion of the trust.

Example 7. Formula partial election. D's will established a trust funded with the residue of D's estate. Trust income is to be paid annually to S for life, and the principal is to be distributed to D's children upon S's death. S has the power to require that all the trust property be made productive. There is no power to distribute trust property during S's lifetime to any person other than S. D's executor elects to deduct a fractional share of the residuary estate under section 2056(b)(7). The election specifies that the numerator of the fraction is the amount of deduction necessary to reduce the Federal estate tax to zero (taking into account final estate tax values) and the denominator of the fraction is the final estate tax value of the residuary estate (taking into account any specific bequests or liabilities of the estate paid out of the residuary estate). The formula election is of a fractional share. The value of the share qualifies for the marital deduction even though the executor's determinations to claim administration expenses as estate or income tax deductions and the final estate tax values will affect the size of the fractional share.

Example 8. Formula partial election. The facts are the same as in *Example 7* except that, rather than defining a fraction, the executor's formula states: "I elect to treat as qualified terminable interest property that portion of the residuary trust, up to 100 percent, necessary to reduce the Federal estate tax to zero, after taking into account the available unified credit, final estate tax values and any liabilities and specific bequests paid from the residuary estate." The formula election is of a fractional share. The share is equivalent to the fractional share determined in *Example 7*.

Example 9. Severance of QTIP trust. D's will established a trust funded with the residue of D's estate. Trust income is to be paid annually to S for life, and the principal is to be distributed to D's children upon S's death. S has the power to require that all of the trust property be made productive. There is no power to distribute trust property during S's lifetime to any person other than S. D's will authorizes the executor to make the election under section 2056(b)(7) only with respect to the minimum amount of property necessary to reduce estate taxes on D's estate to zero, authorizes the executor to divide the residuary estate into two separate trusts to reflect the election, and authorizes the executor to charge any payment of principal to S to the qualified terminable interest trust. S is the sole beneficiary of both trusts during S's lifetime. The authorizations in the will do not adversely affect the allowance of the marital deduction. Only the property remaining in the marital deduction trust, after payment of principal to S, is subject to inclusion in S's gross estate under section 2044 or subject to gift tax under section 2519.

Example 10. Payments to spouse from individual retirement account. S is the life beneficiary of sixteen remaining annual installments payable from D's individual retirement account. The terms of the account provide for the payment of the account balance in nineteen annual installments that commenced when D reached age 70½. Each installment is equal to all the income earned on the remaining principal in the account plus a share of the remaining principal equal to 1/19 in the first year, 1/18 in the second year, 1/17 in the third year, etc. Under the terms of the account, S has no right to withdraw any other amounts from the account. Any payments remaining after S's death pass to D's children. S's interest in the account qualifies as a qualifying income interest for life under section 2056(b)(7)(B)(ii), without regard to the provisions of section 2056(b)(7)(C).

Example 11. Spouse's interest in trust in the form of an annuity. D died prior to October 24, 1992. D's will established a trust funded with income producing property valued at $500,000 for estate tax purposes. The trustee is required by the trust instrument to pay $20,000 a year to S for life. Trust income in excess of the annuity amount is to be accumulated in the trust and may not be distributed during S's lifetime. S's lifetime annuity interest is treated as a qualifying income interest for life. If the executor elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the value of the deductible interest is (assuming that 10 percent is the applicable interest rate under section 7520 for valuing annuities on the appropriate valuation date) $200,000, because that amount would yield an income to S of $20,000 a year.

Example 12. Value of spouse's annuity exceeds value of trust corpus. The facts are the same as in *Example 11* except that the trustee is required to pay S $70,000 a year for life. If the executor elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the value of the deductible interest is $500,000, which is the lesser of the entire value of the property ($500,000), or the amount of property that (assuming a 10 percent interest rate) would yield an income to S of $70,000 a year ($700,000).

Example 13. Pooled income fund. D's will provides for a bequest of $200,000 to a pooled income fund described in section 642(c)(5), designating S as the income beneficiary for life. If D's executor elects to treat the entire $200,000 as qualified terminable interest property, the deductible interest is $200,000.

Example 14. Funding severed QTIP trusts. D's will established a trust satisfying the requirements of section 2056(b)(7). Pursuant to the authority in D's will and § 20.2056(b)-7(b)(2)(ii), D's executor indicates on the Federal estate tax return that an election under section 2056(b)(7) is being made with respect to 50 percent of the trust, and that the trust will subsequently be divided to reflect the partial election on the basis of the fair market value of the property at the time of the division. D's executor funds the trust at the end of the period of estate administration. At that time, the property available to fund the trusts consists of 100 shares of X Corporation stock with a current value of $400,000 and 200 shares of Y Corporation stock with a current value of $400,000. D may fund each trust with the stock of either or both corporations, in any combination, provided that the aggregate value of the stock allocated to each trust is $400,000.

§ 20.2056(b)-8 Special rule for charitable remainder trusts.

(a) *In general*—(1) *Surviving spouse only noncharitable beneficiary.* With respect to estates of decedents dying after December 31, 1981, subject to section 2056(d), if the surviving spouse of the decedent is the only noncharitable beneficiary of a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 (qualified charitable remainder trust), section 2056(b)(1) does not apply to the interest in the trust that is transferred to the surviving spouse. Thus, the value of the annuity or unitrust interest passing to the spouse qualifies for a marital deduction under

section 2056(b)(8) and the value of the remainder interest qualifies for a charitable deduction under section 2055. If an interest in property qualifies for a marital deduction under section 2056(b)(8), no election may be made with respect to the property under section 2056(b)(7). For purposes of this section, the term *non-charitable beneficiary* means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

(2) *Interest for life or term of years.* The surviving spouse's interest need not be an interest for life to qualify for a marital deduction under section 2056(b)(8). However, for purposes of section 664, an annuity or unitrust interest payable to the spouse for a term of years cannot be payable for a term that exceeds 20 years.

(3) *Payment of state death taxes.* A deduction is allowed under section 2056(b)(8) even if the transfer to the surviving spouse is conditioned on the spouse's payment of state death taxes, if any, attributable to the qualified charitable remainder trust. See § 20.2056(b)–4(c) for the effect of such a condition on the amount of the deduction allowable.

(b) *Charitable remainder trusts where the surviving spouse is not the only noncharitable beneficiary.* In the case of a charitable remainder trust where the decedent's spouse is not the only noncharitable beneficiary (for example, where the noncharitable interest is payable to the decedent's spouse for life and then to another individual for life), the qualification of the interest as qualified terminable interest property is determined solely under section 2056(b)(7) and not under section 2056(b)(8). Accordingly, if the decedent died on or before October 24, 1992, or the trust otherwise comes within the purview of the transitional rules contained in § 20.2056(b)–7(e)(5), the spousal annuity or unitrust interest may qualify under § 20.2056(b)–(7)(e) as a qualifying income interest for life.

§ 20.2056(b)–9 Denial of double deduction.

The value of an interest in property may not be deducted for Federal estate tax purposes more than once with respect to the same decedent. For example, where a decedent transfers a life estate in a farm to the spouse with a remainder to charity, the entire property is, pursuant to the executor's election under section 2056(b)(7), treated as passing to the spouse. The entire value of the property qualifies for the marital deduction. No part of the value of the property qualifies for a charitable deduction under section 2055 in the decedent's estate.

§ 20.2056(b)–10 Effective dates.

Except as specifically provided in §§ 20.2056(b)–5(c)(3) (ii) and (iii), 20.2056(b)–7(e)(5), and 20.2056(b)–8(b), the provisions of §§ 20.2056(b)–5(c), 20.2056(b)–7, 20.2056(b)–8, and 20.2056(b)–9 are effective with respect to estates of decedents dying after March 1, 1994. With respect to estates of decedents dying on or before such date, the executor of the decedent's estate may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of §§ 20.2056(b)–5(c), 20.2056(b)–7, 20.2056(b)–8, and 20.2056(b)–9 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

§§ 20.2056(c)–1 and 20.2056(c)–2 [Removed]

Par. 16. Sections 20.2056(c)–1 and 20.2056(c)–2 are removed.

Par. 17. Section 20.2056(e)–1 is redesignated § 20.2056(c)–1 and amended as follows:

a. The section heading is revised as set forth below.

b. Headings are added for paragraphs (a) and (b) as set forth below.

c. The last sentence in paragraph (b) is removed.

§ 20.2056(c)–1 Marital deduction; definition of passed from the decedent.

(a) *In general.* * * *

(b) *Expectant interest in property under community property laws.* * * *

Par. 18. Section 20.2056(e)–2 is redesignated § 20.2056(c)–2, and amended as follows:

a. The section heading is revised.

b. The first sentence of paragraph (a) is amended by removing the reference "§ 20.2056(e)–1" and adding "§ 20.2056(c)–1" in its place.

c. Paragraphs (a)(2) through (a)(5) are redesignated as paragraphs (a)(3) through (a)(6), respectively, and a new paragraph (a)(2) is added.

d. The first sentence in the concluding text of paragraph (a) following newly designated paragraph (a)(6) is revised.

e. Paragraphs (b)(1)(iv) and (b)(2)(iii) are amended by removing the reference "§ 20.2056(b)–5" and adding "§ 20.2056(b)–5 or 20.2056(b)–7" in its place.

f. Paragraph (b)(3)(v) is amended by removing the reference "section 2056(b)(5)" and adding "§ 20.2056(b)–5 or 20.2056(b)–7" in its place.

g. The revisions and additions read as follows:

§ 20.2056(c)–2 Marital deduction; definition of passed from the decedent to his surviving spouse.

(a) * * *

(2) In the case of certain interests with income for life to the surviving spouse that the executor elects to treat as qualified terminable interest property (see § 20.2056(b)–7);

* * * * *

A property interest is treated as passing to the surviving spouse only if it passes to the spouse as beneficial owner, except to the extent otherwise provided in §§ 20.2056(b)–5 through 20.2056(b)–7. * * *

* * * * *

§ 20.2056(e)–3 [Redesignated as § 20.2056(c)–3 and Amended]

Par. 19. Section 20.2056(e)–3 is redesignated § 20.2056(c)–3, and amended by removing the references to "§ 20.2056(e)–1" and "§ 20.2056(e)–2" and adding "§ 20.2056(c)–1" and "§ 20.2056(c)–2" in their respective places in the first sentence.

Par. 20. Sections 20.2207A–1 and 20.2207A–2 are added to read as follows:

§ 20.2207A–1 Right of recovery of estate taxes in the case of certain marital deduction property.

(a) *In general*—(1) *Right of recovery from person receiving the property.* If the gross estate includes the value of property that is includible by reason of section 2044 (relating to certain property in which the decedent had a qualifying income interest for life under sections 2056(b)(7) or 2523(f)), the estate of the surviving spouse is entitled to recover from the *person receiving the property* (as defined in paragraph (d) of this section) the amount of Federal estate tax attributable to that property. The right of recovery arises when the Federal estate tax with respect to the property includible in the gross estate by reason of section 2044 is paid by the estate. There is no right of recovery from any person for the property received by that person for which a deduction was allowed from the gross estate if no tax is attributable to that property.

(2) *Failure to exercise right of recovery.* Failure of an estate to exercise a right of recovery under this section upon a transfer subject to section 2044 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts from the persons who would benefit from the recovery to the persons from whom the recovery could have been obtained. See § 25.2511–1 of this

chapter. The transfer is considered made when the right of recovery is no longer enforceable under applicable local law. A delay in the exercise of the right of recovery may be treated as an interest-free loan with appropriate gift tax consequences under section 7872 depending on the facts of the particular case.

(3) *Waiver of right of recovery.* The provisions of § 20.2207A–1(a)(2) do not apply to the extent that the surviving spouse's will provides that a recovery shall not be made or to the extent that the beneficiaries cannot otherwise compel recovery. Thus, e.g., if the surviving spouse gives the executor of the estate discretion to waive the right of recovery and the executor waives the right, no gift occurs under § 25.2511–1 of this chapter if the persons who would benefit from the recovery cannot compel the executor to exercise the right of recovery.

(b) *Amount of estate tax attributable to property includible under section 2044.* The amount of Federal estate tax attributable to property includible in the gross estate under section 2044 is the amount by which the total Federal estate tax (including penalties and interest attributable to the tax) under chapter 11 of the Internal Revenue Code that has been paid, exceeds the total Federal estate tax (including penalties and interest attributable to the tax) under chapter 11 of the Internal Revenue Code that would have been paid if the value of the property includible in the gross estate by reason of section 2044 had not been so included.

(c) *Amount of estate tax attributable to a particular property.* An estate's right of recovery with respect to a particular property is an amount equal to the amount determined in paragraph (b) of this section multiplied by a fraction. The numerator of the fraction is the value for Federal estate tax purposes of the particular property included in the gross estate by reason of section 2044, less any deduction allowed with respect to the property. The denominator of the fraction is the total value of all properties included in the gross estate by reason of section 2044, less any deductions allowed with respect to those properties.

(d) *Person receiving the property.* If the property is in a trust at the time of the decedent's death, the *person receiving the property* is the trustee and any person who has received a distribution of the property prior to the expiration of the right of recovery if the property does not remain in trust. This paragraph (d) does not affect the right, if any, under local law, of any person with an interest in property to reimbursement or contribution from another person with an interest in the property.

(e) *Example.* The following example illustrates the application of paragraphs (a) through (d) of this section.

Example. D died in 1994. D's will created a trust funded with certain income producing assets included in D's gross estate at $1,000,000. The trust provides that all the income is payable to D's wife, S, for life, remainder to be divided equally among their four children. In computing D's taxable estate, D's executor deducted, pursuant to section 2056(b)(7), $1,000,000. Assume that S received no other property from D and that S died in 1996. Assume further that S made no section 2519 disposition of the property, that the property was included in S's gross estate at a value of $1,080,000, and that S's will contained no provision regarding section 2207A(a). The tax attributable to the property is equal to the amount by which the total Federal estate tax (including penalties and interest) paid by S's estate exceeds the Federal estate tax (including penalties and interest) that would have been paid if S's gross estate had been reduced by $1,080,000. That amount of tax may be recovered by S's estate from the trust. If, at the time S's estate seeks reimbursement, the trust has been distributed to the four children, S's estate is also entitled to recover the tax from the children.

§ 20.2207A–2 Effective date.

The provisions of § 20.2207A–1 are effective with respect to estates of decedents dying after March 1, 1994. With respect to estates of decedent dying on or before such date, the executor of the decedent's estate may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 20.2207A–1 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

PART 22—TEMPORARY ESTATE AND GIFT TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

Par. 21. The authority citation for part 22 is revised to read as folows:

Authority: 26 U.S.C. 7805.

§ 22.2056–1 [Removed]

Par. 22. Section 22.2056–1 is removed.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 23. The authority citation for part 25 is revised to read as follows:

Authority: 26 U.S.C. 7805.

(Section 25.2512–5 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2512–9 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2513–1 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2522(c)–3 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2522(d)–1 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2523(a)–1 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.2523(b)–1 also issued under 26 U.S.C. 170(f)(4) and 26 U.S.C. 642(c)(5))

(Section 25.6091–1 also issued under 26 U.S.C. 6091)

Par. 24. The authority citations immediately following §§ 25.2512–5, 25.2512–9, 25.2522(c)–3 and 25.2523(a)–1 are removed.

Par. 25. Sections 25.2207A–1 and 25.2207A–2 are added immediately following the undesignated center heading "Determination of Tax Liability" to read as follows:

§ 25.2207A–1 Right of recovery of gift taxes in the case of certain marital deduction property.

(a) *In general.* If an individual is treated as transferring an interest in property by reason of section 2519, the individual or the individual's estate is entitled to recover from the *person receiving the property* (as defined in paragraph (e) of this section) the amount of gift tax attributable to that property. The value of property to which this paragraph (a) applies is the value of all interests in the property other than the qualifying income interest. There is no right of recovery from any person for the property received by that person for which a deduction was allowed from the total amount of gifts, if no Federal gift tax is attributable to the property. The right of recovery arises at the time the Federal gift tax is actually paid by the transferor subject to section 2519.

(b) *Failure of a person to exercise the right of recovery.* [Reserved].

(c) *Amount of gift tax attributable to all properties.* The amount of Federal gift tax attributable to all properties includible in the total amount of gifts under section 2519 made during the calendar year is the amount by which the total Federal gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 of the Internal Revenue Code which has been paid, exceeds the total Federal gift tax for the calendar year (including penalties and interest attributable to the tax) under chapter 12 of the Internal Revenue Code which would have been paid if the value of the properties includible in the total amount of gifts by

reason of section 2519 had not been included.

(d) *Amount of gift tax attributable to a particular property.* A person's right of recovery with respect to a particular property is an amount equal to the amount determined in paragraph (c) of this section multiplied by a fraction. The numerator of the fraction is the value of the particular property included in the total amount of gifts made during the calendar year by reason of section 2519, less any deduction allowed with respect to the property. The denominator of the fraction is the total value of all properties included in the total amount of gifts made during the calendar year by reason of section 2519, less any deductions allowed with respect to those properties.

(e) *Person receiving the property.* If the property is in a trust at the time of the transfer, the *person receiving the property* is the trustee, and any person who has received a distribution of the property prior to the expiration of the right of recovery if the property does not remain in trust. This paragraph (e) does not affect the right, if any, under local law, of any person with an interest in property to reimbursement or contribution from another person with an interest in the property.

(f) *Example.* The following example illustrates the application of paragraphs (a) through (e) of this section.

Example. D created an inter vivos trust during 1994 with certain income producing assets valued at $1,000,000. The trust provides that all income is payable to D's wife, S, for S's life, with the remainder at S's death to be divided equally among their four children. In computing taxable gifts during calendar year 1994, D deducted, pursuant to section 2523(f), $1,000,000 from the total amount of gifts made. In addition, assume that S received no other transfers from D and that S made a gift during 1996 of the entire life interest to one of the children, at which time the value of trust assets was $1,080,000 and the value of S's life interest was $400,000. Although the entire value of the trust assets ($1,080,000) is, pursuant to sections 2511 and 2519, included in the total amount of S's gifts for calendar year 1996, S is only entitled to reimbursement for the Federal gift tax attributable to the value of the remainder interest, that is, the Federal gift tax attributable to $680,000 ($1,080,000 less $400,000). The Federal gift tax attributable to $680,000 is equal to the amount by which the total Federal gift tax (including penalties and interest) paid for the calendar year exceeds the federal gift tax (including penalties and interest) that would have been paid if the total amount of gifts during 1996 had been reduced by $680,000. That amount of tax may be recovered by S from the trust.

§ 25.2207A–2 Effective date.

The provisions of § 25.2207A–1 are effective with respect to dispositions made after March 1, 1994. With respect to gifts made on or before such date, the donor may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 25.2207A–1 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

Par. 26. Section 25.2515–1 is amended by:

a. Redesignating paragraph (a) as (a)(3).

b. Adding paragraphs (a)(1) and (2) to read as follows:

§ 25.2515–1 Tenancies by the entirety; in general.

(a) *Scope*—(1) *In general.* This section and §§ 25.2515–2 through 25.2515–4 do not apply to the creation of a tenancy by the entirety after December 31, 1981, and do not reflect changes made to the Internal Revenue Code by sections 702(k)(1)(A) of the Revenue Act of 1978, or section 2002(c)(2) of the Tax Reform Act of 1976.

(2) *Special rule in the case of tenancies created after July 13, 1988, if the donee spouse is not a United States citizen.* Under section 2523(i)(3), applicable (subject to the special treaty rule contained in Public Law 101–239, section 7815(d)(14)) in the case of tenancies by the entirety and joint tenancies created between spouses after July 13, 1988, if the donee spouse is not a citizen of the United States, the principles contained in section 2515 and §§ 25.2515–1 through 25.2515–4 apply in determining the gift tax consequences with respect to the creation and termination of the tenancy, except that the election provided in section 2515(a) (prior to repeal by the Economic Recovery Tax Act of 1981) and § 25.2515–2 (relating to the donor's election to treat the creation of the tenancy as a transfer for gift tax purposes) does not apply.

* * * * *

Par. 27. Sections 25.2519–1 and 25.2519–2 are added immediately after the undesignated center heading "Deductions" and before § 25.2521–1 to read as follows:

§ 25.2519–1 Dispositions of certain life estates.

(a) *In general.* If a donee spouse makes a disposition of all or part of a qualifying income interest for life in any property for which a deduction was allowed under section 2056(b)(7) or section 2523(f) for the transfer creating the qualifying income interest, the donee spouse is treated for purposes of chapters 11 and 12 of subtitle B of the Internal Revenue Code as transferring all interests in property other than the qualifying income interest. For example, if the donee spouse makes a disposition of part of a qualifying income interest for life in trust corpus, the spouse is treated under section 2519 as making a transfer subject to chapters 11 and 12 of the entire trust other than the qualifying income interest for life. Therefore, the donee spouse is treated as making a gift under section 2519 of the entire trust less the qualifying income interest, and is treated for purposes of section 2036 as having transferred the entire trust corpus, including that portion of the trust corpus from which the retained income interest is payable. A transfer of all or a portion of the income interest of the spouse is a transfer by the spouse under section 2511. See also section 2702 for special rules applicable in valuing the gift made by the spouse under section 2519.

(b) *Presumption.* Unless the donee spouse establishes to the contrary, section 2519 applies to the entire trust at the time of the disposition. If a deduction is taken on either the estate or gift tax return with respect to the transfer which created the qualifying income interest, it is presumed that the deduction was allowed for purposes of section 2519. To avoid the application of section 2519 upon a transfer of all or part of the donee spouse's income interest, the donee spouse must establish that a deduction was not taken for the transfer of property which created the qualifying income interest. For example, to establish that a deduction was not taken, the donee spouse may produce a copy of the estate or gift tax return filed with respect to the transfer creating the qualifying income interest for life establishing that no deduction was taken under section 2056(b)(7) or section 2523(f). In addition, the donee spouse may establish that no return was filed on the original transfer by the donor spouse because the value of the first spouse's gross estate was below the threshold requirement for filing under section 6018. Similarly, the donee spouse could establish that the transfer creating the qualifying income interest for life was made before the effective date of section 2056(b)(7) or section 2523(f), whichever is applicable.

(c) *Amount treated as a transfer—(1) In general.* The amount treated as a transfer under this section upon a disposition of all or part of a qualifying income interest for life in qualified terminable interest property is equal to the fair market value of the entire property subject to the qualifying

income interest, determined on the date of the disposition (including any accumulated income and not reduced by any amount excluded from total gifts under section 2503(b) with respect to the transfer creating the interest), less the value of the qualifying income interest in the property on the date of the disposition. The gift tax consequences of the disposition of the qualifying income interest are determined separately under § 25.2511–2.

(2) *Disposition of interest in property with respect to which a partial election was made.* If, in connection with the transfer of property that created the spouse's qualifying income interest for life, a deduction was allowed under section 2056(b)(7) or section 2523(f) for less than the entire interest in the property (i.e., for a fractional or percentage share of the entire interest in the transferred property) the amount treated as a transfer by the donee spouse under this section is equal to the fair market value of the entire property subject to the qualifying income interest on the date of the disposition, less the value of the qualifying income interest for life, multiplied by the fractional or percentage share of the interest for which the deduction was taken.

(3) *Reduction for distributions charged to nonelective portion of trust.* The amount determined under paragraph (c)(2) of this section (if applicable) is appropriately reduced if—

(i) The donee spouse's interest is in a trust and distributions of principal have been made to the donee spouse;

(ii) The trust provides that distributions of principal are made first from the qualified terminable interest share of the trust; and

(iii) The donee spouse establishes the reduction in that share based on the fair market value of the trust assets at the time of each distribution.

(4) *Effect of gift tax recovered under section 2207A on the amount of the transfer.* [Reserved]

(5) *Interest in previously severed trust.* If the donee spouse's interest is in a trust consisting of only qualified terminable interest property, and the trust was previously severed (in compliance with § 20.2056(b)–7(b)(2)(ii) of this chapter or § 25.2523(f)–1(b)(3)(ii) from a trust that, after the severance, held only property that was not qualified terminable interest property, only the value of the property in the severed portion of the trust at the time of the disposition is treated as transferred under this section.

(d) *Identification of property transferred.* If only part of the property in which a donee spouse has a qualifying income interest for life is qualified terminable interest property, the donee spouse is, in the case of a disposition of all or part of the income interest within the meaning of section 2519, deemed to have transferred a pro rata portion of the entire qualified terminable interest property for purposes of this section.

(e) *Exercise of power of appointment.* The exercise by any person of a power to appoint qualified terminable interest property to the donee spouse is not treated as a disposition under section 2519, even though the donee spouse subsequently disposes of the appointed property.

(f) *Conversion of qualified terminable interest property.* The conversion of qualified terminable interest property into other property in which the donee spouse has a qualifying income interest for life is not, for purposes of this section, treated as a disposition of the qualifying income interest. Thus, the sale and reinvestment of assets of a trust holding qualified terminable interest property is not a disposition of the qualifying income interest, provided that the donee spouse continues to have a qualifying income interest for life in the trust after the sale and reinvestment. Similarly, the sale of real property in which the spouse possesses a legal life estate and thus meets the requirements of qualified terminable interest property, followed by the transfer of the proceeds into a trust which also meets the requirements of qualified terminable interest property, or by the reinvestment of the proceeds in income producing property in which the donee spouse has a qualifying income interest for life, is not considered a disposition of the qualifying income interest. On the other hand, the sale of qualified terminable interest property, followed by the payment to the donee spouse of a portion of the proceeds equal to the value of the donee spouse's income interest, is considered a disposition of the qualifying income interest.

(g) *Examples.* The following examples illustrate the application of paragraphs (a) through (f) of this section. Except as provided otherwise in the examples below, assume that the decedent, D, was survived by spouse, S, that in each example the section 2503(b) exclusion has already been fully utilized for each year with respect to the donee in question, and that section 2503(e) is not applicable to the amount deemed transferred.

Example 1. Transfer of the spouse's life estate in residence. Under D's will, a personal residence valued for estate tax purposes at $250,000 passes to S for life, and after S's death to D's children. D's executor made a valid election to treat the property as qualified terminable interest property. During 1995, when the fair market value of the property is $300,000 and the value of S's life interest in the property is $100,000, S makes a gift of S's entire interest in the property to D's children. Pursuant to section 2519, S makes a gift in the amount of $200,000 (i.e., the fair market value of the qualified terminable interest property of $300,000 less the fair market value of S's qualifying income interest in the property of $100,000). In addition, under section 2511, S makes a gift of $100,000 (i.e., the fair market value of S's income interest in the property). See § 25.2511–2.

Example 2. Sale of spouse's life estate. The facts are the same as in *Example 1* except that during 1995, S sells S's interest in the property to D's children for $100,000. Pursuant to section 2519, S makes a gift of $200,000 ($300,000 less $100,000 value of the qualifying income interest in the property). S does not make a gift of the income interest under section 2511, because the consideration received for S's income interest is equal to the value of the income interest.

Example 3. Transfer of income interest in trust subject to partial election. D's will established a trust valued for estate tax purposes at $500,000, all of the income of which is payable annually to S for life. After S's death, the principal of the trust is to be distributed to D's children. Assume that only 50 percent of the trust was treated as qualified terminable interest property. During 1995, S makes a gift of all of S's interest in the trust to D's children at which time the fair market value of the trust is $400,000 and the fair market value of S's life income interest in the trust is $100,000. Pursuant to section 2519, S makes a gift of $150,000 (the fair market value of the qualified terminable interest property, 50 percent of $400,000, less the $50,000 income interest in the qualified terminable interest property). S also makes a gift pursuant to section 2511 of $100,000 (i.e., the fair market value of S's life income interest).

Example 4. Transfer of a portion of income interest in trust subject to a partial election. The facts are the same as in *Example 3* except that S makes a gift of only 40 percent of S's interest in the trust. Pursuant to section 2519, S makes a gift of $150,000 (i.e., the fair market value of the qualified terminable interest property, 50 percent of $400,000, less the $50,000 value of S's qualified income interest in the qualified terminable interest property). S also makes a gift pursuant to section 2511 of $40,000 (i.e., the fair market value of 40 percent of S's life income interest). See also section 2702 for additional rules that may affect the value of the total amount of S's gift under section 2519 to take into account the fact that S's 30 percent retained income interest attributable to the qualifying income interest is valued at zero under that section, thereby increasing the value of S's section 2519 gift to $180,000. In addition, under § 25.2519–1(d), S's disposition of 40 percent of the income interest is deemed to be a transfer of a pro rata portion of the qualified terminable interest property. Thus, assuming no further

lifetime dispositions by S, 30 percent (60 percent of 50 percent) of the trust property is included in S's gross estate under section 2036 and an adjustment is made to S's adjusted taxable gifts under section 2001(b)(1)(B). If S later disposes of all or a portion of the retained income interest, see § 25.2702–6.

Example 5. Transfer of a portion of spouse's interest in a trust from which corpus was previously distributed to the spouse. D's will established a trust valued for estate tax purposes at $500,000, all of the income of which is payable annually to S for life. The trustee is granted the discretion to distribute trust principal to S. All appointments of principal must be made from the portion of the trust subject to the section 2056(b)(7) election. After S's death, the principal of the trust is to be distributed to D's children. The executor makes the section 2056(b)(7) election with respect to 50 percent of the trust. In 1994, pursuant to the terms of D's will, the trustee distributed $50,000 of principal to S and charged the entire distribution to the qualified terminable interest portion of the trust.

Immediately prior to the distribution, the value of the entire trust was $550,000 and the value of the qualified terminable interest portion was $275,000 (50 percent of $550,000). Provided S can establish the above facts, the qualified terminable interest portion of the trust immediately after the distribution is $225,000 or 45 percent of the value of the trust ($225,000/$500,000). In 1996, when the value of the trust is $400,000 and the value of S's income interest is $100,000, S makes a transfer of 40 percent of S's income interest. S's gift under section 2519 is $135,000; i.e., the fair market value of the qualified terminable interest property, 45 percent of $400,000 ($180,000), less the value of the income interest in the qualified terminable interest property, $45,000 (45 percent of $100,000). S also makes a gift under section 2511 of $40,000; i.e., the fair market value of 40 percent of S's income interest. S's disposition of 40 percent of the income interest is deemed to be a transfer under section 2519 of the entire 45 percent portion of the remainder subject to the section 2056(b)(7) election. Since S retained 60 percent of the income interest, 27 percent (60 percent of 45 percent) of the trust property is includible in S's gross estate under section 2036. See also section 2702 and *Example 4* as to the principles applicable in valuing S's gift under section 2702 and adjusted taxable gifts upon S's subsequent death.

Example 6. Transfer of Spousal Annuity Payable From Trust. D died prior to October 24, 1992. D's will established a trust valued for estate tax purposes at $500,000. The trust instrument required the trustee to pay an annuity to S of $20,000 a year for life. All the trust income other than the amounts paid to S as an annuity are to be accumulated in the trust and may not be distributed during S's lifetime to any person other than S. After S's death, the principal of the trust is to be distributed to D's children. Because D died prior to the effective date of section 1941 of the Energy Policy Act of 1992, S's annuity interest qualifies as a qualifying income interest for life. Under § 20.2056(b)–7(e) of this chapter, based on an applicable 10 percent interest rate, 40 percent of the property, or $200,000, is the value of the deductible interest. During 1996, S makes a gift of the annuity interest to D's children at which time the fair market value of the trust is $800,000 and the fair market value of S's annuity interest in the trust is $100,000. Pursuant to section 2519, S is treated as making a gift of $220,000 (the fair market value of the qualified terminable interest property, 40 percent of $800,000 ($320,000), less the $100,000 annuity interest in the qualified terminable interest property). S is also treated pursuant to section 2511 as making a gift of $100,000 (the fair market value of S's annuity interest).

§ 25.2519–2 Effective date.

Except as specifically provided in § 25.2519–1(g), *Example 6*, the provisions of § 25.2519–1 are effective with respect to gifts made after March 1, 1994. With respect to gifts made on or before such date, the donee spouse of a section 2056(b)(7) or section 2523(f) transfer may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 25.2519–1 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

Par. 28. Section 25.2522(c)–4 is added to read as follows:

§ 25.2522(c)–4 Disallowance of double deduction in the case of qualified terminable interest property.

No deduction is allowed under section 2522 for the transfer of an interest in property if a deduction is taken from the *total amount of gifts* with respect to that property by reason of section 2523(f). See § 25.2523(h)–1.

Par. 29. Section 25.2523(a)–1 is amended as follows:

a. Paragraph (a) is revised.

b. Paragraph (b)(3)(ii) is revised.

c. Paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively.

d. New paragraph (c) is added.

e. Newly designated paragraph (d) is amended by:

1. Revising the paragraph heading.

2. Revising the introductory text.

3. The designations "(1)", "(2)", "(3)", "(4)", "(5)", "(6)", "(7)" appearing before each example are revised to read "1.", "2.", "3.", "4.", "5.", "6.", "7.".

4. *Example 8* is added.

f. Newly designated paragraph (e) is amended by revising the first sentence.

g. The revisions and additions read as follows:

§ 25.2523(a)–1 Gift to spouse; in general.

(a) *In general.* In determining the amount of taxable gifts for the calendar quarter (with respect to gifts made after December 31, 1970, and before January 1, 1982), or calendar year (with respect to gifts made before January 1, 1971, or after December 31, 1981), a donor may deduct the value of any property interest transferred by gift to a donee who at the time of the gift is the donor's spouse, except as limited by paragraphs (b) and (c) of this section. See § 25.2502–1(c)(1) for the definition of calendar quarter. This deduction is referred to as the *marital deduction*. In the case of gifts made prior to July 14, 1988, no marital deduction is allowed with respect to a gift if, at the time of the gift, the donor is a nonresident not a citizen of the United States. Further, in the case of gifts made on or after July 14, 1988, no marital deduction is allowed (regardless of the donor's citizenship or residence) for transfers to a spouse who is not a citizen of the United States at the time of the transfer. However, for certain special rules applicable in the case of estate and gift tax treaties, see section 7815(d)(14) of Public Law 101–239. The donor must submit any evidence necessary to establish the donor's right to the marital deduction.

(b) * * *

(3) * * *

(ii) Any property interest transferred by a donor to the donor's spouse is a *nondeductible interest* to the extent it is not required to be included in a gift tax return for a calendar quarter (for gifts made after December 31, 1970, and before January 1, 1982) or calendar year (for gifts made before January 1, 1971, or after December 31, 1981).

(c) *Computation*—(1) *In general.* The amount of the marital deduction depends upon when the interspousal gifts are made, whether the gifts are terminable interests, whether the limitations of § 25.2523(f)–1A (relating to gifts of community property before January 1, 1982) are applicable, and whether § 25.2523(f)–1 (relating to the election with respect to life estates) is applicable, and (with respect to gifts made on or after July 14, 1988) whether the donee spouse is a citizen of the United States (see section 2523(i)).

(2) *Gifts prior to January 1, 1977.* Generally, with respect to gifts made during a calendar quarter prior to January 1, 1977, the marital deduction allowable under section 2523 is 50 percent of the aggregate value of the deductible interests. See section 2524 for an additional limitation on the amount of the allowable deduction.

(3) *Gifts after December 31, 1976, and before January 1, 1982.* Generally, with respect to gifts made during a calendar quarter beginning after December 31, 1976, and ending prior to January 1, 1982, the marital deduction allowable under section 2523 is computed as a percentage of the deductible interests in those gifts. If the aggregate amount of deductions for such gifts is $100,000 or less, a deduction is allowed for 100 percent of the deductible interests. No deduction is allowed for otherwise deductible interests in an aggregate amount that exceeds $100,000 and is equal to or less than $200,000. For deductible interests in excess of $200,000, the deduction is limited to 50 percent of such deductible interests. If a donor remarries, the computations in this paragraph (c)(3) are made on the basis of aggregate gifts to all persons who at the time of the gifts are the donor's spouse. See section 2524 for an additional limitation on the amount of the allowable deduction.

(4) *Gifts after December 31, 1981.* Generally, with respect to gifts made during a calendar year beginning after December 31, 1981 (other than gifts made on or after July 14, 1988, to a spouse who is not a United States citizen on the date of the transfer), the marital deduction allowable under section 2523 is 100 percent of the aggregate value of the deductible interests. See section 2524 for an additional limitation on the amount of the allowable deduction, and section 2523(i) regarding disallowance of the marital deduction for gifts to a spouse who is not a United States citizen.

(d) *Examples.* The following examples (in which it is assumed that the donors have previously utilized any specific exemptions provided by section 2521 for gifts prior to January 1, 1977) illustrate the application of paragraph (c) of this section and the interrelationship of sections 2523 and 2503.

* * * * *

Example 8. A donor made a transfer by gift to the donor's spouse, a United States citizen, of $200,000 cash on January 1, 1995. The donor made no other transfers during 1995. For calendar year 1995, the amount excluded under section 2503(b) is $10,000; the marital deduction is $190,000; and the amount of taxable gifts is zero ($200,000—$10,000 (annual exclusion)—$190,000 (marital deduction)).

(e) *Valuation.* If the income from property is made payable to the donor or another individual for life or for a term of years, with remainder to the donor's spouse or to the estate of the donor's spouse, the marital deduction is computed (pursuant to § 25.2523(a)–1(c)) with respect to the present value of the remainder, determined under section 7520. * * *

Par. 30. Section 25.2523(b)–1 is amended as follows:

a. Paragraph (a)(1) is revised.

b. In paragraph (b)(3), the first sentence is amended by removing the reference "§ 25.2523(e)–1" and adding "§ 25.2523(e)–l or 25.2523(f)–l" in its place.

c. In paragraph (b)(3), the designations "(1)" and "(2)" appearing before each example are revised to read "1." and "2."

d. In paragraph (b)(3), the phrase immediately preceding *Example 1* is revised.

e. In paragraph (b)(6), the designations "(1)", "(2)", "(3)", "(4)", "(5)", "(6)" appearing before each example are revised to read "l.", "2.", "3.", "4.", "5.", "6.".

f. In paragraph (b)(6), the phrase immediately preceding *Example 1* is revised.

g. In paragraph (c)(2), the phrase immediately preceding the example is removed and a sentence is added in its place.

h. The additions and revisions read as follows:

§ 25.2523(b)–1 Life estate or other terminable interest.

(a) *In general.* (1) The provisions of section 2523(b) generally disallow a marital deduction with respect to certain property interests (referred to generally as *terminable interests* and defined in paragraph (a)(3) of this section) transferred to the donee spouse under the circumstances described in paragraph (a)(2) of this section, unless the transfer comes within the purview of one of the exceptions set forth in § 25.2523(d)–1 (relating to certain joint interests); § 25.2523(e)–1 (relating to certain life estates with powers of appointment); § 25.2523(f)–1 (relating to certain qualified terminable interest property); or § 25.2523(g)–1 (relating to certain qualified charitable remainder trusts).

* * * * *

(b) * * *

(3) * * * The following examples, in which it is assumed that the donor did not make an election under sections 2523(f)(2)(C) and (f)(4), illustrate the application of the provisions of this paragraph (b)(3):

* * * * *

(6) * * * In each example, it is assumed that the donor made no election under sections 2523(f)(2)(C) and (f)(4) and that the property interest that the donor transferred to a person other than the donee spouse is not transferred for adequate and full consideration in money or money's worth: * * *

(c) * * *

(2) * * * The application of this paragraph may be further illustrated by the following example, in which it is assumed that the donor made no election under sections 2523(f)(2)(C) and (f)(4).

* * * * *

Par. 31. § 25.2523(c)–1 is amended by removing the first sentence of paragraph (c) and adding three new sentences in its place to read as follows:

§ 25.2523(c)–1 Interest in unidentified assets.

* * * * *

(c) If both of the circumstances set forth in paragraph (b) of this section exist, only a portion of the property interest passing to the spouse is a deductible interest. The portion qualifying as a deductible interest is an amount equal to the excess, if any, of the value of the property interest passing to the spouse over the aggregate value of the asset (or assets) that if transferred to the spouse would not qualify for the marital deduction. See paragraph (c) of § 25.2523(a)–l to determine the percentage of the deductible interest allowable as a marital deduction. * * *

* * * * *

Par. 32. The third sentence of § 25.2523(d)–1 is revised to read as follows:

§ 25.2523(d)–1 Joint interests.

* * * Thus, if the donor purchased real property in the name of the donor and the donor's spouse as tenants by the entirety or as joint tenants with rights of survivorship, a marital deduction is allowable with respect to the value of the interest of the donee pouse in the property (subject to the limitations set forth in § 25.2523(a)–1). * * *

Par. 33. Section 25.2523(e)–1, paragraph (c) is revised to read as follows:

§ 25.2523(e)–1 Marital deduction; life estate with power of appointment in donee spouse.

* * * * *

(c) *Meaning of specific portion*—(1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, a partial interest in property is not treated as a *specific portion* of the entire interest. In addition, any specific portion of an entire interest in property is nondeductible to the extent the specific portion is subject to invasion for the benefit of any person other than the donee spouse, except in the case of

a deduction allowable under section 2523(e), relating to the exercise of a general power of appointment by the donee spouse.

(2) *Fraction or percentage share.* Under section 2523(e), a partial interest in property is treated as a specific portion of the entire interest if the rights of the donee spouse in income, and the required rights as to the power described in § 25.2523(e)–1(a), constitute a fractional or percentage share of the entire property interest, so that the donee spouse's interest reflects its proportionate share of the increase or decrease in the value of the entire property interest to which the income rights and the power relate. Thus, if the spouse's right to income and the spouse's power extend to a specified fraction or percentage of the property, or its equivalent, the interest is in a specific portion of the property. In accordance with paragraph (b) of this section, if the spouse has the right to receive the income from a specific portion of the trust property (after applying paragraph (c)(3) of this section) but has a power of appointment over a different specific portion of the property (after applying paragraph (c)(3) of this section), the marital deduction is limited to the lesser specific portion.

(3) *Special rule in the case of gifts made on or before October 24, 1992.* In the case of gifts within the purview of the effective date rule contained in paragraph (c)(3)(iii) of this section:

(i) A specific sum payable annually, or at more frequent intervals, out of the property and its income that is not limited by the income of the property is treated as the right to receive the income from a specific portion of the property. The specific portion, for purposes of paragraph (c)(2) of this section, is the portion of the property that, assuming the interest rate generally applicable for the valuation of annuities at the time of the donor's gift, would produce income equal to such payments. However, a pecuniary amount payable annually to a donee spouse is not treated as a right to the income from a specific portion of trust property for purposes of this paragraph (c)(3)(i) if any person other than the donee spouse may receive, during the donee spouse's lifetime, any distribution of the property. To determine the applicable interest rate for valuing annuities, see sections 2512 and 7520 and the regulations under those sections.

(ii) The right to appoint a pecuniary amount out of a larger fund (or trust corpus) is considered the right to appoint a specific portion of such fund or trust in an amount equal to such pecuniary amount.

(iii) The rules contained in paragraphs (c)(3) (i) and (ii) of this section apply with respect to gifts made on or before October 24, 1992.

(4) *Local law.* A partial interest in property is treated as a specific portion of the entire interest if it is shown that the donee spouse has rights under local law that are identical to those the donee spouse would have acquired had the partial interest been expressed in terms satisfying the requirements of paragraph (c)(2) of this section (or paragraph (c)(3) of this section if applicable).

(5) *Examples.* The following examples illustrate the application of paragraphs (b) and (c) of this section, where D, the donor, transfers property to D's spouse, S:

Example 1. Spouse entitled to the lesser of an annuity or a fraction of trust income. Prior to October 24, 1992, D transferred in trust 500 identical shares of X Company stock, valued for gift tax purposes at $500,000. The trust provided that during the lifetime of D's spouse, S, the trustee is to pay annually to S the lesser of one-half of the trust income or $20,000. Any trust income not paid to S is to be accumulated in the trust and may not be distributed during S's lifetime. S has a testamentary general power of appointment over the entire trust principal. The applicable interest rate for valuing annuities as of the date of D's gift under section 7520 is 10 percent. For purposes of paragraphs (a) through (c) of this section, S is treated as receiving all of the income from the lesser of one-half of the stock ($250,000), or $200,000, the specific portion of the stock which, as determined in accordance with § 25.2523(e)-1(c)(3)(i) of this chapter, would produce annual income of $20,000 (20,000/.10). Accordingly, the marital deduction is limited to $200,000 (200,000/500,000 or ⅖ of the value of the trust.)

Example 2. Spouse possesses power and income interest over different specific portions of trust. The facts are the same as in *Example 1* except that S's testamentary general power of appointment is exercisable over only ¼ of the trust principal. Consequently, under section 2523(e), the marital deduction is allowable only for the value of ¼ of the trust ($125,000); i.e., the lesser of the value of the portion with respect to which S is deemed to be entitled to all of the income (⅖ of the trust or $200,000), or the value of the portion with respect to which S possesses the requisite power of appointment (¼ of the trust or $125,000).

Example 3. Power of appointment over shares of stock constitutes a power over a specific portion. D transferred 250 identical shares of Y company stock to a trust under the terms of which trust income is to be paid annually to S, during S's lifetime. S was given a testamentary general power of appointment over 100 shares of stock. The trust provides that if the trustee sells the Y company stock, S's general power of appointment is exercisable with respect to the sale proceeds or the property in which the proceeds are reinvested. Because the amount of property represented by a single share of stock would be altered if the corporation split its stock, issued stock dividends, made a distribution of capital, etc., a power to appoint 100 shares at the time of S's death is not necessarily a power to appoint the entire interest that the 100 shares represented on the date of D's gift. If it is shown that, under local law, S has a general power to appoint not only the 100 shares designated by D but also 100/250 of any distributions by the corporation that are included in trust principal, the requirements of paragraph (c)(2) of this section are satisfied and S is treated as having a general power to appoint 100/250 of the entire interest in the 250 shares. In that case, the marital deduction is limited to 40 percent of the trust principal. If local law does not give S that power, the 100 shares would not constitute a specific portion under § 25.2523(e)–1(c) (including § 25.2523(e)–1(c)(3)(ii)). The nature of the asset is such that a change in the capitalization of the corporation could cause an alteration in the original value represented by the shares at the time of the transfer and is thus not a specific portion of the trust.

* * * * *

Par. 34. An undesignated center heading is added immediately following § 25.2524–1 to read as follows: "Deductions Prior to 1982"

Par. 35. Section 25.2523(f)–1 is redesignated as § 25.2523(f)–1A under the new undesignated center heading "Deductions Prior to 1982" and amended as follows:

(a) The section heading of newly designated § 25.2523(f)–1A is revised.

(b) The first sentence of paragraph (a) is revised.

(c) The revisions read as follows:

§ 25.2523(f)–1 A Special rule applicable to community property transferred prior to January 1, 1982.

(a) *In general.* With respect to gifts made prior to January 1, 1982, the marital deduction is allowable with respect to any transfer by a donor to the donor's spouse only to the extent that the transfer is shown to represent a gift of property that was not, at the time of the gift, held as *community property,* as defined in paragraph (b) of this section.

* * *

* * * * *

Par. 36. New §§ 25.2523(f)–1, 25.2523(g)–1, 25.2523(h)–1 and 25.2523(h)–2 are added to read as follows:

§ 25.2523(f)–1 Election with respect to life estate transferred to donee spouse.

(a) *In general.* (1) With respect to gifts made after December 31, 1981, subject to section 2523(i), a marital deduction is allowed under section 2523(a) for transfers of *qualified terminable interest property.* Qualified terminable interest property is terminable interest property described in section 2523(b)(1) that

satisfies the requirements of section 2523(f)(2) and this section. Terminable interests that are described in section 2523(b)(2) cannot qualify as qualified terminable interest property. Thus, if the donor retains a power described in section 2523(b)(2) to appoint an interest in qualified terminable interest property, no deduction is allowable under section 2523(a) for the property.

(2) All of the property for which a deduction is allowed under this paragraph (a) is treated as passing to the donee spouse (for purposes of § 25.2523(a)–1), and no part of the property is treated as retained by the donor or as passing to any person other than the donee spouse (for purposes of § 25.2523(b)–1(b)).

(b) *Qualified terminable interest property*—(1) *Definition.* Section 2523(f)(2) provides the definition of *qualified terminable interest property.*

(2) *Meaning of property.* For purposes of section 2523(f)(2), the term *property* generally means an *entire interest in property* (within the meaning of § 25.2523(e)–l(d)) or a *specific portion of the entire interest* (within the meaning of § 25.2523(e)–l(c)).

(3) *Property for which the election may be made*—(i) *In general.* The election may relate to all or any part of property that meets the requirements of section 2523(f)(2) (A) and (B), provided that any partial election must be made with respect to a fractional or percentage share of the property so that the elective portion reflects its proportionate share of the increase or decrease in the entire property for purposes of applying sections 2044 or 2519. Thus, if the interest of the donee spouse in a trust (or other property in which the spouse has a qualifying income interest) meets the requirements of this section, the election may be made under section 2523(f)(2)(C) with respect to a part of the trust (or other property) only if the election relates to a defined fraction or percentage of the entire trust (or other property) or specific portion thereof within the meaning of § 25.2523(e)–1(c). The fraction or percentage may be defined by formula.

(ii) *Division of trusts.* If the interest of the donee spouse in a trust meets the requirements of this section, the trust may be divided into separate trusts to reflect a partial election that has been made, if authorized under the terms of the governing instrument or otherwise permissible under local law. A trust may be divided only if the fiduciary is required, either by applicable local law or by the express or implied provisions of the governing instrument, to divide the trust according to the fair market value of the assets of the trust at the time of the division. The division of the trusts must be done on a fractional or percentage basis to reflect the partial election. However, the separate trusts do not have to be funded with a pro rata portion of each asset held by the undivided trust.

(4) *Manner and time of making election.* (i) An election under section 2523(f)(2)(C) (other than a deemed election with respect to a joint and survivor annuity as described in section 2523(f)(6)), is made on a gift tax return for the calendar year in which the interest is transferred. The return must be filed within the time prescribed by section 6075(b) (determined without regard to section 6019(a)(2)), including any extensions authorized under section 6075(b)(2) (relating to an automatic extension of time for filing a gift tax return where the donor is granted an extension of time to file the income tax return).

(ii) If the election is made on a return for the calendar year that includes the date of death of the donor, the return (as prescribed by section 6075(b)(3)) must be filed no later than the time (including extensions) for filing the estate tax return. The election, once made, is irrevocable.

(c) *Qualifying income interest for life*—(1) *In general.* For purposes of this section, the term *qualifying income interest for life* is defined as provided in section 2056(b)(7)(B)(ii) and § 20.2056(b)–7(d)(1).

(i) *Entitled for life to all the income.* The principles outlined in § 25.2523(e)–1(f) (relating to whether the spouse is entitled for life to all of the income from the entire interest or a specific portion of the entire interest) apply in determining whether the donee spouse is entitled for life to all the income from the property, regardless of whether the interest passing to the donee spouse is in trust. An income interest granted for a term of years, or a life estate subject to termination upon the occurrence of a specified event (e.g., divorce) is not a qualifying income interest for life.

(ii) *Income between last distribution date and date of spouse's death.* An income interest does not fail to constitute a qualifying income interest for life solely because income for the period between the last distribution date and the date of the donee spouse's death is not required to be distributed to the estate of the donee spouse. See § 20.2044–1 of this chapter relating to the inclusion of such undistributed income in the gross estate of the donee spouse.

(iii) *Pooled income funds.* An income interest in a pooled income fund described in section 642(c)(5) constitutes a qualifying income interest for life for purposes of this section.

(iv) *Distribution of principal for the benefit of the donee spouse.* An income interest does not fail to constitute a qualifying income interest for life solely because the trustee has a power to distribute principal to or for the benefit of the donee spouse. The fact that property distributed to a donee spouse may be transferred by the spouse to another person does not result in a failure to satisfy the requirement of section 2056(b)(7)(B)(ii)(II). However, if the governing instrument requires the donee spouse to transfer the distributed property to another person without full and adequate consideration in money or money's worth, the requirement of section 2056(b)(7)(B)(ii)(II) is not satisfied.

(2) *Immediate right to income.* In order to constitute a qualifying income interest for life, the donee spouse must be granted the immediate right to receive the income from the property. Thus, an income interest does not constitute a qualifying income interest for life if the donee spouse receives the right to trust income commencing at some time in the future, e.g., on the termination of a preceding life income interest of the donor spouse.

(3) *Annuities payable from trusts in the case of gifts made on or before October 24, 1992.* (i) In the case of gifts made on or before October 24, 1992, a donee spouse's lifetime annuity interest payable from a trust or other group of assets passing from the donor is treated as a qualifying income interest for life for purposes of section 2523(f)(2)(B). The deductible interest, for purposes of § 25.2523(a)–1(b), is the specific portion of the property that, assuming the applicable interest rate for valuing annuities at the time the annuity interest is transferred, would produce income equal to the minimum amount payable annually to the donee spouse. If, based on the applicable interest rate, the entire property from which the annuity may be satisfied is insufficient to produce income equal to the minimum annual payment, the value of the deductible interest is the entire value of the property. The value of the deductible interest may not exceed the value of the property from which the annuity is payable. If the annual payment may increase, the increased amount is not taken into account in valuing the deductible interest.

(ii) An annuity interest is not treated as a qualifying income interest for life for purposes of section 2523(f)(2)(B) if any person other than the donee spouse may receive during the donee spouse's

lifetime, any distribution of the property or its income from which the annuity is payable.

(iii) To determine the applicable interest rate for valuing annuities, see sections 2512 and 7520 and the regulations under those sections.

(4) *Joint and survivor annuities.* [Reserved]

(d) *Treatment of interest retained by the donor spouse*—(1) *In general.* Under section 2523(f)(5)(A), if a donor spouse retains an interest in qualified terminable interest property, any subsequent transfer by the donor spouse of the retained interest in the property is not treated as a transfer for gift tax purposes. Further, the retention of the interest until the donor spouse's death does not cause the property subject to the retained interest to be includable in the gross estate of the donor spouse.

(2) *Exception.* Under section 2523(f)(5)(B), the rule contained in paragraph (d)(1) of this section does not apply to any property after the donee spouse is treated as having transferred the property under section 2519, or after the property is includable in the gross estate of the donee spouse under section 2044.

(e) *Application of local law.* The provisions of local law are taken into account in determining whether or not the conditions of section 2523(f)(2) (A) and (B), and the conditions of paragraph (c) of this section, are satisfied. For example, silence of a trust instrument on the frequency of payment is not regarded as a failure to satisfy the requirement that the income must be payable to the donee spouse annually or more frequently unless applicable local law permits payments less frequently to the donee spouse.

(f) *Examples.* The following examples illustrate the application of this section, where D, the donor, transfers property to D's spouse, S. Unless stated otherwise, it is assumed that S is not the trustee of any trust established for S's benefit:

Example 1. Life estate in residence. D transfers by gift a personal residence valued at $250,000 on the date of the gift to S and D's children, giving S the exclusive and unrestricted right to use the property (including the right to continue to occupy the property as a personal residence or rent the property and receive the income for her lifetime). After S's death, the property is to pass to D's children. Under applicable local law, S's consent is required for any sale of the property. If D elects to treat all of the transferred property as qualified terminable interest property, the deductible interest is $250,000, the value of the property for gift tax purposes.

Example 2. Power to make property productive. D transfers assets having a fair market value of $500,000 to a trust pursuant to which S is given the right exercisable annually to require distribution of all the trust income to S. No trust property may be distributed during S's lifetime to any person other than S. The assets used to fund the trust include both income producing assets and nonproductive assets. Applicable local law permits S to require that the trustee either make the trust property productive or sell the property and reinvest the proceeds in productive property within a reasonable time after the transfer. If D elects to treat the entire trust as qualified terminable interest property, the deductible interest is $500,000. If D elects to treat only 20 percent of the trust as qualified terminable interest property, the deductible interest is $100,000; i.e., 20 percent of $500,000.

Example 3. Power of distribution over fraction of trust income. The facts are the same as in *Example 2* except that S is given the power exercisable annually to require distribution to S of only 50 percent of the trust income for life. The remaining trust income may be accumulated or distributed among D's children and S in the trustee's discretion. The maximum amount that D may elect to treat as qualified terminable interest property is $250,000; i.e., the value of the trust for gift tax purposes ($500,000) multiplied by the percentage of the trust in which S has a qualifying income interest for life (50 percent). If D elects to treat only 20 percent of the portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the deductible interest is $50,000; i.e, 20 percent of $250,000.

Example 4. Power to distribute trust corpus to other beneficiaries. D transfers $500,000 to a trust providing that all the trust income is to be paid to D's spouse, S, during S's lifetime. The trustee is given the power to use annually $5,000 from the trust for the maintenance and support of S's minor child, C. Any such distribution does not necessarily relieve S of S's obligation to support and maintain C. S does not have a qualifying income interest for life in any portion of the trust because the gift fails to satisfy the condition in sections 2523(f)(3) and 2056(b)(7)(B)(ii)(II) that no person have a power, other than a power the exercise of which takes effect only at or after S's death, to appoint any part of the property to any person other than S. The trust would also be nondeductible under section 2523(f) if S, rather than the trustee, were given the power to appoint a portion of the principal to C. However, in the latter case, if S made a qualified disclaimer (within the meaning of section 2518) of the power to appoint to C, the trust could qualify for the marital deduction pursuant to section 2523(f), assuming that the power was personal to S and S's disclaimer terminates the power. Similarly, if C made a qualified disclaimer of the right to receive distributions from the trust, the trust would qualify under section 2523(f) assuming that C's disclaimer effectively negates the trustee's power under local law.

Example 5. Spouse's interest terminable on divorce. The facts are the same as in *Example 3* except that if S and D divorce, S's interest in the trust will pass to C. S's income interest is not a qualifying income interest for life because it is terminable upon S's divorce. Therefore, no portion of the trust is deductible under section 2523(f).

Example 6. Spouse's interest in trust in the form of an annuity. Prior to October 24, 1992, D established a trust funded with income producing property valued for gift tax purposes at $800,000. The trustee is required by the trust instrument to pay $40,000 a year to S for life. Any income in excess of the annuity amount is to be accumulated in the trust and may not be distributed during S's lifetime. S's lifetime annuity interest is treated as a qualifying income interest for life. If D elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the value of the deductible interest is $400,000, because that amount would yield an income to S of $40,000 a year (assuming a 10 percent interest rate applies in valuing annuities at the time of the transfer).

Example 7. Value of spouse's annuity exceeds value of trust corpus. The facts are the same as in *Example 6*, except that the trustee is required to pay S $100,000 a year for S's life. If D elects to treat the entire portion of the trust in which S has a qualifying income interest for life as qualified terminable interest property, the value of the deductible interest is $800,000, which is the lesser of the entire value of the property ($800,000) or the amount of property that (assuming a 10 percent interest rate) would yield an income to S of $100,000 a year ($1,000,000).

Example 8. Transfer to pooled income fund. D transfers $200,000 on June 1, 1994, to a pooled income fund (described in section 642(c)(5)) designating S as the only life income beneficiary. If D elects to treat the entire $200,000 as qualified terminable interest property, the deductible interest is $200,000.

Example 9. Retention by donor spouse of income interest in property. On October 1, 1994, D transfers property to an irrevocable trust under the terms of which trust income is to be paid to D for life, then to S for life and, on S's death, the trust corpus is to be paid to D's children. Because S does not possess an immediate right to receive trust income, S's interest does not qualify as a qualifying income interest for life under section 2523(f)(2). Further, under section 2702(a)(2) and § 25.2702–2(b), D is treated for gift tax purposes as making a gift with a value equal to the entire value of the property. If D dies in 1996 survived by S, the trust corpus will be includible in D's gross estate under section 2036. However, in computing D's estate tax liability, D's adjusted taxable gifts under section 2001(b)(1)(B) are adjusted to reflect the inclusion of the gifted property in D's gross estate. In addition, if S survives D, the trust property is eligible for treatment as qualified terminable interest property under section 2056(b)(7) in D's estate.

Example 10. Retention by donor spouse of income interest in property. On October 1, 1994, D transfers property to an irrevocable trust under the terms of which trust income is to be paid to S for life, then to D for life

and, on D's death, the trust corpus is to be paid to D's children. D elects under section 2523(f) to treat the property as qualified terminable interest property. D dies in 1996, survived by S. S subsequently dies in 1998. Under § 2523(f)–1(d)(1), because D elected to treat the transfer as qualified terminable interest property, no part of the trust corpus is includible in D's gross estate because of D's retained interest in the trust corpus. On S's subsequent death in 1998, the trust corpus is includible in S's gross estate under section 2044.

Example 11. Retention by donor spouse of income interest in property. The facts are the same as in *Example 10*, except that S dies in 1996 survived by D, who subsequently dies in 1998. Because D made an election under section 2523(f) with respect to the trust, on S's death the trust corpus is includible in S's gross estate under section 2044. Accordingly, under section 2044(c), S is treated as the transferor of the property for estate and gift tax purposes. Upon D's subsequent death in 1998, because the property was subject to inclusion in S's gross estate under section 2044, the exclusion rule in § 25.2523(f)–1(d)(1) does not apply under § 25.2523(f)–1(d)(2). However, because S is treated as the transferor of the property, the property is not subject to inclusion in D's gross estate under section 2036 or section 2038. If the executor of S's estate made a section 2056(b)(7) election with respect to the trust, the trust is includible in D's gross estate under section 2044 upon D's later death.

§ 25.2523(g)–1 Special rule for charitable remainder trusts.

(a) *In general.* (1) With respect to gifts made after December 31, 1981, subject to section 2523(i), if the donor's spouse is the only noncharitable beneficiary (other than the donor) of a charitable remainder annuity trust or charitable remainder unitrust described in section 664 (qualified charitable remainder trust), section 2523(b) does not apply to the interest in the trust transferred to the donee spouse. Thus, the value of the annuity or unitrust interest passing to the spouse qualifies for a marital deduction under section 2523(g) and the value of the remainder interest qualifies for a charitable deduction under section 2522.

(2) A marital deduction for the value of the donee spouse's annuity or unitrust interest in a qualified charitable remainder trust to which section 2523(g) applies is allowable only under section 2523(g). Therefore, if an interest in property qualifies for a marital deduction under section 2523(g), no election may be made with respect to the property under section 2523(f).

(3) The donee spouse's interest need not be an interest for life to qualify for a marital deduction under section 2523(g). However, for purposes of section 664, an annuity or unitrust interest payable to the spouse for a term of years cannot be payable for a term that exceeds 20 years or the trust does not qualify under section 2523(g).

(4) A deduction is allowed under section 2523(g) even if the transfer to the donee spouse is conditioned on the donee spouse's payment of state death taxes, if any, attributable to the qualified charitable remainder trust.

(5) For purposes of this section, the term *noncharitable beneficiary* means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

(b) *Charitable remainder trusts where the donee spouse and the donor are not the only noncharitable beneficiaries.* In the case of a charitable remainder trust where the donor and the donor's spouse are not the only noncharitable beneficiaries (for example, where the noncharitable interest is payable to the donor's spouse for life and then to another individual (other than the donor) for life), the qualification of the interest as qualified terminable interest property is determined solely under section 2523(f) and not under section 2523(g). Accordingly, if the transfer to the trust is made prior to October 24, 1992, the spousal annuity or unitrust interest may qualify under § 25.2523(f)–(1)(c)(3) as a qualifying income interest for life.

§ 25.2523(h)–1 Denial of double deduction.

The value of an interest in property may not be deducted for Federal gift tax purposes more than once with respect to the same donor. For example, assume that D, a donor, transferred a life estate in a farm to D's spouse, S, with a remainder to charity and that D elects to treat the property as qualified terminable interest property. The entire value of the property is deductible under section 2523(f). No part of the value of the property qualifies for a charitable deduction under section 2522 for gift tax purposes.

§ 25.2523(h)–2 Effective dates.

Except as specifically provided, in §§ 25.2523(e)–1(c)(3), 25.2523(f)–1(c)(3), and 25.2523(g)–1(b), the provisions of §§ 25.2523(e)–1(c), 25.2523(f)–1, 25.2523(g)–1, and 25.2523(h)–1 are effective with respect to gifts made after March 1, 1994. With respect to gifts made on or before such date, donors may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of §§ 25.2523(e)–1(c), 25.2523(f)–1, 25.2523(g)–1, and 25.2523(h)–1, (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

Par. 37. Section 25.6019–1 is amended as follows:

a. Paragraphs (a) and (b) are revised.

b. Paragraphs (c) and (d) are redesignated paragraphs (g) and (h).

c. New paragraphs (c) through (f) are added.

d. The revisions and additions read as follows:

§ 25.6019–1 Persons required to file returns.

(a) *Gifts made after December 31, 1981.* Subject to section 2523(i)(2), an individual citizen or resident of the United States who in any calendar year beginning after December 31, 1981, makes any transfer by gift other than a transfer that, under section 2503 (b) or (e) (relating, respectively, to certain gifts of $10,000 per donee and the exclusion for payment of certain educational and medical expenses), is not included in the total amount of gifts for that year, or a transfer of an interest with respect to which a marital deduction is allowed for the value of the entire interest under section 2523 (other than a marital deduction allowed by reason of section 2523(f), regarding qualified terminable interest property for which a return must be filed in order to make the election under that section), must file a gift tax return on Form 709 for that calendar year.

(b) *Gifts made after December 31, 1976, and before January 1, 1982.* An individual citizen or resident of the United States who makes a transfer by gift within any calendar year beginning after December 31, 1976, and before January 1, 1982, must file a gift tax return on Form 709 for any calendar quarter in which the sum of the taxable gifts made during that calendar quarter, plus all other taxable gifts made during the year (for which a return has not yet been required to be filed), exceeds $25,000. If the aggregate transfers made in a calendar year after 1976 and before 1982 that must be reported do not exceed $25,000, only one return must be filed for the calendar year and it must be filed by the due date for a fourth quarter gift tax return (April 15).

(c) *Gifts made after December 31, 1970, and before January 1, 1977.* An individual citizen or resident of the United States who makes a transfer by gift within any calendar year beginning after December 31, 1970, and before January 1, 1977, must file a gift tax return on Form 709 for the calendar quarter in which any portion of the value of the gift, or any portion of the sum of the values of the gifts to such donee during that calendar year, is not excluded from the total amount of taxable gifts for that year, and must also

make a return for any subsequent quarter within the same taxable year in which any additional gift is made to the same donee.

(d) *Gifts by nonresident alien donors.* The rules contained in paragraphs (a) through (c) of this section also apply to a nonresident not a citizen of the United States provided that, under section 2501(a)(1) and § 25.2511–3, the transfer is subject to the gift tax.

(e) *Miscellaneous provisions.* Only individuals are required to file returns and not trusts, estates, partnerships, or corporations. Duplicate copies of the return are not required to be filed. See §§ 25.6075–1 and 25.6091–1 for the time and place for filing the gift tax return. For delinquency penalties for failure to file or pay the tax, see section 6651 and § 301.6651–1 of this chapter (Procedure and Administration Regulations). For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

(f) *Return required even if no tax due.* The return is required even though, because of the deduction authorized by section 2522 (charitable deduction) or the unified credit under section 2505, no tax may be payable on the transfer.

* * * * *

Par. 38. Section 25.6019–2 is revised to read as follows:

§ 25.6019–2 Returns required in case of consent under section 2513.

Except as otherwise provided in this section, the provisions of § 25.6019–1 (other than paragraph (d) of § 25.6019–1) apply with respect to the filing of a gift tax return or returns in the case of a husband and wife who consent (see § 25.2513–1) to the application of section 2513. If both spouses are (without regard to the provisions of section 2513) required under the provisions of § 25.6019–1 to file returns, returns must be filed by both spouses. If only one of the consenting spouses is (without regard to the provisions of section 2513) required under § 25.6019–1 to file a return, a return must be filed by that spouse. In the latter case if, after giving effect to the provisions of section 2513, the other spouse is considered to have made a gift not excluded from the total amount of such other spouse's gifts for the taxable year by reason of section 2503 (b) or (e) (relating, respectively, to certain gifts of $10,000 per donee and the exclusion for certain educational or medical expenses), a return must also be filed by such other spouse. Thus, if during a calendar year beginning after December 31, 1981, the first spouse made a gift of $18,000 to a child (the gift not being either a future interest in property or an amount excluded under section 2503(e)) and the other spouse made no gifts, only the first spouse is required to file a return for that calendar year. However, if the other spouse had made a gift in excess of $2,000 to the same child during the same calendar year or if the gift made by the first spouse had amounted to $21,000, each spouse would be required to file a return if the consent is signified as provided in section 2513.

Par. 39. Section 25.6019–3 is amended as follows:

a. The first sentence in paragraph (a) is revised.

b. The second sentence in paragraph (b) is revised.

c. The revisions read as follows:

§ 25.6019–3 Contents of return.

(a) *In general.* The return must set forth each gift made during the calendar year (or calendar quarter with respect to gifts made after December 31, 1970, and before January 1, 1982) that under sections 2511 through 2515 is to be included in computing taxable gifts; the deductions claimed and allowable under sections 2521 through 2524; and the taxable gifts made for each of the preceding reporting periods. * * *

(b) * * * In any case where a husband and wife enter into a written agreement of the type contemplated by section 2516 and the final decree of divorce is not granted on or before the due date for the filing of a gift tax return for the calendar year (or calendar quarter with respect to periods beginning after December 31, 1970, and ending before January 1, 1982) in which the agreement became effective (see § 25.6075–1), then, except to the extent § 25.6019–1 provides otherwise, the transfer must be disclosed by the transferor upon a gift tax return filed for the calendar year (or calendar quarter) in which the agreement becomes effective, and a copy of the agreement must be attached to the return. * * *

Par. 40. Section § 25.6019–4 is amended by revising the first sentence to read as follows:

§ 25.6019–4 Description of property listed in return.

The properties comprising the gifts made during the calendar year (or calendar quarter with respect to gifts made after December 31, 1970, and before January 1, 1982) must be listed on the return and described in a manner that they may be readily identified. * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 41. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 42. Section 602.101(c) is amended by adding two entries in numerical order in the table to read as follows:

§ 602.101 OMB Control numbers.

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	*
20.2056(b)–7	1545–0015
* * *	*
25.2523(f)–1	1545–0015
* * *	*

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: January 7, 1994.

Leslie Samuels,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 94–3945 Filed 2–28–94; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 31

[TD 8525]

RIN 1545–AR07

Supplemental Annuity Tax—Railroad Retirement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the supplemental annuity tax under the Railroad Retirement Tax Act (RRTA). The regulations contain rules for calculating the work-hours subject to the tax. The regulations also contain a safe harbor that railroad employers may use to determine the taxable work-hours in lieu of calculating work-hours separately for each employee. The regulations provide railroad employers with guidance necessary to comply with the law and offer a simple safe-harbor calculation that can significantly reduce the burden on employers. The regulations affect all railroad employers and employee representatives.

EFFECTIVE DATES: These regulations are effective for calendar years beginning after December 31, 1992, except that

§ 31.3221–3(d) is effective for calendar years beginning after December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at 202–622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1993, the IRS published in the **Federal Register** (58 FR 28371) proposed amendments to the Employment Tax Regulations (26 CFR part 31) under section 3221(c) of the Internal Revenue Code (Code), which imposes a supplemental tax on railroad employers for each work-hour for which compensation is paid by the employer for services rendered to the employer during a calendar quarter.

Two written comments were received from the public on the proposed regulations, and a public hearing was held on August 30, 1993. After consideration of the written comments received and the statements made at the public hearing, the proposed regulations are adopted by this Treasury decision.

Explanation of Provisions

Retirement benefits for railroad employees are provided under a system that currently combines elements similar to those under both the social security system and the private pension system.

In addition to Tier I benefits (similar to social security benefits) and Tier II benefits (similar to private pension benefits), a supplemental retirement annuity was established in 1966 by Public Law 89–699 (1966 Act). The benefit provisions are administered by the Railroad Retirement Board (Board).

The 1966 Act established a program to be administered by the Board for the payment of supplemental annuities for career railroad employees. The program, which was required to be self-financing, was to be financed separately from the regular railroad retirement program by imposing on railroad employers an excise tax under section 3221(c) of the Code. The rate was originally set at 2 cents for each work-hour of employment. In 1970, Public Law 91–215 replaced the 2-cents rate with a rate determined quarterly by the Board at a level sufficient to finance the annuities. The rate is currently 30 cents.

The supplemental tax is imposed on every employer for each work-hour for which compensation is paid by the employer for services rendered to the employer during a calendar quarter. Section 3211(b) of the Code imposes a similar tax on employee representatives. No tax is imposed on employees to fund the supplemental annuities.

The only guidance previously published with respect to the supplemental tax is in the instructions for Form CT–1, Employer's Annual Railroad Retirement and Unemployment Repayment Tax Return. The instructions today are nearly identical to the instructions 25 years ago. Nevertheless, in recent years, significant variations in the interpretation of the statutory language have arisen.

Definition of Work-Hours

The final regulations, like the proposed regulations, do not change the longstanding interpretation of work-hours that was included in the instructions for Form CT–1 when the supplemental annuity tax was enacted. A commentator suggested that the 1970 legislation clarified that the term is limited to those hours both worked and paid for, and recommended that the regulations be revised accordingly. This recommendation has not been adopted for the reasons set forth below.

The definition of work-hours as it appeared in the instructions for Form CT–1 was not changed following the 1970 legislation, because the IRS believed that the revised statutory language was not intended to change the meaning of work-hours, or to clarify its meaning. When the taxing provision was enacted in 1966, the tax was equal to 2 cents for each work-hour. The 1970 legislation changed the rate from 2 cents to a rate to be determined quarterly by the Board, beginning April 1, 1970. Because the rate would no longer be constant, Congress changed the statutory language to make it clear that the taxing period is a calendar quarter and that, for purposes of the tax, the timing of the services, not the timing of the payment for the services, governed.

With respect to services rendered, the Treasury and the IRS believe that Congress intended to tax those hours for which the employee was paid both to perform and not to perform services. If an employee is guaranteed *x* hours of work a week and is paid for *x* hours, this is the number of hours to be taxed, even if there are less than *x* hours of work to be performed. The Treasury and the Service believe that this is so whether the employee is expected to report to the work site and do no work, whether the employee is not expected to report when no work is available, or whether the employee is not expected to report when no work is available but is expected to be available to be called to work.

The 1970 legislation did not alter the statutory language regarding employees who receive daily, weekly, or monthly rates of compensation. The language is clear that the tax applies to the number of hours comprehended in the rate, plus overtime hours. Thus, if a monthly rate of compensation comprehends that the employee is entitled to time off from work for holiday time, vacation time, and sick time, all of those hours are taxed, not merely the hours during which the employee actually performed services.

Safe Harbor

The final regulations retain a safe harbor method of calculating work-hours provided in the proposed regulations. Under the safe harbor, the employer counts the number of employees who received any compensation during the month and multiplies that figure by a "safe harbor number" to determine the number of work-hours subject to the tax. Each individual who is paid compensation is counted, even if the individual is a part-time, temporary, or seasonal employee. For purposes of the safe harbor count, it is irrelevant whether an employee actually performed any services for the employer during the month.

The Treasury and the IRS believe that the safe harbor is an attractive method of significantly reducing administrative complexity, because the safe harbor will simplify calculation of the supplemental annuity tax. The Service has worked with the railroad industry in establishing a safe harbor number that will fairly and equitably implement the supplemental annuity tax provisions while providing a method of computing the liability that reduces the need to make a work-hour determination on an individual-by-individual basis. The Treasury and the IRS anticipate that, for most employers, use of the safe harbor number will result in fewer taxable hours, and the Board will adjust the tax rate accordingly.

The regulations provide the Commissioner with the authority to publish the safe harbor number in guidance of general applicability. Pursuant to this grant of authority, a revenue procedure will be published to announce the safe harbor number. Commentators on the proposed regulations, representing both the Class I railroads and the Class III railroads, suggested a safe harbor number of 164. These comments have been taken into account in developing the revenue procedure.

Retroactivity

One commentator suggested that the safe harbor provision be made retroactive at the election of the

taxpayer. Because the number the safe harbor produces is generally more favorable than work-hours calculated under the regulations, retroactive application of the safe harbor would, in many situations, produce taxable work-hours at levels below those anticipated when prior-period tax rates were set. Also, retroactive application would be inequitable because some taxpayers have many open tax years and others do not. For these reasons, the Treasury and the IRS have rejected any period of retroactivity and, therefore, this approach is not included in the final regulations. Thus, the safe harbor provision is effective for calendar years beginning after December 31, 1993, as proposed.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment 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 regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Karin Loverud of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

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

Par. 2. Section 31.3211–3 is added to read as follows:

§ 31.3211–3 Employee representative supplemental tax.

See paragraphs (a), (b), and (c) of § 31.3221–3 for rules applicable to the supplemental tax for each work-hour for which compensation is paid to an employee representative for services rendered as an employee representative.

Par. 3. Section 31.3221–3 is added under the heading "Tax on Employers" to read as follows:

§ 31.3221–3 Supplemental tax.

(a) *Introduction*—(1) *In general.* Section 3221(c) imposes an excise tax on every employer, as defined in section 3231(a) and § 31.3231(a)–1, with respect to individuals employed by the employer. The tax is imposed for each work-hour for which the employer pays compensation, as defined in section 3231(e) and § 31.3231(e)–1, for services rendered to the employer during a calendar quarter. This § 31.3221–3 provides rules for determining the number of taxable work-hours.

(2) *Overview.* Paragraph (b) of this section defines *work-hours.* Paragraph (c) of this section demonstrates the calculation of work-hours. Paragraph (d) of this section offers a safe harbor calculation of work-hours for use by any employer in lieu of calculating the number of work-hours for each employee.

(b) *Definition of work-hours*—(1) *In general.* For purposes of section 3221(c) and this section, *work-hours* are hours for which the employee is compensated, whether or not the employee performs services.

(i) *Payments included in work-hours.* Work-hours include regular time worked; overtime; time paid for vacations and holidays; time allowed for meals; away-from-home terminal time; called and not used, runaround, and deadheading time; time for attending court, participating in investigations, and attending claim and safety meetings; and guaranteed time not worked. Work-hours also include conversion hours, that is, compensation converted into work-hours. Conversion hours may be derived from payment by the mile or by the piece. Work-hours also include time for which the employee is paid for periods of absence not due to sickness or accident disability, such as for routine medical and dental examinations or for time lost.

(ii) *Payments excluded from work-hours.* Certain kinds of payments are not subject to conversion into work-hours. These include those payments that are specifically excluded from *compensation* within the meaning of section 3231(e), such as certain sick pay payments (section 3231(e)(1)(i)); tips (section 3231(e)(1)(ii)); and amounts paid specifically (either as an advance, as reimbursement, or allowance) for traveling expenses (section 3231(e)(1)(iii)). Traveling expenses paid under a nonaccountable plan are excluded from work-hours even though they are includible in compensation. See § 31.3231(e)–1(a)(5). Also excluded from work-hours are amounts representing bonuses, amounts received pursuant to the exercise of an employee stock option, and all separation payments or severance allowances.

(2) *Hourly compensation.* Because the tax under section 3221(c) is calculated on the basis of work-hours, the number of hours for which an employee receives compensation is the figure used to determine work-hours. In the case of an hourly-rated employee, each hour for which the employee receives compensation is one work-hour.

(3) *Daily, weekly, monthly compensation.* (i) If an employee is paid by the day, week, month, or other period of time, the tax is imposed on the number of hours comprehended in the rate and, if any, the number of overtime hours for which additional compensation is paid. Thus, in the case of an office worker who receives an annual salary based on an 8-hour, 5-day-a-week work schedule that includes paid holidays, vacations, and sick time, the number of work-hours for one month is 174 (2088 hours/year ÷12 months).

(ii) The rule in paragraph (b)(3)(i) of this section is illustrated by the following examples.

Example 1. A, an office worker, receives an annual salary that is paid monthly. The salary is based on an 8-hour, Monday through Friday work schedule. *A* is not paid for overtime hours. *A* is not expected to work on holidays, during *A*'s annual vacation, or during periods that *A* is ill. The number of work-hours for one month is 174 (2088 hours/year ÷12 months). This figure remains constant, even though some months have more workdays than others.

Example 2. B is paid a stated amount for each day *B* works, regardless of the number of hours worked. However, if *B* works more than 8 hours during any day, *B* is paid overtime for each additional hour worked that day. *B* is not paid for holidays, vacations, or sick time. During May, *B* worked 6 hours on 4 days, 7 hours on 6 days, 8 hours on 6 days, and 9 hours on 5 days. Because *B* is paid a daily rate for up to 8 hours, 8 hours are comprehended in the daily rate. Therefore, the number of work-hours for May is 173 (21 days×8 hours/day+5 overtime hours), even though *B* actually worked 159 hours.

(4) *Conversion hours*—(i) Compensation not based on time (hour, day, month, etc.), such as compensation paid by the mile or by the piece, must be converted into the number of hours represented by the compensation paid. Thus, if an employee is paid by the mile, 1 work-hour equals the number of miles constituting a workday, divided by 8 hours. However, in the case of a collective bargaining agreement that specifies a number of hours as constituting a workday, the number of hours specified under the agreement may be used instead of 8.

(ii) The rule in paragraph (b)(4)(i) of this section is illustrated by the following example.

Example. C's normal workday consists of 2 150-mile round trips that together take 6 hours. *C* is paid by the mile. The collective bargaining agreement does not specify the number of hours in a workday. Thus, the number of work-hours for each day *C* works is 8, or 1 work-hour for each 37.5 miles (300 miles/day ÷ 8 hours/day). If the applicable collective bargaining agreement specifies that 6 hours constitute a workday, the number of work-hours for each day *C* works would be 6.

(c) *Calculation of work-hours*—(1) An employer may calculate the work-hours separately for each employee, as described in the examples in this paragraph. If the employer chooses to calculate work-hours separately for each employee, the employer must calculate the number of regular hours, overtime hours, and conversion hours for each employee for each month. In lieu of separate calculations, the employer may calculate the work-hours for all the employer's employees using the safe harbor formula described in paragraph (d) of this section.

(2) The rules in paragraph (c) of this section are illustrated by the following examples.

Example 1. D worked 8 hours a day, Monday through Friday, during the months of February and March 1992. *D* did not work on President's Day, but was paid for the holiday. *D*'s work-hours for February were 160 (19 days × 8 hours a day + 8 holiday hours). *D*'s work-hours for March were 176 (22 days × 8 hours a day).

Example 2. E worked 7-hour shifts every Tuesday through Saturday during the months of February and March 1992. *E* also worked 7 overtime hours during February and 21 overtime hours during March. Also, *E* was paid for 7 hours on President's Day, even though *E* did not work on that day. The number of work-hours for February was 161 (21 days × 7 hours a day + 7 overtime hours + 7 holiday hours). The number of work-hours for March was 168 (21 days × 7 hours a day + 21 overtime hours). Because *E* receives an hourly wage and was paid for the President's Day holiday, the number of hours (7) for which *E* was paid are added to the hours *E* actually worked. If *E* had worked on President's Day and had received extra pay for working on a holiday and holiday pay for 7 hours, the employer would include 14 hours in *E*'s work-hours for that day, the 7 hours *E* actually worked and the 7 holiday hours for which *E* was paid.

Example 3. Employment beginning during month. F began employment on March 16, a Monday, and worked 8 hours a day, Monday through Friday. The employer calculates that *F*'s hours for the month were 96, because *F* worked 12 8-hour days during the month. If March 16 were on a Friday, the employer would calculate 11 days, or 88 hours.

Example 4. Employment ending during month. G's last day of employment was Friday, March 13. *G* worked 8 hours a day, Monday through Friday, except for March 3, when *G* was ill. *G* was paid for 8 hours for March 3. The employer calculates that *G*'s work-hours for March were 80, because *G* worked 9 8-hour days and was paid for an additional 8 hours.

(d) *Safe harbor*—(1) *In general.* In lieu of calculating work-hours separately for each employee, an employer may use the safe harbor for all employees. If the employer elects to use the safe harbor for a calendar year, the employer must use the safe harbor for all employees for the entire calendar year. If an employer uses the safe harbor for a calendar year, the employer need not elect the safe harbor for the following calendar year. An employer that elects the safe harbor for a calendar year may not subsequently elect to separately calculate employee work-hours for that calendar year.

(2) *Method of calculation.* The safe harbor treats each employee of the employer as receiving monthly compensation for a number of hours equal to the safe harbor number. To determine the number of work-hours for a month, the employer multiplies the safe harbor number by the number that equals the total number of employees to whom the employer paid compensation during the month.

(i) *Safe harbor number defined.* The safe harbor number is the number established in guidance of general applicability promulgated by the Commissioner.

(ii) *Employee defined.* Solely for purposes of this paragraph, an employee is any individual who is paid compensation, within the meaning of § 31.3231(e)–1, regardless of the amount, during the month. Thus, for example, a part-time, temporary, or seasonal employee is counted as an employee. A terminated employee is counted in the month of termination (provided the terminated employee received compensation in the month of termination), but not in any subsequent month in which the employee does not perform service for the employer as an employee, even if the terminated employee is paid compensation in a subsequent month. Thus, for example, an employee who terminates employment during the month, receives compensation during the month of termination, and receives a final paycheck the following month is counted as an employee of the employer for the month of termination but not for the following month.

(3) *Method of election.* An employer makes the safe harbor election for a calendar year on the employment tax return filed for the previous calendar year.

(4) *Additional rules.* The Commissioner may, in revenue procedures, revenue rulings, notices, or other guidance of general applicability, revise the safe harbor number or provide additional safe harbors that satisfy section 3221(c).

(e) *Effective dates.* This § 31.3221–3 is effective for calendar years beginning after December 31, 1992, except that paragraph (d) is effective for calendar years beginning after December 31, 1993. Taxpayers may apply the rules in paragraphs (a), (b), and (c) of this section before January 1, 1993.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: February 23, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–4675 Filed 2–25–94; 8:54 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Reg. 5400.21]

Privacy Program

AGENCY: Defense Logistics Agency, DOD.

ACTION: Final rule.

SUMMARY: On January 19, 1994, (59 FR 2786) the Defense Logistics Agency published a proposed rule to exempt an existing system of records, S255.01 DLA–GC, entitled Fraud and Irregularities, from certain provisions of the Privacy Act of 1974. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records. The notice was previously published on November 16, 1993, at 58 FR 60428.

EFFECTIVE DATE: February 19, 1994.

ADDRESSES: If you have any questions concerning this rule, address them to the Privacy Act Officer, Administrative Management Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

This final rule adds two exemptions to an existing DLA system of records. DLA performs as one of its principal functions investigations into and enforcement actions concerned with violations of civil and administrative law, fraud, or antitrust rules relating to DLA procurement, property disposal, contract administration, or other DLA activities. The (k)(2) and (k)(5) exemptions reflects recognition that certain records in the system may be deemed to require protection from disclosure in order to protect confidential sources mentioned in the files and avoid compromising, impeding, or interfering with investigative and enforcement proceedings. The Director, DLA has adopted the exemptions for the above reasons.

List of subjects in 32 CFR part 323

Privacy.

Accordingly, the Defense Logistics Agency amends 32 CFR part 323 as follows:

1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Appendix H to Part 323 is amended by adding paragraph c.

Appendix H to Part 323–DLA Exemption Rules

* * * * *

c. ID: S100.50 DLA–GC (Specific exemption).

1. *System name:* Fraud and Irregularities.

2. *Exemption:* This system of records is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G), (H), and (I), and (f).

3. *Authorities:* 5 U.S.C. 552a(k)(2) and (k)(5).

4. *Reasons:* From subsection (c)(3) because granting access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

From subsections (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Dated: February 22, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4520 Filed 2–28–94; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI30–02–6143; AMS–FRL–4841–9]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: United States Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action conditionally approves a revision to the Wisconsin State Implementation Plan (SIP) for the attainment of the National Ambient Air Quality Standards for ozone. This revision provides for the adoption and implementation of a vehicle inspection/maintenance (I/M) program meeting all the requirements of the United States Environmental Protection Agency (USEPA) regulations, published in the **Federal Register** on November 5, 1992, concerning vehicle I/M programs. The

USEPA is conditionally approving this SIP revision pursuant to section 110(k)(4) of the Clean Air Act (Act). The conditional approval is based on a November 18, 1992, SIP submittal, amended on January 19, 1993, which contained a commitment by the Governor's designee to the timely adoption and implementation of an I/M program meeting all the requirements of USEPA's I/M regulations, a schedule for implementation of the required program, and evidence of a hearing on the commitment. A full SIP revision, including legal authority to implement the program, was required by November 15, 1993. Wisconsin submitted a full SIP revision on November 15, 1993.

EFFECTIVE DATE: This final rulemaking becomes effective March 31, 1994.

ADDRESSES: Copies of the requested SIP revision, technical support documents and public comments received are available at the following address:

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John M. Mooney, Environmental Protection Specialist, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6043.

Anyone wishing to come to Region 5 offices should contact John M. Mooney first.

SUPPLEMENTARY INFORMATION:

I. Summary

On September 20, 1993, the USEPA published a notice of proposed rulemaking in the **Federal Register** (58 FR 48812) which proposed to conditionally approve the State of Wisconsin's November 18, 1992, SIP submittal, as amended on January 19, 1993, as a revision to the Wisconsin SIP. A more detailed account of the USEPA's action can be found in the proposed rule.

II. Analysis of State Submittal

The USEPA has reviewed this submittal and is conditionally approving it pursuant to section 110(k)(4) of the Act, on the condition that the I/M program is adopted and implemented according to the commitments and schedule contained in the SIP submittal. The submittal specifies that Wisconsin has committed to adopt the necessary I/M regulation to meet the requirements of the USEPA's I/M rule and to submit a final SIP to the USEPA by November 15, 1993. Wisconsin submitted a final SIP to the USEPA on November 15, 1993, and this submittal was found to be complete by the USEPA on January 3, 1994. The USEPA will review and take action on the final SIP in a separate FR notice. The conditionally approved commitment will remain part of the SIP until the USEPA takes final action approving or disapproving the new submittal. If the USEPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

III. Public Comments

On September 20, 1993, the USEPA proposed to conditionally approve this SIP submittal and requested public comment. The public comment period closed on October 20, 1993, on which date comments were received from the Natural Resources Defense Council (NRDC), the only comments on this proposal. The following summarizes NRDC's comments and USEPA's response to these comments:

Comment: "NRDC urges EPA to disapprove Wisconsin's submittal. The Clean Air Act ("CAA" or the "Act") requires States to submit complete I/M programs in 1990 (basic) for many regions and on November 15, 1992, for other regions (enhanced). Because the submittal evaluated in this proposed rule does not contain regulations actually establishing an I/M program they are incomplete within the meaning of 40 CFR part 51, appendix V. As such section 110(k)(1) of the Act requires EPA to make a finding of incompleteness. EPA lacks the authority to approve conditionally such submittals because they contain major deficiencies and consequently do not constitute "official plan submittals" within the meaning of the Act. See 40 CFR 51.103. Conditional approval of these documents is also inconsistent with the conditions outlined in the I/M rule and other EPA guidance for the approval of committal SIPs. EPA has a legal obligation to follow its own rules."

Response: As noted in a July 22, 1992, memorandum from Michael Shapiro entitled "Guidelines for State Implementation Plan (SIP) Submittals Due November 15, 1992," the USEPA identified the I/M program as one where conditional approvals under section 110(k)(4) of the Act would be appropriate. According to the final I/M regulation "EPA believes that conditional approvals are appropriate in these circumstances because States cannot be expected to begin developing I/M programs meeting the requirements of these regulations until the regulations are finally adopted." (57 FR 52970.) This did not occur until November 5, 1992. As a result, States were not required by the I/M rule to submit final regulations with the November 15, 1992, submittal. For areas required to implement "enhanced" I/M programs, such as the Milwaukee ozone nonattainment area, the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992), States that "in the event that EPA's enhanced performance standard is not finalized soon enough to provide sufficient time for SIP development, USEPA will use its authority under section 110(k)(4) to conditionally approve SIP submittals committing to adopt enhanced I/M programs consistent with USEPA's guidance." This has served as the basis for the USEPA's rulemaking on Wisconsin's enhanced I/M SIP submittal.

In cases where the USEPA issues conditional approvals under section 110(k)(4) of the Act, States are not required to submit fully adopted rules until the date specified by the State's commitment. In determining the completeness of these submittals, the USEPA considers only the aspects of the completeness criteria that are relevant to the rulemaking action. Since the USEPA's conditional approval in this instance is not based on a consideration of fully adopted rules, the State's submittal can be found complete without them.

Comment: "The I/M rule requires States to commit to sending a complete program to EPA by November 15, 1993. 57 FR 52950, 53002 (November 5, 1992). NRDC insists on literal compliance with the rule's requirement that the I/M commitment come from the Governor, not his designee. See 57 FR 52970. That kind of high-level personal commitment is necessary in order to make sure the commitment to a controversial program is kept. This is not an idle concern. EPA received no such commitment from the Governor of California and he now feels free to fight actively passage of a rule meeting the I/M regulations unencumbered by any threat of mandatory sanctions. The absence of such high-level commitment requires disapproval of a State's submission."

Response: Traditionally, Governors have chosen to delegate their authority for making formal SIP revisions to whomever they deem fit. In the State of Wisconsin, this authority has been delegated to the Director of the Bureau of Air Management in the Wisconsin Department of Natural Resources. It is the USEPA's interpretation that, not withstanding the particular language in

the final I/M regulation, the Governor's designee has been authorized to make such a commitment to be incorporated into the SIP and that this commitment is legally binding on the State. The USEPA believes that a commitment made by the State official responsible for making SIP submittals constitutes a commitment from the Governor within the meaning of 40 CFR 51.372(b)(1).

Comment: "The I/M rule also requires a State seeking conditional approval to obtain legal authority for implementing an appropriate program in the first legislative session after November 5, 1992, including legislative sessions in progress if at least 21 days remain before the bill submittal deadline. 57 FR 53003 (to be codified at 40 CFR 51.373(e)). Failure to obtain such prompt legislative authority for an I/M program requires disapproval of a State's submission."

Response: Based on the SIP submittal requirements contained in the USEPA final I/M regulation, States were required to implement I/M programs "as expeditiously as practicable" and were not required to submit fully adopted legislation for I/M until November 15, 1993. However, in its committal SIP submittal, the State of Wisconsin did include the fully adopted legislation which authorizes the Wisconsin Department of Natural Resources to develop an I/M program as necessary to meet Federal requirements (Wisconsin Acts 39 and 302). Thus, Wisconsin fully satisfied the obligation to obtain appropriate legal authority by the first full legislative session after November 5, 1992, as required by 57 FR 3003, (to be codified at 40 CFR 51.373(e).

Comment: "Furthermore, EPA's I/M rule requires States to submit a schedule of specific dates of program implementation milestones. 57 FR 52970. Such schedule must include at a minimum: a date for final specification and test procedures, 57 FR 53002 (to be codified at 40 CFR 51.372(a)(1)(iii)); a date for licensing or certifications of stations and inspectors, id. (to be codified at 40 CFR 51.372(a)(1)(v)); and a date when full stringency cut points will be supplied, id. (to be codified at 40 CFR 51.372(a)(1)(vii))."

Response: Wisconsin's submittal included a schedule which contained the milestones specified by the USEPA final I/M regulation including deadlines for final specification and test procedures and full stringency cutpoints. Dates for certifications of stations and inspectors are established through the operation of the I/M program that is currently in place in the Milwaukee area. Since this latest SIP revision represents an upgrade and expansion of the existing program, and not the implementation of a new program, these existing procedures provide an adequate method for certifying stations and inspectors as they become necessary during the program enhancement process. Since this program is already in place, the USEPA does not believe it was necessary for Wisconsin to include dates for station and inspector certification in its I/M committal SIP.

Comment: "In determining whether to conditionally approve a State's submission, EPA must assess the likelihood that the State will meet its commitments. See e.g., "Memorandum from John Calcagni to Regional Air Directors re. Processing of SIP Submittals (July 9, 1992) at 6. In particular, the final rule must address whether the State has met scheduled milestones that pass prior to final conditional approval. If any one of them has not been met, EPA cannot conditionally approve the commitment. In addition, as the November 15, 1993 deadline for a complete I/M program nears, EPA is now in position to evaluate a State's ability to submit a timely approvable plan. For those States which will be unable to meet the November 15, 1993 deadline, of which there are many, EPA should reject the States' submissions now and impose sanctions pursuant to section 110(k)(1)."

Response: In processing the State's submittal, the USEPA has based its action on the State's ability to meet the November 15, 1993, submittal date. As noted above, the State submitted its final I/M SIP to the USEPA on November 15, 1993. Therefore, the USEPA believes that it is appropriate at this time to conditionally approve the State's submittal.

Comment: "NRDC opposes EPA's broad use of conditional approvals in evaluating SIP submissions and has sued the agency in the D.C. Circuit for the U.S. Court of Appeals regarding such policy. Having relaxed statutory deadlines for I/M, EPA is at least obligated to the public to follow its own rule, published in final form on November 5, 1992. Failing to hold States strictly to the I/M rule's standards for committals sends the wrong message to States and thwarts the goals of the Clean Air Act."

Response: As noted in the I/M regulation, for their November 15, 1992 submittals, States were allowed to submit a commitment from the Governor to the timely adoption and implementation of an I/M program meeting all of the requirements of the I/M regulation, a schedule of implementation, and evidence that a public hearing was held on the commitment. The USEPA's final action on the State's November 15, 1992, submittal is based on a consideration of Wisconsin's ability to comply with these elements. Action with respect to the State's November 15, 1993 submittal for the fully adopted I/M program will be addressed by the USEPA shortly in a separate rulemaking in accordance with the Act and the final regulation for I/M.

Comment: The NRDC also asserts that EPA should disapprove Wisconsin's committal SIP or make a finding of nonsubmittal or incompleteness retroactive to November 15, 1992.

Response: The USEPA does not believe that it can make a disapproval action or incompleteness determination retroactive to November 15, 1992, as requested by NRDC. Retroactive application of rules is not allowed in the absence of an express Congressional grant of such authority. *Bowen* v. *Georgetown University Hosp.*, 109 S. Ct. 468, 471 (1988). Congress has provided no authority for the USEPA to make disapproval actions or incompleteness determinations retroactive to the time the submittal was due. Moreover, since the USEPA made a finding on January 3, 1994, that Wisconsin submitted a complete I/M committal SIP, the USEPA cannot now make a finding of failure to submit or of incompleteness, nor make such a finding retroactive, with respect to this submittal.

IV. Rulemaking Action

The USEPA is conditionally approving Wisconsin's submittal pursuant to section 110(k)(4) of the Act. The submittal specifies that Wisconsin has committed to adopt the necessary I/M regulation to meet the requirements of the USEPA's I/M rule and to submit a final SIP to the USEPA by November 15, 1993. The State submitted a final SIP revision to the USEPA on November 15, 1993.

Procedural Background

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future notice will inform the general public of these tables. Under the revised tables this action remains classified as Table 2. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222)

from the requirement of section 3 of Executive Order 12291 for a period of 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on the USEPA's request. This request continued in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, The USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals under sections 110 and 301, subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the USEPA certifies that it is does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 1994. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements. 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: February 7, 1994.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2569 is amended adding paragraph (a)(2) to read as follows:

§ 52.2569 Identification of plan—conditional approval.

(a) * * *

(2) On November 18, 1992, the Wisconsin Department of Natural Resources (WDNR) submitted a commitment to adopt motor vehicle enhanced inspection and maintenance (I/M) rules as a revision to the State's ozone State Implementation Plan (SIP). After holding a public hearing on the submission, WDNR resubmitted the SIP on January 19, 1993. In this submission, the State commits to submit a fully adopted I/M program to the USEPA by November 15, 1993.

[FR Doc. 94–4443 Filed 2–28–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7594]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas

(section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

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, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New Jersey:				
Linden, city of, Union County	340467	Nov. 20, 1970, Emerg; Nov. 24, 1976, Reg; Mar. 2, 1994, Susp.	3–2–94	Mar. 2, 1994.
Region III				
Virginia:				
Williamsburg, city of	510294	Oct. 29, 1975, Emerg; Nov. 20, 1981, Reg; Mar. 2, 1994, Susp.	3–2–94	Do
Region VI				
Texas:				
San Angelo, city of, Tom Green County	480623	Mar. 3, 1972, Emerg; May 16, 1977, Reg; Mar. 2, 1994, Susp.	3–2–94	Do
Region IX				
California:				
Kern County, unincorporated areas	060075	Sept. 10, 1971, Emerg; July 28, 1972, Susp; Jan. 18, 1974, Rein; Sept. 29, 1986, Reg; Mar. 2, 1994, Susp.	3–2–94	Do
Region III				
Pennsylvania:				
Hawley, borough of, Wayne County	420863	July 18, 1974, Emerg; Aug. 19, 1991, Reg; Mar. 15, 1994, Susp.	3–15–94	Mar. 15, 1994.
Region IV				
Mississippi:				
Richland, city of, Rankin County	280299	Nov. 9, 1976, Emerg; Feb. 2, 1983, Reg; Mar. 15, 1994, Susp.	3–15–94	Do
Region VI				
Louisiana:				
Monroe, city of, Ouachita Parish	220136	Sept. 6, 1974, Emerg; Dec. 18, 1979, Reg; Mar. 15, 1994 Susp.	3–15–94	Mar. 15, 1994.
Ouachita Parish, unincorporated areas	220135	Jan. 29, 1974, Emerg; July 2, 1980, Reg; Mar. 15, 1994, Susp.	3–15–94	Do

State/Location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Richwood, town of, Ouachita Parish	220378	Feb. 9, 1978, Emerg; Sept. 30, 1987 Reg; Sept. 30, 1987, Susp; Nov. 5, 1987, Rein; Mar. 15, 1994, Susp.	3–15–94	Do

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: February 17, 1994.

Robert H. Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 94–4585 Filed 2–28–94; 8:45 am]

BILLING CODE 6718–21–P

Proposed Rules

Federal Register
Vol. 59, No. 40
Tuesday, March 1, 1994

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AD58

Revisions to the Upland Cotton User Marketing Certificate Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: Concerns have been raised about the cost of the upland cotton user marketing certificate program and the way in which it has been administered. A notice requesting comments regarding the program was published in the **Federal Register** on August 20, 1993, at 58 FR 44320. Comments were solicited with respect to several of the concerns that have been raised. The Commodity Credit Corporation (CCC) is now requesting further comments with respect to proposed changes in the formula for determining the user marketing payment rate; whether export contracts that specify shipment after September 30 should be eligible for payments beginning October 1, and, if so, whether the maximum payment rate should be 2.5 cents per pound until such time as the payment rate calculation is based entirely on Northern Europe forward prices; and whether a destination should be required to be declared for export sales contracts.

DATES: Comments must be received by March 11, 1994, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Director, Fibers and Rice Analysis Division (FRAD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3754–S, PO Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Wayne Bjorlie, FRAD, ASCS, USDA, room 3754–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–7954.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by USDA, it has been determined that this proposed rule would materially alter the budgetary impacts of entitlements and the rights and obligations of entitlement recipients. A change in the method of determining the payment rate under the program could raise payment rates for domestic textile mills and lower payment rates for exporters of U.S.-grown cotton, reducing budgetary expenditures. The ability of exporters to earn a payment on forward-crop sales beginning earlier in the marketing year could afford them greater benefits under the program and result in more price competition. The requirement that exporters designate the country of destination of the cotton before CCC will fix a payment rate will entail additional paperwork for exporters and could reduce exports of U.S. cotton.

These program changes are projected to increase the average rate at which domestic mills are being paid by about one-half cent and to decrease the average rate at which exporters are being paid by about two cents. As a result, domestic mill use of upland cotton is expected to increase by 50,000 bales per year and exports of U.S. cotton are expected to be reduced by 100,000 bales per year. These changes are not significant enough to have any impact on acreage reduction programs, prices, or farm income. Government outlays for Step-2 payments are projected to be reduced by an average of almost $30 million per year.

Other than the impacts indicated above, this action:

(1) Will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Will not materially alter the budgetary impacts of user fees or loan programs, and;

(4) Will not raise novel legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The information collection requirements contained in the current regulations have been approved by the Office of Management and Budget (OMB), under the provisions of 44 U.S.C. chapter 35, through August 31, 1994 (OMB No. 0560–0136). Changes made to the Upland Cotton Domestic User/Exporter Agreement as a result of

this proposed rule have been submitted to OMB for approval in addition to one new information collection requirement (see Attachment 1).

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Background

This proposed rule amends 7 CFR part 1427 to set forth proposed determinations with respect to the upland cotton user marketing certificate program. A notice requesting comments on the administration of the program was published on August 20, 1993, at 58 FR 44320. Comments were requested on these specific concerns:

(1) How to make the program equitable to exporters with and without foreign affiliates, to domestic textile mills, and to other members of the U.S. cotton industry;

(2) How best to meet the legislative objectives of the program as they relate to U.S. cotton competitiveness;

(3) How to assure that export contracts considered eligible to lock in rates in advance under the program represent actual sales and how to institute appropriate measures that discourage program abuse but do not unduly penalize exporters if they are unable to ship cotton due to unforseen and unavoidable circumstances;

(4) How to operate a program that interferes as little as possible with normal cotton marketing practices, that does not overly influence or dominate decision-making in the cotton market, that will not result in cotton price distortions, and that will not commit Federal funds unnecessarily to the competitiveness program; and

(5) How to accomplish the above objectives in a way that is not administratively burdensome.

A total of sixteen comments were received in response to the notice requesting comments.

With regard to changing the formula for calculating the user marketing certificate payment rate, four respondents supported a proposal that would limit the weekly increase in the forward payment rate calculation to 25 percent of the current week's payment rate calculation. Two respondents recommended basing the user marketing certificate payment rate throughout the year on a four-week moving average of the payment rate formula. One respondent commented that domestic mills should receive the same rate as exporters or the formula should be eliminated. Another respondent urged elimination of the current and forward dual rate structure and suggested that CCC make adjustments in the price quotations to reflect actual sales prices. Four respondents recommended eliminating the program altogether, one respondent recommended eliminating the program for exporters only, and one respondent suggested using a fixed certificate rate of 0.5 cents per week. Two respondents did not comment on the payment rate formula.

With regard to the formula used to determine whether a special import quota is in effect, three respondents recommended that only current Northern Europe price quotations be used.

With regard to sales to foreign affiliates, one respondent asked that sales to foreign affiliates be allowed to continue, one respondent asked that sales to foreign affiliates not be allowed, and three respondents asked that only sales to end users be allowed. In addition, one respondent requested that CCC not establish regulations that interfere with traditional international marketing practices.

Two respondents requested that there not be a time limit for specifying the destination of any exports. One respondent asked that liquidated damages be calculated based on 50 percent of the certificate value and another respondent asked that CCC increase penalties for non-performance on export contracts.

Several respondents commented on various provisions of the upland cotton loan program. One respondent suggested lowering the loan rate to 45 cents. One respondent asked that the loan period be shortened to ten months with a two-month extension, that preliminary notice of any discretionary adjustment to the adjusted world price (AWP) be given and that producers be ineligible for loans if they have cotton under loan from a previous crop. One respondent suggested that CCC deduct carrying charges from the loan proceeds.

After considering these comments, the following changes are proposed to be made with respect to the regulations governing the upland cotton user marketing certificate program:

(1) Beginning with the period each year when both Northern Europe current prices and Northern Europe forward prices are available, determine the payment rate for both domestic mills and exporters using a blend of the two prices similar to the method used to make a transition in the AWP from current to forward prices. Establish a six-week transition period during which blended prices would be used. Following the transition period, calculate payment rates based on the Northern Europe forward prices. If adopted, this proposal would require that a complementary procedure be established for determining the "Step 3" special import quota;

(2) Allow export contracts that specify delivery after September 30 to qualify for payments beginning about October 1. Such contracts would earn the lower of the rate in effect for a given week or 2.5 cents per pound until such time as the payment rate is based entirely on Northern Europe forward prices. Thereafter, no limitation on the payment rate would apply; and

(3) Require exporters to declare the country of destination before a Step-2 payment rate can be established for an export contract.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, it is proposed that 7 CFR part 1427 be amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.102 is amended by:

A. Adding "End user" definition, and

B. Revising definitions of "Northern Europe current price", "Northern Europe forward price", "Northern Europe price", "U.S. Northern Europe current price", "U.S. Northern Europe forward price", and "U.S. Northern Europe price" to read as follows:

§ 1427.102 Definitions.

* * * * *

End user means the person or entity who opens a bale of cotton for use in the manufacture of cotton products.

* * * * *

Northern Europe current (NEc) price means the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for Middling (M) 1 3/32 inch cotton C.I.F. northern Europe.

Northern Europe forward (NEf) price means the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths

quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

Northern Europe (NE) price means, during the period in which only one daily price quotation is available for the growth quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, the average for the preceding Friday through Thursday period of the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

* * * * *

U.S. Northern Europe current (USNEc) price means the average of the current shipment prices for the preceding Friday through Thursday for the lowest-priced United States growth as quoted for Middling (M) 3/32 inch cotton C.I.F. northern Europe.

U.S. Northern Europe forward (USNEf) price means the average of the forward shipment prices for the preceding Friday through Thursday for the lowest-priced United States growth as quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

U.S. Northern Europe (USNE) price means, during the period in which only one daily price quotation is available for the growth quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, the average for the preceding Friday through Thursday period of the lowest-price United States growth as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

3. Section 1427.107 is amended by:

A. Redesignating paragraphs (d) through (g) as paragraphs (f) through (i), respectively,

B. Revising paragraphs (a), (b), and (c),

C. Adding new paragraphs (d) and (e), and

D. Revising redesignated paragraph (f)(3)(i) to read as follows:

§ 1427.107 Payment rate.

(a) Payments will be made to domestic users for all eligible bales opened and exporters on contracts which specify shipment of the cotton by not later than September 30 following such contract period and for which a country of destination has been named, whenever the formula defined in paragraph (c) of this section (hereinafter referred to as the "payment rate calculation") results in positive values for the four preceding consecutive weeks and the adjusted world price, determined in accordance with § 1427.25 of this part (hereinafter referred to as the "AWP"), does not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period. Payments will not be made if the payment rate calculation, adjusted for the value of any certificate or cash payments issued under this section, results in a positive value for each week of the immediately preceding 10-week period. The payment rate for any Friday through Thursday period is equal to the payment rate calculation for the immediately preceding Friday through Thursday period.

(b) Payments will be made to exporters on contracts which specify shipment of the cotton after September 30 following such contract period and for which a country of destination has been named beginning the Friday through Thursday week which includes October 1 whenever the payment rate calculations defined in paragraph (c) of this section are positive for the preceding four consecutive weeks and the AWP does not exceed the current crop-year loan level for the base quality of upland cotton by more than 130 percent in any week of the 4-week period. No payments will be allowed on contracts which specify shipment of the cotton after September 30 following such contract period if the contract was made prior to the Friday through Thursday week which includes the preceding October 1. With respect to contracts which specify shipment of the cotton after September 30, 1994 but before September 30, 1995, no payments will be made on contracts made prior to the week following the first week covering the period Friday through Thursday which includes April 15, 1994 or, if the USNEc, the USNEf, the NEc and the NEf are not available, prior to the week following the first week covering the period Friday through Thursday after the week which includes April 15, 1994 in which the USNEc, the USNEf, the NEc and the NEf are available. Payments will not be made if the payment rate calculation, adjusted for the value of any certificate or cash payments issued under this section, results in a positive value for each week of the immediately preceding 10-week period. Beginning the Friday through Thursday week which includes October 1 and until the seventh week following the first week covering the period Friday through Thursday which includes April 15 or, if the USNEc, the USNEf, the NEc and the NEf are not available, until the seventh week following the first week covering the period Friday through Thursday after the week which includes April 15 in which the USNEc, the USNEf, the NEc and the NEf are available, the payment rate for any Friday through Thursday period is equal to the lower of the payment rate calculation for the immediately preceding Friday through Thursday period or 2.5 cents. Beginning the seventh week following the first week covering the period Friday through Thursday which includes April 15 or, if the USNEc, the USNEf, the NEc and the NEf are not available, beginning with the seventh week following the first week covering the period Friday through Thursday after the week which includes April 15 in which the USNEc, the USNEf, the NEc and the NEf are available, the payment rate for any Friday through Thursday period is equal to the payment rate calculation for the immediately preceding Friday through Thursday period.

(c) (1) Beginning August 1 until the first week covering the period Friday through Thursday which includes April 15 or, if the USNEc, the USNEf, NEc and the NEf are not available, until the first week covering the period Friday through Thursday after the week which includes April 15 in which the USNEc, the USNEf, the NEc and the NEf are available, the payment rate calculation is the USNE minus the NE price minus 1.25 cents per pound.

(2) Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if the USNEc, the USNEf, the NEc and the NEf are not available, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which the USNEc, the USNEf, the NEc and the NEf price are available, the payment rate calculation will be based on an average of the USNEc price and the USNEf (hereinafter referred to as the "blended U.S. Northern Europe price") and an average of the NEc and the NEf (hereinafter referred to as the "blended Northern Europe price") as follows:

(i) Weeks 1 and 2: Blended U.S. Northern Europe price equals ((2×USNEc)+USNEf)/3. Blended Northern Europe price equals ((2×NEc)+NEf)/3.

(ii) Weeks 3 and 4: Blended U.S. Northern Europe price equals (USNEc+USNEf)/2. Blended Northern Europe price equals (NEc+NEf)/2.

(iii) Weeks 5 and 6: Blended U.S. Northern Europe price equals (USNEc+(2×USNEf))/3. Blended Northern Europe price equals (NEc+(2×NEf))/3. The payment rate calculation for the 6-week period is the blended U.S. Northern Europe price minus the blended Northern Europe price minus 1.25 cents per pound.

(3) Beginning with the seventh week following the first week covering the period Friday through Thursday which includes April 15 or, if the USNEc, the USNEf, the NEc and the NEf are not available, beginning with the seventh

week following the first week covering the period Friday through Thursday after the week which includes April 15 in which the USNEc, the USNEf, the NEc and the NEf are available, until July 31, the payment rate calculation is the USNEf minus the NEf minus 1.25 cents per pound.

(d) For contracts entered into before August 30, 1991, the payment rate shall be zero.

(e) All export contracts must specify a country of destination in order to determine the applicable payment rate. If the country of destination is declared on the date the export sale is first confirmed in writing, the payment rate shall be the rate in effect for that Friday through Thursday week. If the country of destination is declared after the date that sale is first confirmed in writing but prior to shipment, the payment rate shall be the lower of the rate in effect at the time the sale was made or the rate in effect at the time the destination was declared. If no destination is declared prior to shipment, the payment rate shall be the lower of the rate in effect at the time the sale was first confirmed in writing or the rate in effect on the shipment date. The exporter shall notify CCC if there is a change in the country of destination previously declared for any export contract. Upon receipt of such notification, CCC will establish the payment rate for cotton shipped under such contract at the lower of the payment rate in effect when the original contract was made, or the payment rate in effect on the date written notification which is submitted to CCC stating that the cotton shipped, or to be shipped, under such contract was, or shall be shipped to a country other than that shown in the original contract.

* * * * *

(f) * * *

(3) * * *

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was based upon a current or forward contract, and the lower of the original contract payment rate or if a replacement contract has been made, the replacement contract payment rate, or if a change of destination country was made, the payment rate in effect at the time change of destination is declared, or

* * * * *

4. Section 1427.108 (c)(2) and (d) are revised to read as follows:

§ 1427.108 Payment.

* * * * *

(c) * * *

(2) Sold by the exporter on the date the contract for sale is first confirmed in writing by the exporter or importer and the destination country is named.

(d) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchases and consumption of eligible cotton by the domestic user or proof of export of eligible cotton by the exporter, as required by the provisions of the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC. Retention of export payments is predicated upon the receipt by CCC of proof of delivery to the designated country within 60 calendar days of such payment.

5. Section 1427.109(c)(3)(i) is revised to read as follows:.

§ 1427.109 Contract cancellations.

* * * * *

(c) * * *

(3) * * *

(i) The difference between the highest payment rate paid to or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by the exporter was based upon a current or forward contract and the lower of the original contract payment rate or if a replacement contract has been made, the replacement contract payment rate, or if a change of destination country was made, the payment rate in effect at the time the change of destination is declared, or

* * * * *

Signed at Washington, DC, on February 24, 1994.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 3410-05-P

CCC-1046
(02-17-94)

U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

Form Approved - OMB No. 0560-0136

CERTIFICATE OF IMPORTATION OF AMERICAN RAW COTTON

NOTE: *The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1980, as amended. The authority for requesting the following information is 7CFR Part 1427, Subpart--Upland Cotton User Marketing Certificate Program. The information will be used to insure contractual requirements. Furnishing the requested information is mandatory. Failure to furnish the requested information will result in recovery of payment which may include interest and/or liquidated damages. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.*

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560-0136), Washington, D.C. 20503.

PART A - EXPORTER AND PURCHASER DATA *(Complete Part A **before** forwarding to the approving port official.)*

1. NAME AND ADDRESS OF EXPORTER			2. NAME AND ADDRESS OF PURCHASER
3. QUANTITY SHIPPED	4. PORT OF EXPORT	5. VESSEL	6. BILL OF LADING NUMBER
7. DATE LOADED ON VESSEL	8. DESTINATION COUNTRY		
9. CCC CONTRACT CONTROL NUMBER		10. AGREEMENT NUMBER	11. EXPORTER'S INVOICE NUMBER
12. EXPORTER'S SALES NUMBER			13. SHIPPING MARKS AS SHOWN ON BILL OF LADING

PART B - APPROVING OFFICIAL *(Must be a duly - authorized customs or port official of the destination country.)*

NOTE: This information is being requested by the exporter listed in Item 1 so that the exporter can report to the Commodity Credit Corporation, United States Department of Agriculture, the place and date of debarkation of this cargo of American upland cotton. ***The original of this certificate to be airmailed to the exporter entered in item 1 above.***

14. SIGNATURE ☞	15. OFFICIAL TITLE	16. DATE SIGNED
17. SIGNED AT:	18. PORT OF DISCHARGE	19. SIGNED AT *(CITY, COUNTRY)*
20. DATE DISCHARGED FROM SHIP		

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or disability.

[FR Doc. 94–4674 Filed 2–24–94; 4:22 pm]

BILLING CODE 3410–05–C

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91–101–1]

Goats Imported From Mexico for Immediate Slaughter; Horse Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the regulations concerning importation of animals into the United States to allow importation of goats from Mexico without a health certificate if the goats are imported for immediate slaughter within 2 weeks following importation. Goats imported from Mexico for immediate slaughter would have to be sprayed for ticks at the time of importation, would have to be inspected at the port of entry and found free from evidence of and exposure to both communicable animal disease and fever tick infestation, and would have to be moved directly from the port of entry to a recognized slaughtering establishment in a sealed vehicle.

This change would allow goats from Mexico, that do not present a significant risk of spreading animal disease because they are bound for immediate slaughter, to be imported without meeting the health certificate requirements that are needed for goats not bound for immediate slaughter, which present a greater risk of spreading animal disease.

We also propose to make a minor change for clarity in our regulations concerning horses subject to quarantine after importation into the United States.

DATES: Consideration will be given only to comments received on or before May 2, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–101–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 govern the importation into the United States of certain animals and poultry and certain animal and poultry products. Section 92.426 deals with inspection at the port of entry of ruminants (including goats) from Mexico, and § 92.428 deals with health certification requirements for sheep, goats, and wild ruminants from Mexico. Section 92.429 addresses the importation of ruminants (excluding sheep and goats) from Mexico for immediate slaughter.

Currently, § 92.428 requires, in part, that goats from Mexico offered for importation into the United States be accompanied by a certificate issued by a salaried veterinarian of the Mexican government which states that the goats are not affected with, nor have been exposed to, scrapie and other communicable diseases, and which requires that "[n]otwithstanding such certificate, such * * * goats shall be detained or quarantined as provided in § 92.427 and shall be dipped at least once in a permitted scabies dip under supervision of an inspector." The currently required certificate must also state that the goats "have been tested for tuberculosis and brucellosis with negative results within 30 days preceding their being offered for entry, and give the date and method of testing, the name of the consignor and of the consignee, and a description of the animals including breed, ages, markings, and tattoo and eartag numbers. Notwithstanding such certification, such goats shall be detained or quarantined as provided in § 92.427 and retested for brucellosis."

We believe these requirements are not necessary to prevent the introduction or spread of animal disease in the case of goats imported from Mexico for immediate slaughter. These requirements were designed for animals which have significant opportunity to spread disease to other animals in the United States, such as through breeding or prolonged contact with other animals; goats moved for immediate slaughter following importation should not have these opportunities.

We believe that goats may be imported from Mexico without presenting a significant disease risk if they are treated for ticks prior to their entry, and if they are moved directly from the port of entry to a recognized slaughtering establishment in a sealed vehicle, and slaughtered within 2 weeks.

The tick treatment would control the possibility that disease-bearing ticks could become dislodged from the goats and move to other animals in the United States. As a treatment for ticks, we propose that the goats be sprayed with a solution of 0.25 percent of an approved proprietary brand of coumaphos under the supervision of a port veterinarian. This treatment has been used effectively for many years to control ticks in goats and other ruminants, and the proper concentration of coumaphos is readily available in the form of commercial products such as Co-Ral®.

The requirement for movement in a sealed vehicle would prevent contact with other animals while the goats are en route to slaughter, and the requirement for slaughter within 2 weeks would reduce the possibility that the goats could come in contact with other animals while awaiting slaughter, or be diverted from slaughter. The requirement for direct movement appears necessary to minimize the risk of goats spreading disease to animals in the United States, should any of the imported goats have an infectious disease. As defined in § 92.400, and consequently applicable here, "moved directly" is "[m]oved without unloading and without stopping except for refueling, or for traffic conditions such as traffic lights or stop signs."

Therefore, we propose to exempt goats imported from Mexico for immediate slaughter from the requirements of § 92.428, and to allow their importation subject to the requirements described above, which we would add to § 92.429.

We do not propose to exempt goats imported from Mexico for immediate slaughter from any of the requirements currently contained in §§ 92.424, 92.425, and 92.426 that apply to ruminants imported from Mexico. Section 92.424 requires the importer, subject to certain exceptions, to obtain an import permit for ruminants, and to deliver an application for inspection at the port of entry. Section 92.425 requires the importer to present two copies of a declaration to the collector of customs at the port of entry, containing certain information about the importer, the animals offered for importation, and their destination. Section 92.426 provides for inspection of ruminants at the port of entry, and refusal of entry for ruminants found to be affected with or exposed to a

communicable disease or infested with fever ticks.

Horse Quarantine Facilities

Our regulations at 9 CFR 92.308 establish requirements for the quarantine of certain horses imported into the United States. Section 92.308(c)(2)(ii)(B), which contains the physical requirements for a quarantine facility, provides that "Doors, windows, and other openings of the facility shall be provided with double screens which will prevent insects from entering the facility."

However, the preceding paragraph, § 92.308(c)(2)(ii)(A) states that "All walls, floors, and ceilings shall be constructed of solid impervious material or be screened as provided in paragraph (c)(2)(ii)(B) of this section." The last phrase of this sentence has led some readers to believe that walls, floors, and ceilings of quarantine facilities could somehow be constructed of screening. That was not our intent when we originally promulgated this language. We simply meant that if a facility's solid and impervious walls, floor, or ceiling had openings, they must be screened in accordance with § 92.308(c)(2)(ii)(B). Therefore, we propose to remove the last phrase of the misleading sentence in § 92.308(c)(2)(ii)(A), to make it read "All walls, floors, and ceilings shall be constructed of solid impervious material."

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

This proposed amendment, if adopted, would allow importation of a small number of goats from Mexico under reduced paperwork requirements. This change would also relieve certain requirements for testing and veterinary examination. The goats eligible for such importation do not present a significant risk of spreading animal disease because they are bound for immediate slaughter. It is anticipated that no more than 100 goats a year would be imported in accordance with the proposed regulations. The ability to import the goats would benefit several small businesses near the Mexican border that are interested in importing goats to meet local demands for goat meat. The expected scale of the imports would preclude any significant competition with large or small domestic goat producers.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 92 as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.308 [Amended]

2. In § 92.308(c)(2)(ii)(A) would be amended by removing the phrase "or be screened as provided in paragraph (c)(2)(ii)(B) of this section".

§ 92.428 [Amended]

3. In § 92.428, paragraph (a) introductory text, the first word "Sheep" would be removed and the phrase "Except for goats imported from Mexico for immediate slaughter in accordance with § 92.429(b), sheep" would be added in its place.

4. In § 92.428, paragraph (b), the phrase "accompanying goats offered for importation from Mexico shall, in addition to the statement required by paragraph (a) of this section," would be removed and the phrase "required by paragraph (a) of this section to accompany goats, shall also" would be added in its place.

§ 92.429 [Amended]

5. The existing text of § 92.429 would be designated as paragraph (a); in the last sentence the phrase "and goats" would be removed; and a new paragraph (b) would be added to read as follows:

§ 92.429 Ruminants for immediate slaughter.

* * * * *

(b) *Goats imported from Mexico for immediate slaughter.* Goats may be imported from Mexico for immediate slaughter, subject to the provisions of §§ 92.424, 92.425, and 92.426. Such goats shall at the time of importation be sprayed for ticks with a solution of 0.25 percent of an approved proprietary brand of coumaphos (Co-Ral®) under the supervision of a port veterinarian. Such goats shall be moved directly from the port of entry to a recognized slaughtering establishment and there slaughtered within 2 weeks from the date of entry. Such goats shall be moved from the port of entry in conveyances sealed with seals of the United States Department of Agriculture.

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4594 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Parts 101 and 113

[Docket No. 92–201–1]

Viruses, Serums, Toxins, and Analogous Products; General Requirements for Inactivated Bacterial Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to include a general Standard Requirement for inactivated bacterial products that is consistent with the general Standard Requirements for live bacterial products, killed virus vaccines, and live virus vaccines. The proposed rule would update the current standards and provide uniform, relevant criteria for inactivated bacterial products. We are also including criteria and tests concerning Master Seed and its identity. Finally, the proposed amendment provides a choice of the most appropriate test methods, including identity tests, for the broad range of inactivated bacterial products available today.

DATES: Consideration will be given only to comments received on or before May 2, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–201–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Richard E. Pacer, Senior Staff Veterinarian, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the regulations in 9 CFR part 113, Standard Requirements are prescribed for the licensing of veterinary biological products. A Standard Requirement consists of specifications, procedures, and test methods which define the standards of purity, safety, potency, and efficacy for a given type of veterinary biological product.

General Standard Requirements are currently listed in Title 9, Code of Federal Regulations, part 113 for live virus vaccines, killed virus vaccines, and live bacterial vaccines. General Standard Requirements, however, have not been established for inactivated bacterial products. Previously, the general Standard Requirements for live bacterial products in § 113.64 have often been applied to inactivated bacterial products. The proposed amendments would define the relevant criteria for the evaluation of the purity, safety, and identity of inactivated bacterial products in proposed § 113.100(a–d). The proposed amendments would also define the Master Seed concept in proposed § 113.100(c) as it applies to inactivated bacterial products. The proposed amendments would provide more specific criteria for these inactivated bacterial products in proposed § 113.100(a–d).

Section 113.100 pertaining to inactivated bacterial products currently defines four categories of products: bacterin, toxoid, bacterin-toxoid, and bacterial extract. These definitions in current § 113.100, paragraphs (a–d) are accurate, but should appear in Part 101—Definitions. Therefore, the definitions for bacterin, toxoid, bacterin-toxoid, and bacterial extract, with minor editorial changes for clarity, would be removed from § 113.100 and added to § 101.3 of the regulations, which defines biological products and related terms.

The general Standard Requirement in proposed new § 113.100 would establish criteria for purity, safety, identity of Master Seed, and ingredients used in the preparation of inactivated bacterial products.

The purity of inactivated bacterial products would be based on applicable tests in §§ 113.26 and 113.27(d) of the regulations.

The safety of inactivated bacterial products would be based on mouse or guinea pig safety tests in §§ 113.33(b) and 113.38 of the regulations.

The identity of the Master Seed Bacteria would be determined to the genus and species level according to published criteria. If the Master Seed bacteria are characterized as to serotype, serovar, subtype, pilus type, strain, or other taxonomic subdivision below the species level, adequate testing would be required to distinguish the Master Seed bacteria from other bacteria characterized to that level based on specified test methods.

Finally, ingredients used in the growth and preparation of the Master Seed bacteria would have to meet specified requirements in §§ 113.50 and 113.53 of the regulations.

Executive Order 12866 and Regulatory Flexibility Act

The Department is issuing this proposed rule in conformance with Executive Order 12866.

There are currently no general requirements for inactivated bacterial products in the regulations. However, approximately 30 percent of the 114 currently licensed veterinary biologics companies manufacture inactivated bacterial products. Many of these companies would be considered small entities and would benefit from the adoption of this proposed rule. The benefits of the proposed rule would include increased efficiency and reduced time and expense in accomplishing the steps toward licensure of an inactivated bacterial product. These benefits would be realized because of ready access to clear requirements, uniformity and consistency in product development, and the alleviation of unnecessary steps in production of these type of products. These companies should not experience any additional costs above those which they currently incur to license an inactivated bacterial product as a result of adoption of this proposed rule.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 101 and 113 would be amended as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 101.3, would be amended by adding, at the end of the section, the following definitions to read as follows:

§ 101.3 Biological products and related terms.

* * * * *

(m) *Bacterin.* An antigenic suspension of organisms or particulate parts of organisms, representing a whole culture or a concentrate thereof, with or without the unevaluated growth products, which has been inactivated as demonstrated by acceptable tests written into the filed Outline of Production for the product.

(n) *Toxoid.* A sterile, antigenic toxin or toxic growth product, which has resulted from the growth of bacterial organisms in a culture medium from which the bacterial cells have been removed, which has been inactivated without appreciable loss of antigenicity as measured by suitable tests, and which is nontoxic as demonstrated by acceptable tests written into the filed Outline of Production.

(o) *Bacterin-toxoid.* An inactivated bacterial product which is either:

(1) A suspension of organisms, representing a whole culture or a concentrate thereof, with the toxic growth products from the culture which has been inactivated without appreciable loss of antigenicity as measured by suitable tests, the inactivation of organisms and toxins being demonstrated by acceptable tests written into the filed Outline of Production: *Provided,* That it shall contain cellular antigens and shall stimulate the development of antitoxin, or

(2) A combination product in which one or more toxoids or bacterin-toxoids is combined with one or more bacterins or one or more bacterin-toxoids.

(p) *Bacterial extract.* The sterile, nontoxic, antigenic derivatives extracted from bacterial organisms or from culture medium in which bacterial organisms have grown.

PART 113—STANDARD REQUIREMENTS

3. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 113.100, the heading, introductory paragraph, and paragraphs (a) through (d) would be revised to read as follows:

§ 113.100 General requirements for inactivated bacterial products.

Unless otherwise prescribed in an applicable Standard Requirement or in the filed Outline of Production, an inactivated bacterial product shall meet the applicable requirements in this section.

(a) *Purity tests.* (1) Final container samples of completed product from each serial and each subserial shall be tested for viable bacteria and fungi as provided in § 113.26.

(2) Each lot of Master Seed Bacteria shall be tested for the presence of extraneous viable bacteria and fungi in accordance with the test provided in § 113.27(d).

(b) *Safety tests.* Bulk or final container samples of completed product from each serial shall be tested for safety in young adult mice in accordance with the test provided in § 113.33(b) unless:

(1) The product contains material which is inherently lethal for mice. In such instances, the guinea pig safety test provided in § 113.38 shall be conducted in place of the mouse safety test.

(2) The product is recommended for poultry. In such instances, the product shall be safety tested in poultry as defined in the specific Standard Requirement or Outline of Production for the product.

(c) *Identity test.* Methods of identification of Master Seed Bacteria to the genus and species level by laboratory tests shall be sufficient to distinguish the bacteria from other similar bacteria according to criteria described in the most recent edition of *Bergey's Manual of Systematic Bacteriology* or the American Society for Microbiology *Manual of Clinical Microbiology.* If Master Seed Bacteria are referred to by serotype, serovar, subtype, pilus type, strain or other taxonomic subdivision below the species level, adequate testing must be used to identify the bacteria to that level. Tests which may be used to identify Master Seed Bacteria include, but are not limited to:

(1) Cultural characteristics,
(2) Staining reaction,
(3) Biochemical reactivity,
(4) Fluorescent antibody tests,
(5) Serologic tests,
(6) Toxin typing,
(7) Somatic or flagellar antigen characterization, and
(8) Restriction endonuclease analysis.

(d) *Ingredient requirements.* Ingredients used for the growth and preparation of Master Seed Bacteria and of final product shall meet the requirements provided in § 113.50. Ingredients of animal origin shall meet the applicable requirements provided in § 113.53.

* * * * *

Done in Washington, DC, this 18th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–4592 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF ENERGY

Office of General Counsel

10 CFR Ch. II, III, and X; 18 CFR Ch. I; and 48 CFR Ch. 9

[Docket No. GC–NOI–94–110]

Review of Existing Regulations for Modification or Elimination

AGENCY: Department of Energy.

ACTION: Notice of Inquiry.

SUMMARY: As a first step of a comprehensive initiative by the Department of Energy (DOE or Department) to reform its rulemaking efforts, the public is requested to provide general comments on existing regulations and programs where improvements might be made through their modification or elimination. DOE's existing regulations are listed in the table below.

This effort is in response to Executive Order 12866, "Regulatory Planning and Review," published on October 4, 1993 (58 FR 51735). The Executive Order requires that existing significant regulations be reviewed to: Make them more effective in achieving regulatory objectives, reduce regulatory burden, or align them more closely with the

President's priorities or principles of the Executive Order.

It is the Department's intention at a later time to seek specific public recommendations for regulatory modifications or rescissions within these subject matter areas. Any modifications or rescissions to existing significant regulations that may be undertaken will be implemented through appropriate administrative actions, including issuance of notices of proposed rulemaking.

DATES: Written comments (original and five copies) will be considered if received at the address provided below no later than March 30, 1994.

ADDRESSES: Written comments (original and five copies) and the envelope should be marked, "Notice of Inquiry: Regulatory Planning and Review Initiative, Docket No. GC–NOI–94–110." Comments must be submitted to: U.S. Department of Energy, Office of General Counsel, GC–1, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Romulo L. Diaz, Jr., U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2902.

SUPPLEMENTARY INFORMATION:

I. Background

The Department's new mission commits DOE to providing the scientific foundation, technology, policy and institutional leadership necessary to achieve efficiency in energy use, diversity in energy sources, a more productive and competitive economy, improved environmental quality, and a secure national defense. The DOE is beginning a review of its existing regulations to determine where improvements are warranted to better align existing regulations with the Department's mission and commitment to quality improvements.

II. Discussion

Public Involvement in Targeting Regulations

The Department is seeking through this Notice to maximize public involvement early in this review of DOE regulations, and, in addition, invites the public to comment on how DOE might facilitate public involvement over the course of this effort. It is DOE's expectation that through an interactive process of notices and public comment the Department can best target existing regulations for improvement, taking into account the views expressed by the general public. By Fall 1994, the DOE expects to have completed its preliminary review of the existing regulations and will target specific regulations for modification or elimination.

Possible Areas for Modification or Elimination

To facilitate public review, DOE staff has suggested several specific DOE regulations where public comment on the need for modification or elimination would be useful. These are intended only as examples of existing regulations that do not meet the standards established by Executive Order 12866. The DOE welcomes public review and comment on the totality of the regulations reflected in the attached table.[1]

- Unfunded Mandates: Under the terms of Executive Order 12875, agencies are barred from the promulgation of future regulatory mandates "not required by statute" on State, local, and tribal governments unless Federal funds are provided to pay for compliance or there has been adequate consultation with affected governments. The Executive Order also provides for review and improvement of administrative procedures for obtaining waivers from unfunded mandates. DOE is particularly interested in hearing the extent to which State, local, and tribal governments believe that existing DOE regulations contain such unfunded mandates, and their suggestions for improvement.

- The Department of Energy Acquisition Regulations (48 CFR Ch. 9): These regulations provide detailed and sometimes burdensome requirements on DOE organizational elements and direction to those companies and individuals who seek to provide goods or services to the Department. The DOE seeks to identify opportunities for simplifying and streamlining the contracting process.

- Regulations Implementing the Atomic Energy Act of 1954, as amended (10 CFR Ch. III and X): In view of the Department's current priorities and initiatives, are there existing regulations under the Atomic Energy Act, as amended, that should be considered for modification or elimination?

- Energy Extension Service (EES) Regulations (10 CFR part 465): The National Energy Extension Service Act (Pub. L. 95–39) was repealed by section 143(a) of the Energy Policy Act of 1992 (Pub. L. 102–486). EES programs will be closed out by September 1994.

Scope of Review

Although the Executive Order requires that Federal agencies periodically review only "existing significant regulations," the DOE views this effort as an opportunity to consider needed improvements to all of its existing regulations, including those that do not reach the "significance" threshold.

The DOE is also mindful of the need to identify any legislative mandates that require the DOE to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances. Thus, suggestions should not be restricted to existing regulations that are discretionary in nature. It is DOE's intention to consider the need for related statutory changes in the development of the Department's annual legislative program.

Issued in Washington, DC, on February 22, 1994.

Robert R. Nordhaus,

General Counsel.

[1] Please note that a separate Notice of Inquiry on 10 CFR part 961, "Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste," will be issued in March. Any comments on the standard contract should be filed in that docket, and not this one.

DEPARTMENT OF ENERGY REGULATIONS

[January 1994]

Part	Title
	Title 10—Energy
	Chapter II—Department of Energy (Parts 200–699)
	Subchapter A—Oil
202	Production or disclosure of material or information.
205	Administrative procedures and sanctions
207	Collection of information
209	International voluntary agreements
210	General allocation and price rules
211	Mandatory petroleum allocation regulations
212	Mandatory petroleum price regulations
215	Collection of foreign oil supply agreement information
216	Materials allocation and priority performance under contracts or orders to maximize domestic energy supplies
218	Standby mandatory international oil allocation
221	Priority supply of crude oil and petroleum products to the Department of Defense under the Defense Production Act
	Appendix to Subchapter A—DOE rulings
	Subchapter B—Coal
303	Administrative procedures and sanctions
305	Coal utilization
	Subchapter D—Energy Conservation
420	State energy conservation program
430	Energy conservation program for consumer products
435	Energy conservation voluntary performance standards for new buildings; mandatory for Federal buildings
436	Federal energy management and planning programs
440	Weatherization assistance for low-income persons
450	Energy measures and energy audits
455	Grant programs for schools and hospitals and buildings owned by units of local government and public care institutions
459	Residential energy efficiency program
463	Annual reports from States and nonregulated utilities on progress in considering the ratemaking and other regulatory standards under the Public Utility Regulatory Policies Act of 1978
465	Energy extension service
470	Appropriate technology small grants program
473	Automotive propulsion research and development
474	Electric and hybrid vehicle research, development and demonstration program; equivalent petroleum-based fuel economy calculation
475	Electric and hybrid vehicle research, development, and demonstration project
476	Electric and hybrid vehicle research, development, and demonstration program small business planning grants
478	Methane transportation research and development; review and certification of contracts, grants, cooperative agreements, and projects
	Subchapter E—Alternate Fuels
500	Definitions
501	Administrative procedures and sanctions
503	New facilities
504	Existing powerplants
515	Transitional facilities
	Subchapter G—Natural Gas
580	Curtailment priorities for essential agricultural uses
590	Administrative procedures with respect to the import and export of natural gas
	Subchapter H—Assistance Regulations
600	Financial assistance rules
601	New restrictions on lobbying
605	Special research grants program
	Subchapter I—Sales Regulation
622	Contractual provisions
624	Contract clauses
625	Price competitive sale of Strategic Petroleum Reserve petroleum

DEPARTMENT OF ENERGY REGULATIONS—Continued

[January 1994]

Part	Title
	Chapter III—Department of Energy (Parts 700–999)
703	Contract appeals
706	Security policies and practices relating to labor-management relations
707	Workplace substance abuse programs at DOE sites
708	DOE contractor employee protection program
710	Criteria and procedures for determining eligibility for access to classified matter or significant quantities of special nuclear material
715	Definition of nonrecourse project-financed
725	Permits for access to restricted data
730	Unusual volumes allocation petition procedures
745	Protection of human subjects
760	Domestic uranium program
761	Criteria to assess viability of domestic uranium mining and milling industry
762	Uranium enrichment services criteria
763	Uranium enrichment late payment charges
766	Uranium Enrichment Decontamination and Decommissioning Fund; Procedures
780	Patent Compensation Board regulations
781	DOE patent licensing regulations
782	Claims for patent and copyright infringement
783	Waiver of patent rights
790	The geothermal loan guaranty program
791	Electric and hybrid vehicle research, development, demonstration, and production loan guaranties
792	Loans for reservoir confirmation projects
794	Loans for development of wind energy systems and small hydroelectric power projects
796	Federal loan guarantees for alternative fuel demonstration facilities
797	Loans for small hydroelectric power project feasibility studies and related licensing
798	Urban wastes demonstration facilities guarantee program
799	Loan guarantees for alcohol fuels, biomass energy and municipal waste projects
800	Loans for bid or proposal preparation by minority business enterprises seeking DOE contracts and assistance
810	Assistance to foreign atomic energy activities
820	Procedural Rules for DOE nuclear activities
835	Occupational Radiation Protection
840	Extraordinary nuclear occurrences
860	Trespassing on Administration property
861	Control of traffic at Nevada test site
862	Restrictions on aircraft landing and air delivery at Department of Energy nuclear sites
871	Air transportation of plutonium
903	Power and transmission rates
904	General regulations for the charges for the sale of power from the Boulder Canyon Project
960	General guidelines for the recommendation of sites for nuclear waste repositories
961	Standard contract for disposal of spent nuclear fuel and/or high-level radioactive waste
962	Byproduct material
	Chapter X—Department of Energy (General Provisions) (Parts 1000–1099)
1000	Transfer of proceedings to the Secretary of Energy and the Federal Energy Regulatory Commission
1001	Separation of regulatory and enforcement functions within the Economic Regulatory Administration
1002	Official seal and distinguishing flag
1004	Freedom of information
1005	Intergovernmental review of Department of Energy programs and activities
1008	Records maintained on individuals (Privacy Act)
1009	General policy for pricing and charging for materials and services sold by DOE
1010	Conduct of employees
1013	Program fraud civil remedies and procedures
1014	Administrative claims under Federal Tort Claims Act
1015	Collection of claims owed the United States
1016	Safeguarding of restricted data
1017	Identification and protection of unclassified controlled nuclear information
1018	Referral of debts to IRS for tax refund offset
1020	Grand Junction remedial action criteria
1021	Compliance with the National Environmental Policy Act
1022	Compliance with floodplain/wetlands environmental review requirements
1023	Contract appeals
1024	Procedures for financial assistance appeals
1035	Debarment and suspension (Procurement)
1036	Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)
1039	Uniform relocation assistance and real property acquisition for Federal and federally assisted programs
1040	Nondiscrimination in federally assisted programs
1041	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by Department of Energy

DEPARTMENT OF ENERGY REGULATIONS—Continued

[January 1994]

Part	Title
1045	National security information
1046	Physical protection of security interests
1047	Limited arrest authority and use of force by protective force officers
1048	Trespassing on strategic petroleum reserve facilities and other property
1049	Limited arrest authority and use of force by protective force officers of the Strategic Petroleum Reserve
1050	Foreign gifts and decorations
1060	Payment of travel expenses of persons who are not Government employees
	Title 18—Conservation of Power and Water Resources
	Chapter I—Federal Energy Regulatory Commission, Department of Energy (Parts 1–399) Subchapter L—Regulations for Federal Power Marketing Administrations
300	Confirmation and approval of the rates of Federal power marketing administrations
301	Average system cost methodology for sales from utilities to Bonneville Power Administration Northwest Power Act
	Title 48—Federal Acquisition Regulations
	Chapter 9—Department of Energy (Parts 900–999)
	Subchapter A—General
901	Federal Acquisition Regulations System
902	Definitions of words and terms
903	Improper business practices and personal conflicts of interest
904	Administrative matters
	Subchapter B—Acquisition Planning
905	Publicizing contract actions
906	Competition requirements
907	Acquisition planning
908	Required sources of supplies and services
909	Contracting qualifications
910	Specifications, standards, and other purchase descriptions
912	Contract delivery or performance
	Subchapter C—Contracting Methods and Contract Types
913	Small purchase and other simplified purchase procedures
914	Sealed bidding
915	Contracting by negotiation
916	Types of contracts
917	Special contracting methods
	Subchapter D—Socioeconomic Programs
919	Small business and small disadvantaged business concerns
920	Labor surplus area concerns
922	Application of labor laws to Government acquisition
923	Environment, conservation, and occupational safety
924	Protection of privacy and freedom of information
925	Foreign acquisition
	Subchapter E—General Contracting Requirements
927	Patents, data, and copyrights
928	Bonds and insurance
931	Contract cost principles and procedures
932	Contract financing
933	Protests, disputes, and appeals
	Subchapter F—Special Categories of Contracting
935	Research and development contracting
936	Construction and architect—engineer contracts
937	Service contracting
	Subchapter G—Contract Management
942	Contract administration
943	Contract modifications
944	Subcontracting policies and procedures

DEPARTMENT OF ENERGY REGULATIONS—Continued

[January 1994]

Part	Title
945	Government property
947	Transportation
949	Termination of contracts
950	Extraordinary contractual actions
951	Use of Government sources by contractors
	Subchapter H—Clauses and Forms
952	Solicitation provisions and contract clauses
	Subchapter I—Agency Supplementary Regulations
970	DOE management and operating contracts
971	Review and approval of contract actions

[FR Doc. 94–4633 Filed 2–28–94; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB35

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) proposes to amend its regulations governing computation of an institution's assessment base to provide for the subtraction of certain liabilities arising under depository institution investment contracts. The subject liabilities are those not treated as insured deposits under section 11(a)(8) of the Federal Deposit Insurance Act (FDI Act). Under the proposal, these liabilities would be excluded from the deposit base on which deposit insurance premiums are assessed, thereby reducing assessment payments for affected institutions. The purpose of the amendment is to give effect, by regulation, to apparent congressional intent.

DATES: Written comments must be received by the FDIC on or before March 31, 1994.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC, 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: William Farrell, Chief, Assessments Management Section, Division of Finance, (703) 516–5546; or Gerald J. Gervino, Senior Attorney, (202) 898–3723; Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Prior to December 1993, liabilities arising under bank or thrift investment contracts (BICs) that qualified as deposits under section 3(*l*) of the FDI Act, 12 U.S.C. 1813(*l*), were insured in accordance with the statutory and regulatory provisions governing federal deposit insurance coverage. Similarly, BIC liabilities that qualified as deposits were included in an institution's deposit base for the purpose of calculating the institution's deposit insurance premiums.

Effective December 19, 1993, a new section 11(a)(8) was added to the FDI Act by section 311(a)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Under this new provision, codified at 12 U.S.C. 1821(a)(8), liabilities arising under certain depository institution investment contracts are no longer treated as insured deposits.

A companion provision to the new section 11(a)(8) was a new subparagraph (D) added to section 7(b)(6) of the FDI Act by section 311(a)(2) of FDICIA, which also became effective December 19, 1993. Section 7(b)(6)(D) excluded from an institution's insurance assessment base any liability of the institution not treated as an insured deposit pursuant to section 11(a)(8).

Although section 11(a)(8) continues in force, its companion provision does not. Section 7(b)(6), as amended effective December 19, 1993, was superseded as of January 1, 1994, by a totally revised version of section 7(b) that provides for a risk-based assessment system. The existing section 7(b), 12 U.S.C. 1817(b), as amended by section 302(a) of FDICIA, omits all provisions of the superseded section 7(b) that dealt with the computation of an institution's deposit insurance assessment base. Under the existing provisions, definition of the assessment base is to be determined by the FDIC.

The FDIC believes that it is appropriate and desirable to give continued effect, by regulation, to the intent of Congress, as reflected in superseded section 7(b)(6), that investment-contract liabilities not treated as insured deposits under section 11(a)(8) of the FDI Act should be excluded from the universe of deposits on which insurance assessments are paid. The proposed amendment would maintain the balance we believe Congress intended in enacting the former section 7(b)(6) as a companion to section 11(a)(8).

Accordingly, the Board proposes to amend its assessments regulation to exclude from an institution's assessment base, as computed under part 327.4, those investment contract liabilities not treated as insured deposits under section 11(a)(8) of the FDI Act.

The Board hereby requests comments on the proposed amendment. Interested persons are invited to submit written comment during a 30-day comment period.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule. Consequently, no information has been submitted to the

Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It would not impose burdens on depository institutions of any size and would not have the type of economic impact addressed by the Act.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Financing Corporation, Savings associations.

For the reasons stated in the preamble, the Board proposes to amend 12 CFR part 327 as follows:

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

2. Section 327.4 is amended by removing the period at the end of paragraph (b)(2)(iv)(B) and adding a semicolon in lieu thereof, and by adding paragraph (b)(2)(v) to read as follows:

§ 327.4 Average assessment base.

* * * * *

(b) * * *

(2) * * *

(v) Liabilities arising from a depository institution investment contract that are not treated as insured deposits under section 11(a)(8) of Federal Deposit Insurance Act (12 U.S.C. 1821(a)(8)).

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 22nd day of February, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–4527 Filed 2–28–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

Natural Resource Damage Assessments Under the Oil Pollution Act of 1990

AGENCY: National Oceanic and Atmospheric Administration (NOAA), of the Department of Commerce.

ACTION: Proposed rule; Notice of public meeting and extension of comment period.

SUMMARY: Section 1006(e)(1) of the Oil Pollution Act of 1990 requires the President, acting through the Under Secretary for Oceans and Atmosphere to promulgate regulations for the assessment of natural resource damages resulting from the discharge of oil. The National Oceanic and Atmospheric Administration (NOAA) proposed those regulations on January 7, 1994 (59 1062). Today's Notice announces a public meeting to be held on March 24–25, 1994, in Washington, DC, and extends the comment period on the proposed rule to July 7, 1994.

DATES: Written comments on the January 7, 1994 proposed rule (59 FR 1062) should be received no later than July 7, 1994.

ADDRESSES: Written inquiries are to be submitted to: Damage Assessment Regulations Team (DART), c/o NOAA/DAC, 1350 East-West Highway, SSMC #4, 10th Floor, Workstation #10218, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Linda Burlington or Karl Gleaves, Office of General Counsel, DART, telephone 202–606–8000; FAX: 202–606–4900.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 1994 (59 FR 1062), NOAA published a notice of proposed rulemaking concerning the natural resource damage assessment and restoration regulations required by the Oil Pollution Act of 1990. NOAA requested comments, recommendations, and technical information concerning appropriate assessment procedures and the overall assessment process. NOAA also announced a series of regional meetings to discuss and solicit comments on the proposed rule (59 FR 1189). Comments on the proposed rule were to be received by April 7, 1994. Through today's Notice, NOAA announces a public meeting concerning the proposed rule and an extension of the comment period.

II. Public Meeting

NOAA has held six regional meetings in January and February of 1994 to discuss the proposed natural resource damage assessment regulations and to encourage future cooperative efforts among various natural resource trustees and potentially responsible parties. NOAA has received requests from these meeting participants and other interested parties that an additional meeting should be held in Washington, DC, to discuss and take questions on the proposed rule and to report on the regional meetings. Therefore, NOAA will hold a meeting on March 24–25, 1994, from 9 a.m. to 4:30 p.m. each day. The meeting will be held in Room 4830 at the Department of Commerce, 14th and Pennsylvania Ave., NW., Washington, DC. This meeting will be open to the public, however, representatives of organizations that have a direct interest in the assessment process and the proposed rule are encouraged to attend. Such interested organizations may include, but are not limited to: Federal response and trustee agencies; States; Indian tribes; foreign trustees; industries or industry organizations; natural scientists; and economists.

The general format of the meeting is as follows (although it may be revised in some part): the morning of March 24 will be devoted mainly to a discussion of issues that were of most concern in the regional meetings, as well as an opportunity to raise new issues; the afternoon of March 24 will provide an opportunity to report on the cooperative prespill planning workshops with a discussion of the possibilities and concerns that arose during those meetings. On March 25, the morning session will be divided into three concurrent discussion groups: one group to discuss the legal/procedural issues; a second group to discuss the scientific/resource issues; and the third group to discuss the economic/valuation issues. In the afternoon of March 25, all groups will come together again to begin a question and answer period devoted to both the proposed rule and the cooperative efforts.

III. Comment Period for Proposed Rule

NOAA has received numerous requests to extend the comment period for the proposed rule. Several of the participants in the regional meetings asked for more time to review the compensation formulas in particular. Because NOAA wants to encourage a thorough and thoughtful review of all components of the proposed rule, the comment period will be extended for ninety days. Therefore, comments on the proposed rule are now due on or before July 7, 1994. Comments are to be submitted to the address given at the beginning of this Notice.

Authority: Sec. 1006(e), Pub. L. 101–380.

Dated: February 23, 1994.

Meredith J. Jones,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 94–4534 Filed 2–28–94; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Risk Assessment for Holding Company Systems

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is proposing for comment rules to implement the risk assessment provisions of the Futures Trading Practices Act of 1992. The proposed rules would enhance the Commission's financial surveillance program by providing the Commission with access to information concerning the activities of affiliates of registered futures commission merchants ("FCMs") whose activities are reasonably likely to have a material impact on the financial or operational condition of the FCM. As proposed, these rules would require registered FCMs to maintain certain records concerning the financial activities of such material affiliates, to file certain information with the Commission on an annual and quarterly basis and to provide additional information to the Commission upon the occurrence of specified events.

DATES: Comments must be received on or before May 2, 1994.

ADDRESSES: Comments on the proposed rules should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to "Proposed Risk Assessment Rules."

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

Following the failures of certain FCMs operating as part of a group of affiliated companies, the Commission requested and received new statutory authority, codified in the Futures Trading Practices Act of 1992 ("FTPA"),[1] to obtain information concerning affiliate activities that could pose material risks to the FCM. The Commission is proposing rules to implement this new authority. The proposed rules, in accordance with the statutory authority granted the Commission, establish three basic types of risk assessment requirements: (1) Recordkeeping; (2) reporting to the Commission of certain information on a routine basis; and (3) reporting to the Commission upon the occurrence of certain events that warrant further review.

First, the proposed rules require that FCMs maintain certain records. These records concern FCM risk management policies, procedures and systems and the activities of their affiliates that could result in material risks to the FCM's financial condition or operations. They include information concerning on-balance sheet and off-balance financial activities of the FCM's material affiliates, and consolidated financial information for the group of companies of which the FCM is a part.

Second, the proposed rules would require reporting by the FCM to the Commission, generally on an annual basis unless significant changes in the reported information occur, of the risk management and affiliate activity information required to be maintained by the FCM. Aggregate information concerning the noncustomer accounts carried by the reporting FCM would be required on a routine quarterly basis. These routine reporting requirements are designed to facilitate identification of FCMs whose financial condition or operations may be affected by their relationships with affiliate firms, to provide Commission staff background information on the group and its activities to enable it to better evaluate non-routine reports and permit more efficient and informed responses by the Commission in emergency situations, to permit identification of significant changes in the scope, types and risk of those activities, to permit the Commission to better understand how the group is funded, and to provide the Commission with information concerning the types of affiliate activities that are likely to pose risks to the FCM.

Third, the proposed rules would require that FCMs give notice to the Commission of certain events such as a decline in the FCM's capital or losses at a material affiliate exceeding specified thresholds. These "trigger" events have been constructed with a view towards providing the Commission with notice of circumstances likely to warrant further scrutiny. Upon receipt of such a notice, the Commission may seek additional information, as warranted in the circumstances, from another regulator and/or from the FCM. The use of specified events triggering notice to the Commission is also intended to reduce the need for routine reports to the Commission without compromising the overall objectives of the risk assessment program.

The rules contain certain required exemptions for banks and insurance companies and defer to certain Securities Exchange Act requirements in the case of broker-dealer FCMs.

Comment is requested concerning all aspects of the proposed rules and specifically concerning the appropriate balance of routine reporting requirements, event-specific notice requirements, and use of statutory special call authority.

A. Current Financial Regulatory Framework

Section 229 of the FTPA, entitled "Risk Assessment for Holding Company Systems," added new section 4f(c)[2] to the Commodity Exchange Act ("CEA" or "Act"). Section 4f(c) provides the Commission with authority to obtain information concerning activities of an FCM's affiliates that could pose material risks to the FCM. The Commission's new risk assessment authority augments long-standing provisions of the CEA and Commission regulations designed to safeguard funds held by FCMs on behalf of futures customers and to assure that FCMs maintain a minimum level of capital to support their obligations to customers and the marketplace on an ongoing basis.

Section 4d(2) of the CEA and Commission regulations require that one hundred percent of customer funds and property, that is, all funds and property deposited to "margin, guarantee or secure" futures or commodity option positions, and all accruals thereon, be maintained for the exclusive benefit of the depositing customer and segregated from the funds of the FCM.[3] The segregation requirement bars the use by an FCM of one customer's funds for any purpose other than to margin or secure that customer's trades and facilitates customer recovery on a first priority basis in the event of the bankruptcy of the FCM. Under Section 4d(2) and Commission rules, an FCM must always maintain sufficient funds in segregation to satisfy the claims of all customers holding accounts with positive net equities. An FCM therefore is required to add its own funds to the segregated customer funds account to cover any debit or deficit account balance of any

[1] Pub. L. No. 102–546, 106 Stat. 3590 (1992). The FTPA was enacted on October 28, 1992.

[2] 7 U.S.C. 6f(c) (Supp. IV 1992).

[3] 7 U.S.C. 6d(2) (1988).

customer by the close of business on the day the deficit occurs. As a consequence, if the segregation requirements are satisfied, an FCM's financial failure generally should not result in a loss of customer funds, and one customer's withdrawal of funds or failure to satisfy margin demands should not affect the funds of any other customer.[4]

The CEA and Commission rules requiring that FCMs maintain regulatory capital at or above specified minimum levels buttress the security of customer funds and the overall financial integrity of the futures markets. Minimum capital requirements for FCMs are designed to assure that futures firms are financially sound and have liquid assets sufficient to sustain normal market reverses without losses to customers. The CFTC's financial regulations also establish an "early warning" system to identify firms whose capital levels or other conditions warrant intensified surveillance. This system requires notice to the Commission when an FCM's capital falls below 150 percent of its required minimum capital and when certain other conditions exist that constitute or could lead to capital impairment or other financial deficiencies.[5]

Other safeguards for customer funds established by the CEA and CFTC regulations include protections against the use of customer funds by depositories, such as banks or clearing organizations, to offset obligations of the FCM to the depository, limitations on investments of customer funds to U.S. government or municipal securities, and the requirement that an FCM's independent public accountant review and report upon the adequacy of the firm's internal controls and procedures for safeguarding customer assets.

The statutory and regulatory framework administered by the Commission requires that each futures exchange, as a self-regulatory organization ("SRO"), adopt and enforce minimum financial requirements and reporting rules for its member FCMs that are at least as stringent as those established by Commission regulations. As SROs, the futures exchanges and the National Futures Association ("NFA"), an industry-wide self-regulatory organization responsible for firms that are not members of an exchange, have the primary direct responsibility to ensure the financial integrity of their member firms.[6] The Commission is responsible for oversight of the SROs' financial surveillance and rule enforcement programs.

The Commission's routine financial oversight activities include evaluation and monitoring of SRO financial surveillance and audit activities, direct audits of FCMs and introducing brokers ("IBs") as a quality control check of SRO audit work, and targeted reviews of FCMs that have "early warning" conditions or have otherwise been identified as high risk firms. The Commission's financial oversight program makes use of various types of information to target firms for heightened surveillance and to better understand firm operations, including among other sources of relevant information, data identifying the holders of large market positions generated on a daily basis by the Commission's large-trader reporting system, notices of adjusted net capital being below early warning levels, and financial data, including pay and collect data, generated by the SROs' surveillance systems.

B. Purposes of Risk Assessment Authority

The risk assessment provisions of the FTPA are designed to facilitate financial oversight of FCMs which are part of holding company groups whose activities may affect the FCM's overall financial condition, or where the structure of the group of companies places control of funding outside the FCM. As such, the risk assessment provisions are intended to enhance the effectiveness of existing safeguards of customer funds by providing the Commission with increased access to material information concerning the operations of affiliates of the FCM whose activities may expose the FCM to financial or operational risks. This new statutory authority recognizes that, as illustrated by the experience of the CFTC and other regulators with several recent failures of regulated brokerage firms, the operations of regulated FCMs may be materially affected by, and only understood in conjunction with, the activities of affiliated entities, many of which may be unregulated. Concomitantly, the effectiveness of ongoing financial oversight programs may depend upon access to information concerning risks to the FCM created by affiliate activity, and the efficacy of regulatory responses to financial problems at the regulated entity may be enhanced by access to information concerning relevant affiliate activity.

For example, Commission staff and futures industry self-regulators worked closely with securities and banking regulators to facilitate the rapid wind-down of Drexel Burnham Lambert, Inc. ("DBL"), a registered FCM and securities broker-dealer, and to minimize adverse effects of the wind-down on customers and the markets. Approximately 1700 futures accounts were transferred from DBL to other futures firms during a two-week period in February 1990.[7] The immediate cause of DBL's failure was the inability of its parent firm, The Drexel Burnham Lambert Group, Inc. ("DBL Group"), to meet certain debt payments, some of which consisted of commercial paper, following a reduction of DBL's credit rating. DBL Group filed a bankruptcy petition on February 13, 1990. Previously, approximately $220 million of DBL's excess capital had been transferred to DBL Group in the form of short-term loans.[8]

In addition to monitoring and facilitating the transfer of DBL's futures accounts to other firms, Commission staff monitored the liquidation of futures positions of Drexel Burnham Lambert Trading Corporation ("Drexel Trading"), a noncustomer affiliate whose account was carried by DBL. Drexel Trading's futures account at DBL was apparently used to hedge its commodity trading activities in unregulated cash and forward markets. The wind-down of Drexel Trading's business thus entailed the liquidation of futures positions that were related to unregulated cash positions. In the course of the Drexel events, the availability of information concerning the developing problems at DBL Group and better understanding of the unregulated activities of Drexel Trading and other Drexel Group entities that carried futures positions in noncustomer accounts at DBL to manage the risks of related cash operations and swaps positions would have facilitated the Commission's financial oversight of DBL and the development and tailoring of regulatory responses to those events.

Commission staff also monitored the wind-down of Stotler and Company

[4] *See, generally*, Commission Rules 1.20–1.30 and Part 190. Commission rules referred to herein are found at 17 CFR Ch. I (1993).

[5] Commission rules require, for example, that an FCM provide notice to the Commission if the FCM fails to keep current books and records, is notified by an independent public accountant of a material inadequacy under Rule 1.16(d)(2), becomes subject to trading restrictions for failure to meet a margin call or determines that it is carrying an account that is undermargined by an amount exceeding its adjusted net capital. *See* Commission Rule 1.12.

[6] Responsibility for routine periodic audits of firms that are members of more than one SRO is allocated among the SROs under a Joint Audit Plan in which all of the exchanges and NFA participate.

[7] No regulated futures customers suffered losses due to DBL's insolvency.

[8] The New York Stock Exchange subsequently ordered DBL to maintain excess capital of $300 million.

("Stotler"), a registered FCM and government securities broker-dealer. On July 25, 1990, Stotler Group, Inc. ("Stotler Group"), Stotler's parent firm, formally announced that it had defaulted on $750,000 of commercial paper obligations and that Stotler would be winding down its futures brokerage business. As those events unfolded, it became apparent that Stotler's FCM was dependent upon financing from Stotler Group, which in turn was dependent upon the issuance of commercial paper for its own financing. Stotler had already commenced informally winding down its futures brokerage business on July 12, 1990, following notification by the Commission that it did not meet minimum capital requirements, due to adjustments to Stotler's reported capital to correct, among other things, the failure to reflect in Stotler's capital computations liabilities purportedly transferred to Stotler Group. In a period of approximately eight weeks, Stotler, with the assistance and monitoring of the CFTC and self-regulatory authorities, transferred more than 65,000 futures customer accounts and customer segregated funds totaling over $309 million.[9] Access to information concerning Stotler Group's commercial paper operations, on which Stotler drew for financing, would have assisted the Commission in its oversight of Stotler and aided in the identification of the developing difficulties of the Stotler entities.

The well-publicized problems of the Metallgesellschaft AG group of companies provide the most recent example of the potential utility of information on entities affiliated with an FCM. MG Futures, Inc. ("MG Futures"), a registered FCM and a wholly-owned subsidiary of Metallgesellschaft AG, carried large, purported hedge positions in the energy futures markets for the MG group of companies. Large losses sustained by the MG Group of companies in late 1993 apparently caused severe cash flow problems for MG Futures, the regulated intermediary. The losses, which occurred at an affiliated entity, were not reflected in the financial reports filed by MG Futures with the Commission and materially affected MG Futures' funding arrangements.

The interrelationships between FCMs and their affiliates may include a wide range of financial relationships that render the FCM dependent upon certain affiliates' financial condition or expose the FCM's capital to withdrawal or other impairment to support an affiliate experiencing funding difficulties. These types of financial relationships include, for example, guarantee arrangements between the FCM and its parent or other affiliate, arrangements to shift capital from the FCM to an affiliate, financing or investment relationships between the FCM and an affiliate, maintenance by the FCM of a futures account for an affiliate, and business referral arrangements or other forms of contractual arrangements that create financial interdependencies between the FCM and an affiliate. Further, even in the absence of direct exposure of the FCM's resources to an affiliate's activities pursuant to contract or common ownership, the existence of management or ownership linkages between the FCM and an affiliate may have the result that financial or operational difficulties of a closely linked affiliate adversely affect the FCM's credit or customer relationships, and thus its liquidity.

The potential risks to FCM operations created by affiliate activities may be exacerbated, and the importance of ready access to information concerning affiliate activities heightened, by the nature of the affiliate activities. Because FCM activities are subject to minimum capital requirements designed to measure, and provide resources adequate to protect against, the risks of various types of transactions, a holding company group may elect to conduct activities giving rise to capital charges in unregulated affiliates rather than the regulated entity. As a result, activities conducted on an unregulated basis but that nonetheless may create significant market, credit or other risk exposures, may be concentrated in affiliated entities that are not subject to federal or state oversight.[10]

C. Statutory Risk Assessment Provisions

The risk assessment provisions added to the CEA by the FTPA provide a mechanism for the Commission to obtain information concerning FCM affiliate activities that should facilitate both a better understanding of the ongoing risk exposures of the FCM and an improved ability to determine appropriate intervention in the event of financial difficulties at the FCM or in other circumstances of heightened risk. New Section 4f(c) of the Act authorizes the Commission to require each registered FCM to obtain "such information and make and keep such records as the Commission, by rule or regulation, prescribes concerning the registered futures commission merchant's policies, procedures or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons, other than a natural person." [11] The statute provides that the required records should "describe, in the aggregate, each of the futures and other financial activities conducted by, and the customary sources of capital and funding of, those of its affiliated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of the futures commission merchant, including its adjusted net capital, its liquidity, or its ability to conduct or finance its operations." [12] The Commission is authorized to require, by rule or regulation, summary reports of such information to be filed no more frequently than quarterly. Section 4f(c) also authorizes the Commission to require the filing by FCMs of supplemental reports if, as a result of adverse market conditions, based on reports provided pursuant to this section, or other available information, the Commission "reasonably concludes" that it has concerns regarding the financial or operational condition of any registered FCM.[13]

Section 4f(c) also provides that the Commission may exempt "any person or class of persons" from recordkeeping or reporting requirements established pursuant to that provision. In granting such exemptions, the Commission is directed to consider, "among other factors," whether information of the type required is available from the Securities and Exchange Commission ("SEC"), a state insurance commission or similar state agency, a supervisory agency as defined in section 1101(7) of the Right to Financial Privacy Act of 1978 [14] or a similar foreign regulator; the

[9] Less than one percent of customer segregated funds had not been returned to customers prior to the filing by Stotler and Stotler Group of petitions in bankruptcy on August 24, 1990. The remaining one percent was subsequently returned.

[10] As the SEC noted in proposing its risk assessment rules for broker-dealers, "the activities carried out by the affiliates of a broker-dealer are, in the aggregate, generally more highly leveraged and riskier than permitted by the net capital rule." 56 FR 44014, 44015 (September 6, 1991).

[11] 7 U.S.C. 6f(c)(2)(A) (Supp. IV 1992).

[12] 7 U.S.C. 6f(c)(2)(B) (Supp. IV 1992).

[13] 7 U.S.C. 6f(c)(3)(A) (Supp. IV 1992).

[14] The term "supervisory agency" is defined in section 1101(7) of the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401(7), to include the following agencies which have the statutory authority to examine the financial condition, business operations, or records or transactions of a financial institution, holding company, or subsidiary thereof: (1) The Federal Deposit Insurance Corporation; (2) the Director, Office of Thrift Supervision; (3) the National Credit Union Administration; (4) the Board of Governors of the Federal Reserve System; (5) the Comptroller of the Currency; (6) the Securities and Exchange Commission; (7) the

Continued

primary business of any affiliated person; the nature and extent of domestic or foreign regulation of the affiliated person's activities; the nature and extent of the FCM's futures and options activities; and, with respect to the FCM and its affiliated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the U.S. futures markets.[15] The legislative history reflects that the Commission "may determine not to require information concerning holding companies or other affiliates of FCMs that are primarily engaged in nonfinancial activities such as merchandising, construction (other than equity investment or financing), travel services, real estate brokerage, consumer lending, publishing or nonfutures-related information processing."[16]

Section 4f(c) provides that generally an FCM will be considered to have complied with a recordkeeping or reporting requirement adopted by the Commission concerning an affiliated person subject to examination by, or reporting requirements of, a federal banking agency if the FCM uses for that purpose copies of reports filed by the affiliated person with the relevant federal banking agency pursuant to specified statutory provisions. However, the Commission is authorized to require the FCM to obtain, maintain or report supplemental information if the Commission makes a finding that such information is necessary to inform the Commission concerning potential risks to the FCM and first requests the federal banking agency to expand its requirements to include the information.[17]

The risk assessment provisions of the FTPA require the Commission to treat any risk assessment information required to be provided to it pursuant to that authority as subject to the confidentiality provisions of section 8 of the Act. The Commission therefore is generally prevented from disclosing such information to third parties.[18]

D. SEC Final Temporary Risk Assessment Regulations

The Commission's statutory risk assessment authority is substantially similar to that granted to the SEC under Section 4 of the Market Reform Act of 1990.[19] Pursuant to this risk assessment authority, the SEC has adopted "final temporary" rules[20] which generally require securities broker-dealers to maintain and preserve records and file quarterly reports containing information concerning the financial and securities activities of the broker-dealers' material affiliates.[21] The SEC's risk assessment structure includes recordkeeping and reporting rules applicable generally to all broker-dealers that maintain capital equal to or greater than twenty million dollars or that carry customer accounts and maintain capital of $250,000. Under the SEC's risk assessment rules, broker-dealers are required to maintain an organizational chart identifying material associated persons, to depict the broker-dealer's risk management policies and procedures, to provide certain financial data on the affiliated system, including consolidated and consolidating financial statements, to provide aggregate securities and commodities positions, including financial instruments with off-balance sheet risk and concentrations of credit risk (as defined in Statement of Financial Accounting Standards No. 105 ("SFAS 105")) on a disaggregated basis for each material associated person, and other financial and securities-related information. Under the SEC's risk assessment program, the information required to be maintained by broker-dealers under the recordkeeping rule generally is required to be filed within 60 days after the end of each quarter on SEC Form 17–H.[22]

The SEC's rules include provisions designed to diminish the necessity for broker-dealers to create additional sets of records where records substantially similar to those required by the risk assessment rules are created for the use of other federal or state regulators. For example, under the SEC's rules, a broker-dealer will be deemed in compliance with the recordkeeping and reporting requirements concerning a material associated person subject to the CFTC's supervision if it maintains and files copies of Forms 1–FR–FCM or 1–FR–IB filed by the FCM or the IB, respectively, with the CFTC.[23] In adopting its risk assessment rules, the SEC stated that these special provisions for CFTC registrants were appropriate "because entities regulated by the CFTC are subject to recordkeeping, reporting, and supervisory requirements similar to those imposed by the Commission on broker-dealers."[24] The SEC's risk assessment rules also include special provisions for reporting broker-dealers with respect to other types of regulated affiliates, including banks, insurance companies, and entities subject to the supervision of foreign financial regulatory authorities.

E. Coordination With Other Regulators

The legislative history of the FTPA indicates that Congress intended that the Commission take into account the existing reporting systems of other relevant financial regulators in exercising the risk assessment authority conferred upon it.[25] The Commission has consulted extensively with other financial regulators to develop, to the extent possible, a coordinated approach to information-gathering concerning regulated affiliates of FCMs. Commission staff have met with securities and banking regulators on multiple occasions and have reviewed various reports and filings required

Secretary of the Treasury; and (8) any state banking or securities department or agency.

[15] 7 U.S.C. 6f(c)(9) (Supp. IV 1992).

[16] S. Rep. No. 22, 102d Cong., 2d Sess. 50 (1992).

[17] Section 4f(c)(5) also provides that prior to making a request for supplemental information pursuant to section 4f(c)(3) with respect to an affiliated person that is subject to examination by or reporting requirements of a federal banking agency, the Commission shall notify the agency of the information requested and consult with the agency to determine whether the information required is available from the agency and for other purposes, "unless the Commission determines that any delay resulting from the consultation would be inconsistent with ensuring the financial and operational condition of the futures commission merchant or the stability or integrity of the futures markets." 7 U.S.C. 6f(c)(5) (Supp. IV 1992).

[18] Section 8 of the Act provides generally that the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and the trade secrets or names of customers unless such information has been previously disclosed in connection with a congressional proceeding or an administrative or judicial proceeding brought under the Act. 7 U.S.C. 12 (1988 & Supp. IV 1992).

[19] Pub. L. No. 101–432, 104 Stat. 963 (1990).

[20] The SEC adopted "final temporary" rules as an interim step in the adoption of final regulations to enable the agency to gain experience with the information obtained pursuant to its risk assessment rules and to evaluate the operation of the risk assessment program based upon review of this information. The SEC's Division of Market Regulation will prepare a study evaluating the effectiveness of the rules which will be published 90 days after the rules have been in full effect for two years. After evaluating public comment on this report, the SEC will determine what modifications to the rule, if any, are necessary. *See* 57 FR 32159, 32161 (July 21, 1992).

[21] 57 FR 32159 (July 21, 1992).

[22] The SEC's rules require broker-dealers to file an organizational chart as part of its first risk assessment filing and with each year-end filing. Quarterly updates are required only if a material change has occurred. The risk management policies must be filed only with the first risk assessment filing, unless a material change has occurred, in which case a quarterly update is required.

[23] The CFTC and SEC, in cooperation with securities and futures industry self-regulatory organizations, have developed a draft of a new, combined Form 1–FR/FOCUS report, which will further harmonize and facilitate electronic financial reporting for broker-dealers and FCMs and will capture certain information on a regulated firm's derivative product positions. The draft form is expected to be published for public comment within the next several months.

[24] 57 FR at 32163.

[25] S. Rep. No. 22, 102d Cong., 2d Sess. at 50.

under the securities and banking regulatory frameworks. In particular, Commission staff have explored the extent to which other federal financial regulators may share relevant risk assessment information concerning entities subject to their supervision with the CFTC on a confidential basis in order that requirements for reporting to the CFTC with respect to such entities might be minimized. The Commission believes that, subject to appropriate confidentiality safeguards such as are afforded by section 8 of the CEA, information-sharing among federal financial regulators responsible for oversight of various entities operating within the same holding company group should be fostered to facilitate financial oversight of the group and its regulated component entities and to minimize reporting requirements under the various individual regulatory structures. For example, Commission staff have explored the extent to which various types of event-specific information could be provided directly to the CFTC by the relevant regulatory authority. The staff also has discussed establishing lead regulator type responsibilities to the extent practicable.

Further, the Commission has given extensive consideration to the risk assessment rules adopted by the SEC pursuant to the risk assessment authority granted it in the Market Reform Act of 1990. To the extent possible, the Commission has designed its risk assessment provisions with a view towards permitting FCMs which are broker-dealers (or which are part of holding company groups that include a broker-dealer) required to report pursuant to the SEC's risk assessment rules to use reports prepared pursuant to the SEC's requirements to fulfill the Commission's requirements. Generally, the Commission's proposed rules would require filing of a subset of the information called for by the SEC on a routine basis but call for certain additional information specific to the operations of FCMs acting as clearing firms for affiliated entities. The proposed rules are designed to permit the use of the SEC risk assessment form, Form 17–H, given appropriate supplementation, on an elective basis in lieu of new CFTC Form 1.15A. To the extent that the Commission's approach alters that of the SEC, it is intended to give early warning of events that would cause the CFTC to request further information or to seek assistance from other regulators and to take account of the more limited resources available to the Commission to assess the information provided.

II. The Proposed Rules

Proposed Rule 1.14 would require FCMs to maintain and preserve certain records and information concerning, among other things, the organizational structure of which the FCM is part, the FCM's policies and systems for monitoring and controlling risks arising from the activities of its affiliates, consolidated and consolidating financial statements for the FCM and its ultimate parent company, and aggregate information concerning futures, forwards and financial instruments with off-balance sheet risk and concentrations of credit risk. Proposed Rule 1.15 requires FCMs to file with the Commission, generally on an annual basis, the information required to be maintained under proposed Rule 1.14 and to provide the Commission with notice upon the occurrence of certain specified events, such as large decreases in the reported adjusted net capital of FCMs or the equity of their parent companies.

Maintenance of the records required under proposed Rule 1.14 and reporting of the data required pursuant to proposed Rule 1.15 are intended to impose a discipline on the FCM relative to its own risk management activities as well as to permit the Commission to make informed assessments relevant to market events and to the analysis of possible regulatory responses to such events. For example, risk assessment information may permit more effective and moderate management of financial market disruptions than would occur in the absence of pertinent information.

The risk assessment provisions being proposed by the Commission would apply generally to FCMs that hold customer funds of $6,250,000 or greater, maintain adjusted net capital in excess of $5,000,000 or that are clearing members of a contract market. As proposed, however, the rules make special provisions for FCMs that are dually registered with the SEC as broker-dealers, or that are part of a holding company group that includes a broker-dealer, filing reports pursuant to the SEC's risk assessment rules. Further, in general, the proposed rules would allow FCMs that have affiliates subject to regulation by a federal banking agency, a state insurance commission or similar state agency, or a foreign futures authority or other relevant foreign authority to comply with certain reporting and recordkeeping requirements by filing or maintaining records that the regulated affiliate is required to file with the relevant regulator.

A. Definition of Material Affiliated Person

The FTPA requires that, in general, FCMs maintain certain records regarding "their affiliated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of the FCM."[26] For the purpose of determining which affiliated persons are covered under this standard, the proposed rules would define the term "material affiliated person" ("MAP") by reference to several illustrative factors relevant to the activities of the FCM and its affiliate and the relationship between the entities. The factors specified are intended to provide guidance and not to be exhaustive. FCMs should consider all of the facts and circumstances pertinent to the identification of their affiliated entities whose business activities are reasonably likely to have a material impact on the financial or operational condition of the FCM.

The material affiliated person definition used in the Commission's proposed rules is similar to that used in SEC Rule 17h-1T.[27] However, for purposes of these rules, the Commission has used the term "affiliated person" rather than "associated person" to avoid confusion with the associated person registration category described in section 4k of the Act[28] and Commission Rule 3.12. Like the SEC under its risk assessment regulations, the Commission proposes to leave the determination as to which entities affiliated with an FCM are MAPs with the reporting FCM, in the first instance, based on the FCM's examination of all relevant facts and circumstances.

A first relevant factor in determining the materiality of an affiliated person is the legal relationship between the FCM and the affiliated person, *i.e.*, the nature and proximity of the relationship between the FCM and the affiliated person. In a two-tier holding company structure, for example, the first tier may

[26] Specifically, Section 4f(c)(2)(A) of the Act states that each FCM "shall obtain such information and make and keep such records as the Commission, by rule or regulation prescribes concerning the registered (FCM's) policies, procedures or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons, other than natural persons." 7 U.S.C 6f(c)(2)(A) (Supp. IV 1992). The term "affiliated person" is defined for purposes of section 4f(c)(1)(i) of the Act to mean "any person directly or indirectly controlling, controlled by or under common control with a futures commission merchant, as the Commission, by rule or regulation, may determine will effectuate the purposes of this subsection." Natural persons are generally excluded from risk assessment requirements. 7 U.S.C. 6f(c)(2)(A) and (3)(A) (Supp. IV 1992).

[27] 17 CFR 240.17h-1T (1993).

[28] 7 U.S.C. 6k (1988 & Supp. IV 1992).

include the direct holding company parent of the FCM and several related financial service entities. The entities at this first tier are very likely to be material to the FCM in light of their close proximity and consequent potential for direct financial impact upon the FCM and its funding. In some cases, entities other than the FCM's parent and the parent's affiliates may be required to be deemed MAPs. For example, intermediate holding companies and the ultimate parent corporation may be deemed MAPs if, for example, a bankruptcy of the ultimate parent could significantly affect the FCM's ability to obtain needed credit. If, however, after evaluating all of the relevant facts and circumstances, it appears that an affiliated person in the upper tiers of a holding company structure could have only a remote impact on the financial or operational condition of the FCM, the affiliate would not be required to be designated as a MAP. Moreover, if the ultimate parent in a multi-tiered holding company structure primarily is engaged in activities which are not related to the futures or financial markets, such as manufacturing or retailing, the parent would not generally be required to be designated a MAP. However, an ultimate parent company which is engaged in non-financial activities may clear its futures account through the FCM in order to manage the risk of cash commodity positions and this relationship could expose the FCM to potential risks relative to cash or over-the-counter trading that would render the parent company a MAP.

A second factor relevant to the identification of MAPs is the degree of financial dependence of the FCM on its affiliate and the nature of the FCM's financing requirements. For example, if the FCM's obligations are guaranteed by a parent or other affiliate, the FCM has a degree of financial dependence upon the guarantor entity such that, absent unusual circumstances, that entity would be a MAP. Similarly, if the FCM relies for financing upon a parent company whose capacity to provide such financing depends upon the issuance of commercial paper or other sources of unsecured credit, the FCM would be materially affected by an acceleration or call by the holders of these obligations, especially if the FCM did not have sufficient liquid assets or alternative financing available to replace the financing provided by its parent company.

A third materiality factor is the degree to which an FCM or its customers rely upon an affiliated person for operational services or support. If an FCM relies upon an affiliated person for significant operational facilities or support, the operations or financial difficulties of the affiliated person could materially impact the FCM's operations.

Another relevant factor in the materiality determination is the level of market, credit and other risk present in an affiliated entity's activities. A high volume of over-the-counter derivative transactions conducted through an unregulated affiliated entity may give rise to market, credit, operational or other risks that require sophisticated risk management strategies and internal control procedures to protect against potential losses that could jeopardize the resources of the affiliate and potentially impact related entities. Position taking by an affiliate may also expose the affiliate to risks that create the potential for spillover effects upon the FCM. Generally, affiliated entities that assume greater risk exposures may incur an increased likelihood of liquidity declines or other financial difficulties that increase the potential for adverse effects upon the FCM.

Finally, the extent to which an affiliated person has the authority or ability to negatively impact the FCM's capital is a factor in determining the materiality of the affiliated entity. The activities of a parent company or other affiliate that has the ability to remove capital from the FCM, such as for the purpose of repayment of loans or debt, generally are material to the FCM (*e.g.*, a parent company of an FCM may have the ability to withdraw capital from a subsidiary FCM if the parent is unable to meet interest or principal payments on debt).[29]

B. Information Required To Be Maintained and Filed on a Routine Basis

The proposed rules generally require two forms of risk assessment activity by FCMs: Recordkeeping and reporting. FCMs subject to the rules would generally be required to maintain specified types of information and to file reports of that information on a routine basis, in most cases annually, absent a material change in reported data. The categories of information called for are discussed below, with specific reference to the relevant recordkeeping and reporting requirements of the proposed rules.

1. Organizational Chart

Proposed Rule 1.14(a)(1)(i) would require an FCM to maintain an organizational chart depicting the holding company structure of which the FCM is a part. The chart should provide an overview of the entire organization and identify those affiliated persons that are MAPs of the FCM, as determined by the registrant in accordance with the standards set forth in the proposed rule and discussed above. The chart should also indicate which MAPs file routine financial or risk exposure reports with the SEC, a federal banking agency, an insurance commissioner or other similar official or agency of a state or a foreign regulatory authority. In addition, the chart should indicate whether a MAP is a dealer or end user (or both) of financial instruments with off-balance sheet risk. End-users employ financial instruments to facilitate the management of financial risks that arise in the course of their business. Dealers are distinguished from end-users by their readiness to make two-way markets in financial instruments, thereby providing end-users (and other dealers) with the financial instrument positions they seek. As proposed, Rule 1.15(a)(1)(i) would require the FCM to file its organizational chart within 90 calendar days after the effective date of the rule or within 60 calendar days of registration if that occurs after the rule's effective date. Where there is a material change in the information provided, an updated organizational chart is required to be filed within five calendar days after the end of the fiscal quarter in which the change occurred. If no material change occurs, no updates are required.[30]

2. Risk Management Policies

Paragraph (a)(1)(ii) of proposed Rule 1.14 would require an FCM to maintain records relating to the FCM's procedures for monitoring and controlling financial and operational risks to it resulting from the activities of its affiliates. Like the SEC's risk assessment rules, the Commission's proposed rule would require that FCMs maintain and preserve their written policies, procedures or systems concerning methods for monitoring and controlling financial and operational risks resulting from the activities of any of their affiliated persons and concerning their financing and capital adequacy, including information regarding sources of funding and a narrative discussion by management of the liquidity of the material assets, the structure of debt capital and sources of alternative

[29] Of course, the parent could only lawfully withdraw capital to the extent that the FCM would remain in compliance with the Commission's net capital requirements.

[30] A statement that updates required under Rule 1.15 in the event of a change in previously reported information are not required because no change sufficient to trigger the update requirement has occurred may be requested on the new combined 1–FR/FOCUS report.

funding. Also like the SEC rule, the Commission's proposed rule would require the FCM to maintain written policies concerning trading positions and risks, such as records regarding reporting responsibilities for trading activities, limitations on trading activities and a description of the types of reviews conducted to monitor existing positions. However, the CFTC's proposed requirement relating to records of policies, procedures and systems with respect to trading activity, while incorporating the matters covered by the SEC's rules, includes specific reference to the FCM's internal controls with respect to the market risks, credit risks and other risks created by the FCM's proprietary and noncustomer clearing activities, reflecting risks entailed in the performance of the clearing function typical of FCMs operating within a holding company structure. These would include, for example, as specified in proposed Rule 1.14(a)(1)(ii), systems and policies for supervising, monitoring, reporting and reviewing trading activities in securities, futures contracts, commodity options, forward contracts or financial instruments such as swaps, and policies for hedging or managing risks created by its proprietary trading activities and reviewing hedging and risk management strategies of noncustomer affiliates.

Subject to the CEA and Commission regulations, in particular any requirements encompassed by existing Rule 166.3, the proposed rule does not itself require an FCM to create specific risk management policies and procedures.[31] It is sufficient for purposes of the risk assessment requirements for an FCM to document, in writing, the policies in place or the absence of such policies in the unlikely event that it operates without them. However, the Commission believes that from the perspective of prudent risk management, FCMs subject to these rules should review their existing internal controls and risk management systems and procedures with a view towards assuring that those systems are sufficient in light of the potential risks created by their own and their affiliates' activities. The types of risk management policies and internal controls referred to in the proposed rule, while by no means exclusive of those necessary to prudent risk management,[32] are indicative of the types of risk management systems that may be warranted to address risks engendered by affiliate activities.

Paragraph (a)(1)(ii) of Rule 1.15 requires an FCM to file the information referred to above with the Commission within 90 calendar days from the effective date of the rule or 60 days following the FCM's registration if that occurs after the rule's effective date. Where there is a material change in the information provided, such a change is required to be reported to the Commission within five calendar days after the end of the fiscal quarter in which the change occurred. If there is no material change, no update is required.[33]

3. Financial Statements

The following financial statements would be required on a consolidated basis for the FCM and its ultimate parent company and would be required to be filed within 105 calendar days after the end of each fiscal year: (1) Balance sheet; (2) statement of income; (3) statement of cash flows; and (4) explanatory notes to the financial statements. Additionally, a consolidating balance sheet and statement of income must be filed annually for the FCM and its ultimate parent company. The consolidated and consolidating financial statements would be required to be prepared in accordance with United States generally accepted accounting principles, consistently applied ("U.S. GAAP"), except as indicated below. If an annual audit and certification is performed as an ordinary and customary part of the entity's business, the consolidated statements should be certified by an independent certified public accountant. The consolidating financial statements must show separately the FCM, its ultimate parent company and each MAP.

With respect to affiliated persons that use a comprehensive set of accounting principles other than U.S. GAAP, a note to the financial statements indicating the comprehensive body of accounting principles used to prepare the financial statements should be included. The note should provide a narrative description of the items that are treated differently by U.S. GAAP. The consolidated financial statements also should be accompanied by the footnotes required by GAAP and any other information necessary for an understanding of the information being presented (*e.g.*, the summary of significant accounting policies).

The Commission requests comment as to whether quantification of any material differences in the contents of the financial statements, in addition to a narrative description of items treated differently from U.S. GAAP, should be required where accounting principles other than U.S. GAAP are used.

The financial statements required to be maintained and filed pursuant to the proposed rules are the same as those required under the SEC's risk assessment program. The proposed rules, however, require the consolidated financial statements to be certified if an audit is ordinarily performed. The Commission does not believe that this should create any additional burdens for FCMs also subject to the SEC's regulations, because the proposed rules would not impose the added expense of an annual audit if an annual audit is not customarily performed. Moreover, the Commission is requesting financial statements to be filed on an annual basis rather than quarterly as required under SEC rules. However, the Commission requests comment as to whether consolidated and consolidating financial statements are customarily prepared on a quarterly basis and, if so, whether they should be required to be filed quarterly so as to provide more current financial data.

4. Aggregate Securities and Commodity Positions

Paragraph (a)(1)(v) of proposed Rule 1.14 would require FCMs to maintain records of the fair market value as of the end of each fiscal quarter of each MAP's inventory of long and short securities and physical commodity positions as specified in new Form 1.15A, including a separate listing for each MAP of any aggregate unhedged exposure, other than U.S. government or agency securities, denominated in dollars and measured by interest rate, duration, instrument or other measure as specified by the reporting entity, which exceeds a Materiality Threshold. For purposes of the proposed rules, the term "materiality threshold" is defined as the greatest of: (i) $20 million; (ii) 10 percent of the FCM's adjusted net capital on the most recent financial reports filed by the FCM with the Commission pursuant to Rule 1.10; (iii)

[31] See 57 FR at 32165 (wherein the SEC notes that broker-dealers need not create risk management policies for purposes of the SEC risk assessment requirements if none exist).

[32] Simulation analyses or major market move scenarios to measure the impact upon positions carried and upon regulatory capital of extreme price movements would be one tool for management of the risk of positions carried by the FCM, one which has been favorably mentioned by audit staff in oversight reviews of exchange financial surveillance programs. Separation of functions, periodic reconciliations of key accounts, daily marking-to-market of positions, and on-going assessments of the effectiveness of hedge positions, are examples of other internal controls generally important to an FCM's business, some of which are explicitly required under the CEA and Commission rules.

[33] In this regard, the Commission's proposed rule departs from the SEC's reporting structure which requires similar information to be filed on an annual basis.

10 percent of the MAP's tangible net worth; or (iv) for an FCM that is required, or that has a MAP that is required, to file pursuant to SEC Rule 17h-2T, the Materiality Threshold specified in SEC Rule 17h-1T.

The Commission requests comment as to whether the Materiality Threshold should be applied on a product-by-product basis with respect to each MAP or on an aggregate basis for all transactions of a MAP with a single counterparty. If product-by-product differentiation is more appropriate for credit risk assessment purposes, what product breakdowns are desirable?

The information required under this provision of the proposed rules is intended to encompass only the types of items which appear on the balance sheet of the FCM. Accordingly, records of physical (spot) commodities would be maintained under this paragraph and reported under the "aggregate securities and commodities" heading of Form 1.15A, while off-balance sheet items such as futures and forwards are covered in paragraph (a)(1)(vi) of proposed Rule 1.14 which concerns "financial instruments," as discussed below.

The on-balance sheet items provide more particularity by instrument than required financial reports and some information relative to funding. Nonetheless, the Commission requests comment concerning the scope of the requirement for on-balance sheet information, in particular as to whether the specified on-balance sheet items should generally be required or only required where the item is part of a financing transaction.

Rule 1.15 requires the information discussed above to be filed on Form 1.15A on an annual basis within 105 days after the end of each fiscal year. Quarterly updates would be required only if a change of 20 percent or greater in a line item has occurred since the FCM's last filing with the Commission. Rather than require routine quarterly reporting of on-balance sheet aggregate securities and commodities information, the Commission is proposing to require quarterly updates only when a significant change in previously reported information has occurred. When filing any quarterly update referred to herein, only the particular line item in which the 20 percent or greater change occurred need be updated, not the entire form. However, an FCM may elect to file this information for each fiscal quarter.

The Commission requests comment as to whether the requirement for quarterly updates would more appropriately be framed in terms of whether a "material change," rather than a 20 percent change, in such data has occurred or whether a routine quarterly filing requirement would be preferable.

The type of information required under the foregoing provisions is the same as that required under the SEC's interim final regulations. However, the information would be provided on new CFTC Form 1.15A in the aggregate for the FCM's MAPs rather than separately for each MAP as is required under the SEC's rules, unless such a presentation would materially understate the risk relative to stockholders' equity of any MAP, in which case the information must be provided separately for such MAP. The Commission, however, is including a proposed Part C to Form 1.15A to elicit comment as to whether such a schedule is preferable for identifying MAPs that require additional review and could be used for reporting cases where aggregate data for all MAPs might disguise a particular MAP's risk. For example, Part C would require information on a MAP's trading book, and if a MAP maintains separate trading books for different types of instruments, these must be discussed separately.

The Commission requests comment as to whether Part C should be used in lieu of providing the information on Parts A and B for such MAP separately. The Commission requests comment concerning Form 1.15A generally as well as concerning Part C thereof, and the Commission further requests comment as to whether reporting on Form 1.15A should generally be required separately for each MAP rather than on an aggregate basis for all MAPs.

The Commission's proposed rules also incorporate a lower Materiality Threshold than is provided in the SEC's risk assessment rules, which use the greater of $100 million or 10 percent of the broker-dealer's tentative net capital or tangible net worth.[34] The Commission believes that a $20 million threshold is a more realistic materiality figure for FCMs as opposed to generally larger broker-dealers but requests comment on this point. To reduce reporting burdens for FCMs that also file under the SEC's rules or are part of a holding company group that includes a reporting broker-dealer, the Commission's proposed threshold incorporates the SEC's higher materiality threshold for such firms.

[34] Further, Form 1.15A, unlike SEC Form 17–H, does not call for information concerning purchased options or risk arbitrage.

5. Financial Instruments

Proposed Rule 1.14(a)(1)(vi) requires FCMs to maintain records of the amount at the end of each fiscal quarter, on an aggregate basis for the FCM and its MAPs, of the notional or contractual amounts, and in the case of options, the value of the underlying instruments, of exchange-traded futures and commodity option contracts, forward contracts, over-the-counter commodity options, and financial instruments with off-balance sheet risk and financial instruments with concentrations of credit risk, as those terms are defined in SFAS 105, broken down by contract type and maturity as specified in proposed Form 1.15A. The record must identify each instrument where credit risk with respect to a counterparty exceeds the Materiality Threshold. SFAS 105 is applicable to all companies that prepare financial statements in accordance with GAAP and requires disclosure of information about financial instruments[35] with off-balance sheet risk and financial instruments with a concentration of credit risk. As noted above, in contrast to paragraph (a)(1)(v) of Rule 1.14 which concerns "on-balance sheet" aggregate securities and commodity positions, the information regarding "financial instruments" is intended to encompass off-balance sheet activities.

"Off-balance sheet risk" is defined in SFAS 105 as the risk of accounting loss.[36] SFAS 105 defines "credit risk" as the possibility that a loss may occur from the failure of another party to perform under the terms of the contract. The proposed rules would require an FCM to separately list each instrument where the credit risk with respect to an individual counterparty exceeds the Materiality Threshold at quarter end.

The reporting of futures, forwards and swaps on proposed Form 1.15A differs slightly from that under SEC Form 17–H. While SEC Form 17–H breaks out only interest rate and foreign exchange swaps, proposed Form 1.15A also includes separate entries for energy and

[35] The term "financial instrument" is defined in SFAS 105 as cash, evidence of an ownership interest in an entity or a contract that both:

a. Imposes on one entity a contractual obligation (1) to deliver cash or another financial instrument to a second entity or (2) to exchange financial instruments on potentially unfavorable terms with the second entity; and

b. Conveys to that second entity a contractual right (1) to receive cash or another financial instrument from the first entity or (2) to exchange other financial instruments on potentially favorable terms with the first entity.

[36] "Accounting loss" is further defined as the loss that may have to be recognized due to credit and market risk as the result of the obligations from a financial instrument.

precious metal swaps. The same category breakdown would also apply for reporting futures and forwards on proposed Form 1.15A. This is in contrast to SEC Form 17–H, which breaks down the reporting of futures and forward contracts by three categories of underlying instrument: (1) U.S. Treasury and mortgage-backed securities; (2) other securities; and (3) all others. In addition, Form 1.15A would require separate listing of all swaps and forwards by three different maturities: less than one year; one to five years; and more than five years.

These changes are intended to take account of differences between banking and securities reporting of off-balance sheet exposures and ongoing discussions on data relative to macro-prudential, as opposed to micro-prudential, risk. The Commission requests comment as to whether additional maturity breakdowns under one year or over five years would be appropriate, particularly in the case of interest rate instruments.

Rule 1.15 requires the above information to be filed on Form 1.15A on an annual basis within 105 days after the end of each fiscal year. Quarterly updates would be required within 60 calendar days after the end of any fiscal quarter in which a change of 20 percent or greater in any line item has occurred since the FCM's last filing with the Commission. An FCM may elect to file this information routinely for each fiscal quarter.

The Commission requests comment as to whether a materiality standard, as compared to a quantitative threshold, should be used to determine whether quarterly updates are required or whether a routine quarterly filing requirement would be preferable to an update requirement triggered by a change in any line item. Comment is also requested as to whether any efficiencies in reporting would be achieved if large trader account numbers were substituted for domestic exchange traded futures positions.

6. Extensions of Credit

Paragraph (a)(1)(vii) of proposed Rule 1.14 would require an FCM to maintain records of the aggregate amount as of quarter end of all material unsecured extensions of credit by each MAP, including a description of any extensions of credit to a single borrower which exceed the Materiality Threshold. Annual filing of this information would be required on Form 1.15A pursuant to proposed Rule 1.15. If a change of 20 percent or greater occurs in the information last filed with the Commission, a quarterly update must be filed within 60 calendar days after the end of the fiscal quarter in which such a change occurred. An FCM may, at its option, file this information routinely for each fiscal quarter.

The information required under this paragraph is essentially the same as that required under the SEC's risk assessment rules. However, the Commission's proposal does not break out bridge loans as a separate listing under this heading. Rather, a bridge loan, if material, would be treated the same as and be grouped together with any other material unsecured extensions of credit for recordkeeping and reporting purposes under the Commission's proposal.

7. Commercial Paper and Other Financing Information

Paragraph (a)(1)(viii) of Rule 1.14 would require FCMs to keep records of the aggregate amount at fiscal quarter end of commercial paper, secured and unsecured borrowing, bank loans, lines of credit and the principal installments of long-term or medium-term debt scheduled to mature within one year. Under proposed Rule 1.15 this information would be required to be filed on Form 1.15A annually unless a change of 20 percent or greater occurs in any of the information last filed with the Commission pursuant to either paragraph (a)(2)(iii) or (a)(4) of Rule 1.15, in which case a quarterly update would be required to be filed within 60 calendar days after the end of the fiscal quarter in which such a change occurred. An FCM may, at its option, file this information routinely for each fiscal quarter. The information discussed above is of the same nature as that called for under the SEC's risk assessment regulations, except that the proposed rule generally calls for such information to be reported in the aggregate for the FCM's MAPs rather than for each MAP as required under SEC rules.

8. Real Estate Information

Proposed Rule 1.14(a)(1)(ix) requires FCMs to maintain information concerning the annual gross income derived from real estate activities, including mortgage loans and investments, for each MAP that derived more than 20 percent of its gross income (loss) from such activities during the fiscal year. This information would be required to be reported annually on Form 1.15A. The information required under the SEC's risk assessment rules regarding a MAP's real estate activities is considerably more detailed than that which would be required under the Commission's proposed rules. The SEC's rules require that a broker-dealer maintain and file information regarding any real estate activities of a MAP, without regard to the percentage of gross income derived from such activities, and call for a variety of types of information concerning each MAP's real estate operations.[37] The proposed rules would require reporting of the annual gross income derived from real estate activities for any MAP that derived more than 20 percent of its gross income (loss) from such activities during the fiscal year. Although the Commission may ask for supplemental information concerning a MAP's real estate activities if necessary in the circumstances, the Commission believes that, in the first instance, the information requested under the proposed rules should be sufficient to highlight the real estate activities of those MAPs which may require additional review. The Commission requests comment, however, as to whether more detailed information, such as is called for by the SEC's rules, should be required.

9. Information Regarding Noncustomer Accounts

Paragraph (a)(1)(x) of Rule 1.14 would require an FCM to maintain on a quarterly basis the gross notional value, long and short, of open positions in noncustomer accounts, as that term is defined in Rule 1.17(b)(4),[38] the percentage of this value compared to the FCM's adjusted net capital, the percentage of the notional value of noncustomer accounts carried by the futures commission merchant that are bona fide hedging positions in accordance with Rule 1.3(z), and the percentage of the aggregate notional value of noncustomer accounts carried for the purpose of managing the risk of

[37] For example, the SEC's rules require that a broker-dealer maintain and file information concerning a material associated person's real estate mortgage or loan investment type, a geographic distribution of such activities by year, the value of loans that are noncurrent, are in the process of foreclosure or have been restructured, the allowance for losses on loans and investments and information concerning risk concentration in the material associated person's investment and loan portfolio. See 17 CFR 240.17h–1T(a)(1)(x).

[38] Rule 1.17(b)(4) defines a "noncustomer account" as a commodity futures or option account carried on the books of an FCM "which is not included in the definition of customer or * * * proprietary account (as defined in § 1.17(b)(3))." "Proprietary account" is defined in Rule 1.17(b)(3) to mean a commodity futures or option account carried on the books of the FCM for the FCM itself, or for general partners in the FCM. Essentially, the definition of noncustomer account includes proprietary accounts as defined in Rule 1.3(y) other than the account of the FCM itself or its general partners. Noncustomer accounts would thus include, among others, accounts of affiliates of the FCM that are under common control with the FCM, that control the FCM, or are controlled by the FCM.

cash market commitments that mature more than 12 months from quarter end and more than 60 months from quarter end, compared to the aggregate notional value of open positions in all noncustomer accounts carried by the FCM. Large positions carried in noncustomer accounts of an FCM may represent a significant exposure of the FCM to risks created by its affiliate's trading activities relative to cash flow or financing shortages. The nature of the affiliate's activities, *i.e.*, whether the positions are for hedging purposes or for speculation and, if for hedging or risk management purposes, the maturities of the cash positions being offset, may bear significantly upon the risks assumed by the FCM carrying an affiliate's account.

The Commission believes that the size and nature of noncustomer accounts carried by the FCM are likely to be important components of risk assessment information, particularly in circumstances in which futures positions carried for affiliates are either not offset by, or are imperfectly correlated with, cash positions at the affiliate. Accordingly, information concerning such positions is necessary for a complete risk assessment evaluation of an FCM. The noncustomer account information that would be required under the proposed rules would, for the most part, be maintained by the FCM as part of its required recordkeeping under current rules[39] and could be used to trigger more extensive financial oversight by the CFTC. To the extent that additional information is required to be maintained and reported concerning the maturities of cash commitments which a MAP is hedging or the risks of which the MAP is managing by means of futures transactions carried by the FCM, the information requested is material to the FCM's own risk management program and should be readily accessible to the FCM.

Rule 1.15(a)(1)(iii) would initially require filing of the information discussed above within 90 calendar days of the rule's effective date or 60 calendar days from the date of the FCM's registration if later. Thereafter, Rule 1.15(a)(3) would require this information to be filed within 60 calendar days after the end of each fiscal quarter. and 1.46.

C. Information Required Upon the Occurrence of Certain Events

The proposed rules would require the majority of the required risk assessment information to be filed on an annual basis, with updates to be provided at the end of a quarter only if a change of 20 percent or greater has occurred in the information provided to the Commission since the FCM's last risk assessment filing. Only information concerning noncustomer accounts, which is either wholly or largely within the scope of the FCM's routine recordkeeping systems, would be required routinely on a quarterly basis. This approach differs from that adopted by the SEC, which generally requires routine quarterly reporting. In lieu of requiring routine quarterly filing of substantial information concerning each affiliate's activities, the Commission's proposed rules identify certain extraordinary events which trigger a required notice to the Commission. Upon receipt of notice of such an event, the Commission may then determine whether supplemental information should be requested of the FCM, in light of the circumstances of the FCM and its affiliated entities, the nature of the event triggering the notice requirement and other available information concerning the FCM.

The proposed rule would require notification to the Commission upon the occurrence of any of eight "triggering" events which may indicate a basis for further inquiry or closer scrutiny of the FCM. In specifying "triggering" events requiring notice to the Commission, together with quarterly updates of significant changes in financial information, the Commission has endeavored to construct a reporting system that minimizes routine filings and operates instead to identify potentially significant events from a financial monitoring perspective that should be readily evident to the FCM, are objectively or quantitatively defined, evidence circumstances likely to warrant further review, and should occur infrequently. An FCM would be required to notify the Commission (by notice to the Director of the Division of Trading and Markets or the Director's designee)[40] within three business days of the occurrence of any event specified in paragraph (b)(2) of proposed Rule 1.15 except to the extent that shorter periods are specified in paragraphs (b)(2)(i) and (b)(2)(viii) with respect to particular triggering events. After reviewing the notice filed by an FCM, additional information may be requested from the firm or a relevant regulatory agency, as determined to be necessary in the circumstances. The Commission requests comment, however, as to whether the notice of occurrence of a triggering event should be required to be accompanied by an explanation of the circumstances giving rise to the occurrence such that supplemental inquiries might be obviated in many cases.

Comment is also requested, in view of the recordkeeping requirements of proposed Rule 1.14, as to whether any efficiencies would be achieved by limiting the reporting of certain information required on Form 1.15A to a response for a request for information in the event of a triggering event. In this connection, commenters should specifically address what routine information would be sufficient to provide such understanding of group activities and exposures as may be necessary to provide background about the liquidity management of the group and to assist in evaluating potential risks and the significance of a triggering event to the regulated FCM. Commenters should also address the practicability of developing particularized information on a sufficiently timely basis, if such information were only provided upon a triggering event, to assist the Commission's management of emergency situations. For example, when market surveillance special calls are made, generally a response is required within 24 hours.

Under the proposed rule, the following events would require notice to the Commission.

1. Reduction in FCM's Adjusted Net Capital or Parent's Stockholders' Equity

The Commission believes that a sudden major reduction in the adjusted net capital of an FCM or the consolidated stockholders' equity of the FCM's parent may be an indication of impending financial difficulties and should be brought to the Commission's attention. Accordingly, the Commission's proposed rules require that an FCM notify the Commission of any such reduction. Paragraph (b)(2)(i) of Rule 1.15 requires an FCM to notify the Commission of any reduction of 20 percent or more in its adjusted net capital as last reported on its financial reports filed with the Commission pursuant to Rule 1.10. The FCM must provide notice within two business days of any such reduction caused by an activity in the normal course of business, such as an operating loss, proprietary trading loss or increase in charges against net capital, or at least two business days prior to any extraordinary transactions or series of transactions, such as a dividend

[39] *See, generally*, Rule 1.35; *see also* Rules 1.33, 1.37 and 1.46.

[40] The Director of the Division of Trading and Markets is generally delegated the authority to act on behalf of the Commission with respect to the proposed risk assessment regulations.

payment or making of a loan. This notification requirement is essentially the same as that provided in Rule 921 of the Chicago Mercantile Exchange ("CME"), which requires that an FCM notify the CME within 48 hours after activities in the normal course of business or at least two business days prior to any extraordinary transaction or series of transactions that cause greater than a twenty percent reduction in the FCM's last reported adjusted net capital.[41] SEC regulations also require notice in the event of withdrawals, advances or loans by a broker-dealer or its consolidated subsidiaries or affiliates that exceed certain thresholds.[42]

Similarly, paragraph (b)(2)(v) of the rule requires an FCM to notify the Commission of any reduction of 20 percent or more of its parent's consolidated stockholders' equity from the date of the parent's last quarterly consolidated financial statements. Such notice must be provided within three calendar days of any such reduction.

2. Outflow of FCM's Assets

Paragraph (b)(2)(ii) of Rule 1.15 requires an FCM to notify the Commission of any outflow of assets from the FCM which in the aggregate in any 30 calendar day period exceeds 20 percent or more of the FCM's excess adjusted net capital. The rule explicitly excludes, however, securities transactions between FCMs and their MAPs which occur in the ordinary course of business where payment is made within two business days, and aggregate withdrawals equalling $500,000 or less (computed on a net basis) within a 30 calendar-day period. This provision would enable the Commission to receive current information on matters that materially impact the financial resources of a futures commission merchant and to update the Commission's records regarding the amount of an entity's adjusted net capital and other financial resources maintained by a firm, which otherwise could become materially inaccurate. This notice requirement is similar to a requirement in the SEC's net capital rule which requires broker-dealers to notify the SEC of certain withdrawals of equity capital.[43] The Commission's rule is, however, both more lenient and broader than the SEC rule. The Commission's proposal allows three business days for an FCM to notify the Commission of any transaction which falls within the proposed rule, as opposed to the advance notice or two business day notification requirements established by the SEC. However, the Commission requires notice of "any outflow of assets" that meets the criteria set forth in the proposed rule and therefore potentially could require notice of certain transactions that would not affect an entity's regulatory capital and therefore would not fall within the SEC's notice provisions.

3. Losses

Paragraph (b)(2)(iii) of proposed Rule 1.15 would require an FCM to notify the Commission if aggregate cumulative losses occurring in all noncustomer accounts (as defined in Rule 1.17(b)(4)) carried by the FCM exceed: (1) In any 30 day period, the greater of 10 percent of the last reported consolidated stockholders' equity of the FCM's parent or $50 million; or (2) in any 12-month period, the greater of 20 percent of the last reported consolidated stockholders' equity of the FCM's parent or $100 million.

This provision is designed to assure that the FCM alerts the Commission to material losses in the futures markets to the extent such losses are incurred by the consolidated group in noncustomer accounts carried by the FCM. Since reporting under this provision is triggered by losses in the futures markets and does not depend upon a computation of corporate net income pursuant to generally accepted accounting principles, it is a simple and relatively sensitive reporting device. Although the Commission recognizes that losses on futures transactions may be offset by corresponding gains on related cash positions, this notice provision is intended to permit the Commission to make early inquiries regarding financial strategies or positions that may be causing material cash flow demands on the resources of the consolidated group of which the FCM is a part.

Paragraph (b)(2)(iv) of Rule 1.15 is intended to alert the Commission to large losses occurring at a MAP which may affect the consolidated group's financial stability. This provision requires an FCM to notify the Commission of any net loss at a MAP during any quarter which exceeds 30 percent of the MAP's last reported net worth or 20 percent of the FCM's adjusted net capital.

4. Changes in Credit or Capital Rating

Paragraph (b)(2)(vi) of Rule 1.15 requires an FCM to notify the Commission of any reduction in a MAP's credit rating by Standard & Poor's Corporation, Moody's Investor Services, Inc. or any other nationally recognized rating service. As over-the-counter transactions may be conducted through unregulated entities that are heavily dependent upon high credit ratings for the conduct of their business, a change in credit rating may be very material to such entities' operations. Consequently, reporting under this provision will alert the Commission to events which could adversely impact the FCM or its consolidated group.

Paragraph (b)(2)(vii) requires an FCM to notify the Commission if a MAP files a notice with a banking regulator stating that an adjustment to its capital category may have occurred. A reduction in capital category may have been due to financial or other events of which the Commission has not yet become aware. Under banking regulations, an entity subject to the supervision of the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation or the Office of the Comptroller of the Currency must provide written notice to its supervisory agency or agencies that an adjustment to the entity's capital category may have occurred, no later than 15 calendar days following the date that any material event has occurred that would cause the

[41] The Commodity Exchange, Inc. ("COMEX"), New York Mercantile Exchange ("NYMEX") and Chicago Board of Trade ("CBT") have adopted similar rules. *See* COMEX Rule 7.08(a); NYMEX Rule 2.14(D); and CBT Rule 285.03.

[42] 17 CFR 240.15c3–1(e)(1) (1993). In general, the SEC rule provides that a broker-dealer or consolidated subsidiary or affiliate must notify the SEC: (1) Two business days prior to any withdrawals, advances or loans which on a net basis exceed in the aggregate in any 30 calendar day period 30 percent of the broker-dealer's excess net capital; or (2) two business days after withdrawals, advances or loans which on a net basis exceed in the aggregate in any 30 calendar day period 20 percent of the broker-dealer's excess net capital. The rule, however, is limited to the following types of transactions that cause an equity reduction: (1) Withdrawals by action of a stockholder or partner; (2) redemption or repurchase of stock by a consolidated entity; (3) payment of dividends or any similar distribution; or (4) an unsecured advance or loan made to a stockholder, partner, sole proprietor, employee or affiliate. Pursuant to SEC Rule 15c3–1(e)(3)(i), the SEC also may restrict for up to twenty business days any withdrawal of equity capital by a broker-dealer or unsecured loan or advance to a stockholder, partner, sole proprietor, employee or affiliate if: (1) Such advance or loan when aggregated with all other withdrawals, advances or loans on a net basis during a 30 calendar day period exceeds 30 percent of the broker-dealer's excess net capital; or (2) the SEC concludes that the withdrawal, advance or loan may be detrimental to the broker-dealer's financial integrity, may unduly jeopardize the broker-dealer's ability to repay customer claims or other liabilities which may cause a significant impact on the markets or expose the broker-dealer's customers or creditors to loss. 17 CFR 240.15c3–1(e)(3)(i) (1993). *See also* 17 CFR 240.15c3–1(e)(2) (1993) (placing various other limitations on withdrawals of broker-dealer's equity capital).

[43] *See supra* note 42.

entity to be placed in a lower capital category.[44]

5. Guarantee Agreements

Paragraph (b)(2)(viii) of Proposed Rule 1.15 would require an FCM to notify the Commission three business days prior to the effective date of any agreement whereby the FCM agrees to guarantee the obligation of any affiliated entity. The Commission wishes to emphasize that this provision applies to agreements between the FCM and any affiliate and is not limited to guarantee agreements entered into with a MAP.[45] Notice under this provision would inform the Commission as to new financial obligations undertaken by an FCM that may have a material impact upon the firm's regulatory capital and may not yet have been reflected in financial reports filed with the Commission. Upon receipt of a notice under this provision, depending upon the nature and extent of the guarantee, the Commission may request a current pro forma computation of an FCM's adjusted net capital position, which would indicate the potential impact on adjusted net capital of any newly undertaken guarantees.

D. Exemptions and Special Provisions

Under Section 4f(c), the Commission may exempt, "under such terms and conditions and for such periods as the Commission shall provide," any person or class of persons from rules issued pursuant to that provision. Section 4f(c) of the Act directs the Commission to consider the following general factors in determining whether to grant such exemptions: (1) Whether the information requested is available from another supervisory agency; (2) the primary business of an affiliated person; (3) the nature and extent of domestic or foreign regulation of the affiliated person's activities; (4) the nature and extent of the FCM's commodity futures and options activities; and (5) the amount of assets and revenues derived from and involved in United States futures markets.

Based upon these factors and the purposes of the risk assessment rules, the Commission has determined to provide an exemption for FCMs who, based on the amount of customer funds held and adjusted net capital maintained, appear to engage in only small amounts of futures and options activities. Further, the proposed rules provide special provisions for entities which are subject to the regulatory oversight of other domestic and foreign regulatory bodies. With respect to FCMs that are not otherwise exempt, the proposed rules permit an FCM, by application, to request individual exemptions from the rules which would be considered by the Commission on a case-by-case basis.

1. Exemption Based on Level of Customer Funds and Net Capital

Preliminarily, the Commission has determined to focus its risk assessment program upon those FCMs which appear to be significantly engaged in futures and options trading or which, by virtue of their status as clearing members[46] of exchanges may have a significant impact upon the financial integrity of the exchange marketplace. In this regard, the Commission is proposing to exempt from the risk assessment requirements all FCMs, other than clearing member firms, that hold customer funds of less than $6,250,000[47] and maintain adjusted net capital of less than $5,000,000, calculated as of the FCM's fiscal year-end.[48] Of course, the Commission may re-evaluate these customer funds and adjusted net capital levels at a later date should experience indicate that they are either too high or too low given the objective of the risk assessment rules to provide the Commission with data designed to reduce risks to the futures markets and users of regulated intermediaries transacting in these markets arising from the financial deterioration of an FCM or related company.

Currently, the Commission requires an FCM to calculate its minimum adjusted net capital requirement by multiplying the amount it is required to segregate and set aside in special accounts for the benefit of its customers by four percent, subject to a minimum dollar requirement of $50,000.[49] However, Commission Rule 170.15 provides that "(e)ach person required to register as a futures commission merchant must become and remain a member of at least one futures association which is registered under section 17 of the Act and which provides for the membership therein of such futures commission merchant, unless no such futures association is so registered." The Commission approved an increase in the minimum dollar requirement for member FCMs of the NFA, currently the only registered futures association, from $50,000 to $250,000, effective December 31, 1990. This increase effectively requires all FCMs to maintain adjusted net capital of at least $250,000. Therefore, the Commission believes that it is appropriate to use as the minimum level for the application of those rules that level of customer funds carried by an FCM where an increase in such amount of funds will effectively cause an increase in the minimum adjusted net capital requirement. Based upon the NFA minimum dollar amount and the Commission's basic four percent calculation, that level is $6,250,000.

The Commission further believes that, even if an FCM is not carrying any customer funds, it may be engaged in proprietary trading or trading for noncustomer accounts to an extent that could create the potential for risks to other market participants or systemic risks. The Commission is therefore proposing $5 million of adjusted net capital as an additional minimum level for application of these rules, even if a firm is not carrying the minimum level of customer funds of $6,250,000. In determining this amount, the Commission examined data concerning the financial condition of registered FCMs and comparable SEC rules.[50]

The Commission requests comment as to the appropriateness of the adjusted net capital and customer funds exemption levels established by the proposed rules.

2. Special Provisions for Certain Regulated Entities

a. *Broker-Dealers.* The legislative history of section 4f(c) of the FTPA indicates that Congress intended that, in promulgating its risk assessment rules, the Commission would "avoid imposing

[44] *See* 12 CFR 208.32(c)(1993); 12 CFR 565.3(c)(1993); 12 CFR 325.102(c)(1993); and 12 CFR 6.3(c)(1993).

[45] However, the establishment of such a guarantee arrangement may result in the affiliate becoming a MAP.

[46] Rule 1.3(c) defines "clearing member" as any person who is a member of, or enjoys the privilege of clearing trades in his own name through, the clearing organization of a contract market.

[47] In determining the dollar amount of customer funds held by an FCM at fiscal year-end, funds required to be segregated pursuant to section 4d(2) of the Act and set aside pursuant to part 30 of the Commission's rules are required to be included. The Commission requests comment as to whether the calculation of customer funds for this purpose should be the same as that for Rule 1.17 capital computation purpose, *i.e.*, whether long option values should be deducted.

[48] The Commission estimates that approximately 200 FCMs would be covered under the proposed rules. A substantial percentage of these FCMs either are dually registered as broker-dealers reporting under the SEC's risk assessment rules or are affiliated with a reporting broker-dealer, bank or insurance company.

[49] See Commission Rule 1.17(a)(1)(i).

[50] The comparable SEC figure is $20 million. 17 CFR 240.17h–1T(d)(1)(iv) and 240.17h–2T(b)(1)(iv). However, given the relative size of securities and futures market activity, the degree of leverage in futures transactions, and the fact that the Commission is proposing a materiality threshold of $20 million, as compared to the SEC's $100 million, a $5 million adjusted net capital ceiling for exemption from these rules appears to be an appropriate level.

unnecessary paperwork burdens upon securities brokers or dealers regulated by the SEC."[51] As noted above, the SEC has adopted interim risk assessment rules which require recordkeeping and quarterly reporting of comprehensive information concerning material affiliates of broker-dealers. The proposed rules derive in significant measure from the SEC's risk assessment rules and are intended to facilitate reporting by FCMs that are either also registered as broker-dealers and are required to report to the SEC pursuant to the SEC's rules or are part of a holding company group that includes a broker-dealer reporting pursuant to the SEC's rules. The rules also contemplate coordination with other regulators and the use of triggering events to diminish routine paperwork. In light of the SEC's risk assessment requirements, the Commission's proposed rules permit FCMs that are dually registered as securities broker-dealers or that have affiliates that are registered as broker-dealers to file SEC Form 17–H, the SEC's risk assessment information form, in partial compliance with the Commission's proposed rules. Generally, under proposed Rule 1.15(d)(1), an FCM that is dually registered as a broker-dealer or that has an affiliate that is registered as a broker-dealer would be deemed to be in compliance with all of the routine reporting requirements of proposed Rule 1.15, except the filing of risk management policies pursuant to paragraph (a)(1)(ii) of Rule 1.15[52] and the reporting of information regarding the FCM's noncustomer accounts under paragraphs (a)(1)(iii) and (a)(3) of proposed Rule 1.15, if the FCM files SEC Form 17–H with the Commission. However, if the SEC filing does not include as MAPs all of the entities that would be MAPs of the FCM under the CFTC's rules, the SEC filing would be required to be supplemented to include those MAPs. Only an individual filing for the excluded MAP need be filed. Similarly, the FCM would be deemed to be in compliance with all of the recordkeeping requirements of proposed Rule 1.14, except for the requirements that the FCM maintain records concerning the FCM's risk management policies under paragraph (a)(1)(ii) and noncustomer accounts under paragraph (a)(1)(x), if the FCM maintains, in accordance with the proposed rule, copies of the records and reports maintained and filed on SEC Form 17–H. The FCM would, however, be required to maintain supplemental information for any entities required to be treated as MAPs under the CFTC's rules that are not treated as MAPs for purposes of the SEC's rules.

Because SEC Form 17–H is, with respect to certain reporting requirements, more inclusive than the Commission's proposed reporting requirements, Rule 1.15(d)(1) provides an FCM with the option of either filing Form 17–H in its entirety, or filing the form with certain modifications to omit information that would not be required under the proposed rules. Specifically, the FCM may make the following changes to its Form 17–H filing: (1) The FCM need not include information on arbitrage and purchased options required under Items 10 and 11, respectively, of Part I of Form 17–H; (2) the FCM may substitute the real estate information required to be maintained under Rule 1.14(a)(ix) and reported under Section V of Form 1.15A for the detailed information required under Section V of Form 17–H; and (3) the FCM may file the information required under Part II of Form 17–H on an aggregate basis for its MAPs rather than for each MAP as otherwise required, provided that if this would materially understate risk in relation to equity in any MAP, the information must be provided separately for such MAP. The FCM may use either the Commission or the SEC form for the latter purpose. As noted above, however, an FCM who qualifies under the special provisions applicable to SEC filers would remain responsible for maintaining and furnishing the Commission with information concerning the FCM's risk management policies under paragraph (a)(1)(ii) of proposed Rules 1.14 and 1.15 and noncustomer accounts under paragraphs (a)(1)(x) of proposed Rule 1.14 and (a)(1)(iii) and (a)(3) of proposed Rule 1.15. Moreover, the FCM would remain responsible for notifying the Commission of the occurrence of the events specified in Rule 1.15(b)(2) and providing supplemental information, if requested. If, however, such a "triggering" event occurs, the Division Director will attempt, in the first instance, to obtain any necessary supplemental information from the FCM's or its MAP's filings with the SEC.[53]

The Commission believes that compliance with the notice provisions of proposed Rule 1.15(b) is essential to enable the Commission to act expeditiously in emergency situations and to detect incipient problems. The Commission does not believe that such compliance should impose an undue burden on entities dually registered as FCMs and securities broker-dealers, as the events that require notification under proposed Rule 1.15(b) should occur infrequently.

b. *Banks.* Section 4f(c)(4)(B) of the Act provides generally that a registered FCM shall be considered to have complied with recordkeeping or reporting requirements adopted by the Commission "concerning an affiliated person that is subject to examination by, or reporting requirements of, a Federal banking agency if the [FCM] utilizes for the recordkeeping or reporting requirement copies of reports filed by the affiliated person with the Federal banking agency" pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act or section 5 of the Bank Holding Company Act. The legislative history of the FTPA indicates, however, that an FCM may not be required under any circumstances to obtain or furnish the Commission with copies of examination reports.[54]

With respect to an FCM with a MAP that is subject to supervision by a federal banking agency, the proposed rule provides that an FCM will be deemed to be in compliance with all of the routine reporting requirements of proposed Rule 1.15(a)(2) with respect to such MAP, if the FCM maintains in accordance with Rule 1.14 copies of all reports filed by the MAP with bank regulators.[55] Paragraph (b)(2) of proposed Rule 1.14 provides similar treatment with respect to recordkeeping requirements. Generally, foreign banking organizations that are subject to U.S. banking regulation will be treated in the same fashion as domestic banks for purposes of the application of the proposed rules. Additionally, as part of its risk assessment program with respect to MAPs that are subject to the supervision of a federal banking agency, the Commission intends to obtain and

[51] S. Rep. No. 22, 102d Cong., 2d Sess. at 50.

[52] The relief provided does not extend to filing of risk management policies because although the SEC rules require filing of many of the same types of written policies and procedures as the CFTC's rules, the CFTC rule requires additional information relating to FCM risk management policies with respect to noncustomer trading activities.

[53] A letter from the FCM or a relevant MAP acknowledging the Commission's right of access to relevant SEC risk assessment filings may be requested in these circumstances.

[54] H.R. Rep. No. 978, 102d Cong., 2d Sess. 75 (1992).

[55] With respect to Form FR 2068, the Confidential Form of Operations required to be filed with the Board of Governors of the Federal Reserve System by foreign banking organizations, Commission staff are exploring with Federal Reserve officials procedures by which access to Form 2068 may be obtained on an as needed basis.

review, on an as-needed basis, the Bank Holding Company Performance Report prepared by the Board of Governors of the Federal Reserve and/or the Uniform Bank Performance Report, prepared by the Federal Deposit Insurance Corporation, to gain further information regarding the financial activities of such MAPs.

c. *Insurance Companies.* Section 4f(c) of the Act requires that, in granting exemptions from the reporting and recordkeeping requirements, the Commission should consider, among other factors, whether information of the type required is available from a state insurance commission or similar state agency. The proposed rules would provide relief comparable to that provided with respect to MAPs subject to supervision by Federal banking agencies for MAPs subject to regulation by an insurance commissioner or other similar state official or agency. Under the proposed rule, an FCM with a MAP that is an insurance company would satisfy the routine reporting requirements of proposed Rule 1.15(a)(2) with respect to such a MAP if, in the case of a mutual insurance company or non-public stock company, the FCM maintains in accordance with proposed Rule 1.14 copies of the annual reports filed by the parent insurance company on forms prescribed by the National Association of Insurance Commissioners. With respect to a MAP organized as a public stock company, the FCM would be required, in addition to maintaining state insurance reports, to maintain in accordance with proposed Rule 1.14 copies of the filings the insurance company makes under Sections 13 or 15 of the Securities Exchange Act of 1934 and filings made under the Investment Company Act of 1940.

d. *Firms subject to foreign regulatory supervision.* With respect to foreign firms that are regulated in a foreign jurisdiction, the proposed rules would permit an FCM to maintain and file any financial or risk exposure reports filed by a MAP with a foreign futures authority, as that term is defined in section 1a(10) of the Commodity Exchange Act, or other foreign regulatory authority with which the Commission has an information-sharing agreement in effect. The proposed rules require that the FCM file with the Commission a copy of the original report as well as one copy translated into English. In the absence of such an information-sharing agreement, the FCM would be required to comply with the proposed rules with respect to foreign MAPs subject to foreign regulation to the same extent as unregulated entities.

III. Implementation Schedule

The Commission is proposing to phase in implementation of the risk assessment rules in order to provide FCMs with the opportunity to make any internal adjustments in their financial recordkeeping and reporting operations which may be necessary prior to beginning compliance with the risk assessment rules. The proposed rules would require that FCMs maintain and file with the Commission the organizational chart, risk management policy information and noncustomer account information required by paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(x) of proposed Rule 1.14 and paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of proposed Rule 1.15 within 90 calendar days from the effective date of the proposed rules. The first annual filings for fiscal years ending December 31, 1994 or thereafter would be due, in accordance with the proposed rules, within 105 calendar days of fiscal year-end.

IV. Other Matters

The Commission has proposed these rules recognizing the types and formats of information provided to other reporting agencies and based upon the types of information it uses to consider regulatory intervention in financial disruptions. Nonetheless, the Commission requests comment on whether alternative approaches could achieve the Commission's and Congress' objectives and could be reasonably integrated with the approaches of other financial regulators. In that current events have caused the Commission to need enhanced authority to obtain information concerning affiliate activity, the Commission will only consider responses to this request for alternatives that are sufficiently specific to reasonably convince it that the alternative would address the Commission's objectives.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect FCMs. The Commission already has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[56] FCMs have been determined not to be small entities under the RFA. Additionally, smaller FCMs generally will not be affected by the proposed rules because the rules exempt from their requirements certain smaller entities. The Commission believes that the proposals, if adopted, would not have a significant economic impact on smaller entities.

Accordingly, pursuant to Rule 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any registered FCM who believes that these rules would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted these proposed rules and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including these proposed rules, is as follows:

Average Burden Hours Per Response: 18.55
Number of Respondents: 1,990
Frequency of Response: Annually and on occasion

The burden associated with this specific proposed rule, is as follows:

Average Burden Hours Per Response: 3.05
Number of Respondents: 620
Frequency of Response: Annually and on occasion

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Office, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

C. Electronic Filing

The Office of the Executive Director expects to include review of this proposal in any plan to enhance and refine systems to accept electronic filings. Should it appear that the filing of data electronically would expedite the purposes of collecting the information or provide a significant cost benefit to reporting entities and the Commission, the Commission will work

[56] 47 FR 18618–18621 (April 30, 1982).

with the reporting entities to define and implement a secure cost-effective reporting method.

List of Subjects in 17 CFR Part 1

Financial reporting, Recordkeeping requirements, Risk assessment.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 4f(b), 4f(c) 4g and 8a, 7 U.S.C. 6f(b), 6f(c), 6g and 12a, the Commission hereby proposes to amend part 1 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.14 is proposed to be added to read as follows:

§ 1.14 Risk assessment recordkeeping requirements for futures commission merchants.

(a) *Requirement to maintain and preserve information.* (1) Each futures commission merchant registered with the Commission pursuant to section 4d of the Act, unless exempt pursuant to paragraph (d) of this section, shall prepare, maintain and preserve the following information:

(i) An organizational chart which includes the futures commission merchant and each of its affiliated persons. Included in the organizational chart shall be a designation of which affiliated persons are "Material Affiliated Persons" as that term is used in paragraph (a)(2) of this section, which Material Affiliated Persons file routine financial or risk exposure reports with the Securities and Exchange Commission, a federal banking agency, an insurance commissioner or other similar official or agency of a state, or a foreign regulatory authority, and which Material Affiliated Persons are dealers, end users or both;

(ii) Written policies, procedures, or systems concerning the futures commission merchant's:

(A) Method(s) for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons;

(B) Financing and capital adequacy, including information regarding sources of funding, together with a narrative discussion by management of the liquidity of the material assets of the futures commission merchant, the structure of debt capital, and sources of alternative funding;

(C) Establishing and maintaining internal controls with respect to market risk, credit risk, and other risks created by the futures commission merchant's proprietary and noncustomer clearing activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in securities, futures contracts, commodity options, forward contracts and financial instruments; policies for hedging or managing risks created by trading activities or reviewing hedging and risk management strategies of noncustomer affiliates, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities:

Provided, however, that if the futures commission merchant has no such written policies, procedures or systems, it must so state in writing.

(iii) Fiscal year end consolidated and consolidating balance sheets for the futures commission merchant and its ultimate parent company, prepared in accordance with generally accepted accounting principles, which consolidated balance sheets shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which shall include appropriate explanatory notes. The consolidating balance sheet shall show separately the futures commission merchant, its ultimate parent company and each Material Affiliated Person;

(iv) Fiscal year end consolidated and consolidating income statements and consolidated cash flow statements for the futures commission merchant and its ultimate parent company, prepared in accordance with generally accepted accounting principles, which consolidated statements shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which shall include appropriate explanatory notes. The consolidating statements shall show separately the futures commission merchant, its ultimate parent company and each Material Affiliated Person;

(v) The fair market value as of the end of each fiscal quarter of each Material Affiliated Person's inventory of long and short securities and physical commodity positions as specified in Form 1.15A, including a separate listing for each Material Affiliated Person of any aggregate unhedged exposure, other than U.S. government or agency securities, denominated in dollars measured by interest rate, duration, instrument or other measure as specified by the reporting entity, that exceeds the Materiality Threshold, as defined in this section, at any fiscal quarter end;

(vi) The notional or contractual amounts, and in the case of options, the value of the underlying instruments, as of the end of each fiscal quarter, of exchange-traded futures and commodity option contracts, forward contracts, over-the-counter commodity options, and financial instruments with off-balance sheet risk or concentrations of credit risk (as those terms are used in Statement of Financial Accounting Standards No. 105), broken down by contract type and maturity, as specified in Form 1.15A. The record must identify each instrument or contract where the credit risk (as that term is used in Statement of Financial Accounting Standards No. 105) with respect to a counterparty exceeds the Materiality Threshold at the fiscal quarter end;

(vii) The aggregate amount as of the end of each fiscal quarter of all material unsecured extensions of credit (not including intra-group receivables) with an initial or remaining maturity of less than one year by each Material Affiliated Person, together with the allowance for losses for such transactions;

(viii) The aggregate amount as of the end of each fiscal quarter of commercial paper, secured and other unsecured borrowing, bank loans, lines of credit, or any other borrowings, and the principal installments of long-term or medium-term debt, scheduled to mature within twelve months from the most recent fiscal quarter for each Material Affiliated Person;

(ix) The percentage, as of fiscal year end, of annual gross income or loss derived from real estate activities, including mortgage loans and investments in real estate, with respect to each Material Affiliated Person which derived greater than 20 percent of its gross income or loss for the fiscal year from such activities; and

(x) The gross notional value, long and short, of open positions in noncustomer accounts, as defined in § 1.17(b)(4), carried by the futures commission merchant as of the end of each fiscal quarter, the percentage of such aggregate notional value compared to the futures commission merchant's adjusted net capital, the percentage of the aggregate notional value of open positions in noncustomer accounts carried by the futures commission merchant that

constitute bona fide hedging positions in accordance with § 1.3(z), and the percentage of the aggregate notional value of noncustomer accounts carried for the purpose of managing the risk of cash market commitments that mature more than 12 months and 60 months, respectively, from fiscal quarter end compared to the aggregate notional value of open positions in all noncustomer accounts carried by the futures commission merchant.

(2) The determination of whether an affiliated person of a futures commission merchant is a Material Affiliated Person shall involve consideration of all aspects of the activities of, and the relationship between, both entities, including without limitation, the following factors:

(i) The legal relationship between the futures commission merchant and the affiliated person;

(ii) The overall financing requirements of the futures commission merchant and the affiliated person, and the degree, if any, to which the futures commission merchant and the affiliated person are financially dependent on each other;

(iii) The degree, if any, to which the futures commission merchant or its customers rely on the affiliated person for operational support or services in connection with the futures commission merchant's business;

(iv) The level of market, credit or other risk present in the activities of the affiliated person; and

(v) The extent to which the affiliated person has the authority or the ability to cause a withdrawal of capital from the futures commission merchant.

(3) The information, reports and records required by this section shall be maintained and preserved, and made readily available for inspection in accordance with the provisions of § 1.31.

(4) For the purposes of this section and § 1.15, the term Materiality Threshold shall mean the greatest of:

(i) $20 million;

(ii) 10 percent of the futures commission merchant's adjusted net capital as reported on its most recent financial reports filed pursuant to § 1.10;

(iii) 10 percent of the Material Affiliated Person's tangible net worth; or

(iv) In the case of a futures commission merchant that is required, or that has a Material Affiliated Person that is required, to maintain and preserve information pursuant to Rule 240.17h-1T of this title, the Materiality Threshold specified in § 240.17h-1T or such other risk-assessment regulations as the Securities and Exchange Commission may adopt.

(b) *Special provisions with respect to material affiliated persons subject to the supervision of certain domestic regulators.* A futures commission merchant shall be deemed to be in compliance with the recordkeeping requirements of paragraphs (a)(1)(i) and (a)(1)(iii) through (ix) of this section if:

(1) The futures commission merchant is required, or has a Material Affiliated Person that is required, to maintain and preserve information pursuant to Rule 240.17h-1T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt, and maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the records and reports maintained and filed on Form 17–H (or such other forms or reports as may be required) by such futures commission merchant or its Material Affiliated Person with the Securities and Exchange Commission pursuant to §§ 240.17h-1T and 240.17h-2T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt, provided, however, that if the futures commission merchant has any Material Affiliated Persons for purposes of this section and § 1.15 that are not designated as Material Associated Persons for purposes of §§ 240.17h-1T and 240.17h-2T of this title, the futures commission merchant must also maintain the information required pursuant to paragraphs (a)(1)(v) through (ix) of this section for any such Material Affiliated Person;

(2) In the case of a Material Affiliated Person that is subject to examination by, or the reporting requirements of, a Federal banking agency, the futures commission merchant maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of all reports submitted by such Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or

(3) In the case of a Material Affiliated Person that is subject to the supervision of an insurance commissioner or other similar official or agency of a state, the futures commission merchant maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the annual statements with schedules and exhibits prepared by the Material Affiliated Person on forms prescribed by the National Association of Insurance Commissioners or by a state insurance commissioner.

(c) *Special provisions with respect to material affiliated Persons subject to the supervision of a Foreign Regulatory Authority.* A futures commission merchant shall be deemed to be in compliance with the recordkeeping requirements of paragraphs (a)(iii) through (a)(ix) of this section with respect to a Material Affiliated Person if such futures commission merchant maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of any financial or risk exposure reports filed by such Material Affiliated Person with a foreign futures authority or other relevant foreign authority. The futures commission merchant shall maintain a copy of the original report and a copy translated into the English language.

(d) *Exemptions.* (1) The provisions of this section shall not apply to any futures commission merchant which holds funds or property of or for futures customers of less than $6,250,000, has less than $5,000,000 in adjusted net capital as of the futures commission merchant's current fiscal year end, and is not a clearing member of an exchange.

(2) The Commission may, upon written application by a Reporting Futures Commission Merchant, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any futures commission merchant affiliated with such Reporting Futures Commission Merchant. The term "Reporting Futures Commission Merchant" shall mean, in the case of a futures commission merchant that is affiliated with another registered futures commission merchant, the futures commission merchant which maintains the greater amount of adjusted net capital as last reported on financial reports filed with the Commission pursuant to § 1.10. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records required by this section concerning the Material Affiliated Persons of the futures commission merchant affiliated with the Reporting Futures Commission Merchant will be available to the Commission pursuant to this section or § 1.15.

(e) *Location of records.* A futures commission merchant required to maintain records concerning Material Affiliated Persons pursuant to this section may maintain those records either at the principal office of the

Material Affiliated Person or at a records storage facility, provided that the records are located within the boundaries of the United States and the records are kept and available for inspection in accordance with § 1.31. If such records are maintained at a place other than the futures commission merchant's principal place of business, the Material Affiliated Person or other entity maintaining the records shall file with the Commission a written undertaking, in a form acceptable to the Commission, signed by a duly authorized person, to the effect that the records will be treated as if the futures commission merchant were maintaining the records pursuant to this section and that the entity maintaining the records will permit examination of such records at any time, or from time to time during business hours, by representatives or designees of the Commission and promptly furnish the Commission representative or its designee true, correct, complete and current hard copy of any or all or any part of such records. The election to maintain records at the principal place of business of the Material Affiliated Person or at a records storage facility pursuant to the provisions of this paragraph shall not relieve the futures commission merchant required to maintain and preserve such records from any of its responsibilities under this section or § 1.15.

(f) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a futures commission merchant concerning a Material Affiliated Person shall be deemed confidential information for the purposes of section 8 of the Act.

(g) *Implementation schedule.* Each futures commission merchant subject to the requirements of this section shall maintain and preserve the information required by this section commencing 90 days from the effective date of this section.

3. Section 1.15 is proposed to be added to read as follows:

§ 1.15 Risk assessment reporting requirements for futures commission merchants.

(a) *Reporting requirements with respect to information required to be maintained by § 1.14.* (1) Each futures commission merchant registered with the Commission pursuant to Section 4d of the Act, unless exempt pursuant to paragraph (c) of this section, shall file the following with the regional office with which it files periodic financial reports within 90 calendar days after the effective date of this section, provided that in the case of a futures commission merchant whose registration becomes effective after the effective date of this section, such futures commission merchant shall file the following within 60 calendar days after the effective date of such registration:

(i) A copy of the organizational chart maintained by the futures commission merchant pursuant to paragraph (a)(1)(i) of § 1.14. Where there is a material change in information provided, an updated organizational chart shall be filed within five calendar days after the end of the fiscal quarter in which the change has occurred;

(ii) Copies of the financial, operational, and risk management policies, procedures and systems maintained by the futures commission merchant pursuant to paragraph (a)(1)(ii) of § 1.14. If the futures commission merchant has no such written policies, procedures or systems, it must file a statement so indicating. Where there is a material change in information provided, such change shall be reported within five calendar days after the end of the fiscal quarter in which the change has occurred; and

(iii) The aggregate notional value of open positions in noncustomer accounts, as defined in § 1.17(b)(4), held by the futures commission merchant as of the end of the most recent fiscal year, the percentage of such aggregate notional value compared with the futures commission merchant's adjusted net capital as of its fiscal year end, the percentage of the aggregate notional value of open positions in noncustomer accounts carried by the futures commission merchant that constitute bona fide hedging positions in accordance with § 1.3(z), and the percentage of the aggregate notional value of open positions in noncustomer accounts held for the purpose of managing the risks of cash market commitments that mature more than 12 months and 60 months, respectively, from the most recent fiscal quarter end, as compared to the aggregate notional value of open positions in all noncustomer accounts held by the futures commission merchant.

(2) Each futures commission merchant registered with the Commission pursuant to section 4d of the Act, unless exempt pursuant to paragraph (c) of this section, shall file the following with the regional office with which it files periodic financial reports within 105 calendar days after the end of each fiscal year:

(i) Fiscal year end consolidated and consolidating balance sheets for the futures commission merchant and its ultimate parent company, prepared in accordance with generally accepted accounting principles, which consolidated balance sheet shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which consolidated balance sheets shall include appropriate explanatory notes. The consolidating balance sheet shall show separately the futures commission merchant, its ultimate parent company and each Material Affiliated Person.

(ii) Fiscal year end annual consolidated and consolidating income statements and consolidated cash flow statements for the futures commission merchant and its ultimate parent company, prepared in accordance with generally accepted accounting principles, which consolidated statements shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which consolidated statements shall include appropriate explanatory notes. The consolidating statements shall show separately the futures commission merchant, its ultimate parent company and each Material Affiliated Person.

(iii) Form 1.15A. The information required to be reported on Form 1.15A may be provided on an aggregate basis for the futures commission merchant's Material Affiliated Persons, provided that if this would materially understate the risk relative to stockholders' equity of any Material Affiliated Person, the required information must be provided separately for such Material Affiliated Person.

(3) Each futures commission merchant registered with the Commission pursuant to Section 4d of the Act, unless exempt pursuant to paragraph (c) of this section, shall file with the regional office with which it files periodic financial reports within 60 calendar days after the end of each fiscal quarter the aggregate notional value of open positions in noncustomer accounts, as defined in § 1.17(b)(4), held by the futures commission merchant as of the end of each fiscal year, the percentage of such aggregate notional value compared with the futures commission merchant's adjusted net capital as of fiscal year end, the percentage of the aggregate notional value of open positions in noncustomer accounts carried by the futures commission merchant that constitute bona fide hedging positions in accordance with § 1.3(z), and the percentage of the aggregate notional value of open positions in noncustomer

accounts held for the purpose of managing the risk of cash market commitments that mature more than 12 months and 60 months, respectively, from fiscal quarter end compared to the aggregate notional value of open positions in all noncustomer accounts held by the futures commission merchant.

(4) A futures commission merchant shall provide the Commission with updated information within 60 calendar days after the end of each fiscal quarter for any line item in which a change of 20% or greater has occurred since the futures commission merchant's last filing with the Commission with respect to any information required to be reported pursuant to paragraph (a)(2)(iii) of this section, except information relating to a Material Affiliated Person's real estate activities; provided, however, that a futures commission merchant may, at its option, file the information required by paragraph (a)(2)(iii) of this section on a routine quarterly basis.

(5) For the purposes of this section, the term Material Affiliated Person shall have the meaning used in § 1.14.

(b) *Notice and additional reporting requirements upon the occurrence of certain events.* (1) A futures commission merchant shall notify the Director of the Division of Trading and Markets or the Director's designee of the occurrence of any event specified in paragraph (b)(2) of this section. Such notice must be provided within three business days of such occurrence unless a different reporting period is specified in paragraph (b)(2) of this section. Upon receipt of such notice from a futures commission merchant, the Director of the Division of Trading and Markets or the Director's designee may require that the futures commission merchant provide or cause a Material Affiliated Person to provide, within three business days from the date of request or such shorter period as the Division Director or designee may specify, such other information as the Division Director or designee determines to be necessary based upon market conditions, reports provided by the futures commission merchant, or other available information.

(2) The following events shall require a futures commission merchant to notify the Director of the Division of Trading and Markets or the Director's designee in accordance with paragraph (b)(1) of this section.

(i) Any reduction in adjusted net capital in excess of 20 percent of the futures commission merchant's adjusted net capital as last reported in financial reports filed with the Commission pursuant to § 1.10 shall be reported as follows.

(A) With respect to activities in the normal course of business (*e.g.*, operating losses, proprietary trading losses, increased charges against net capital) that cause such reduction, written notification must be received within two business days of such reduction; and

(B) With respect to any extraordinary transaction or series of transactions that will cause such reduction, written notification must be received at least two business days in advance of the transaction or the first in the series of transactions.

(ii) Any outflow of assets from the futures commission merchant, including but not limited to any loans, advances, asset transfers, redemption or repurchase of a consolidated entity's stock, recapitalization of stock or payment of dividends, which withdrawal, advance or loan on a net basis exceeds in the aggregate in any 30 calendar day period 20 percent or more of the futures commission merchant's excess adjusted net capital, provided, however, that this paragraph shall not apply to:

(A) Securities transactions in the ordinary course of business between a futures commission merchant and a Material Affiliated Person where the futures commission merchant makes payment to or on behalf of such Material Affiliated Person for the securities transaction within two business days of the transaction; or

(B) Withdrawals, advances or loans which in the aggregate in any thirty calendar day period, on a net basis, equal $500,000 or less.

(iii) Aggregate, cumulative losses occurring in all non-customer accounts carried by the futures commission merchant, as defined in § 1.17(b)(4), which exceed the greater of: (A) In any 30-day period, 10 percent of the last reported consolidated stockholders' equity of the parent company of the futures commission merchant or $50 million; and (B) in any 12-month period, 20 percent of the last reported consolidated stockholders' equity of the parent company of the futures commission merchant or $100 million;

(iv) Negative net income at a Material Associated Person during any quarter which is the greater of:

(A) 30 percent of the Material Associated Person's last-reported net worth; or

(B) 20 percent of the futures commission merchant's adjusted net capital;

(v) A reduction of 20 percent or more of the consolidated stockholders' equity of the futures commission merchant's parent from the date of the parent's last quarterly consolidated financial statements;

(vi) Any reduction in the credit rating of a Material Affiliated Person as reported by Standard & Poor's Corporation, Moody's Investor Services, Inc. or any other nationally recognized rating organization;

(vii) Filing of a notice by a Material Associated Person with the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the Office of the Comptroller of the Currency pursuant to 12 CFR 208.32(c), 12 CFR 325.102(c), 12 CFR 565.3(c) or 12 CFR 6.3(c), with respect to possible adjustment of a Material Affiliated Person's capital category; or

(viii) Agreement by the futures commission merchant to guarantee any obligation of any affiliated entity, such notice to be filed within three business days before such guarantee is to become effective.

(3) The reports required to be filed pursuant to paragraphs (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall be considered filed when received by the regional office of the Commission with whom the futures commission merchant files financial reports pursuant to § 1.10. Any notice required to be filed pursuant to paragraph (b)(1) of this section shall be considered filed when received at the Commission's principal office in Washington, DC.

(c) *Exemptions.* (1) The provisions of this section shall not apply to any futures commission merchant which holds funds or property of or for futures customers of less than $6,250,000, has less than $5,000,000 in adjusted net capital as of the futures commission merchant's fiscal year end, and is not a clearing member of an exchange.

(2) The Commission may, upon written application by a Reporting Futures Commission Merchant, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any futures commission merchants affiliated with the Reporting Futures Commission merchant. The term "Reporting Futures Commission Merchant" shall mean, in the case of a futures commission merchant that is affiliated with another registered futures commission merchant, the futures commission merchant which maintains the greater amount of net capital as last reported on its financial reports filed with the Commission pursuant to § 1.10. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records and

other information required to be maintained pursuant to § 1.14 concerning the Material Affiliated Persons of the futures commission merchant affiliated with the Reporting Futures Commission Merchant will be available to the Commission pursuant to the provisions of this section.

(d) *Special provisions with respect to Material Affiliated Persons subject to the supervision of certain domestic regulators.* (1) In the case of a futures commission merchant which is required to file, or has a Material Affiliated Person which is required to file, Form 17–H (or such other forms or reports as may be required) with the Securities and Exchange Commission pursuant to §§ 240.17h–2T of this title or such other risk assessment regulations as the Securities and Exchange Commission may adopt, such futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraphs (a)(1)(i) and (a)(2) of this section if the futures commission furnishes, in accordance with paragraph (a)(2) of this section, a copy of the most recent Form 17–H filed by the futures commission merchant or its Material Affiliated Person with the Securities and Exchange Commission, provided however, that if the futures commission merchant has designated any of its affiliated persons as Material Affiliated Persons for purposes of this section and § 1.14 which are not designated as Material Associated Persons for purposes of the Form 17–H filed pursuant to §§ 240.17h–1T and 240.17h–2T of this title, the futures commission must also file any information required pursuant to paragraph (a)(2)(iii) of this section with respect to any such Material Affiliated Person and designate any such affiliated person as a Material Affiliated Person on the organizational chart required as Item 1 of Part I of Form 17–H. To comply with paragraphs (a)(1)(i) and (a)(2) of this section, such futures commission merchant may, at its option, file Form 17–H in its entirety or file such form with the following amendments:

(i) The information concerning arbitrage and purchased options required to be reported on Items 10 and 11, respectively, of Part I of Form 17–H need not be included;

(ii) The information concerning real estate activities required to be maintained under Rule 1.14(a)(1)(ix) and reported on Section V of Form 1.15A may be included in lieu of the information required under Section V of Part II of Form 17–H; and

(iii) The information required to be reported on Part II of Form 17–H may be provided on an aggregate basis for the futures commission merchant's Material Affiliated Persons, provided that if this would materially understate the risk relative to stockholders' equity of any Material Affiliated Person, the required information must be provided separately for such Material Affiliated Person.

(2) In the case of a Material Affiliated Person that is subject to examination by or the reporting requirements of a Federal banking agency, the futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to such Material Affiliated Person if the futures commission merchant or such Material Affiliated Person maintains in accordance with § 1.14 copies of all reports filed by the Material Affiliated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners Loan Act, or section 5 of the Bank Holding Company Act of 1956.

(3) In the case of a futures commission merchant that has a Material Affiliated Person that is subject to the supervision of an insurance commissioner or other similar official or agency of a state, such futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to the Material Affiliated Person if:

(i) With respect to a Material Affiliated Person organized as a mutual insurance company or a non-public stock company, the futures commission merchant maintains in accordance with § 1.14 copies of the annual statements with schedules and exhibits prepared by the Material Affiliated Person on forms prescribed by the National Association of Insurance Commissioners or by a state insurance commissioner; and

(ii) With respect to a Material Affiliated Person organized as a public stock company, the futures commission merchant maintains, in addition to the annual statements with schedules and exhibits required to be maintained pursuant to § 1.14, copies of the filings made by the Material Affiliated Person pursuant to sections 13 or 15 of the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

(4) No futures commission merchant shall be required to furnish to the Commission any examination report of any Federal banking agency or any supervisory recommendations or analyses contained therein with respect to a Material Affiliated Person that is subject to the regulation of a Federal banking agency. All information received by the Commission pursuant to this section concerning a Material Affiliated Person that is subject to examination by or the reporting requirements of a Federal banking agency shall be deemed confidential for the purposes of section 8 of the Act.

(5) The furnishing of any information or documents by a futures commission merchant pursuant to this section shall not constitute an admission for any purpose that a Material Affiliated Person is otherwise subject to the Act.

(e) *Special provisions with respect to Material Affiliated Persons subject to the supervision of a Foreign Regulatory Authority.* A futures commission merchant shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to a Material Affiliated Person if such futures commission merchant furnishes, in accordance with the provisions of this section, copies of any financial or risk exposure reports filed by such Material Affiliated Person with a foreign futures authority or other foreign regulatory authority with which the Commission has entered into an information sharing agreement which remains in effect as of the futures commission merchant's fiscal year end. The futures commission merchant shall file a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Futures Authority shall have the meaning set forth in section 1a(10) of the Act.

(f) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a futures commission merchant concerning a Material Associated Person shall be deemed confidential information for the purposes of section 8 of the Act.

(g) *Implementation schedule.* Each futures commission merchant subject to the requirements of this section shall file the information required by paragraph (a)(1) of this section within 90 calendar days from the effective date of this section. Commencing December 31, 1994, the provisions of this section shall apply in their entirety.

Risk Assessment Report for Futures Commission Merchants CFTC Form 1.15A—Instructions

1. This form contains three parts. Part A is the cover page and includes a summary of the FCM's Material Affiliated Persons that are included in this report as well as the FCM's attestation. Part B contains information concerning the FCM's MAPs' on-balance

sheet financial instruments (Section I); financial instruments with off-balance sheet risk (Section II); extensions of credit (Section III); sources of funding for operations (Section IV); and real estate activities (Section V). Part C contains information for individual MAPs whose positions with a single counterparty exceed the Materiality Threshold as defined in paragraph 9 of these instructions.

2. The information requested in Part B is to be completed in the aggregate for all MAPs. However, if this would materially understate the risk exposure relative to stockholders' equity of any MAP, an additional Part B must be prepared showing the required information for just that MAP. In addition, Part C must also be prepared for such separately reported MAP, if applicable.

3. This Form contains line items for reporting numerical and other data required by paragraphs (a)(1)(v) through (ix) of Rule 1.14. The information to be provided on this Form is in addition to the reporting requirements of paragraphs (a)(1) (organizational chart, risk management policies, and initial filing of aggregate notional value of open positions in noncustomer accounts), (a)(2)(i) and (ii) (annual consolidated and consolidating balance sheets, income statements and cash flow statements), and (a)(3) (quarterly noncustomer account data) of Rule 1.15.

4. The report is to be prepared as of the last day of the FCM's fiscal year or fiscal quarter if a quarterly update is required under Rule 1.15. This Form is to be filed within 105 calendar days after the end of each fiscal year. An update as to the particular line item only must be filed within 60 calendar days after the end of each fiscal quarter for which any line item change of 20 percent or more has occurred since the FCM's last filing with the Commission.

5. If an FCM is affiliated with one or more other registered FCMs, each FCM is required to file a separate Form 1.15A. The Commission may exempt from the filing requirements all FCMs affiliated with an FCM that has been designated a "Reporting Futures Commission Merchant" as defined in Rules 1.14 and 1.15, i.e., the FCM which maintains the greater amount of adjusted net capital as last reported to the Commission. An FCM seeking designation as a Reporting Futures Commission Merchant must apply to the Commission for such designation pursuant to Rule 1.15. Pending such designation, each FCM affiliated with the FCM requesting such designation is required to file a separate Form 1.15A.

6. Whenever a replacement cost is required to be reported, the methodology for determining such amount must be stated.

7. Although specific maturities only for swaps and forwards need be identified, an FCM should also indicate if the maturities of any other instruments reported herein represent unusual risk.

8. All amounts should be reported in thousands of U.S. dollars.

9. The term "Materiality Threshold" shall mean the greatest of: (i) $20 million; (ii) 10 percent of the FCM's adjusted net capital as reported on its most recent financial report; (iii) 10 percent of the Material Affiliated Person's tangible net worth; or (iv) in the case of an FCM that is required, or that has a Material Affiliated Person that is required, to maintain and preserve information pursuant to SEC Rule 240.17h-1T, the Materiality Threshold specified in that rule or such other risk assessment rules as the SEC may adopt.

10. The term "Designated Country" shall mean Canada, France, Germany, Japan, Switzerland, and the United Kingdom. The term "Designated Currency" shall mean Canadian dollar, French franc, Deutschemark, Japanese yen, Swiss franc, British pound, and European currency unit.

BILLING CODE 6351-01-P

- 2 -

RISK ASSESSMENT REPORT FOR FUTURES COMMISSION MERCHANTS

CFTC FORM 1.15A – PART A - BACKGROUND INFORMATION AND ATTESTATION

FCM Name and Address:	NFA ID No: _____
	Contact Person: _____
	Contact's Phone: _____
Report as of date: _____	[ ] Year-End Report
Prior report date: _____	[ ] Quarterly Update

Names of material affiliated persons included in this report:	City, State / Country:	Parts Attached [x] [B]	[C]
_____	_____	[ ]	[ ]
_____	_____	[ ]	[ ]
_____	_____	[ ]	[ ]
_____	_____	[ ]	[ ]
_____	_____	[ ]	[ ]
_____	_____	[ ]	[ ]
_____	_____	[ ]	[ ]
_____	_____	[ ]	[ ]

Attestation

The futures commission merchant submitting this Form and its attachments and the person whose signature appears below represent that, to the best of their knowledge, all information contained therein is true, correct and complete. It is understood that all required items, statements and schedules are integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted, provided however that, in the case of a required quarterly update, this representation applies only to those particular items that are updated or would be required to be updated. It is further understood that any willfully made false or misleading statement or omission of a material fact may constitute violations of the Commodity Exchange Act (7 U.S.C. § 9), federal criminal violations (7 U.S.C. § 13 and 18 U.S.C. § 1001) or grounds for disqualification from registration.

Signed this_____day of_____, 19_____

Manual signature_____

Type or print name_____ Title: _____

____ Chief Executive Officer ____ Chief Financial Officer

____ General Partner ____ Sole Proprietor

RISK ASSESSMENT REPORT FOR FUTURES COMMISSION MERCHANTS

CFTC FORM 1.15A – PART B - AGGREGATE FINANCIAL INFORMATION ON MAPs

Is this form being filed for all MAPs in the aggregate or for a particular MAP that exceeds the *materiality threshold* as defined in paragraph 9 of the instructions.

[ ] All MAPs in the aggregate

[ ] Particular MAP – Identify: _____

I. Securities and Commodity Positions – Inventory or On-Balance Sheet Items – Separately list for each Material Affiliated Person any aggregate unhedged exposure, other than U.S. government or agency securities, denominated in dollars measured by interest rate, duration, instrument or other measure as specified by the reporting entity that exceeds the Materiality Threshold (attach schedule)

FINANCIAL INSTRUMENT	MARKET VALUE AT END OF PERIOD	
	LONG POSITIONS	SHORT POSITIONS
U.S. Treasury securities		
U.S. government agency securities		
State and municipal securities		
Foreign government securities Designated countries (see paragraph 10 of the instructions)		
Other countries		
Bankers' acceptances		
Certificates of deposit		
Commercial paper		
Corporate obligations		
Stocks and warrants		
Physical commodities		
Investments with no ready market Equity		
Debt		
Other (Include limited partnership interests)		
Other		

II. Financial Instruments With Off-Balance Sheet Risk and With Concentration of Credit Risk – Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument. In the event a separate listing of a position or instrument is required pursuant to the provisions of paragraph 9 of these instructions, separately state such positions.

FINANCIAL INSTRUMENT	NOTIONAL OR CONTRACTUAL AMOUNTS	
	LONG	SHORT
A. SECURITIES 1. When-issued securities (a) Gross commitments to purchase (b) Gross commitments to sell		
2. Written stock options contracts (a) Market value of covered call contracts: (i) Listed (A) Market Value (B) Value of underlying securities ** (ii) Unlisted (A) Market Value (B) Value of underlying securities **		
(b) Market value of covered put contracts: (i) Listed (A) Market Value (B) Value of underlying securities ** (ii) Unlisted (A) Market Value (B) Value of underlying securities **		
(c) Market value of naked call contracts: (i) Listed (A) Market Value (B) Value of underlying securities ** (ii) Unlisted (A) Market Value (B) Value of underlying securities **		
(d) Market value of naked put contracts: (i) Listed (A) Market Value (B) Value of underlying securities ** (ii) Unlisted (A) Market Value (B) Value of underlying securities **		

** Report these amounts here and not under Part I.

FINANCIAL INSTRUMENT	Notional or Contractual Amount	Aggregate Current Cost to Replace by Counterparty Where MAP has Gain	By Individual MAP Counterparty Credit Risk > Materiality Threshold (Y/N) (Attach Explanation)
B. INTEREST RATE SWAPS			
1. U.S. dollar denominated swaps			
(a) Maturing in less than one year			
(b) Maturing in one to five years			
(c) Maturing in more than five years			
2. Cross currency swaps - designated currencies (See paragraph 10 of the instructions)			
(a) Maturing in less than one year			
(b) Maturing in one to five years			
(c) Maturing in more than five years			
3. Cross currency swaps – all other currencies (See paragraph 10 of the instructions)			
(a) Maturing in less than one year			
(b) Maturing in one to five years			
(c) Maturing in more than five years			
C. FOREIGN CURRENCY			
1. Swaps - designated currencies (See paragraph 10 of the instructions)			
(a) Maturing in less than one year			
(b) Maturing in one to five years			
(c) Maturing in more than five years			
2. Swaps - all other currencies (See paragraph 10 of the instructions)			
(a) Maturing in less than one year			
(b) Maturing in one to five years			
(c) Maturing in more than five years			
3. Naked written option contracts	Contractual Value	Value of the Underlying Instruments	

FINANCIAL INSTRUMENT	Notional or Contractual Amount	Aggregate Current Cost to Replace by Counterparty Where MAP has Gain	By Individual MAP Counterparty Credit Risk > Materiality Threshold (Y/N) (Attach Explanation)
D. ENERGY SWAPS			
1. Maturing in less than one year			
2. Maturing in one to five years			
3. Maturing in more than five years			
E. PRECIOUS METAL SWAPS			
1. Maturing in less than one year			
2. Maturing in one to five years			
3. Maturing in more than five years			
F. ALL OTHER SWAP AGREEMENTS (Specify type - attach schedule if necessary).			
1. Maturing in less than one year			
2. Maturing in one to five years			
3. Maturing in more than five years			

FINANCIAL INSTRUMENT	Notional or Contractual Amounts		Aggregate Current Cost to Replace by Counterparty Where MAP has Gain		By Individual MAP Counterparty Credit Risk > Materiality Threshold (Y/N) (Attach Explanation)	
	LONG	SHORT	LONG	SHORT	LONG	SHORT
G. COMMODITIES 1. Futures (a) Interest rate (b) Foreign currency (c) Energy (d) Precious metal (e) Other (specify)						
2. Forwards (by contract type and maturity in years): (a) Interest rate (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years						
(b) Foreign currency (*Designated currencies* – see paragraph 10 of the instructions) (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years (*Other currencies* – see paragraph 10 of the instructions) (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years						
(c) Energy (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years						
(d) Precious metals (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years						
(e) Other (specify) (i) Less than 1 year (ii) 1 - 5 years (iii) Above 5 years (f) Where credit risk exceeds the Materiality Threshold for any one counterparty, note here and attach schedule providing details.						

FINANCIAL INSTRUMENT	Notional or Contractual Amounts	
	Long	Short
G. COMMODITIES (Continued)		
3. Sold option contracts (e.g., options on individual commodities and commodity indexes)		
(a) Market value of covered call contracts:		
(i) Listed		
(A) Market Value		
(B) Value of underlying position **		
(ii) Unlisted		
(A) Market Value		
(B) Value of underlying position **		
(b) Market value of covered put contracts:		
(i) Listed		
(A) Market value		
(B) Value of underlying position **		
(ii) Unlisted		
(A) Market value		
(B) Value of underlying position **		
(c) Market value of naked call contracts:		
(i) Listed		
(A) Market value		
(B) Value of underlying position **		
(ii) Unlisted		
(A) Market value		
(B) Value of underlying position **		
(d) Market value of naked put contracts:		
(i) Listed		
(A) Market value		
(B) Value of underlying position **		
(ii) Unlisted		
(A) Market value		
(B) Value of underlying position **		
H. Identify and discuss other off-balance sheet items which may materially affect the financial position of the FCM.		
I. Identify and discuss significant concentrations of credit risk as defined in Statement of Financial Accounting Standards No. 105.		

** Report these amounts here and not under Part I.

III. Extensions of Credit by MAPs

A. Provide details concerning material extensions of credit granted by MAPs that were in effect at the end of the reporting period. Include a discussion of losses experienced during the year and allowance for losses provided.

B. Identify guarantees of indebtedness provided by MAPs which were in effect at the end of the reporting period. Include guarantees of indebtedness and standby commitments, including assets sold with recourse. Include in the discussion whether the guarantees were for the benefit of any other companies within the FCM's corporate group, and whether any guarantees were acted on by third parties.

IV. Sources of Funding for MAPs – Discuss in detail the sources of funding for MAPs. If NONE, so state after each form of funding.

FORM OF FINANCING	Amount	Commercial Paper Ratings, Rating Agencies, and Comments	
A. Short term borrowings			
1. Commercial paper			
2. Bank loans - secured			
3. Bank loans - unsecured			
4. Other (including material changes in inter-company accounts not due to routine operations) (describe in attachment)			
5. Total			
B. Long and medium-term debt (specify nature)			
	Commitments	Amount Used	Comments
C. Lines of Credit			
1. Banks			
2. Other (Describe in Comments column)			
D. Total standby, commercial and similar letters of credit or guarantees			

V. Real Estate Activities – Provide a listing of the percentage of annual gross income (loss) derived from real estate activities for each MAP which derived more than 20 percent of its gross income (loss) for the fiscal year from such activities. If NONE, so state.

RISK ASSESSMENT REPORT FOR FUTURES COMMISSION MERCHANTS

CFTC FORM 1.15A – PART C - INFORMATION CONCERNING INDIVIDUAL MAPs

1. Name of MAP:

2. Explain why the affiliate is a MAP of the FCM:

3. Describe the MAP's major business segments and percent of gross revenue derived from each: Percent

4. Does the MAP maintain a trading book? [ ] YES [ ] NO If YES, specify in which derivative products (by underlying instrument or commodity, and contract type) the book is maintained and the percentage of maturities in each book that exceed five years. Also, specify the percentage which are collateralized:

5. During the past year what have been the aggregate losses, if any, due to non-payment or other default by counterparties? Describe.

6. Concentration – Indicate the greatest replacement cost attributable to a single counterparty that exceeds 10 percent of the MAP's tangible net worth:

7. MAP Funding

a. Discuss the extent to which the MAP depends on another group member for funding:

b. Describe the largest funding transaction during the reporting period:

BILLING CODE 835-01-C

Issued in Washington, DC, on February 23, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4570 Filed 2–28–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Ch. I

Minerals Management Service

30 CFR Ch. II

Geological Survey

30 CFR Ch. IV

Bureau of Mines

30 CFR Ch. VI

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

National Park Service

36 CFR Ch. I

Office of the Secretary

43 CFR Subtitle A

48 CFR Ch. 14

Bureau of Reclamation

43 CFR Ch. I

Bureau of Land Management

43 CFR Ch. II

Fish and Wildlife Service

50 CFR Chs. I and IV

Review of Existing Significant Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of intent of periodic reviews of regulations; request for comment.

SUMMARY: Pursuant to Executive Order 12866 (the "Order"), the Department of the Interior ("DOI") is announcing its intent to establish periodic reviews of all "significant" regulations published by the Department. The purpose of these reviews is to ensure that all significant DOI regulations are efficient and effective, impose the least possible burden upon the public, and are tailored no broader than necessary to meet the objectives of the program being implemented. The purpose of this notice is to seek public comment on which DOI regulations should be reviewed, the best means for ensuring appropriate public involvement in the review process, and on mechanisms or processes to ensure that thorough reviews are conducted at appropriate intervals.

DATES: Written comments must be received by May 2, 1994.

ADDRESSES: Please send written comments to Bill Vincent, Deputy Director, Office of Regulatory Affairs, Department of the Interior, Mail Stop 6214 MIB, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bill Vincent, Deputy Director, Office of Regulatory Affairs, phone (202) 208–5271.

SUPPLEMENTARY INFORMATION:

Background

Section 5 of the Order requires all federal agencies to establish periodic reviews of all "significant" regulations currently published in the Code of Federal Regulations. The purpose of these reviews is to ensure that regulations help provide the highest possible quality services to the public, are tailored no broader than necessary to efficiently and effectively meet program objectives and Presidential priorities, and impose the least possible burden on the public.

DOI is developing a methodology for conducting these reviews and is seeking public comment to help determine which regulations should be reviewed as part of this process, to develop a mechanism to encourage the fullest appropriate public involvement in the review process, and to develop schedules for conducting reviews at appropriate intervals. DOI intends to solicit public comment on the substance of the reviews at a later date by publishing in the **Federal Register** a listing of all rules subject to review and inviting public comments on those rules.

Review Plan

To implement the Order, the Department first is seeking to determine which regulations should be reviewed within the next two years. Each bureau and office currently is identifying all "significant" existing regulations within their respective program areas. The Order defines a "significant" regulation as any regulation

> That is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

In determining which existing regulations are significant, DOI plans to consider all regulations within their programmatic context. As a result, rules that are not "significant" standing alone may be significant as part of a broader programmatic scheme and, therefore, may be subject to review.

Although the Order requires only the review of existing "significant" regulations, DOI will consider reviewing any existing regulation that is identified as in need of review. Commenters therefore are encouraged to identify such regulations, and to explain briefly why review is important at this time.

Commenters also may indicate how regulatory changes will improve the services we provide to our customers, the public. Service improvement includes better access to services, improved responsiveness to requests and applications, reduced waiting times for processing information and decisionmaking, and better mechanisms for including customers' needs and desires in the decisionmaking process. In achieving such service improvements, the Department is committed to using modern management techniques wherever practical. These techniques include: (1) Empowering managers and employees to achieve results rather than simply adhering to rigid bureaucratic procedures; (2) ensuring that authority, responsibility, and accountability are placed at the most appropriate levels; and (3) seeking methods to ensure continuous improvements in quality and program integrity while minimizing administrative expenses.

The Department intends to encourage the fullest appropriate public involvement in the review process. Commenters should indicate the best means for ensuring appropriate public participation. The Department is willing to meet with industry, interest groups, and others to discuss their ideas on regulatory reform. The Department also intends to coordinate with other federal agencies and state, local, and tribal governments to ensure that regulatory policies are clear and consistent and to minimize unnecessary overlap and duplication.

Commenters also may suggest mechanisms and processes they believe will help ensure that thorough reviews are conducted in a periodic and timely manner. Currently, the Department intends, wherever possible, to conduct periodic reviews concurrently with reviews required by statute or other competent legal authority. Where such mandated reviews do not exist, however, the Department intends to develop review schedules that are appropriate for particular program areas. Commenters should indicate the frequency with which reviews should be conducted. Although the timing of specific reviews may vary, the Department is considering requiring that the first cycle of reviews, including the implementation of any recommended changes, be completed by June 30, 1996.

Dated: February 23, 1994.

Bill Vincent,

Deputy Director, Office of Regulatory Affairs, Office of the Secretary.

[FR Doc. 94–4601 Filed 2–28–94; 8:45 am]

BILLING CODE 4310–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF03

Line of Duty

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning the service connection of disabilities incurred or aggravated in line of duty. This proposed change is necessary to implement legislation which precludes the establishment of service connection for any condition that results from the abuse of alcohol or drugs.

DATES: Comments must be received on or before May 2, 1994. Comments will be available for public inspection until May 10, 1994. This proposed change is proposed to be effective November 1, 1990, the date established by the enacting legislation.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until May 10, 1994.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr. Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 8052 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, amended 38 U.S.C. 105(a), 1110 and 1131 to provide that injuries or diseases incurred or aggravated during service as a result of the abuse of alcohol or drugs will not be considered incurred or aggravated in the line of duty and thus would not be compensable by VA as service-connected disabilities. These provisions apply to claims filed after October 31, 1990. VA proposes to define drug abuse as the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects. VA proposes to define alcohol abuse as the drinking of alcoholic beverages in any amount, over any period of time, sufficient to cause disability or death. VA proposes to amend 38 CFR 3.1 and 3.301 to implement this new statutory provision.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: December 22, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.1 [Amended].

2. In § 3.1(m) introductory text, the first sentence, after the words "willful misconduct" add the words "or abuse of alcohol or drugs".

§ 3.301 [Amended].

3. In § 3.301(a), after the words "willful misconduct" add the words "or abuse of alcohol or drugs".

4. In § 3.301(c), the heading of the introductory text, after the word "*applications*" add the words "*; willful misconduct*".

5. In § 3.301(c)(3), after the third sentence, add the words "(See paragraph (d) of this section regarding service connection where disability or death is a result of abuse of drugs.)". In the fourth sentence, remove the words "Similarly, where" and add, in their place, the word "Where".

6. In § 3.301, add a new paragraph (d) to read as follows:

§ 3.301 Line of duty and misconduct.

* * * * *

(d) *Line of duty; abuse of alcohol or drugs.* An injury or disease incurred during active military, naval, or air service shall not be deemed to have been incurred in line of duty if such injury or disease was a result of the abuse of alcohol or drugs. For the purpose of this paragraph, alcohol abuse means the drinking of alcoholic beverages in any amount, over any period of time, sufficient to cause disability or death; drug abuse means the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects.

(Authority: 38 U.S.C. 105(a))

[FR Doc. 94–4479 Filed 2–28–94; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing on Proposed Endangered Status for the Pacific Pocket Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, notice of public hearing.

SUMMARY: The Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended, gives notice that a public hearing will be held on the proposed action to list the Pacific pocket mouse (*Perognathus longimembris pacificus*) as an endangered species. The Service will allow all interested parties to submit oral or written comments at the hearing on the proposal.

DATES: A public hearing will be held from 6 to 8 p.m. on Thursday, March 24, 1994, in San Clemente, California. Comments from all interested parties must be received by April 4, 1994.

ADDRESSES: The hearing on Thursday, March 24, 1994, will be held at the Casa Clemente Resort (formerly known as the Ramada Inn), 35 Calle de Industrias, San Clemente, California.

Written comments and materials may be submitted at the hearing or may be sent directly to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection during normal business hours by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Loren Hays or Fred Roberts, Carlsbad Field Office, (see **ADDRESSES** section) or telephone 619/431–9440.

SUPPLEMENTARY INFORMATION:

Background

The Pacific pocket mouse (*Perognathus longimembris pacificus*), a small heteromyid rodent, which historically occurred within about 3 kilometers (2 miles) of the immediate coast at eight locations from Marina del Rey and El Segundo in Los Angeles County south to the vicinity of the Mexican border in San Diego County, California. This species is brownish or grayish in color and attains a total length of 126 millimeters (4.9 inches).

The Pacific pocket mouse occurs on fine-grain, sandy substrates, and inhabits coastal strand, coastal dunes, river alluvium, and coastal sage scrub vegetation on marine terraces. The only known extant population of this species is found on the Dana Point Headlands in Dana Point, California. On February 3, 1994, the Service listed the Pacific pocket mouse as an endangered species using the emergency provision of the Act because it is in imminent danger of extinction due to habitat loss and fragmentation, and predation by feral and domestic cats (59 FR 5306). A proposed rule to list this species and announcing the Service's intention to hold a public hearing on this matter was also published in the **Federal Register** on that date (59 FR 5311).

Those parties wishing to make a statement for the record should bring a copy of their statement to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the address given in the **ADDRESSES** section of this notice. The comment period closes April 4, 1994.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

(Notice of Public Hearing: Pacific pocket mouse; endangered without critical habitat)

Dated: February 21, 1994.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–4545 Filed 2–28–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[I.D. 022294C]

Atlantic Billfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Atlantic billfishes; notice of an additional scoping meeting and extension of comment period.

SUMMARY: NMFS previously announced scoping meetings for Atlantic billfish on February 9, 1994. The purpose of the scoping meetings is to receive comments concerning the Atlantic billfish fishery from fishery participants and other members of the public regarding: A definition of overfishing; reducing fishing mortality; reporting requirements; and other issues. NMFS is also soliciting written comments on issues of concern in this fishery. NMFS requests input at any time during the scoping process, by mail or by fax. An issues/options statement will be prepared for the initial hearing and revised, based on written and oral comments, for subsequent hearings. This notice announces an additional scoping meeting and extends the comment period for the billfish scoping meetings.

DATES: Written scoping comments must be received on or before May 2, 1994. The scoping meeting will be held from 8 a.m. to 10 a.m., March 15, 1994.

ADDRESSES: Written scoping comments should be sent to Richard B. Stone, Chief, Highly Migratory Species Management Division (F/CM4), Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, room 14853, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Atlantic Billfish Scoping Comments." Input for the issues/options statement may also be provided to the same address, or by sending a fax to C. Michael Bailey at 301–713–1035. The meeting will be held at the Hynnes Convention Center, Room 208 (NFI Room/Lounge), 900 Boyleston Avenue, Boston, MA.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347 or fax 301–713–1035.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Depending upon the interest of the audience, the Meeting Officer may increase the length of the meetings, and additional meetings may be announced at a later date. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Richard H. Schaefer by March 11, 1994 (see **ADDRESSES**).

Dated: February 23, 1994.

David S. Crestin,

Acting Office Director, Office of Fisheries Conservation and Management.

[FR Doc. 94–4535 Filed 2–24–94; 10:01 am]

BILLING CODE 3510–22–P

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 940246–4046; I.D. 012794A]

RIN 0648–AE51

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 6 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP). Amendment 6 would establish management measures necessary to conserve overfished stocks of snowy grouper, golden tilefish, speckled hind, and warsaw grouper in the South Atlantic exclusive economic zone (EEZ). The intended effects of this rule are to rebuild the snapper-grouper resources and to clarify the regulations implementing the FMP.

DATES: Written comments must be received on or before April 11, 1994.

ADDRESSES: Comments on the proposed rule must be sent to Peter J. Eldridge, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for copies of Amendment 6, which includes an environmental assessment, a regulatory impact review, and an initial regulatory flexibility analysis should be sent to the South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston SC 29407–4699; FAX 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states are managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 646 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

Recent stock assessments by NMFS have identified snowy grouper, golden tilefish, speckled hind, and warsaw grouper as being overfished. The management measures in Amendment 6 represent the Council's initial steps to prevent this overfishing and to rebuild the abundance level of these species.

Amendment 6 would establish commercial quotas and trip limits for snowy grouper and golden tilefish; impose a trip limit of one warsaw grouper and one speckled hind per vessel and prohibit sale of these species; include tilefish species in the current grouper bag limit; require that vessel logbooks be submitted by all permitted vessels; and close the Oculina Bank habitat area of particular concern (HAPC) to fishing for snapper-grouper species. In addition, NMFS proposes changes to the regulations to clarify them and conform them to current standards.

Snowy Grouper and Golden Tilefish

The most recent stock assessment report for the deep water component of the snapper-grouper fishery indicates that a 40 percent reduction in the fishing mortality rate is necessary to rebuild the snowy grouper stock and a 42 percent reduction is necessary for the golden tilefish stock. These reductions in mortality rate should result in a spawning stock ratio of 30 percent, the level at which the stocks are no longer considered to be overfished under the provisions of the FMP. The Council concluded that reductions in fishing mortality should be achieved through reductions in allowable catch, a manageable proxy for fishing mortality, and should be phased in through equal reductions in each of the next 3 years. Such phased-in catch reductions should minimize financial impacts on fishermen and provide additional information for measuring the effectiveness of the rebuilding schedule.

Accordingly, Amendment 6 would establish a commercial quota for snowy grouper and a commercial quota for golden tilefish for each of the years 1994, 1995, and 1996. To minimize any "derby" fishing that might be caused by the quota system, vessel trip limits are proposed on snowy grouper of 2,500 pounds (1,134 kg) and golden tilefish of 5,000 pounds (2,268 kg). All trip limit weights are either whole weight or gutted weight, at the harvesting vessel's option. Thus, compliance may be determined by weighing the fish without having to sort and weigh whole and gutted fish separately. When a quota for either species is reached, a reduced trip limit of 300 pounds (136 kg) would be implemented for that species for the remainder of the fishing year. The 300-pound level is deemed to be appropriate as a bycatch allowance. Each year's quota would be established at a level that would ensure that bycatch plus the quota would not exceed the catch levels necessary to achieve the targeted reductions in fishing mortalities.

Annual quotas, in gutted weights, are proposed as follows:

	Snowy grouper		Golden tilefish	
	Pounds	Kg	Pounds	Kg
1994	540,314	245,082	1,475,795	669,409
1995	442,448	200,691	1,238,818	561,918
1996	344,508	156,266	1,001,663	454,347

Warsaw Grouper and Speckled Hind

Amendment 6 proposes to limit the possession of warsaw grouper and speckled hind to one of each per vessel per trip and to ban the sale of these species. Fishermen would be encouraged to donate fish caught under the trip limit to "good causes," such as charitable organizations. This measure would reduce the fishing mortality on these overfished species but, since they are minor components of the snapper-grouper fishery, would not have a significant adverse economic effect on fishermen.

Tilefish

Amendment 6 proposes to include tilefish species in the bag limit for groupers, currently five fish per person per day. This action would reduce fishing mortality on golden tilefish, which are known to be overfished, and on the other tilefish species, which, because of similar life history characteristics, are suspected to be overfished. In addition, inclusion of all tilefish species will obviate the necessity for species differentiation

among members of the tilefish family, a task that may be difficult for recreational fishermen.

Fishing Vessel Logbooks

Amendment 6 proposes that all permitted vessels be required to maintain and submit vessel logbooks that provide catch and effort data. Such data are needed for quota monitoring, stock assessments, catch histories, and indications of shifts in effort. Currently, the regulations require vessel logbooks on behalf of vessels selected by the Science and Research Director. Since January 1993, all vessels have been selected. Amendment 6 would not change the level of logbook coverage. Selection of all to report, however, would be in the regulations rather than by individual notification.

Oculina Bank

The Council is concerned that traditional fishery management measures, such as minimum size limits and quotas, may not be sufficient to protect fully the snapper-grouper resources. The Council considered establishing marine reserves in the EEZ off the southern Atlantic states but deferred action due to public opposition and lack of information on benefits derived from marine reserves. To evaluate the benefits of marine reserves, Amendment 6 proposes to prohibit fishing for snapper-grouper species in the Oculina Bank HAPC. The Oculina Bank is an established HAPC under the regulations governing coral and coral reefs of the Gulf of Mexico and South Atlantic (50 CFR part 638) in which fishing with bottom longlines, traps, pots, dredges, and bottom trawls is prohibited. The Oculina Bank HAPC is located offshore from Ft. Pierce to Sebastian Inlet, Florida, at depths between 30 and 75 fathoms. To aid enforcement of the area restrictions of no bottom fishing, the Council also proposes to prohibit fishing while at anchor in the Oculina Bank HAPC. NMFS is not aware of any fishing that would be conducted in the HAPC while anchored other than fishing for snapper-grouper species. Accordingly, this proposed rule would establish a rebuttable presumption that fishing while anchored constitutes fishing for snapper-grouper species. The Council believes this action will provide protection for overfished species in the management unit and will provide data on the benefits of marine reserves while minimizing adverse impacts upon user groups. This measure will "sunset" after 10 years if not reauthorized by the Council. NMFS is to report to the Council on the effectiveness of the HAPC as soon as data are available, but no later than the end of 2000.

Availability of Amendment 6

Additional background and rationale for the measures discussed above are contained in Amendment 6, the availability of which was announced in the **Federal Register** (59 FR 5562, February 7, 1994).

Additional Changes Proposed by NMFS

In § 646.1(b), NMFS proposes to clarify that the scope of the regulations in part 646 includes not only fish in the snapper-grouper fishery in or from the South Atlantic EEZ, but also, for data collection and quotas, such fish in adjoining state waters.

In § 646.2 in the definition of "Fish in the snapper-grouper fishery," NMFS proposes to change "Tilefish (Golden)" to "Golden tilefish" for ease of reference, and to change the family designation "Triggerfishes—Balistidae" to "Leatherjackets—Balistidae" in accordance with current scientific nomenclature.

Section 646.4(b)(2)(vi)(C) requires an applicant for a vessel permit authorizing the use of sea bass pots to sign a statement that allows an authorized officer reasonable access to the applicant's property to examine pots for compliance with the regulations. NMFS finds that this requirement is unnecessary. Accordingly, as a technical amendment, this proposed rule would remove § 641.4(b)(2)(vi)(C).

NMFS proposes to remove from the regulatory text specification of the statistical areas used for reporting catches to designees of the Science and Research Director. Such designees have the capability of recording catch areas with the required specificity. Accordingly, reference to the statistical areas in § 646.5(d) and depiction of the areas in Figure 2 to part 646 would be removed.

NMFS proposes to add a prohibition regarding false statements to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a reef fish. This addition would aid in enforcement of the regulations and conform the regulations to current standards.

Classification

This rule is not subject to review under E.O. 12866. The Council prepared an initial regulatory flexibility analysis (IRFA) as part of Amendment 6, which concludes that Amendment 6 may have a significant economic impact on a substantial number of small entities. The IRFA is summarized as follows. Virtually every permitted vessel in the snapper-grouper fishery represents a small entity, at least 20 percent of which could be affected by the amendment. The estimated potential loss of revenues to fishermen over a period of 3 years is $1.15 million, which may equate to individual reductions in annual gross revenues exceeding 5 percent. Additional analysis and discussion are contained in the IRFA, a copy of which is available (see ADDRESSES).

This rule involves a collection-of-information requirement subject to the Paperwork Reduction Act which has been approved by the Office of Management and Budget under OMB Control Numbers 0648–0016. The public reporting burden for this collection of information is estimated to be 10 minutes.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the south Atlantic states. This determination was submitted for review by responsible state agencies under section 307 of the Coastal Zone Management Act.

An informal consultation under the Endangered Species Act was concluded for Amendment 6 on September 27, 1993. As a result of the informal consultation, the Regional Director determined that neither the fishing activities nor the management measures under this rule are likely to adversely affect endangered or threatened species or critical habitat.

The Council prepared an environmental assessment (EA) that discusses the impacts of the amendment's measures on the human environment as a result of this rule. The EA is available (see ADDRESSES) and comments on it are invited.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 23, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service

For the reasons set forth in the preamble, 50 CFR part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.1, paragraph (b) is revised to read as follows:

§ 646.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of fish in the snapper-grouper fishery in or from the South Atlantic EEZ, except that §§ 646.5 and 646.24 also apply to such fish in or from adjoining state waters.

§ 646.2 [Amended]

3. In § 646.2, in the definition for "Fish in the snapper-grouper fishery", the listing for "Tilefish (Golden)" under the family designation "Tilefishes—Malacanthidae" is revised to read "Golden tilefish" and the family designation "Triggerfishes—Balistidae" is revised to read "Leatherjackets—Balistidae"; and in the definition for "Sea bass pot", in paragraph (3) introductory text, the parenthetical phrase "(see Figure 3)" is revised to read "(see Figure 2)".

§ 646.4 [Amended]

4. In § 646.4, in paragraph (b)(2)(vi)(A), the word "and" is added after the concluding semicolon; in paragraph (b)(2)(vi)(B), the semicolon and concluding word "and" are removed and a period is added in their place; and paragraph (b)(2)(vi)(C) is removed.

5. In § 646.5, paragraphs (a)(1), (d) introductory text, and (d)(4) are revised to read as follows:

§ 646.5 Recordkeeping and reporting.

(a) * * * (1) The owner or operator of a vessel for which a permit for snapper-grouper, excluding wreckfish, has been issued, as required by § 646.4(a)(1); and

* * * * *

(d) *Charter vessel and headboat inventory.* A person described under paragraph (b) of this section who is not selected to report must provide the following information when interviewed by the Science and Research Director:

* * * * *

(4) Fishing areas;

* * * * *

6. In § 646.7, paragraph (kk) is revised; paragraph (mm) is redesignated as paragraph (ss); and new paragraphs (mm) through (rr) are added to read as follows:

§ 646.7 Prohibitions.

* * * * *

(kk) Transfer at sea—

(1) Warsaw grouper or speckled hind, as specified in § 646.21(j)(6);

(2) Fish in the snapper-grouper fishery subject to a bag limit, as specified in § 646.23(f); or

(3) Snowy grouper or golden tilefish, as specified in § 646.25(e).

* * * * *

(mm) Fish for fish in the snapper-grouper fishery in the Oculina Bank habitat area of particular concern (HAPC); retain such fish in or from the Oculina Bank HAPC; or fail to release immediately such fish taken in the Oculina Bank HAPC by hook-and-line gear, as specified in § 646.26(d)(2).

(nn) Possess a warsaw grouper or speckled hind in excess of the vessel trip limit, as specified in § 646.21 (j)(1) or (j)(2).

(oo) Sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter a warsaw grouper or speckled hind, as specified in § 646.21(j)(3).

(pp) Exceed a commercial trip limit for snowy grouper or golden tilefish, as specified in § 646.25 (a) or (b).

(qq) Sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter snowy grouper or golden tilefish in excess of an applicable trip limit, as specified in § 646.25(f).

(rr) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a fish in the snapper-grouper fishery.

* * * * *

7. Section 646.20 is revised to read as follows:

§ 646.20 Fishing years.

(a) The fishing year for wreckfish begins on April 16 and ends on April 15.

(b) The fishing year for fish in the snapper-grouper fishery other than wreckfish begins on January 1 and ends on December 31.

8. In § 646.21, a new paragraph (j) is added to read as follows:

§ 646.21 Harvest limitations.

* * * * *

(j) *Warsaw grouper and speckled hind.* (1) The possession of warsaw grouper in or from the EEZ is limited to one per vessel per trip.

(2) The possession of speckled hind in or from the EEZ is limited to one per vessel per trip.

(3) A warsaw grouper or a speckled hind in or from the EEZ may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

(4) A person who fishes in the EEZ may not combine a possession limit specified in paragraph (j)(1) or (j)(2) of this section with a bag or possession limit applicable to state waters.

(5) The operator of a vessel that fishes in the EEZ is responsible for the possession limit applicable to that vessel.

(6) A warsaw grouper or speckled hind taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place; and a warsaw grouper or speckled hind may not be transferred at sea in the EEZ, regardless of where such fish was taken.

9. In § 646.23, a new paragraph (a)(4) is added and paragraph (b)(3) is revised to read as follows:

§ 646.23 Bag and possession limits.

(a) * * *

(4) Special limitations on possession of warsaw grouper and speckled hind apply. (See § 646.21(j).)

(b) * * *

(3) Groupers, excluding jewfish and Nassau grouper, and tilefishes, combined—5.

* * * * *

10. Section 646.24 is revised to read as follows:

§ 646.24 Commercial quotas.

Persons who are not subject to the bag limits are subject to the following quotas. (See § 646.23(a)(1) for applicability of the bag limits.)

(a) *Wreckfish* (whole weight)—2 million pounds (907,185 kg), each fishing year.

(b) *Snowy grouper* (gutted weight, that is, eviscerated but otherwise whole)—

(1) 540,314 pounds (245,082 kg), in the fishing year that commences January 1, 1994.

(2) 442,448 pounds (200,691 kg), in the fishing year that commences January 1, 1995.

(3) 344,508 pounds (156,266 kg), in the fishing year that commences January 1, 1996.

(c) *Golden tilefish* (gutted weight, that is, eviscerated but otherwise whole)—

(1) 1,475,795 pounds (669,409 kg), in the fishing year that commences January 1, 1994.

(2) 1,238,818 pounds (561,918 kg), in the fishing year that commences January 1, 1995.

(3) 1,001,663 pounds (454,347 kg), in the fishing year that commences January 1, 1996.

§§ 646.27 and 646.25 [Redesignated as §§ 646.28 and 646.27]

11. Section 646.27 is redesignated as § 646.28; § 646.25 is redesignated as § 646.27; and a new § 646.25 is added to read as follows:

§ 646.25 Commercial trip limits.

Persons who are not subject to the bag limits who fish in the EEZ on a trip are subject to the following vessel trip limits. (See § 646.23(a)(1) for applicability of the bag limits.)

(a) *Snowy grouper* (whole weight or gutted weight, that is, eviscerated but otherwise whole).

(1) Until the fishing year quota specified in § 646.24(b) is reached, 2,500 pounds (1,134 kg).

(2) After the fishing year quota specified in § 646.24(b) is reached, 300 pounds (136 kg).

(b) *Golden tilefish* (whole weight or gutted weight, that is, eviscerated but otherwise whole).

(1) Until the fishing year quota specified in § 646.24(c) is reached, 5,000 pounds (2,268 kg).

(2) After the fishing year quota specified in § 646.24(c) is reached, 300 pounds (136 kg).

(c) *Reduction of trip limits.* When a commercial quota specified in § 646.24 (b) or (c) is reached, or is projected to be reached, the Assistant Administrator will file a notice to that effect with the Office of the Federal Register. On and after the effective date of such notice, for the remainder of the fishing year, the appropriate trip limit applies.

(d) A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) A snowy grouper or golden tilefish taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place; and a snowy grouper or golden tilefish may not be transferred at sea in the EEZ, regardless of where such snowy grouper or golden tilefish was taken.

(f) Snowy grouper or golden tilefish in excess of an applicable trip limit specified in paragraph (a) or (b) of this section may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

12. In § 646.26, a new paragraph (d) is added to read as follows:

§ 646.26 Area limitations.

* * * * *

(d) *Habitat area of particular concern (HAPC).* (1) The Oculina Bank, which is a coral HAPC under § 638.23(c) of this chapter, is bounded on the north by 27°53′ N. latitude, on the south by 27°30′ N. latitude, on the east by 79°56′ W. longitude, and on the west by 80°00′ W. longitude.

(2) No fishing for fish in the snapper-grouper fishery may be conducted in the Oculina Bank HAPC and such fish may not be retained in or from the Oculina Bank HAPC. Fish in the snapper-grouper fishery taken incidentally in the Oculina Bank HAPC by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water. It is a rebuttable presumption that fishing aboard a vessel that is anchored in the HAPC constitutes fishing for fish in the snapper-grouper fishery.

(3) See § 638.23(c) of this chapter for prohibitions on fishing with bottom longlines, traps, pots, dredges, and bottom trawls in the Oculina Bank HAPC.

13. Figure 2 to part 646 is removed and Figure 3 to part 646 is redesignated as Figure 2 to part 646.

[FR Doc. 94–4528 Filed 2–24–94; 10:50 am]
BILLING CODE 3510–22–P

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50 CFR Part 658

[I.D. 021494C]

Shrimp Fishery of the Gulf of Mexico; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene four public hearings on Draft Amendment 7 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico. Amendment 7 proposes to: define overfishing for white shrimp; provide for a framework adjustment for the overfishing definitions for brown, white, and pink shrimp; revise the overfishing definition for royal red shrimp; and eliminate the total allowable level of foreign fishing to allow the domestic fleet to obtain optimum yield. Two public hearings were previously announced in the **Federal Register** for Corpus Christi, Texas and Galveston, Texas.

DATES: Written comments on the proposed amendment must be received by April 22, 1994. The hearings are scheduled from 6 p.m. to 8 p.m. as follows: Tuesday, March 15, 1994, in Bon Secour, Alabama; Wednesday, March 23, 1994, in Ft. Myers, Florida; Tuesday, March 29, 1994, in Houma, Louisiana; and Wednesday, March 30, 1994, in Biloxi, Mississippi.

ADDRESSES: Comments should be addressed to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, Florida 33609 FAX: 813–225–7015. The hearings will be held at the following locations:

1. Bon Secour, Alabama—St. Peters Episcopal Church, 6270 Bon Secour Highway, Intersection of County Roads 10 & 49, Bon Secour, Alabama
2. Ft. Myers, Florida—Holiday Inn Central, 2431 Cleveland Avenue, Ft. Myers, Florida
3. Houma, Louisiana—Holiday Inn, 210 South Hollywood Road, Houma, Louisiana
4. Biloxi, Mississippi—Broadwater Beach Resort, 2110 Beach Boulevard, Biloxi, Mississippi

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Fishery Biologist, 813–228–2815.

SUPPLEMENTARY INFORMATION: These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs (see **ADDRESSES**) 5 working days prior to the applicable meeting.

Dated: February 24, 1994.

David S. Crestin,

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

[FR Doc. 94–4615 Filed 2–28–94; 8:45 am]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 59, No. 40
Tuesday, March 1, 1994

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Proposed Information Collection Request Submitted to OMB

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Administrative Conference of the United States has submitted to the Office of Management and Budget (OMB) for approval a proposed version of a confidential disclosure form to be submitted by those individuals from the private sector who are members of the Administrative Conference. This form is a substitute for Standard Form 450 issued by the Office of Government Ethics that such members would otherwise be required to file.

DATES: Comments on this proposal should be received by March 31, 1994.

ADDRESSES: Comments should be sent to Gary J. Edles, General Counsel and Designated Agency Ethics Officer, Administrative Conference of the United States, 2120 L Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Gary J. Edles, General Counsel and Designated Agency Ethics Officer, Administrative Conference of the United States, 2120 L Street NW., Washington, DC 20037. Telephone: (202) 254–7020. A copy of the Administrative Conference's request for approval from OMB, including the proposed form, can be obtained from Susan Mack, at the above address and telephone number.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States (ACUS) is a federal agency that is also a federal advisory committee under the terms of the Federal Advisory Committee Act. Members of ACUS from the private sector are deemed to be special government employees within the meaning of 18 U.S.C. 202(a) and, therefore, are subject to confidential financial disclosure requirements of the Ethics in Government Act, 5 U.S.C. App. 107, and implementing regulations issued by the U.S. Office of Government Ethics (OGE), 5 CFR Part 2634, Subpart I. The proposed form is a substitute for OGE Standard Form 450 that Administrative Conference members otherwise would be required to file. It was approved by the Director of the Office of Government Ethics following a determination by the ACUS Chairman, pursuant to 5 CFR 2634.905 (a), that greater disclosure by public members is not required because the duties of a member make remote the possibility that a real or apparent conflict of interest will occur. As required by the Ethics in Government Act, 5 U.S.C. App. 107(a); Executive Order 12674, 201(d); and OGE regulations, 5 CFR 2634.901(d), this form is confidential and required to be withheld from the public. As the OGE regulations make clear, section 107(a) of the Ethics in Government Act leaves no discretion on this issue with the Administrative Conference.

Dated: February 22, 1994.

Gary J. Edles,

General Counsel.

[FR Doc. 94–4624 Filed 2–28–94; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 94–006N]

National Advisory Committee on Microbiological Criteria for Foods; Subcommittee Meetings

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods' subcommittees on Seafood and HACCP will be held Thursday, March 10 and Friday, March 11, 1994, from 8:30 a.m. to 5 p.m. each day, at the Radisson Haus Inn Sunnyvale, 1085 East El Camino Real, Sunnyvale, California 94087, telephone (408) 247–0800.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria pertaining to microorganisms that indicate whether food has been processed using good manufacturing processes.

The Committee meeting is open to the public on a space available basis. Interested persons may file comments prior to and following the meeting. Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2151, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

Background materials are available for inspection by contacting Mr. Fedchock on (202) 720–9150.

Done at Washington, DC, on: February 23, 1994.

Donald L. White,

Acting Administrator.

[FR Doc. 94–4538 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Establishment of Fifteenmile Creek Purchase Unit

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Fifteen Mile Creek Purchase Unit.

SUMMARY: On January 21, 1994, the Assistant Secretary, Natural Resources and Environment, created the Fifteenmile Creek Purchase Unit. This purchase unit comprises approximately 595 acres within Wasco County, Oregon. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATE: Creation of this purchase unit was effective January 21, 1994.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Director of Lands, Forest Service, Auditor's Building, 201 14th Street, SW., Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090; telephone: (202) 205–1248.

Dated: February 18, 1994.

Lyle Laverty,

Acting Deputy Chief.

Establishment of Fifteenmile Creek Purchase Unit Wasco County, Oregon

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949), the Fifteenmile Creek Purchase Unit is being created in Wasco County, Oregon. The lands within the purchase unit are described as follows:

Wasco County, Oregon, Willamette Meridian
T. 2 S., R. 12 E.

Section 19: Government lots 1 through 4, NE¼, E½NW¼, E½SW¼, W½SE¼
Section 20: NW¼NW¼

The area described contains 595 acres, more or less, and is adjacent to the Mt. Hood National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: January 21, 1994.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 94–4623 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–11–M

Trails End Integrated Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed Trails End integrated project. The Forest Service is proposing to harvest timber on approximately 2000 acres of National Forest land in the northern portion of the Ridgway Ranger District. Forest health is the driving concern in this project proposal. Sugar maple decline and beech-scale necteria are causing growth loss and mortality. Treatments will consist of clearcuts, overstory removals, salvage, improvement cuts and thinnings. In addition to harvesting timber, the proposed action will consider approximately 120 acres of wildlife habitat improvement. These treatments will consist of vegetative planting to increase food availability, maintaining existing apple trees, improving turkey winter habitat, establishing beaver preferred food species, releasing thermal cover and shrubs plus protecting native trout streams.

DATES: Public scoping has been completed. A scoping letter was sent to all interested parties and land owners in or adjacent to the proposed project area. A notice was also published in the Ridgway Record on August 18, 1993. Additional comments will be accepted during the planning process and should reach us by March 31, 1994.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Leon F. Blashock, District Ranger, Ridgway Ranger District, RD #1 Box 28A Ridgway, Pa 15853.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to Carl Leland, Interdisciplinary Team Leader, Ridgway Ranger District, Ridgway, Pa., phone 814–776–6172.

SUPPLEMENTARY INFORMATION: The Allegheny National Forest Land and Resource Management Plan was approved in March 1986. Of the total of 5427 acres in the project area, the plan allocated 400 acres of Management Area (MA) 6.1 and 5027 acres of MA 3.0. MA 6.1 emphasizes mature and overmature hardwood forests with the following primary purposes; (1) maintain or enhance scenic quality, (2) emphasize a variety of dispersed recreation activities in a semi-primitive motorized setting, and (3) emphasize wildlife species which require mature or overmature hardwood forests, such as turkey, bear and cavity nesting birds and mammals. MA 3.0 has the following primary purposes; (1) to provide a sustained yield of high-quality Allegheny hardwood sawtimber though even-aged management, (2) to provide age class or size class habitat diversity from seedlings through mature timber in a variety of different types, (3) emphasize deer and turkey in all timber types and (4) provide a roaded natural setting for all types of developed and dispersed recreation opportunities with an emphasis on motorized recreation activities.

A range of alternatives will be considered. One of these will be no planned activity for the proposed project area. Other alternatives to the proposed action will consider regeneration areas larger than the 40-acre maximum called for in the National Forest Management Act due to the health of some of the stands. Landscape corridor designations will be determined for the project area.

Leon F. Blashock, District Ranger, Ridgway Ranger District, Allegheny National Forest is the responsible official.

The Draft EIS is expected to be filed with the Environmental Protection Agency and to be available for public review by June 1994. At that time the Environmental Protection Agency will publish a notice of availability of the document in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date of the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC, 435 U.S. 519 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* versus *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* versus *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft environmental impact statement, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by September 1994. The decision will be subject to appeal under 36 CFR part 215.

Dated: February 14, 1994.

Leon F. Blashock,

District Ranger.

[FR Doc. 94–4600 Filed 2–28–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Capital Expenditures Survey

Form Number(s): ACE–1, ACE–2.

Agency Approval Number: none.

Type of Request: New collection.

Burden: 108,500 hours.

Number of Respondents: 45,000.

Avg Hours Per Response: 2 hours 25 minutes.

Needs and Uses: A major concern of economic policymakers is the adequacy of investment in plant and equipment. Much of the current data on investment are estimates for broad categories of capital expenditures with very little or no detail about the investing industries. Census is proposing a new annual data collection to provide detail on capital expenditures needed for estimating the national income and product accounts, estimating productivity of U.S. industries, evaluating fiscal and monetary policy, and conducting research using capital expenditures data. In 1991 we conducted a pilot survey under OMB number 0607–0737 to examine the basic survey design, forms and content, and survey processing system. We also conducted a response analysis designed to detect major errors in the forms and obtain respondents' reactions to individual survey items. We then collected 1992 data in a preliminary survey with an expanded panel in order to further test the processing system and survey design. We now plan to collect 1993 data in a full–scale survey. This request is for clearance of the full–scale survey. This request if for clearance of the full–scale survey which includes refinements from the previous efforts.

Affected Public: Businesses or other for–profit institutions, non–profit institutions, small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 24, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–4619 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1993 Survey of Housing Starts, Sales, and Completions.

Form Number(s): SOC 900, 900.1, 900.1(L), 900A, 900A.1, 900A.1(L).

Agency Approval Number: 0607–0110.

Type of Request: Revision of a currently approved collection.

Burden: 4,849 hours.

Number of Respondents: 6,865.

Avg Hours Per Response: 12 minutes.

Needs and Uses: The Survey of Housing Starts, Sales, and completions, also known as the Survey of Construction (SOC), is conducted by Census to collect information on construction characteristics from a sample of home builders, real estate agents, and new home owners. The survey is conducted by mailing out a questionnaire to respondents. A Census interviewer calls the respondent a few days later to transcribe the information onto another form. During the period of 1995 to 1996, Census plans to gradually replace the transcription form with an automated format on laptop computer. The change will be transparent to respondents except that the interviewer will be able to perform interactive editing of the respondents' answers during the interview. The data gathered are used to publish estimates of the number of new residential housing units started, under construction and completed, and the number of new homes sold and for sale. Statistics from the SOC are used by government agencies and private companies to monitor and evaluate this sector of the economy.

Affected Public: Individuals or households, businesses or other for–profit institutions, small businesses or organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 24, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–4620 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

Intent to Revoke Countervailing Duty Orders and Terminate Suspended Investigations

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty orders and terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty orders and terminate the suspended countervailing duty investigations listed below. Domestic interested parties who object to these revocations or terminations must submit their comments in writing not later than 30 days from the publication date of this notice.

EFFECTIVE DATE: March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Brian Albright, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) may revoke a

countervailing duty order or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) (19 CFR 355.25(d)(4) (1993)) of the Department's regulations, we are notifying the public of our intent to revoke the following countervailing duty orders and terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Countervailing Duty Orders	Effective date
Argentina: Certain Textile Mill Products (C–357–404) Contact: Megan Waters (202) 482–1767 or 482–2786.	03/12/85 48 FR 9846
Chile: Standard Carnations (C–337–601) Contact: Cameron Cardozo (202) 482–6071 or 482–2786.	03/19/87 52 FR 8635
France: Brass Sheet and Strip (C–427–603) Contact: Karn Goff (202) 482–3691 or 482–2786.	03/06/87 52 FR 6996
Iran: Raw In-Shell Pistachios (C–507–501) Contact: Patricia W. Stroup (202) 482–0983 or 482–2786.	03/11/86 51 FR 8344
Israel: Oil Country Tubular Goods (C–508–601) Contact: Kelly Parkhill (202) 482–4126 or 482–2786.	03/06/87 52 FR 6999
New Zealand: Carbon Steel Wire Rod (C–614–504) Contact: Lorenza Olivas (202) 482–1775 or 482–2786.	03/07/86 51 FR 7971
Peru: Certain Apparel (C–333–402) Contact: Martina Tkadlec (202) 482–1167 or 482–2786.	03/12/85 48 FR 9871
Peru: Certain Textile Mill Products (C–333–402) Contact: Martina Tkadlec (202) 482–1167 or 482–2786.	03/12/85 48 FR 9871
Sri Lanka: Certain Apparel (C–542–401) Contact: Martina Tkadlec (202) 482–1167 or 482–2786.	03/12/85 48 FR 9826
Sri Lanka: Certain Textile Mill Products (C–542–401) Contact: Martina Tkadlec (202) 482–1167 or 482–2786.	03/12/85 48 FR 9826
Turkey: Welded Carbon Steel Pipes and Tubes (C–489–502) Contact: Norbert Gannon (202) 482–0394 or 482–2786.	03/07/86 51 FR 7984
Turkey: Welded Carbon Steel Line Pipe (C–489–502) Contact: Norbert Gannon (202) 482–0394 or 482–2786.	03/07/86 51 FR 7984

Suspended Countervailing Duty Investigations	Effective date
Colombia: Certain Textile Mill Products (C–301–401) Contact: Will Sjoberg (202) 482–0413 or 482–3793.	03/12/85 50 FR 9863
Thailand: Certain Textile Mill Products Except Noncontinuous Noncellulose Yarns (C–549–401) Contact: Lisa Yarbrough (202) 482–3208 or 482–3793.	03/12/85 50 FR 9832

In accordance with § 355.25(d)(4)(iii) of the Department's regulations, if domestic interested parties (defined in §§ 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) do not object to the Department's intent to revoke these orders or terminate these suspended investigations pursuant to this notice, or interested parties (defined in § 355.2(i) of the regulations) do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty orders or suspended investigations are no longer of interest to interested parties and shall proceed with the revocation(s) or termination(s).

Opportunity to Object

Not later than 30 days after the publication date of this notice, domestic interested parties may object to the Department's intent to revoke these countervailing duty orders or terminate these suspended investigations. Any submission objecting to a revocation or termination must include the name and case number of the order or suspension agreement and a statement that explains how the objecting party qualifies as a domestic interested party under §§ 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

A separate objection must be filed for each order or suspension agreement. In instances where two or more countervailing duty orders or suspension agreements share the same case number (*e.g.*, C–489–509 includes welded carbon steel pipes and tubes, and carbon steel line pipe, or C–333–402 includes certain apparel, and certain textile mill products), an objection must be submitted for each separate order or suspension agreement, as listed above.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: February 25, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–4786 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 022394C]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public meeting on March 16–17, 1994, from 8:30 a.m. until 5 p.m., at the Holiday Inn on the Beach, 365 East Beach Boulevard (Highway 182), Gulf Shores, AL; telephone: (205) 948–6191. Related committee meetings will be held on March 14 and 15, 1994.

On March 16, from 8:45 a.m. until 12 noon, the Council will receive public testimony on Amendment 9 to the Reef Fish Fishery Management Plan, on Amendment 2 to the Coral Fishery Management Plan, and on Amendment 7 to the Mackerel Fishery Management Plan (NOTE: Testimony cards must be turned in to staff before the start of public testimony). From 1:30 p.m. until 4 p.m., the Council will receive a report of the Reef Fish Management Committee and take final action on Reef Fish Amendment 9; and from 4 until 5 p.m., take action on Coral Amendment 2.

The Council will reconvene on March 17 to receive reports from 8:30 a.m. until 9 a.m. from the Mackerel Management Committee (including a report on Amendment 7); from 9 until 9:30 a.m., from the Habitat Protection Committee; from 9:30 until 9:45 a.m., from the Stone Crab Management Committee; and from 9:45 until 10 a.m., from the Scientific and Statistical Committee (SSC) Selection Committee. These items will be followed by Enforcement Reports, a discussion of PESCA (Fisheries Department of the Mexican Government) participation in Council Meetings, and the Director's Reports. This meeting will adjourn at 11:15 a.m.

Committees will convene at 1 p.m. on March 14, beginning with meetings of the SSC Selection Committee, the Mackerel Management Committee and a joint meeting between the Law

Enforcement Advisory Panel and the Reef Fish Management Committee; these meetings will recess at 5 p.m. Committees will reconvene at 8 a.m. on March 15, beginning with a meeting of the Reef Fish Management Committee, followed by meetings of the Coral Management Committee, the Habitat Protection Committee, and the Stone Crab Management Committee. The meetings will adjourn at 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by March 4, 1994.

Dated: February 23, 1994.

David S. Crestin,

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

[FR Doc. 94–4541 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 022394D]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Squid, Mackerel and Butterfish Committee and Squid, Mackerel, and Butterfish Industry Advisory Subcommittee will hold a meeting on March 15, 1994, at the Ramada Inn (1776 Room), 76 Industrial Highway, Essington, PA; telephone: (215) 521–9600. The meeting will begin at 10 a.m.

The following topics will be discussed: History of the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP); timetable of development, goals and objectives of the current FMP; purpose and need for Amendment 5; description of biology and fisheries; review of current management strategy; problems identified during scoping meetings; and review and discussion of alternative management strategies.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least 5 days prior to the meeting date.

Dated: February 23, 1994.

David S. Crestin,

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

[FR Doc. 94–4542 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–22–P

National Telecommunications and Information Administration

[Docket No. 940104–4004]

Inquiry on Privacy Issues Relating to Private Sector Use of Telecommunications-Related Personal Information

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Extension of time for filing comments.

SUMMARY: On February 11, 1994, NTIA published a Notice of Inquiry and Request for Comments in the **Federal Register** entitled "Inquiry on Privacy Issues Relating to Private Sector Use of Telecommunications-Related Information." 59 FR 6842. Due to a Government Printing Office error, however, some copies of that February 11 issue of the **Federal Register** were misprinted, and instead contained the material scheduled for publication on February 14. We have been advised that a corrected replacement copy for the February 11 issue is available at no charge from the Government Printing Office.

DATES: To ensure that all interested parties have an opportunity to participate in this proceeding, the date for filing comments is hereby extended to March 30, 1994.

Authority: National Telecommunications and Information Administration Organization Act of 1992, Pub. L. No. 102–538, 106 Stat. 3533 (1992) (to be codified at 47 U.S.C. 901 *et seq.*).

Dated: February 24, 1994.

Larry Irving,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 94–4618 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

February 23, 1994.

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

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

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. 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) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

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).

In a Memorandum of Understanding (MOU) dated January 19, 1994 between the Governments of the United States and the Federative Republic of Brazil, agreement was reached to extend the limit for Category 219 for a one-year period beginning on April 1, 1994 and extending through March 31, 1995. Also, the two governments agreed to provide special carryforward to the April 1, 1993 through March 31, 1994 period for Category 219.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to increase the current limit for Category 219.

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 58 FR 62645, published on November 29, 1993). Also see 58 FR 14381, published on March 17, 1993.

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 MOU, but are designed to assist only in the

implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 23, 1994.

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 March 12, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1993 and extends through March 31, 1994.

Effective on March 2, 1994, you are directed to amend the directive dated March 12, 1993 to increase the limit for Category 219 to 18,718,880 square meters [1], pursuant to the Memorandum of Understanding dated January 19, 1994 between the Governments of the United States and the Federative Republic of Brazil.

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

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–4553 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 31, 1993.

Announcement of Import Restraint Limits for 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

February 23, 1994.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. 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) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715.

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).

In a Memorandum of Understanding (MOU) dated January 26, 1994 between the Governments of the United States and the Philippines, agreement was reached to amend and extend further the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, for two consecutive one-year periods beginning on January 1, 1994 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period beginning on January 1, 1994 and extending through December 31, 1994.

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 58 FR 62645, published on November 29, 1993).

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 MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 23, 1994.

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 December 9, 1993; pursuant to the Memorandum of Understanding dated January 26, 1994 between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 2, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
Levels not in a group	
669–P [2]	3,173,611 kilograms.
670–L [3]	5,405,405 kilograms.
Levels in Group I	
237	1,337,255 dozen.
239	8,068,604 kilograms.
331/631	4,330,455 dozen pairs.
333/334	209,483 dozen of which not more than 30,073 dozen shall be in Category 333.
335	136,352 dozen.
336	496,198 dozen.
338/339	1,819,393 dozen.
340/640	807,917 dozen.
341/641	729,042 dozen.
342/642	429,187 dozen.
345	127,810 dozen.
347/348	1,503,631 dozen.
350	113,147 dozen.
351/651	468,112 dozen.
352/652	1,838,400 dozen.
359–C/659–C [4]	636,000 kilograms.
361	1,429,219 numbers.
369–S [5]	323,968 kilograms.
431	162,429 dozen pairs.
433	3,198 dozen.
443	38,673 numbers.
445/446	26,415 dozen.
447	7,345 dozen.
611	4,289,201 square meters.
633	27,654 dozen.
634	343,118 dozen.
635	315,037 dozen.
636	1,293,122 dozen.
638/639	1,869,013 dozen.
643	660,549 numbers.
645/646	594,155 dozen.
647/648	907,277 dozen.
649	5,996,169 dozen.
650	80,983 dozen.
659–H [6]	1,065,516 kilograms.
847	706,737 dozen.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O [7], 360, 362, 363, 369–O [8], 400–414 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [9], 665, 666, 669–O [10], 670–O [11], 831–846 and 850–859, as a group.	[1] 15,685,943 square meters equivalent.
Sublevel in Group II	
604	1,515,244 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

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

[3] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[4] 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, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 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.

[5] Category 369–S: only HTS number 6307.10.2005.

[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.

[7] Category 359–O: all HTS numbers except 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, 6211.42.0010 (Category 359–C).

[8] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[9] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 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, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H).

[10] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[11] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

Imports charged to these category limits for the period January 1, 1993 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated January 26, 1994 and the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended and extended, between the Governments of the United States and the Philippines.

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 these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–4552 Filed 2–28–94; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange: Proposed Amendments to the New York Harbor Unleaded Regular Gasoline Futures Contract Relating to Grade and Quality Specifications

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has submitted for Commission's approval, under section 5a(a)(12) of the Commodity Exchange Act and Commission Regulation 1.41(b), proposed amendments to its New York Harbor unleaded regular gasoline (gasoline) futures contract. The proposed amendments revise the grade and quality specifications for deliverable gasoline to reflect recently adopted EPA requirements for reformulated gasoline. The amendments would apply only to newly listed contracts beginning with the December 1994 and January and February 1995 delivery months.

In accordance with section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegate by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATES: Comments must be received on or before March 31, 1994.

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 New York Mercantile Exchange New York Harbor unleaded regular gasoline futures contract.

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

SUPPLEMENTARY INFORMATION: Acting on a mandate set forth in the amended Clean Air Act of 1990, the U.S. Environmental Protection Agency (EPA) on December 15, 1993, promulgated new regulations requiring that gasoline sold in certain areas of the U.S. be "reformulated" to reduce vehicle emissions of toxic and ozone forming compounds. The delivery area of the NYMEX gasoline futures contract, the New York harbor area, is one of those areas in the U.S. that will be affected by the new EPA regulations.

To implement the reformulated gasoline regulations, the EPA has devised a two-step approach. The first step, which will go into effect on December 1, 1994, utilizes a simple model. This model requires manufacturers (i.e., refiners, blenders, and importers) to certify that their product meets applicable emission reduction standards with respect to a gasoline's oxygen, benzene, heavy metal and aromatic content, and Reid Vapor Pressure (RVP).[1] In this respect, the EPA has established two (2) methods by which compliance with the new requirements can be achieved. Compliance with the new gasoline standards can be met by using either a "per gallon" or an "averaging" method. The former method requires the manufacturer of gasoline to ensure that every gallon of product meets a set of standards for each gallon. The latter method, on the other hand, sets a range for each standard within which a manufacturer's product must fall as long as the manufacturer's average over a given period meets specified standards.

Specifically, the new EPA regulations stipulate that, for gasoline to be certified as reformulated under the "per-gallon" method, it must satisfy the following requirements: (1) RVP—8.1 psi maximum from May 1 through September 15; (2) oxygen—2.0% by weight minimum year round; and (3) Benzene—1.0% by volume maximum year round. Under the "averaging" method, the specifications are: (1) RVP—8.3 psi maximum on any gallon from May 1 through September 15, and 8.0 psi maximum on average for the same period; (2) oxygen—1.5% by weight minimum year round on any gallon, and 2.1% by weight minimum

[1] The second step will utilize a complex model and supplant the simple model for certifying compliance with the new gasoline standards as promulgated by the EPA. It will go into effect on January 1, 1998.

on an annual average, with a 3.5% by weight maximum; and (3) benzene—1.3% by volume maximum year round on any gallon and 0.95% by volume maximum on an annual average basis.

The new EPA regulations also require each manufacturer or importer of gasoline to designate its product as reformulated or conventional. This designation is to be accomplished with the use of batch numbers and EPA-assigned facility registration numbers. Finally, to further enforce these new standards, the EPA has established enforcement test tolerance values of 0.3 psi, 0.3 percent weight, and 0.21 percent volume for RVP, oxygen and benzene, respectively.

Current NYMEX provisions stipulate that during the period April 1 through April 30 deliverable gasoline must have an RVP not exceeding 9.0 psi. If delivery is made during the period May 1 through September 15, then the RVP must comply with the applicable state (*i.e.*, New York or New Jersey) law requirements at the time of delivery. Existing provisions of the NYMEX gasoline futures contract do not contain any specifications for benzene or oxygen.

To comply with the new EPA regulations noted above, the Exchange has decided to adopt the "averaging" method of compliance noted above. Accordingly, the NYMEX has revised specifications for RVP and has adopted specifications for oxygen and benzene. Specifically, the proposed amendments are as follows:

Reid Vapor Pressure: Beginning December 1, 1994, gasoline delivered during the period from May 1 through September 15, shall not exceed 8.3 psi (EPA Test Method) and from September 16 through March 31 shall comply with the Colonial Pipeline Company specifications then in effect for the time and place of delivery. Provided that, deliveries on the September contract originally nominated for delivery on or before September 15 shall not exceed 8.3 psi, regardless of the time of actual delivery.

Oxygenation Level: Beginning December 1, 1994, gasoline delivered during the period May 1 through September 30 shall contain minimum 1.5% oxygen by weight; gasoline delivered during the period November 1 through the last day of February shall contain minimum 2.7% oxygen by weight. Any oxygenates included in the product shall conform to the permissible oxygenate qualities contained in the Colonial Pipeline Company specifications for Northern Grade 47 unleaded regular gasoline.

Benzene: Beginning December 1, 1994, gasoline delivered shall contain maximum 1.3% benzene by volume.

The proposed amendments also would incorporate into the NYMEX rules the EPA enforcement test tolerance values noted above, and require the seller making delivery on the futures contract to provide a written statement noting that, to his knowledge his deliverable product is reformulated gasoline, as defined by EPA.

According to the NYMEX, the subject proposed amendments are necessary because, ". . . [d]ata suggests that approximately 30% of total U.S. gasoline will be RFG [i.e., reformulated gasoline] starting in December 1994, and, further, the vast majority (around 75%) of the New York Harbor market will be RFG. RFG in the New York Harbor will conform to EPA enforcement regulations for Simple Model RFG in the Northeast . . . ." The Exchange further maintains that it has adopted the "averaging" instead of the "per-gallon" standards as the method of compliance with the new EPA regulations for several reasons:

First, it is not known at this time how many refiners, blenders and importers will be "averaging" and how many will be on the "per-gallon" method. Therefore, the most conservative approach for the Exchange is to have standards that can be met under all circumstances, regardless of what compliance methodology manufacturers select. Because "averaged" gasoline is less restrictive than "per-gallon" gasoline, "per-gallon" gasoline would be deliverable against the Exchange's "averaging" contract. Second, Colonial Pipeline has indicated to the Exchange informally that it intends to introduce fungible product streams reflecting RFG for delivery to the Northeast market that meets the "averaging" requirements. Third, EPA has indicated that enforcement downstream of the manufacturer will consist of determining that the gasoline meets the minimum and maximum limits under the "averaging" standards.

The NYMEX is proposing to apply the suspect amendments, at this time, only to three delivery months: December 1994 through February 1995. These months are currently not listed for trading.

The Commission requests comment on the proposed amendments to the NYMEX gasoline futures contract. The Commission is specifically requesting comments on the effect of the proposed amendments on the economically deliverable supply of gasoline available for the contract as well as the effect, if any, on the futures pricing basis.

Copies of the amended terms and conditions 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 above address or by phone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments 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 as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments 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 February 22, 1994.

Blake Imel,

Acting Director.

[FR Doc. 94–4575 Filed 2–28–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Agency Information Collection Activities Under OMB Review

ACTION: Notice, Amendment.

The Department of Defense published on Thursday, February 10, 1994, (59 FR 6243), the Information Collection Proposal entitled "Annual Health Care Survey for DoD Beneficiaries." This amends "Type of Request" to add "EXPEDITED PROCESSING—Approval Date Requested: 30 days following publication in the Federal Register."

All other information remains unchanged.

Dated: February 24, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4596 Filed 2–28–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, March 1, 1994;

Tuesday, March 8, 1994; Tuesday, March 15, 1994; Tuesday, March 22, 1994; and Tuesday, March 29, 1994, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Personnel and Readiness) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person a privileged of confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: February 24, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–4597 Filed 2–28–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The Mobility Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 22–24 March 1994 at Robins AFB, GA and Charleston AFB, SC from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–4599 Filed 2–28–94; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The Supportability Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 22–24 March 1994 at The Pentagon, Washington, DC; HQ ACC, Langley AFB, VA and HQ AFMC & HQ ASC Wright-Patterson AFB, OH from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 94–4602 Filed 2–28–94; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Availability of Non-exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning HIV Negative-Strand Transcripts

AGENCY: U.S. Army Medical Research and Development Command, DOD.

ACTION: Notice.

In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent Application Serial Number 08/126,295 entitled "HIV Negative-Strand Transcripts" filed September 24, 1993 for licensing. This patent has been assigned to the United States government as represented by the Secretary of the Army.

ADDRESSES: Office of the Command Judge Advocate, U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, (301) 619–2065.

SUPPLEMENTARY INFORMATION: The invention relates to HIV transcripts of negative-strand polarity in HIV-infected cells, the cloning of cDNAs derived from negative-strand transcripts, and to genetically engineered host cells which express the negative-strand encoded proteins. The invention also relates to HIV sequences that function to promote transcription of the negative-strand RNAs and the demonstration of these RNAs. The identification of negative-strand polarity extends the coding capacity of HIV and suggest a role for antisense regulation of the HIV viral lytic cycle. The negative-strand transcripts and their encoded protein products may be used as research reagents, diagnostic products, or therapeutic products. Regulation of negative-strand transcription may be used in therapeutic intervention, or as a target for drug development.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–4603 Filed 2–28–94; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; New Computer Matching Program Between the United States Department of Agriculture and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a new computer matching program between the United States Department of Agriculture (USDA) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby

giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between USDA and DoD that their records are being matched by computer. The record subjects are USDA delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under the Food Stamp Program administered by USDA so as to permit USDA 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 March 31, 1994, 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, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and USDA 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 for debt collection. The match will yield the identity and location of the debtors within the Federal government so that USDA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. 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 USDA and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the USDA, 14th and Independence Avenue, S.W., Room 4094–S, Washington, DC 20250. Telephone (202) 720–1168.

Set forth below is the 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) of the Privacy Act, and an advance copy of this notice was submitted on February 15, 1994, 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 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated June 25, 1993 (58 FR 36075, July 2, 1993). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: February 24, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program between the United States Department of Agriculture and the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the United States Department of Agriculture (USDA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The USDA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* Upon the execution of this agreement, USDA will provide and disclose certain food stamp debtor records to DMDC so that DMDC can identify and locate any Federal personnel, employed or retired from service with the Federal Government, who may owe delinquent debts to the Federal Government for overissued Food Stamp Program benefits. USDA will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act when voluntary payment is not forthcoming. These collection efforts will include requests by USDA of the employing agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

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, Administrative Offset, 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 7 U.S.C. 2022 (Collection and Disposition of Claims); 10 U.S.C. 136, Assistant Secretaries of Defense; Section 206 of Executive Order No. 11222; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office—Department of Justice); 5 CFR 550.1101–550.1108, Collection by Offset from Indebted Government Employees (OPM); 7 CFR part 3, Debt Management (Agriculture); 7 CFR 273.18 (Claims against households).

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: USDA will use records from the system of records published as Claims Against Food Stamp Recipients—USDA FNS–3, last published at 56 FR 50552 on October 7, 1991, and amended at 58 FR 48633 on September 17, 1993.

DoD will use the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base', last published in the **Federal Register** at 58 FR 10875 on February 22, 1993.

E. *Description of computer matching program:* USDA, as the source, will provide DMDC with a magnetic tape of individuals delinquent in repayment of overissued food stamp benefits. The tape will contain data elements of name, SSN, and internal account number on a total of 200,000 delinquent debtors. Upon receipt of the computer tape file of debtor accounts, DMDC as the recipient matching agency, will perform a computer match using all nine digits of the SSN of the file against a DMDC computer data base. The DMDC computer data base, established under an interagency agreement between DoD, OPM, OMB and the Treasury Department, consists of employment records of approximately 10 million Federal employees. Matching records, 'hits' based on the SSN, will produce the member's name, service or agency,

category of employee, salary or benefit amounts, and current work or home address. The hits will be furnished to USDA. USDA will be responsible for verifying and determining if the data of the DMDC reply tape file are consistent with USDA's source file and to resolve any discrepancies or inconsistencies on an individual basis. USDA will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

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 will be repeated annually. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between USDA 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, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 94–4598 Filed 2–28–94; 8:45 am]

BILLING CODE 5000–04–F

Department of the Navy

Intent To Prepare an Environmental Impact Statement for the Proposed Construction of Additional Family Housing at the Naval Submarine Base, Bangor, Silverdale, WA

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of Navy announces the intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental effects of construction of 352 Family Housing units at the Naval Submarine Base (SUBASE) Bangor, Silverdale, Washington. SUBASE is located on a 7,150 acre federal site approximately ten miles north of the City of Bremerton.

In accordance with the recommendations of the 1993 Base Closure and Realignment Commission (BRAC), the Navy plans to construct approximately 352 multi-family housing units on approximately 75 acres of Government-owned land at SUBASE, Bangor. These additional units are required to house military families connected to the BRAC relocation of military units to Kitsap County, Washington. The Navy family housing mission is to provide quality neighborhoods which meet the needs of personnel, enhance morale and retention, and support the operational readiness of the Navy.

Alternative siting on SUBASE, Bangor, including the no action alternative, will be analyzed to determine the direct and indirect environmental effects of each alternative. Cumulative impacts will be analyzed taking into account other past and future projects at the SUBASE. Additionally, site specific mitigation measures for each alternative will be identified and their effectiveness evaluated.

A public scoping meeting, to determine the scope of issues to be addressed, will be held on March 24, 1994, at 7 p.m. at the Central Kitsap High School auditorium, Silverdale, Washington. At this public meeting, a brief presentation of the proposed action will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. Federal, state, and local agencies and interested individuals are encouraged to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of oral comments at the public meeting. To be most helpful scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements should be mailed no later than April 14, 1994, to: Commanding Officer, Engineering Field Activity, Northwest, Naval Facilities Engineering Command, 3505 NW., Anderson Hill Road, Silverdale, Washington 98383–9130 (Attn: Mr. Joe DiVittorio, Code 232JD), telephone (206) 396–5976.

Dated: February 24, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–4611 Filed 2–28–94; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.262]

Programs to Encourage Minority Students to Become Teachers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994.

Purpose of Program: To improve recruitment and training opportunities in education for minority teachers in elementary and secondary schools; to increase the number of minority teachers, including language minority teachers, in elementary and secondary schools; and to identify and encourage minority students in the 7th through 12th grades to aspire to, and to prepare for, careers in elementary and secondary school teaching. The program is comprised of two components: the Teacher Partnerships Program and the Teacher Placement Program.

Eligible Applicants: Partnership grants are awarded to partnerships between: (1) One or more institutions of higher education which have a demonstrated record and special expertise in carrying out the purposes of this program and (2) one or more local educational agencies; a State educational agency or a State higher education agency; or community-based organizations. Placement grants are awarded to institutions of higher education that have schools or departments of education.

Deadline for Transmittal of Applications: April 15, 1994.

Deadline for Intergovernmental Review: June 14, 1994.

Applications Available: March 2, 1994.

Available Funds: $490,800.

Estimated Range of Awards: $200,000—$250,000.

Estimated Average Size of Awards: $225,000.

Estimated Number of Awards: Two.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months, comprising 12-month budget periods.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 74, 75, 77, 79, 82, 85, and 86.

Supplementary Information: The Federal share for carrying out the purposes of the Teacher Partnerships Program and the Teacher Placement Program shall be 50 percent. In any fiscal year, the Secretary may, based upon evaluation and monitoring results of projects under the Teacher Placement Program, increase the Federal share of a grant under this program for the succeeding fiscal year to 75 percent if the Secretary determines that there is demonstrated success in the operation of the project.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 20 U.S.C. 1112b(c) and EDGAR, 34 CFR 75.210.

The regulations in 34 CFR 75.210(a) and (c) provide that the Secretary may award up to 100 points for the selection criteria, including an additional 15 points. The Secretary distributes the additional 15 points as follows:

Meeting the purposes of the authorizing statute (34 CFR 75.210 (b)). Ten points are added to this criterion for a possible total of 40 points.

Evaluation plan (34 CFR 75.210 (6)). Five points are added to this criterion for a possible total of 10 points.

For Applications or Information Contact: Janice Wilcox, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 260–3207. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1112, 1112a-1112e.

Dated: February 23, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–4543 Filed 2–28–94; 8:45 am]

BILLING CODE 4000–01–P

National Advisory Council on Educational Research and Improvement; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: March 24 and 25, 1994, 9 a.m. to 5 p.m.

ADDRESSES: Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, DC 20036, Telephone: 202–265–1600.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street SW., Washington, DC 20202–7579, (202) 205–9004.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Educational Research and Improvement is established under section 405 of the 1972 Education Amendments, Public Law 92–318, as amended by the Higher Education Amendments of 1986, Public Law 99–498, (20 U.S.C. 1221e).

The Council is established to advise the President, the Secretary of Education and the Congress on policies and activities carried out by the Office of Educational Research and Improvement (OERI). The meeting of the Council is open to the public. The proposed agenda for March 24 includes presentations on Goals 2000 and on the School to Work Transition Act. The Council will give final approval to its Fiscal Year 1993 Annual Report. On March 25, the meeting will discuss the Reading Recovery program and other pending issues in educational research. The final agenda will be available from the Council office on March 21.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street SW., suite 4076, Washington, DC 20202–7579, from 9 a.m. to 5 p.m., Monday through Friday.

Dated: February 23, 1994.

Mary Grace Lucier,

Executive Director.

[FR Doc. 94–4550 Filed 2–28–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award to State of Kentucky

AGENCY: U.S. Department of Energy.

ACTION: Notice of non-competitive financial assistance with the State of Kentucky.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (C), and in support of the Metairie Site Office (MSO), it intends to make a Non-Competitive Financial Assistance Award to the State of Kentucky.

SCOPE: The Department of Energy has determined that the relative complexity of the oil and gas regulations in the State of Kentucky are not thoroughly understood by all local operators. It is assumed that a clearer, simpler guidance document could help these operators comply with environmental regulations more cost effectively.

In accordance with 10 CFR 600, 7(b)(2)(i) criteria (C), a noncompetitive Financial Assistance Award to the State of Kentucky, Division of Oil and Gas has been justified. This effort must be completed with the validation of the State agencies responsible for the regulations summarized in the desired guidance document. The Department of Energy believes that no other organization can guarantee this required outcome other than the relevant State offices themselves. The effort is therefore considered suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a competitive solicitation.

Department of Energy funding for this research is estimated to be approximately $75,000 for the 12 month duration of the project. These funds shall be used to pay for the reasonable cost of staff, consultants, experts, travel, administrative support personnel, printing and mailing.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940, Attn: John R. Owen, Contract Specialist, Telephone: (412) 892–4879.

Issued in Washington, DC on February 15, 1994.

Debra E. Ball,

Chief, Administrative Support Group, Acquisition and Assistance Division.

[FR Doc. 94–4630 Filed 2–28–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance to Manufacturing Sciences Corp.

AGENCY: US Department of Energy (DOE), Rocky Flats Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The US Department of Energy, Rocky Flats Office, gives notice of its plan to award a noncompetitive Cooperative Agreement to Manufacturing Sciences Corporation (MSC) pursuant to the DOE Financial Assistance Rules at 10 CFR 600.7(b)(2)(i)(H). This Cooperative Agreement is for the initial stages of a National Conversion Pilot Project, approved by the Secretary on December 15, 1993, for the recycling of radioactively contaminated DOE scrap metals at Rocky Flats. Funding of approximately $1 million for Stage I will be provided by DOE Office of Facility Transition and Management (EM–60). The Stage II needs are estimated to be $21 million per year for up to two years and will be provided from funds available for economic conversion. Stage III will take up to three years to complete and the cost will be negotiated with a private firm selected through full and open competition. MSC will not be precluded from competing for Stage III as a result of their work on stages I and II.

SUPPLEMENTARY INFORMATION: The mission of the National Conversion Pilot Project is to convert former Defense facilities and hire former Defense production workers, to recycle radioactively contaminated DOE scrap metals. The Pilot Project has the following objectives: to develop a process to convert DOE surplus Defense facilities to alternative uses; to team stakeholders and regulators with DOE to resolve conversion issues; to create an economically competitive environment for conversion; to make immediate tangible progress in cleanup activities; to reduce DOE storage and waste management costs; to protect the environment through recycling; and to use potentially displaced workers and surplus facilities.

FOR FURTHER INFORMATION CONTACT: Richard B. Wallace, Contract Specialist, US Department of Energy, Rocky Flats Office, Acquisition and Financial Assistance Team, P.O. Box 928, Golden, CO 80402–0928, Purchase Requisition No. DE–FC34–94RF00733.

Issued at Golden, CO, February 14, 1994.

Mark N. Silverman,

Manager.

[FR Doc. 94–4631 Filed 2–28–94; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

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

AGENCY: Energy Information Administration, DOE.

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

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

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

DATES: Comments must be filed on or before March 31, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–544.
3. 1902–0153.
4. Gas Pipeline Rates: Rate Change (Formal).
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 40 respondents.
10. 1 response.
11. 4,582.5 hours per response.
12. 183,300 hours.
13. The filing is required by the Commission to determine whether or not jurisdictional natural gas rates are "unjust or unreasonable or unjustly discriminatory or unduly preferential." If after preliminary review the rate filings are set for formal hearing, the data under FERC–544 are collected.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–546.
3. 1902–0155.
4. Certificated Rate Filings: Gas Pipeline Rates.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 100 respondents.
10. 4 responses.
11. 40 hours per response.
12. 163,000 hours.
13. Data collected in tariff filings to implement certificated new/revised service for the transportation and/or sale of natural gas by jurisdictional pipelines. The data are used by the Commision to establish a basis for determining just and reasonable rates that should be charged.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, February 18, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–4632 Filed 2–28–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 11160–001 New York]

GSA International Corp.; Surrender of Preliminary Permit

February 23, 1994.

Take notice that GSA International Corporation, permittee for the Ancram Project No. 11160, located on the Roeliff Jansen Kill Creek, Columbia County, New York, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 27, 1991, and would have expired on August 31, 1994. The permittee states that the project would be economically infeasible.

The permittee filed the request on January 28, 1994, and the preliminary permit for Project No. 11160 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4636 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–232–000]

ANR Pipeline Company and Colorado Interstate Gas Company; Application

February 23, 1994.

Take notice that on February 16, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 and Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed a joint application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a transportation and exchange agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR and CIG state that they propose to abandon the Transportation and Exchange Agreement (Agreement) dated July 20, 1979, as amended, constituting ANR's Rate Schedule X–86, Original Volume No. 2 and CIG's Rate Schedule X–35, Original Volume No. 2. It is stated that the Agreement provides for transportation by CIG and redelivery to ANR of equivalent volumes of natural gas which ANR delivers to CIG's system, and the transportation by ANR and redelivery to CIG of equivalent volumes of natural gas which CIG delivers to ANR's system. ANR and CIG state that no facilities will be abandoned; the facilities used for the transportation and exchange may continue to be used by ANR and CIG for open access transportation.

It is further stated that pursuant to Article XVII of the Agreement, the term of the Agreement was effective as of the date of the Agreement for a term ending 20 years from the date of commencement of deliveries of gas by either Party and thereafter as long as either Party is delivering gas to the other Party for transportation. However, ANR and CIG submit that since both have open access transportation certificates and the Commission has approved the restructuring of services on both pipelines, there is no longer a requirement for the Agreement. Consequently, ANR and CIG have agreed to terminate the Agreement.

Upon the grant of authorization requested herein, CIG states that it will file pursuant to Section 154 of the Regulations to cancel Rate Schedule X–35 to its FERC Gas Tariff, Original Volume No. 2. Likewise, ANR states that it will file to cancel Rate Schedule X–86 to its FERC Gas Tariff, Original Volume No. 2.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 16, 1994, file with the Federal Energy Regulatory Commission, Washington, the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy and Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Lois D. Cashell,

Secretary.

[FR Doc. 94–4643 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2306]

Citizens Utilities Companies; Public Scoping Meetings

February 23, 1994.

The Federal Energy Regulatory Commission (Commission) has received an application for relicense of the existing Clyde River Project No. 2306. This project is located on the Clyde River in northern Vermont, near the town of Newport. The project is operated by Citizens Utilities Companies.

Upon review of the application, supplemental filings, and intervenor submittals, the Commission staff has concluded that they will prepare an Environmental Assessment (EA) that describes and evaluates the probable impacts of the applicant's proposal and alternatives for the project.

One element of the EA process is scoping. Scoping activities are initiated early to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EA;
- Identify significant environmental issues related to the operation of the existing project;
- Determine the depth of analysis for issues that will be discussed in the EA; and
- Identify resource issues that are of lesser importance and, consequently, do not require detailed analysis in the EA.

Scoping Meetings

Commission staff will conduct two scoping meetings for the Clyde River Project. All interested individuals, organizations, and agencies are invited to attend the meetings and help staff identify the scope of environmental issues that should and should not be analyzed in the Clyde River Project EA.

The first scoping meeting for the Clyde River Project will be conducted on March 9, 1994, from 7 p.m. to 10

p.m. in the auditorium of the North Country Union High School on Veterans Avenue in Newport, Vermont. The second scoping meeting will be conducted on March 10, 1994, from 7 p.m. to 10 p.m. in the auditorium of the Grand Isle School located at 224 U.S. Route 2, in Grand Isle, Vermont.

Procedures

The meetings, which will be recorded by a stenographer, will become part of the formal record of the Commission's proceeding on the Clyde River Project. Individuals presenting statements at the meetings will be asked to sign in before the meetings start and to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during the public meeting. Speaking time allowed for individuals will be determined before the meetings, based on the number of persons wishing to speak and the approximate amount of time available for the sessions, but all speakers will be provided at least five minutes to present their views.

Objectives of the Scoping Meetings

At the scoping meetings, the staff will:

- Summarize the environmental issues tentatively identified for analysis in the EA;
- Identify resource issues that are of lessor importance and, therefore, do not require detailed analysis;
- Solicit from the meeting participants all available information, especially quantifiable data, concerning significant local resources; and
- Encourage statements from experts and the public on issues that should be analyzed in the EA.

Information Requested

Federal and state resources agencies, local government officials, interested groups, area residents, and concerned individuals are requested to provide any information they believe will assist the Commission staff to analyze the environmental impacts associated with relicensing the project. The types of information sought include the following:

- Data, reports, and resource plans that characterize the baseline physical, biological, or social environments in the vicinity of the project;
- Information and data that helps staff identify or evaluate significant environmental issues; and
- Evidence that would support a conclusion that the project does not or would not contribute to adverse cumulative effects on resources within the river basin.

Scoping information and associated comments should be submitted to the Commission no later than April 1, 1994. Written comments should be provided at the scoping meeting or mailed to the Commission, as follows: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All correspondence should clearly show the following caption on the first page: Clyde River Hydroelectric Project, FERC No. 2306.

All filings sent to the Secretary of the Commission should contain an original and eight copies. Failure to file an original and eight copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

Intervenors are reminded of the Commission's Rules of Practice and Procedure requiring them to serve a copy of all documents filed with the Commission on each person whose name is listed on the project's service list.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4638 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–28–000]

CMS Generation S.A.; Application for Commission Determination of Exempt Wholesale Generator Status

February 23, 1994.

On February 15, 1994, CMS Generation S.A., Av. Roque Saenz Peña 1116, piso 9 (1035), Buenos Aires, Argentina, c/o Los Nihuiles S.A., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

CMS Generation S.A. is a subsidiary of CMS Enterprises Company, which is a wholly-owned subsidiary of CMS Energy Corporation. Through affiliates, CMS Generation S.A. will participate in a bid to hold and operate three hydroelectric generating facilities with a combined capacity of 265.2 MW on the Atuel River, 350 kilometers south of the City of Mendoza in Argentina.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before March 14, 1994 and must be served on the applicant. 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. 94–4640 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–5–016]

Columbia Gas Transmission Corp.; Corrected Compliance Filing

February 23, 1994.

Take notice that on February 18, 1994, Columbia Gas Transmission Corporation (Columbia) filed tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, as listed on Attachment A. Such tariff sheets include corrected tariff sheets to become effective November 1, 1993 and January 1, 1994.

Columbia states that this filing is being made to correct an error in the demand determinants included in the Second Revised Compliance Filing and the Third Revised Compliance Filing in these proceedings. Columbia states that the corrected tariff sheets eliminate a "double-counting" of certain demand and commodity determinants associated with the conversion of the X–70 rate schedule to transportation service under a part 284 service agreement. In light of this correction, Columbia is withdrawing the sheets listed on Attachment B and pending in Docket No. RS92–5–013.

Columbia states that a copy of the filing is being served on all parties to this proceeding, jurisdictional customers, and interested state Commissions.

Any person desiring to protest this 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 Procedures. All such motions or protests should be filed on or before March 2, 1994. 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.

Attachment A

Proposed to Be Effective November 1, 1993

Second Sub Original Sheet No. 25
Second Sub Original Sheet No. 26
Second Sub Original Sheet No. 27
Second Sub Original Sheet No. 28
Second Sub Original Sheet No. 30A
Second Sub Original Sheet No. 30B
Second Sub Original Sheet No. 30C
Second Sub Original Sheet No. 30D

Proposed to Be Effective January 1, 1994

Sub Third Revised Sheet No. 25
Sub Third Revised Sheet No. 26
Sub Third Revised Sheet No. 27
Sub Third Revised Sheet No. 28
Sub Second Revised Sheet No. 30A
Sub Second Revised Sheet No. 30B
Sub Second Revised Sheet No. 30C
Sub Second Revised Sheet No. 30D

Attachment B

Withdraw Sheets Proposed to Be Effective November 1, 1993

Substitute Original Sheet No. 25
Substitute Original Sheet No. 26
Substitute Original Sheet No. 27
Substitute Original Sheet No. 28
Substitute Original Sheet No. 30A
Substitute Original Sheet No. 30B
Substitute Original Sheet No. 30C
Substitute Original Sheet No. 30D

Withdraw Sheets Proposed to Be Effective January 1, 1994

Third Revised Sheet No. 25
Third Revised Sheet No. 26
Third Revised Sheet No. 27
Third Revised Sheet No. 28
Second Revised Sheet No. 30A
Second Revised Sheet No. 30B
Second Revised Sheet No. 30C
Second Revised Sheet No. 30D

[FR Doc. 94–4634 Filed 2–28–94; 8:45 a.m.]

BILLING CODE 6717–01–M

[Docket No. ER94–967–000]

Delmarva Power & Light Company; Filing

February 17, 1994.

Take notice that on February 10, 1994, Delmarva Power & Light Company (DPL) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an Agreement between DPL and New York State Electric & Gas Corporation (NYSEG) dated February 4, 1994.

DPL states that the Agreement sets for the terms and conditions for the sale of short-term energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to NYSEG. DPL requests that the Commission waive its standard notice period and allow this Agreement to become effective on March 1, 1994.

DPL states that a copy of this filing has been sent to NYSEG and will be furnished to the New York Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 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 March 3, 1994. 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. 94–4641 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–15–000]

MDU Resources Group, Inc.; Application

February 23, 1994.

Take notice that on February 14, 1994, MDU Resources Group, Inc. filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act seeking an order authorizing the issuance of an aggregate of not to exceed $60,000,000 principal amount of one or more series of its First Mortgage Bonds and/or of secured medium term notes and an exemption from competitive bidding.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 94–4639 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–138–000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 23, 1994

Take notice that on February 18, 1994, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to become effective April 1, 1994:

First Revised Sheet Number 103
Second Revised Sheet Number 157
First Revised Sheet No. 158
First Revised Sheet No. 236
First Revised Sheet Number 262
First Revised Sheet Number 262A
First Revised Sheet Number 431
First Revised Sheet Number 500
Second Revised Sheet Number 501
First Revised Sheet Number 502

Northern Border states that the purpose of this filing is to: (i) Require Northern Border to refund or credit to Shippers overpayment amounts and associated carrying charges at an earlier date; (ii) revise the Minimum Revenue Credit (MRC) calculation; (iii) provide for a mileage based determination of any Billing Adjustment for Failure to Accept Gas and Tender Deficiencies; (iv) provide Shippers the option to purchase Company Use Gas and Lost or Otherwise Unaccounted for Gas; (v) revise Article 4 of the IT–1 Transportation Agreement; and (vi) revise the index of firm Shippers. The herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 2, 1994. Protests will be considered but

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4637 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–5–59–001]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 23, 1994.

Take notice that on February 18, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that on January 5, 1994, Northern filed Sixth Revised Sheet No. 53 to establish the Index Price for December 1993. On January 14, 1994, Northern filed 2 Substitute Fifth Revised Sheet No. 53 in Docket No. RP94–64–002 to revise the rates for Rate Schedule GS–T due to revisions of certain aspects of Northern's quarterly transition cost components.

Northern states that due to the timing of these filings, Sixth Revised Sheet No. 53 is the currently effective sheet for the period January 1, 1994, through January 31, 1994. However, this sheet does not reflect the updated GS–T transition cost components as filed by Northern in 2 Substitute Fifth Revised Sheet No. 53. Therefore, Northern hereby files Substitute Sixth Revised Sheet No. 53 to appropriately reflect the December 1993 Index Price of $1.9976 and the currently effective transition cost components for Rate Schedule GS–T effective January 1, 1994.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 2, 1994. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant parties to the proceedings. Copies of the filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4635 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–230–000]

Northwest Pipeline Corporation; Application

February 23, 1994.

Take notice that on February 16, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed an application with the Commission in Docket No. CP94–230–000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for authorization to (1) install valves and piping at its Sumner compressor station in Pierce County, Washington, to accommodate a mobile compressor unit and to (2) temporarily install and operate two existing mobile compressor units with pre-granted abandonment at the Snohomish compressor station in Snohomish County, Washington, and the Sumner compressor station, all as more fully set forth in the application which is open to the public for inspection.

Northwest proposes to temporarily add a 1,343 H.P. mobile compressor unit at both of the Sumner and Snohomish compressor stations for operation during the summers of 1994 and 1995. Northwest also proposes to permanently install additional piping and valves at the Sumner compressor station in order to accommodate a mobile compressor unit. Northwest proposes to remove the mobile compressor units at the end of each summer season to make them available for their ongoing purpose of temporarily replacing out-of-service compressor units as needed at other locations on Northwest's system during peak service periods. Northwest estimates that it would spend approximately $100,000 to install the piping and valves at the Sumner compressor station and $5,000 for each of the temporary connections and removals of the mobile compressor units.

Northwest states that the proposed temporary horsepower additions at the Sumner and Snohomish compressor stations would increase the capacity through these two compressor stations by about 24 Mmcf per day under an off-peak south-flow design scenario. Until Northwest completes the previously authorized[1] permanent upgrades at these compressor stations, availability of the mobile units would enhance Northwest's operational capability to accommodate receipt point flexibility to switch between domestic and Canadian gas supplies under existing transportation agreements serving markets south of these compressor stations.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 6, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Lois D. Cashell,

Secretary.

[FR Doc. 94–4642 Filed 2–28–94; 8:45 am]

BILLING CODE 6717–01–M

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[1] *See* order issued in Docket No. CP93–437–000 at 64 FERC ¶62,175 (1993).

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4843-5]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as Amended by the Superfund Amendments and Reauthorization Act—Idaho Pole Co. Site, Bozeman, MT

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h) concerning the Idaho Pole Company site near Bozeman, Montana. The proposed administrative settlement requires Idaho Pole Company (Washington Corporation); Idaho Pole Company (Co-Partnership); Burlington Northern Railroad Company; L.D. McFarland Company, Ltd.; McFarland Cascade Holdings, Inc.; Brendon Corry McFarland; and Gregory D. McFarland ("Settling Parties") to pay $2,193,578.00 to the U.S. Environmental Protection Agency ("EPA"). The settlement resolves the liability of Settling Parties to the United States under Section 107 of CERCLA for reimbursement of response costs incurred at the Idaho Pole Company site pursuant to CERCLA through September 30, 1993.

DATES: Opportunity for comment: Comments must be submitted on or before March 31, 1994.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Montana Office Record Center, Federal Building, 301 S. Park, Drawer 10096, Helena, Montana 59626-0096. Comments should be addressed to Jim Harris, Remedial Project Manager, at the above address, and should reference the Idaho Pole Company site.

FOR FURTHER INFORMATION CONTACT: Jim Harris at (406) 449-5720.

It is so agreed:

Dated: February 9, 1994.

William Yellowtail,

Regional Administrator.

[FR Doc. 94-4650 Filed 2-28-94; 8:45 am]

BILLING CODE 8560-50-M

[FRL-4843-2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of intent to delete Revere Textile Prints Corporation Superfund Site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region I announces its intent to delete the Revere Textile Prints Corporation Superfund Site (the Revere Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended. EPA and the State of Connecticut have determined that all appropriate CERCLA actions have been implemented and that no further CERCLA cleanup is appropriate. Moreover, EPA and the State have determined that removal activities conducted at the Revere Site to date have been protective of public health, welfare, and the environment with regard to CERCLA.

DATES: Comments concerning this site may be submitted on or before March 31, 1994.

ADDRESSES: Comments may be mailed to: Eric van Gestel, Remedial Project Manager, HEC CAN 6, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Boston, MA 02203.

Comprehensive information on this site is available through the EPA Region I public docket, which is located at EPA's Region I office and is available for viewing by appointment only from 10 a.m. to 1 p.m. and from 2 p.m. to 4 p.m., Monday through Friday, excluding holidays. Requests for appointments of copies of the background information from the Regional public docket should be directed to the EPA Region I docket office.

The address for the Regional docket office is: Ms. Linda D'Amore, Docket Clerk, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building—RCG, Boston, MA 02203, (617) 565-3351.

FOR FURTHER INFORMATION CONTACT: Background information from the Regional public docket is also available for viewing at the Revere Site information repository located with: Clair French, Sterling Public Library, 1110 Plainfield Pike, Oneco, CT 06373, (203) 564-2692.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

EPA Region I announces its intent to delete the Revere Textile Prints Corporation Superfund Site, Sterling, Connecticut, from the NPL, which constitutes Appendix B of the NCP, and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (the Fund). Pursuant to § 300.425(e) (3) of the NCP, any site deleted from the NPL remains eligible for fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning this site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required under CERCLA;

(ii) All appropriate fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate under CERCLA; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures under CERCLA is not appropriate.

III. Deletion Procedures

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region I will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region I has recommended deletion and has prepared the relevant documents.

2. The State of Connecticut has concurred with the decision to delete the site from the NPL.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package, which starts two weeks from the date of the notice, March 15, 1994, and will conclude on April 14, 1994.

4. The Region has made all relevant documents available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion will occur after the EPA Regional Administrator places a notice in the Federal Register. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region I.

IV. Basis for Intended Site Deletion

The Revere Site is located in the center of Sterling, CT at the intersection of Route 14 and Main Street. The former textile mill operated from 1879 until March 1980 when a fire destroyed most of the buildings. The mill used a variety of pigments, paints and solvents to dye and clean textiles. In 1987, EPA added the site to the National Priorities List, making it eligible for federal action under the Superfund law.

Over 1500 drums of hazardous substances stored on the site were removed in 1983, along with some contaminated soil. The possibility of residual contamination from these drums in area soil and ground water prompted EPA to continue investigations at the site.

The Remedial Investigation which began in 1990 included sampling of site soil, sediments, air, and ground water, and also testing of surface water such as the Moosup River. EPA found limited contamination in certain areas of the site, but not enough to cause a significant risk to human health or the environment.

Some of the contaminants found on the site during the Remedial Investigation include volatile organic compounds, heavy metals, and pesticides. In signing the Record of Decision, EPA assumes that the site will be developed for industrial or commercial purposes. Under this scenario, contamination at the site would not result in an unacceptable risk, therefore, no further work will occur. Also included in the final decision is a five year ground water monitoring program to ensure that contaminant levels do not increase.

EPA proposed the no-action alternative in August, 1992 and held a thirty day public comment period to accept comments on the plan. Copies of the Record of Decision along with responses to public comments are available in the Sterling Public Library in Oneco, Connecticut and in the EPA Records Center in Boston.

The Agency for Toxic Substances and Disease Registry (ATSDR) completed a health assessment for the Revere Site in December, 1993. ATSDR reviewed the remedial investigation data and has made determinations in that document consistent with the no-action Record of Decision that the concentrations of contaminants measured did not pose an imminent health threat.

The Town of Sterling, Connecticut imposed deed restrictions at the Revere Site which include prohibitions of both present and future ground water use and non-commercial development.

EPA, with concurrence of the State of Connecticut, has determined that all appropriate Fund-financed responses under CERCLA at the Revere Site have been completed, and that no further cleanup by responsible parties under CERCLA is appropriate.

Dated: December 28, 1993.

Paul G. Keough,

Acting Regional Administrator, USEPA Region I.

[FR Doc. 94–4652 Filed 2–28–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1009–DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi, (FEMA–1009–DR), dated February 18, 1994, and related determinations.

EFFECTIVE DATE: February 20, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Mississippi dated February 18, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 18, 1994:

Alcorn, Benton, Calhoun, Chickasaw, Desoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Panola, Pontotoc, Prentiss, Quitman, Tate, Tippah, Tishomingo, Tunica, and Union Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

G. Clay Hollister,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 94–4583 Filed 2–28–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1009–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1009–DR), dated February 18, 1994, and related determinations.

EFFECTIVE DATE: February 18, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 18, 1994, 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.*), as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from a severe winter storm, freezing rain, and sleet on February 9, 1994, and continuing is of 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 Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from 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 added at a later date, if 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, 42 U.S.C. 5153, 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 J. Roland Sarabia 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 Mississippi to have been affected adversely by this declared major disaster:

Bolivar, Coahoma, Leflore, Sunflower, Tallahatchie, Washington, and Yalobusha Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James Lee Witt,

Director.

[FR Doc. 94–4584 Filed 2–28–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Guillermo E. Briceno, 9735 NW 52nd Street, #220, Miami, FL 33178, Sole Proprietor

Rail Van, Inc. dba Multi Modal, Division of Rail Van, Inc., 400 West Wilson Bridge Road, Worthington, OH 43085, Officers: Jeffrey R. Brashares, President; William R. Lee, Exec. Vice President; Denis M. Bruncak, Vice President

Gulf Shipping Company, 6245 Renwick No. 4526, Houston, TX 77081, Ahmed M. Mohammed, Sole Proprietor

Derwent Freight International Inc., Raritan Center, 426 Northfield Avenue, Edison, NJ 08818, Officers: Kevin John Wall, Director; Glenn Patrick Overton, Director

Venchi International Corp., 780 NW Le June Rd., Unit #9, Miami, FL 33126, Officer: Patricia Nazar, President/Chairman/Stockholder

Todd Maritime Services, 1406 45th Street, North Bergen, NJ 07047, Richard Todd, Sole Proprietor.

Dated: February 23, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–4516 Filed 2–28–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Recession of Order of Revocation

Notice is hereby given that the Order of Revocation pertaining to the following ocean freight forwarder has been rescinded by the Federal Maritime Commission pursuant to sections 14 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name Address
3640	Ruben Posada dba Posada International Cargo, 1595 East El Segundo Blvd., El Segundo, CA 90245.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–4517 Filed 2–28–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of December 21, 1993

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on December 21, 1993.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests a strong advance in economic activity in recent months. Total nonfarm payroll employment rose appreciably further in November, and the civilian unemployment rate fell considerably to 6.4 percent. Industrial production increased sharply in October and November, partly reflecting a continuing rebound in the output of motor vehicles. Retail sales were up moderately in November after a large increase in October. Housing starts advanced substantially in November. Business equipment expenditures have been rising rapidly, and nonresidential construction has turned up from depressed levels. The nominal U.S. merchandise trade deficit in October was about unchanged from its average rate in the third quarter. Broad indexes of consumer and producer prices suggest little change in inflation trends, although prices of some raw materials have increased recently.

Short-term interest rates have changed little, while intermediate- and long-term rates have risen slightly since the Committee meeting on November 16. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G–10 currencies is about unchanged on balance over the intermeeting period.

Growth of M2 and M3 strengthened in November, and both aggregates have risen at somewhat faster rates since late summer than earlier in the year. For the year through November, M2 and M3 are estimated to have grown at rates somewhat above the lower end of the Committee's ranges for the year. Total domestic nonfinancial debt has expanded at a moderate rate in recent months, and for the year through November it is estimated to have increased at a rate in the lower half of the Committee's monitoring range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July lowered the ranges it had established in February for growth of M2 and M3 to ranges of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The Committee anticipated that

[1] Copies of the Minutes of the Federal Open Market Committee meeting of December 21, 1993, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

developments contributing to unusual velocity increases would persist over the balance of the year and that money growth within these lower ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt also was lowered to 4 to 8 percent for the year. For 1994, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1993 to the fourth quarter of 1994, of 1 to 5 percent for M2 and 0 to 4 percent for M3. The Committee provisionally set the monitoring range for growth of total domestic nonfinancial debt at 4 to 8 percent for 1994. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, February 22, 1994.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 94–4539 Filed 2–28–94; 8:45 am]

BILLING CODE 6210–01–F

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 24, 1994. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9 a.m. and to continue until 5 p.m., with a lunch break from 1 until 2 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act Reform. Discussion led by the Bank Regulation Committee on the key elements of the interagency proposal to revise CRA rules, revisions designed to provide clearer guidance to financial institutions and set new standards on how CRA performance will be evaluated.

Truth in Savings Proposal Regarding APY Calculations. Discussion led by the Depository and Delivery Systems Committee on the merits of requiring depository institutions to use a new formula to calculate the annual percentage yield for certain accounts.

Members Forum. Presentation of individual Council members' views on the economic conditions present within their industries or local economies (including whether it is getting easier to obtain a loan, and whether there is a strong focus on lending in the inner cities).

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Consumer Credit Counseling Study. A statistical presentation by a Council member on nonprofit consumer credit counseling services affiliated with the National Foundation for Consumer Credit.

Committee Reports. Reports from Council committees on their work and plans for 1994.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Monday, March 21, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, 202–452–6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202–452–3544.

Board of Governors of the Federal Reserve System, February 22, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–4540 Filed 2–28–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–413]

Announcement of a Cooperative Agreement to the Association of State and Territorial Public Health Laboratory Directors

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds to continue a cooperative agreement with the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD) for the purpose of addressing the need to maintain effective laboratory information and management systems and to promote and provide effective laboratory training to the Nation's public health laboratorians.

Approximately $1,150,000 is available in FY 1994 to fund this award. It is expected that the award will begin on July 1, 1994, and will be made for a 12-month budget period within a project period of up to 5 years. The funding estimate is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The CDC will be responsible for the activities described below:

1. Provide a forum for communication, coordination, collaboration, and consensus development among the participants in the National Laboratory Training Network (NLTN). Support activities include: Participating in policy development for the NLTN; providing a Training Advisor who serves as the principal laboratory training specialist to one of the seven area resource offices of the NLTN; providing training expertise in designing, developing, delivering, and evaluating laboratory training; participating in developing and implementing training needs assessment methodologies; continue compiling and maintaining the National Laboratory Training Resource Directory and Training Calendar that are available to Area Resource Offices (ARO) staff; developing and evaluating NLTN training products/materials; participating in evaluating the effectiveness of the NLTN; providing a NLTN coordinator who collaborates on the NLTN project aspects, including consultation on training activities, promotion of communication links,

maintenance of National Laboratory Training Resource Directory and Training Calendar; upon the request of ASTPHLD, participating in meetings relating to NLTN issues and activities including Training Committee meetings, ASTPHLD annual meetings, Area Laboratory Training Alliance (ALTA) meetings, NLTN staff meetings that involve CDC training advisors; providing staff support and assistance in developing a strategy to promote networking and communication links on the national level; providing direction in assessing the need to conduct training activities with a national focus;

2. Participate in maintaining, monitoring, and providing through the Information Network for Public Health Officials (INPHO) a public health information management system to facilitate the sharing of public health data;

3. Assist in defining core functions of a public health laboratory and in developing strategies to help laboratorians better perform these functions; and

4. Assist in developing a program to promote public health laboratory leadership.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health, HIV Infections, Sexually Transmitted Diseases, Immunization and Infectious Diseases, and Surveillance and Data Systems. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under section 317(k)(3) of the Public Health Service Act, 42 U.S.C. 247b(k)(3), as amended.

Eligible Applicant

Assistance will be provided only to the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD). No other applications are solicited. The program announcement and application kit have been sent to ASTPHLD.

ASTPHLD is uniquely qualified to be the recipient organization for the following reasons:

• ASTPHLD is the only organization that represents all the State and Territorial public health laboratory officials. By working through its own membership, the various ASTPHLD committees, and other affiliate organizations, ASTPHLD has developed a unique knowledge of the needs and operations of State public health laboratory agencies.

• The membership of ASTPHLD has already gained an enormous wealth of experience in developing information systems and laboratory training and has identified information systems and training programs as a priority need for State health agencies.

• ASTPHLD has attained a prominent position among national public health professional associations. In collaboration with the Centers for Disease Control and Prevention (CDC) and a number of other organizations, ASTPHLD developed the National Laboratory Training Network (NLTN). More than 770 training courses with over 28,000 participants have been conducted at numerous sites in the Nation.

• ASTPHLD has been the lead professional organization that has facilitated the development of the NLTN and the National Laboratory Partnership (NLP), and is therefore uniquely qualified to promote and support the continuation of the NLTN and NLP. A continuing, close, and collaborative relationship is essential to maintain the progress to date and ensure future success of these projects.

• ASTPHLD established and coordinated an NLTN Training Committee and regional NLTN training alliances composed of representatives from State public health professional organization, academia, national professional training groups, and CDC. The NLTN Training Committee provided policy guidance while the regional training alliances provide training needs assessment information and training resources. These groups have positioned ASTPHLD to address and resolve issues that promote and support further implementation of state and local action training strategies.

• ASTPHLD is the only professional association that has collected data about the structure and services of the nation's State laboratory systems and makes the data available to the public health community through its Consolidated Annual Report.

• ASTPHLD has access to State public health laboratory directors throughout the country and has demonstrated the ability to obtain their input and active involvement in key projects.

• ASTPHLD currently sponsors the only national meeting designed specifically for State public health laboratory officials.

Executive Order 12372 Review

This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement 413 and contact Carole J. Tully, Grants Management Specialist, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–09, Atlanta, Georgia 30305, telephone (404) 842–6880.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Summary" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: February 23, 1994.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–4546 Filed 2–28–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94D–0029]

International Conference on Harmonisation; Draft Guideline on the Extent of Population Exposure Required to Assess Clinical Safety for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled "The Extent of Population Exposure Required to Assess

Clinical Safety for Drugs Intended for Long-term Treatment of Non-life-threatening Conditions." This draft guideline was prepared by the Expert Group on Efficacy of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline is intended to present an accepted set of principles for the safety evaluation of drugs intended for the long-term treatment (chronic or repeated intermittent use for longer than 6 months) of non-life-threatening diseases.

DATES: Submit written comments by May 16, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Leah Ripper, Center for Drug Evaluation and Research (HFD-500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2544.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and other interested parties. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: the European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the organizing bodies and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held from October 27 through 29, 1993, the ICH Steering Committee agreed that a draft tripartite guideline entitled "Draft Guideline on the Extent of Population Exposure Required to Assess Clinical Safety for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions" should be made available for public comment. The draft guideline will be made available for comment by the European Commission and Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their respective consultation procedures. After analyzing the comments and revising the guideline if appropriate, FDA will determine whether it will adopt and issue the guideline.

The draft guideline presents an accepted set of principles for the safety evaluation of drugs intended for the long-term treatment of non-life-threatening diseases. The draft guideline distinguishes between clinical data on adverse drug events (ADE's) derived from studies of shorter duration and of exposure and data from studies of longer duration, which frequently include nonconcurrently controlled studies. The principles discussed in the draft guideline are summarized as follows: (1) Regulatory standards are valuable for the extent and duration of treatment needed to provide the safety data base for drugs intended for long-term treatment of non-life-threatening conditions; however, there are a number of circumstances where harmonized regulatory standards for the clinical safety evaluation may not be applicable; (2) further investigation is needed about the occurrence of ADE's in relation to duration of treatment for different drug classes; (3) because most ADE's first occur within the first 3 to 6 months of drug treatment, many patients should be treated and observed for 6 months at dosage levels intended for clinical use; and (4) because some serious ADE's may occur only after drug treatment for more than 6 months, some patients should be treated with the drug for 12 months.

Guidelines are generally issued under §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)), which provide for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of considering whether to revise §§ 10.85(d) and 10.90(b). Therefore, if the agency issues this guideline in final form, the guideline would not be issued under the authority of §§ 10.85(d) and 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 16, 1994, submit written comments on the draft guideline to the Dockets Management Branch (address above). Two copies are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

The Extent of Population Exposure Required to Assess Clinical Safety for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions

The objective of this guideline is to present an accepted set of principles for the safety evaluation of drugs intended for the long-term treatment (chronic or repeated intermittent use for longer than 6 months) of non-life-threatening diseases. The safety evaluation during clinical drug development is expected to characterize and quantify the safety profile of a drug over a reasonable duration of time consistent with the intended long-term use of the drug. Thus, duration of drug exposure and its relationship to both time and magnitude of occurrence of adverse events are important considerations in determining the size of the data base necessary to achieve such goals.

For the purpose of this guideline, it is useful to distinguish between clinical data on adverse drug events (ADEs) derived from studies of shorter duration of exposure and data from studies of longer duration, which frequently are non-concurrently controlled studies. It is expected that short-term event rates (cumulative 3 month incidence of about 1%) will be well characterized. Events where the rate of occurrence changes over a longer period of time may need to be characterized depending on their severity and importance to the risk-benefit assessment of the drug. The safety evaluation during clinical drug development is not expected to characterize rare adverse events, for example, those occurring in less than 1 in 1,000 patients.

The design of the clinical studies can significantly influence the ability to make

causality judgments about the relationships between the drug and adverse events. A placebo-controlled trial allows the adverse event rate in the drug-treated group to be compared directly with the background event rate in the patient population being studied. Although a study with a positive or active control will allow a comparison of adverse event rates to be made between the test drug and the control drug, no direct assessment of the background event rate in the population studied can be made. A study that has no concurrent control group makes it more difficult to assess the causality relationship between adverse events observed and the test drug.

There was general agreement on the following:

1. A harmonized regulatory standard is of value for the extent and duration of treatment needed to provide the safety data base for drugs intended for long-term treatment of non-life-threatening conditions. Although this standard covers many indications and drug classes, there are exceptions.

2. Regulatory standards for the safety evaluation of drugs should be based on previous experience with the occurrence and detection of adverse drug events (ADEs), statistical considerations of the probability of detecting specified frequencies of ADEs, and practical considerations.

3. Information about the occurrence of ADEs in relation to duration of treatment for different drug classes is incomplete, and further investigations to obtain this information would be useful.

4. Available information suggests that most ADEs first occur, and are most frequent, within the first few months of drug treatment. The number of patients treated for 6 months at dosage levels intended for clinical use should be adequate to characterize the pattern of ADEs over time.

To achieve this objective the cohort of exposed subjects should be large enough to observe whether more frequently occurring events increase or decrease over time as well as to observe delayed events of reasonable frequency (e.g., in the general range of 0.5%–5%). Usually from 300–600 patients should be adequate.

5. There is concern that, although they are likely to be uncommon, some ADEs may increase in frequency or severity with time or that some serious ADEs may occur only after drug treatment for more than 6 months. Therefore, some patients should be treated with the drug for 12 months. In the absence of more information about the relationship of ADEs to treatment duration, selection of a specific number of patients to be followed for 1 year is to a large extent a judgment based on the probability of detecting a given ADE frequency level and practical considerations.

100 patients exposed for a minimum of 1 year is considered to be acceptable to include as part of the safety data base. The data should come from prospective studies appropriately designed to provide at least one year exposure at dosage levels intended for clinical use. When no serious ADE is observed in a one year exposure period this number of patients can provide reasonable assurance that the true cumulative 1-year incidence is no greater than 3%.

6. It is anticipated that the total number of individuals treated with the investigational drug, including short-term exposure, will be about 1500. Japan currently accepts 500–1500 patients; the potential for a smaller number of patients is due to the post-marketing surveillance requirement, the actual number for a specific drug being determined by the information available on the drug and drug class.

7. There are a number of circumstances where the harmonized general standards for the clinical safety evaluation may not be applicable. Reasons for, and examples of, these exceptions are listed below. It is expected that additional examples may arise. It should also be recognized that the clinical data base needed for efficacy testing may be occasionally larger or may give rise to a need for longer patient observation than that acceptable under this guideline.

Exceptions:

a. Instances where there is concern that the drug will cause late developing ADEs, or cause ADEs that increase in severity or frequency over time, would result in a need for a larger and/or longer-term safety data base. The concern could arise from:

(1). data from animal studies;

(2). clinical information from other agents with related chemical structures or from a related pharmacologic class; and

(3). pharmacokinetic or pharmacodynamic properties known to be associated with such ADEs.

b. Situations in which there is a need to quantitate the occurrence rate of an expected specific low frequency ADE will result in a need for a greater long-term data base. Examples would include situations where a specific serious ADE has been identified in similar drugs or where a serious event that could represent an alert event is observed in early clinical trials.

c. Larger safety data bases may be needed to make risk/benefit decisions in situations where the benefit from the drug is either: (1) small (e.g., symptomatic improvement in less serious medical conditions) or (2) will be experienced by only a fraction of the treated patients (e.g., certain preventive therapies administered to healthy populations) or; (3) is of uncertain magnitude (e.g., efficacy determination on a surrogate endpoint).

d. In situations where there is concern that a drug may add to an already significant background rate of morbidity or mortality, clinical trials may need to be designed with a sufficient number of patients to provide adequate statistical power to detect prespecified increases over the baseline morbidity or mortality.

e. In some cases, a smaller number of patients may be acceptable, for example, where the intended treatment population is small.

8. Filing for approval will usually be possible based on the data from patients treated through 6 months. Data on patients treated through 12 months are to be submitted as soon as available and prior to approval in the United States and Japan but may be submitted after approval in the E.C. In the U.S. the initial submission for those drugs designated as priority drugs is expected to include the 12 months patient data.

Dated: February 23, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4567 Filed 2–24–94; 1:35 pm]

BILLING CODE 4160–01–F

[Docket No. 94D–0028]

International Conference on Harmonisation; Draft Guideline on Repeated Dose Tissue Distribution Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled "Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies." The draft guideline was prepared by the Safety Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guideline is intended to provide guidance on the circumstances when repeated dose tissue distribution studies should be considered and on the conduct of those studies.

DATES: Written comments by May 16, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding the draft guideline: Alan S. Taylor, Center for Drug Evaluation and Research (HFD–502), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2544.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with technical input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and other interested parties. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: the European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held from October 27 through 29, 1993, the ICH Steering Committee agreed that the draft tripartite guideline entitled "Toxicokinetics: Guidance for Repeated Dose Tissue Distribution Studies" should be made available for public comment. The draft guideline will be made available for comment by the European Commission and Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their respective consultation procedures. After analyzing the comments and revising the guideline, if appropriate, FDA will determine whether it will adopt and issue the guideline.

The draft guideline recommends that repeated dose tissue distribution studies should not be required uniformly for all compounds and should only be conducted when appropriate data cannot be derived from other sources. Repeated dose studies may be appropriate for compounds which have: (1) An apparently long half life; (2) incomplete elimination; or (3) unanticipated organ toxicity. The draft guideline provides general guidance on the use of radio-labelled compounds, dose and species selection, and duration of studies.

Guidelines are generally issued under §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)), which provide for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of considering whether to revise §§ 10.85(d) and 10.90(b). Therefore, if the agency issues this guideline in final form, it would not be issued under the authority of §§ 10.85(d) and 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 16, 1994, to the Dockets Management Branch (address above) submit written comments on the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Pharmacokinetics: Guidance for Repeated Dose Tissue Distribution Studies

I. Introduction

A comprehensive knowledge of the absorption, distribution, metabolism, and elimination of a compound is important for the interpretation of pharmacology and toxicology studies. Tissue distribution studies are essential in providing information on distribution and accumulation of the compound and/or metabolites especially in relation to potential sites of action. This information may be useful for designing toxicology and pharmacology studies and for interpreting the results of these experiments.

In the European Community, the United States, and Japan, there has been a general agreement on the need to conduct single dose tissue distribution studies as part of the preclinical package. These studies often provide sufficient information about tissue distribution.

There has been no consistent requirement for repeated dose tissue distribution studies. However, there may be circumstances when assessments after repeated dosing may yield important information.

This paper provides guidance on circumstances when repeat dose tissue distribution studies should be considered and on the conduct of such studies.

II. Circumstances Under Which Repeated Dose Tissue Distribution Studies Should Be Considered

1. When information is available to predict that accumulation of a compound will occur in organs and tissues after repeated administration, then the extent and the time course of accumulation and elimination should be examined by repeated dose tissue distribution studies. For example, when single dose tissue distribution studies suggest that the apparent half-life of the test compound (and/or metabolites) in organs or tissues significantly exceeds the apparent half life of the elimination phase in plasma and is more than twice the dosing interval in the toxicity studies, repeated dose studies may be appropriate.

2. When repeated dose pharmacokinetic or toxicokinetic data suggest an accumulation of the compound and/or metabolites, which was not predicted by single dose kinetic studies, repeated dose tissue distribution studies should be considered.

3. When patho-morphological changes are observed that would not be predicted from short term toxicity studies and single dose tissue distribution studies, repeated dose tissue distribution studies may aid in the interpretation of these findings. Those organs or tissues which were the site of the lesions should be the focus of such studies.

III. Design and Conduct of Repeated Dose Tissue Distribution Studies

1. The objectives of these studies may be achieved using radio-labelled compounds or alternative methods of sufficient sensitivity and specificity.

2. Dose level(s) and species should be chosen to address the problem that led to the consideration of the repeated dose tissue distribution study.

3. Information from previous pharmacokinetic and toxicokinetic studies should be used in selecting the duration of dosing in repeated dose tissue distribution studies. One week of dosing is normally considered to be a minimum period. A longer duration should be selected when the blood/plasma concentration of the drug and/or its metabolites does not reach steady state. It is normally considered unnecessary to dose for longer than 3 weeks.

4. Consideration should be given to measuring unchanged compound and/or metabolites in organs and tissues in which extensive accumulation occurs or if it is believed that such data may clarify mechanisms of organ toxicity.

IV. Conclusions

Tissue distribution studies are an essential component in the preclinical kinetics programme. For most compounds, it is expected that single dose tissue distribution studies with sufficient sensitivity and specificity will provide an adequate assessment of tissue distribution and the potential for accumulation. Thus, repeated dose tissue distribution studies should not be required uniformly for all compounds. Repeated dose studies may be appropriate under certain circumstances based on the data from single dose tissue distribution studies, toxicity and toxicokinetic studies. The studies may be most appropriate for compounds which have an apparently long half life, incomplete elimination or unanticipated organ toxicity. The design and timing of repeated dose tissue distribution studies should be determined on a case-by-case basis.

Dated: February 23, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4568 Filed 2–24–94; 1:35 pm]

BILLING CODE 4160–01–F

[Docket No. 94D–0016]

International Conference on Harmonisation; Draft Guideline on Validation of Analytical Procedures for Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline on the validation of analytical procedures for pharmaceuticals. This draft guideline was prepared by the Expert Working Group on Quality of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This draft guideline is intended to present characteristics that should be considered during the validation of the analytical procedures included as part of registration applications for pharmaceuticals.

DATES: Written comments by May 16, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Charles S. Kumkumian, Center for Drug Evaluation and Research (HFD–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4330.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and other interested parties. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held from October 27 through 29, 1993, the ICH Steering Committee agreed that a draft tripartite guideline entitled "Draft Guideline on Validation of Analytical Procedures" should be made available for public comment. The draft guideline will be made available for comment by the European Commission and Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their respective consultation procedures. After analyzing the comments and revising the guideline if appropriate, FDA will determine whether it will adopt and issue the guideline.

The draft guideline presents a discussion of the characteristics that should be considered during the validation of the analytical procedures included as part of registration applications submitted in Europe, Japan, and the United States. The draft guideline discusses common types of analytical procedures and defines basic terms, such as "analytical procedure," "specificity," and "precision." These terms and definitions are meant to bridge the differences that often exist between various compendia and regulators of the European Union, Japan, and the United States.

Guidelines are generally issued under §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)), which provide for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of considering whether to revise § 10.85(d) and § 10.90(b). Therefore, if the agency issues this guideline in final form, the guideline would not be issued under the authority of § 10.85(d) and § 10.90(b) and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 16, 1994, submit to the Dockets Management Branch (address above) written comments on the draft guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Text on Validation of Analytical Procedures

1. Introduction

This document presents a discussion of the characteristics that should be considered during the validation of the analytical procedures included as part of registration applications submitted within Europe, Japan, and the United States. This document does not necessarily seek to cover the testing that may be required for registration in, or export to, other areas of the world. Furthermore, this text presentation serves as a collection of terms, and their definitions, and is not intended to provide direction on how to accomplish validation. These terms and definitions are meant to bridge the differences that often exist between various compendia and regulators of Europe, Japan, and the United States.

The objective of validation of an analytical procedure is to demonstrate that it is suitable for its intended purpose. A tabular summation of the characteristics applicable to identification, control of impurities and assay procedures is included. Other analytical procedures may be considered in future additions to this document.

2. Types of Analytical Procedures to be Validated

The discussion of the validation of analytical procedures is directed to the four most common types of analytical procedures:

- Identification tests.
- Quantitative measurements for impurities' content.
- Limit tests for the control of impurities.
- Quantitative measure of the active moiety in samples of drug substance or drug product or other selected component(s) in the drug product.

Although there are many other analytical procedures, such as dissolution testing for drug products or particle size determination for drug substance, these have not been addressed in the initial text on validation of analytical procedures. Validation of these additional analytical procedures is equally important to those listed herein and may be addressed in subsequent documents.

A brief description of the types of tests considered in this document is provided below.

• Identification tests are intended to ensure the identity of an analyte in a sample. This is normally achieved by comparison of a property of the sample (e.g. spectrum, chromatographic behavior, chemical reactivity, etc) to that of a reference standard.

• Impurity tests can be either a quantitative test or a limit test for the impurity in a sample. Either test is intended to accurately reflect the purity characteristics of the sample. Different validation characteristics are needed for a quantitative test than for a limit test.

• Assay procedures are intended to measure the analyte present in a given sample. In the context of this document, the assay represents a quantitative measurement of the major component(s) in the drug substance. For the drug product, similar validation characteristics also apply when assaying for the active or other selected component(s). The same validation characteristics may also apply to assays associated with other analytical procedures (e.g. dissolution).

The objective of the analytical procedure should be clearly understood since this will govern the validation characteristics which need to be evaluated. Typical validation characteristics which should be considered are listed below:

Accuracy;
Precision:
Repeatability,
Intermediate precision,
Reproducibility;
Specificity;
Detection limit;
Quantitation limit;
Linearity;
Range.

Each of these validation characteristics is defined in the attached Glossary. The table lists those validation characteristics regarded as the most important for the validation of different types of analytical procedures. This list should be considered typical for the analytical procedures cited but occasional exceptions should be dealt with on a case by case basis. It should be noted that robustness is not listed in the table but should be considered at an appropriate stage in the development of the analytical procedure.

Table

Type of analytical procedure; characteristics	Identification	Impurities purity test		Assay; content/potency dissolution: measurement only
		Quantitation	Limit	
Accuracy	–	+	–	+
Precision:				
Repeatability	–	+	–	+
Intermediate precision	–	+[3]	–	+[3]
Reproducibility	–	–[1]	–	–[1]
Specificity	+	+	+	+[2]
Detection limit	–	+	+	–
Quantitation limit	–	+	–	–
Linearity	–	+	–	+
Range	–	+	–	+

Note: – signifies that this parameter is not normally evaluated; + signifies that this parameter is normally evaluated.
[1] May be needed in some cases.
[2] May not be needed in some cases.
[3] In cases where reproducibility has been performed, intermediate precision is not needed.

Annex

Glossary

1. Analytical Procedure

The analytical procedure is a detailed description of the steps necessary to perform each analytical test. This may include but is not limited to: the sample, the reference standard and the reagents preparations, use of the apparatus, generation of the calibration curve, and use of the formulae for the calculation, etc.

2. Specificity

Specificity is the ability to assess unequivocally the analyte in the presence of components which may be expected to be present. Typically these might include impurities, degradants, matrix, etc.

Lack of specificity of an individual analytical procedure may be compensated by other supporting analytical procedure(s).

This definition has the following implications:

Identification: to ensure the identity of an analyte.

Purity Tests: to ensure that all the analytical procedures performed allow an accurate statement of the content of impurities of an analyte, i.e. related substances test, heavy metals, residual solvents content, etc.

Assay (content or potency): to provide an exact result which allows an accurate statement on the content or potency of the analyte in a sample.

3. Accuracy

The accuracy of an analytical procedure expresses the closeness of agreement between the value which is accepted either as a conventional true value or an accepted reference value and the value found.

4. Precision

The precision of an analytical procedure expresses the closeness of agreement (degree of scatter) between a series of measurements obtained from multiple sampling of the same homogeneous sample under the prescribed conditions. Precision may be performed at three levels: repeatability, intermediate precision and reproducibility.

Precision should be measured using authentic samples. However, if it is not possible to obtain a homogeneous sample it may be measured using artificially prepared samples or a sample solution.

The precision of an analytical procedure is usually expressed as the variance, standard deviation or coefficient of variation of a series of measurements.

4.1 Repeatability

Repeatability expresses the precision under the same operating conditions over a short interval of time. Repeatability is also termed intra-assay precision.

4.2 Intermediate precision

Intermediate precision expresses within laboratories variations: different days, different analysts, different equipment, etc.

4.3 Reproducibility

Reproducibility expresses the precision between laboratories (collaborative studies).

5. Detection Limit

The detection limit of an individual analytical procedure is the lowest amount of analyte in a sample which can be detected but not necessarily quantitated as an exact value.

6. Quantitation Limit

The quantitation limit of an individual analytical procedure is the lowest amount of analyte in a sample which can be quantitatively determined with suitable precision and accuracy. The quantitation limit is a parameter of quantitative assays for

low levels of compounds in sample matrices, and is used particularly for the determination of impurities and/or degradation products.

7. Linearity

The linearity of an analytical procedure is its ability (within a given range) to obtain test results which are directly proportional to the concentration (amount) of analyte in the sample.

For those analytical procedures which are not linear, another mathematical relationship (proportionality) should be demonstrated.

8. Range

The range of an analytical procedure is the interval between the upper and lower concentration (amounts) of analyte in the sample (including these concentrations) for which it has been demonstrated that the analytical procedure has a suitable level of precision, accuracy, and linearity.

9. Robustness

The robustness of an analytical procedure is a measure of its capacity to remain unaffected by small, but deliberate variations in method parameters and provides an indication of its reliability during normal usage.

Dated: February 23, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4565 Filed 2–24–94; 1:35 pm]

BILLING CODE 4160–01–F

[Docket No. 94D–0017]

International Conference on Harmonisation; Draft Guideline on Dose Selection for Carcinogenicity Studies of Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline on dose selection for carcinogenicity studies of pharmaceuticals. This draft guideline examines criteria for establishing uniformity among international regulatory agencies for high dose selection for carcinogenicity studies of human pharmaceuticals. This draft guideline was prepared by the Expert Working Group on Safety of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH), and it is intended to help ensure that dose selection for carcinogenicity studies of pharmaceuticals to support drug registration is carried out according to sound scientific principles.

DATES: Written comments by May 16, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Alan Taylor, Center for Drug Evaluation and Research (HFD–502), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2544.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and other interested parties. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held from October 27 through 29, 1993, the ICH Steering Committee agreed that the draft tripartite guideline entitled "Dose Selection for Carcinogenicity Studies of Pharmaceuticals" should be made available for public comment. The draft guideline will be made available for comment by the European Commission and Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their respective consultation procedures. After analyzing the comments and revising the guideline, if appropriate, FDA will determine whether it will adopt and issue the guideline. The draft guideline discusses criteria for high dose selection for carcinogenicity studies of pharmaceuticals. Five generally acceptable criteria are dose limiting pharmacodynamic effects, maximum tolerated dose, a minimum of a 25-fold area under the concentration-time curve (AUC) ratio (rodent:human), saturation of absorption, and maximum feasible dose. The draft guideline also considers other pharmacodynamic-, pharmacokinetic-, or toxicity-based endpoints in study design based on scientific rationale and individual merits.

Guidelines are generally issued under §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)), which provide for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of considering whether to revise §§ 10.85(d) and 10.90(b). Therefore, if the agency issues the guideline in final form, the guideline would not be issued under the authority of §§ 10.85(d) and 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 16, 1994, submit written comments on the draft guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit single copies. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Dose Selection for Carcinogenicity Studies of Pharmaceuticals

Introduction

Traditionally, carcinogenicity studies for chemical agents have relied upon the

maximally tolerated dose (MTD) as the standard method for high dose selection (Note 1). The MTD is generally chosen based on data derived from toxicity studies of 3 months' duration.

In the past, the criteria for high dose selection for carcinogenicity studies of human pharmaceuticals have not been uniform among international regulatory agencies. In Europe and Japan, dose selection based on toxicity endpoints or attaining high multiples of the maximum recommended human daily dose (greater than 100 times on a milligram per kilogram (mg/kg) basis) have been accepted. However, in the United States, dose selection based on the MTD has traditionally been the only acceptable practice. All regions have used a maximum feasible dose as an acceptable endpoint (Note 2).

For pharmaceuticals with low rodent toxicity, use of the MTD may result in the administration of very large doses in carcinogenicity studies, often representing high multiples of the clinical dose. The usefulness of an approach developed for genotoxic substances or radiation exposure where a threshold carcinogenic dose is not necessarily definable may not be appropriate for nongenotoxic agents. For nongenotoxic substances where thresholds may exist and carcinogenicity may result from alterations in normal physiology, linear extrapolations from high dose effects have been questioned. This has led to the concern that exposures in rodents greatly in excess of the intended human exposures may not be relevant to human risk, because they so greatly alter the physiology of the test species, the findings may not reflect what would occur following human exposure.

Ideally, the doses selected for rodent bioassays for nongenotoxic pharmaceuticals should provide exposures to the agent that: (1) Allow an adequate margin of safety over the human therapeutic exposure, (2) are tolerated without significant chronic physiological dysfunction and are compatible with good survival, (3) are guided by a comprehensive set of animal and human data that focuses broadly on the properties of the agent and the suitability of the animal, and (4) permit data interpretation in the context of clinical use.

In order to achieve international harmonization of requirements for high dose selection for carcinogenicity studies of pharmaceuticals, and to establish a rational basis for high dose selection, the ICH Expert Working Group on Safety initiated a process to arrive at mutually acceptable and scientifically based criteria for high dose selection. Several features of pharmaceutical agents distinguish them from other environmental chemicals and can justify a guideline which may differ in some respects from other guidelines. This should enhance the relevance of the carcinogenicity study for pharmaceuticals. Thus, much knowledge may be available on the pharmacology, pharmacokinetics, and metabolic disposition in humans. In addition, there will usually be information on the patient population, the expected use pattern, the range of exposure, and the toxicity and/or side effects that cannot be tolerated in humans. Diversity of the chemical and pharmacological nature of the substances developed as pharmaceuticals, plus the diversity of nongenotoxic mechanisms of carcinogenesis calls for a flexible approach to dose selection. This document proposes that any one of several approaches may be appropriate and acceptable for dose selection, and should provide for a more rational approach to dose selection for carcinogenicity studies for pharmaceuticals. These include:

1. Pharmacodynamic endpoints,

2. Toxicity-based endpoints,

3. Pharmacokinetic endpoints,

4. Saturation of absorption,

5. Maximum feasible dose.

Consideration of all relevant animal data and integration with available human data is paramount in determining the most appropriate endpoint for selecting the high dose for the carcinogenicity study. Relevant pharmacokinetic, pharmacodynamic and toxicity data should always be considered in the selection of doses for the carcinogenicity study regardless of the primary endpoint used for high dose selection.

In the process of defining such a flexible approach, it is recognized that the fundamental mechanisms of carcinogenesis are only poorly understood at the present time. Further, it is also recognized that the use of the rodent to predict human carcinogenic risk has inherent limitations although this approach is the best available option at this time. Thus, while the use of plasma levels of drug-derived substances represents an important attempt at improving the design of the rodent bioassay, progress in this field will necessitate continuing examination of the best method to detect human risk. This document is therefore intended to serve as guidance in this difficult and complex area recognizing the importance of updating the specific provisions outlined below as new data become available.

General Considerations for the Conduct of Dose-Ranging Studies

The considerations involved when undertaking dose-ranging studies to select the high dose for carcinogenicity studies are the same regardless of the final endpoint utilized.

1. In practice, carcinogenicity studies are carried out in a limited number of rat and mouse strains for which there are reasonable information on spontaneous tumor incidence. Ideally, rodent species/strains with metabolic profiles as similar as possible to humans should be studied (Note 3).

2. Dose-ranging studies should be conducted for both males and females for all strains and species to be tested in the carcinogenicity bioassay.

3. Dose selection is generally determined from 90-day studies using the route and method of administration that will be used in the bioassay.

4. Selection of an appropriate dosing schedule and regimen should be based on clinical use and exposure patterns, pharmacokinetics, and practical considerations.

5. Ideally, both the toxicity profile and any dose-limiting toxicity should be characterized. Consideration should also be given to general toxicity, the occurrence of preneoplastic lesions and/or tissue-specific proliferative effects, and disturbances in endocrine homeostasis.

6. Changes in metabolite profile or alterations in metabolizing enzyme activities (induction or inhibition) over time, should be understood to allow for appropriate interpretation of studies.

Pharmacodynamic Endpoints in High Dose Selection

The utility and safety of many therapeutics depend on their pharmacodynamic receptor selectivity. Pharmacodynamic endpoints for high dose selection will be highly compound-specific and are considered for individual study designs based on scientific merits (Note 10). The high dose selected should not produce disturbances of physiology or homeostasis but should produce a pharmacodynamic response in dosed animals which would preclude further dose escalation and compromise the validity of the study.

Toxicity Endpoints in High Dose Selection

ICH 1 agreed to evaluate endpoints other than the MTD for the selection of the high dose in carcinogenicity studies. These were to be based on the pharmacological properties and toxicological profile of the test compound. There is no scientific consensus for the use of toxicity endpoints other than the MTD. Therefore, the ICH Expert Working Group on Safety has currently agreed to continue use of the MTD as an acceptable toxicity-based endpoint for high dose selection for carcinogenicity studies (Note 1).

Pharmacokinetic Endpoints in High Dose Selection

A systemic exposure representing a large multiple of the human AUC (at the maximum recommended daily dose) may be an appropriate endpoint for dose selection for carcinogenicity studies for nongenotoxic therapeutic agents which have similar metabolic profiles in humans and rodents and low organ toxicity in rodents (high doses are well tolerated in rodents). The level of

animal systemic exposure should be sufficiently great, compared to human exposure, to provide reassurance of an adequate test of carcinogenicity.

It is recognized that the doses administered to different species may not correspond to tissue concentrations because of different metabolic and excretory patterns. Comparability of systemic exposure is better assessed by blood concentrations of parent drug and metabolites than by administered dose. The unbound drug in plasma is thought to be the most relevant indirect measure of tissue concentrations of unbound drug. The AUC is considered the most comprehensive pharmacokinetic endpoint since it takes into account the plasma concentration of the compound and residence time in vivo.

There is as yet, no validated scientific basis for use of comparative drug plasma concentrations in animals and humans for the assessment of carcinogenic risk to humans. However, for the present, and based on an analysis of a database of carcinogenicity studies performed at the MTD, the selection of a high dose for carcinogenicity studies which represents at a minimum a 25-fold ratio of rodent to human plasma AUC of parent compound and/or metabolites is considered pragmatic (Note 4).

Criteria for comparisons of AUC in animals and man for use in high dose selection

The following criteria are especially applicable for use of a pharmacokinetically-defined exposure for high dose selection.

1. Rodent pharmacokinetic data are derived from the strains used for the carcinogenicity studies using the route of compound administration and dose ranges planned for the carcinogenicity study (Notes 5, 6, and 7).

2. Pharmacokinetic data are derived from studies of sufficient duration to take into account potential time-dependent changes in pharmacokinetic parameters which may occur during the dose ranging studies.

3. Documentation is provided on the similarity of exposure to parent compound and metabolites between rodents and humans.

4. In assessing exposure, scientific judgment is used to determine whether the AUC comparison is based on data for the parent, parent and metabolite(s) or metabolite(s). The justification for this decision is provided.

5. Interspecies differences in protein binding are taken into consideration when estimating relative exposure (Note 8).

6. Human pharmacokinetic data are derived from studies encompassing the maximum recommended human daily dose (Note 9).

Saturation of Absorption in High Dose Selection

High dose selection based on saturation of absorption measured by systemic availability of drug-related substances is acceptable. The mid and low doses selected for the carcinogenicity study should take into account saturation of metabolic and elimination pathways.

Additional Endpoints in High Dose Selection

It is recognized that there may be merit in the use of alternative pharmacokinetic (e.g. Cmax) and toxicity endpoints, not specifically defined in this guidance on high dose selection for rodent carcinogenicity studies. Use of these additional endpoints in individual study designs should be justified. Such designs are evaluated based on their individual merits (Note 10).

Selection of Middle and Low Doses in Carcinogenicity Studies

Regardless of the method used for the selection of the high dose, the selection of the mid and low doses for the carcinogenicity study should provide information to aid in assessing the relevance of study findings to humans. The doses should be selected following integration of rodent and human pharmacokinetic, pharmacodynamic, and toxicity data. The rationale for the selection of these doses should be provided. While not all-encompassing, the following points should be considered in selection of the middle and low doses for rodent carcinogenicity studies:

1. Linearity of pharmacokinetics and saturation of metabolic pathways,

2. Human exposure and therapeutic dose,

3. Pharmacodynamic response in rodents,

4. Alterations in normal rodent physiology,

5. Mechanistic information and potential for threshold effects,

6. The unpredictability of the progression of toxicity observed in short term studies.

Summary

This guidance outlines five equally acceptable criteria for selection of the high dose for carcinogenicity studies of pharmaceuticals: dose limiting pharmacodynamic effects, maximum tolerated dose, a minimum of a 25-fold AUC ratio (rodent:human), saturation of absorption, maximum feasible dose. The use of other pharmacodynamic-, pharmacokinetic- or toxicity-based endpoints in study design is considered based on scientific rationale and individual merits. In all cases, appropriate dose ranging studies need to be conducted. All relevant information should be considered for dose and species/strain selection for the carcinogenicity study. This information should include knowledge of human use, exposure patterns and metabolism. The availability of multiple acceptable criteria for dose selection will provide greater flexibility in optimizing the design of carcinogenicity studies for pharmaceutical agents.

Note 1

The following are considered equivalent definitions of the toxicity based endpoint describing the maximum tolerated dose:

The U.S. Interagency Staff Group on Carcinogens has defined the MTD as follows:

"The highest dose currently recommended is that which, when given for the duration of the chronic study, is just high enough to elicit signs of minimal toxicity without significantly altering the animal's normal lifespan due to effects other than carcinogenicity. This dose, sometimes called the maximum tolerated dose (MTD), is determined in a subchronic study (usually 90 days duration) primarily on the basis of mortality, toxicity and pathology criteria. The MTD should not produce morphologic evidence of toxicity of a severity that would interfere with the interpretation of the study. Nor should it comprise so large a fraction of the animal's diet that the nutritional composition of the diet is altered, leading to nutritional imbalance."

"The MTD was initially based on a weight gain decrement observed in the subchronic study; i.e., the highest dose that caused no more than a 10% weight gain decrement. More recent studies and the evaluation of many more bioassays indicate refinement of MTD selection on the basis of a broader range of biological information. Alterations in body and organ weight and clinically significant changes in hematologic, urinary, and clinical chemistry measurements can be useful in conjunction with the usually more definitive toxic, pathologic or histopathologic endpoints." (See *Environmental Health Perspectives*, vol. 67:201–181, 1986.)

The Committee on Proprietary Medicinal Products of the European Communities prescribes the following: "The top dose should produce a minimum toxic effect, for example a 10% weight loss or failure of growth, or minimal target organ toxicity. Target organ toxicity will be demonstrated by failure of physiological functions and ultimately by pathological changes." (See "Rules Governing Medicinal Products in the European Communities," vol. III, 1987.)

The Ministry of Health and Welfare in Japan prescribes the following:

"The dose in the preliminary carcinogenicity study that inhibits body weight gain by less than 10% in comparison with the control and causes neither death due to toxic effects nor remarkable changes in the general signs and laboratory examination findings of the animals is the highest dose to be used in the full-scale carcinogenicity study." (See "Toxicity Test Guideline for Pharmaceuticals," chapter 5, p. 127, 1985.)

Note 2

Currently, the maximum feasible dose by dietary administration is considered 5 percent of the diet.

Note 3

This does not imply that all possible rodent strains will be surveyed for metabolic profile. But rather, that standard strains used in carcinogenicity studies will be examined.

Note 4

In order to select a multiple of the human AUC that would serve as an acceptable endpoint for dose selection for carcinogenicity studies, a retrospective analysis was performed on data from FDA files of carcinogenicity studies of products conducted at the MTD for which there was sufficient human and rodent pharmacokinetic data for comparison of AUC values. (See Contrera et al., "Report to the ICH Safety Working Group Task Force on Dose Selection for Carcinogenicity Studies.")

In 35 drug carcinogenicity studies carried out at the MTD for which there was adequate pharmacokinetic data in rats and humans, approximately 1/3 had a relative systemic

exposure ratio equal to or less than 1, and another 1/3 had a ratio greater than 1 and less than 10 at the MTD.

An analysis of the correlation between the relative systemic exposure ratio, the relative dose ratio (rat mg/kg MTD:human mg/kg maximum recommended dose (MRD) and the dose ratio adjusted for body surface area (rat mg/meter squared (M^2) MTD:human mg/M^2 MRD), performed in conjunction with the above described database analysis indicates that the relative systemic exposure corresponds better with dose ratios expressed in terms of body surface area rather than of body weight. When 123 compounds in the expanded FDA database were analyzed by this approach, a similar distribution of relative systemic exposures was observed.

In the selection of a relative systemic exposure ratio (AUC ratio) to apply in high dose selection, consideration was given to a ratio value that would be attainable by a reasonable proportion of compounds, that would detect known or probable human carcinogens (International Agency for Research on Cancer (IARC) 1 or 2A) and that represents an adequate margin of safety.

To address the issue of detection of known or probable human carcinogenic therapeutics, an analysis of exposure and/or dose ratios was performed on IARC class 1 and 2A therapeutics with positive rat findings. For phenacetin, sufficient rat and human pharmacokinetic data is available to estimate that a relative systemic exposure ratio of at least 15 is necessary to produce positive findings in a rat carcinogenicity study. For most of 14 IARC 1 and 2A drugs evaluated with positive carcinogenicity findings in rats, there is a lack of adequate pharmacokinetic data. For these compounds, the body surface area adjusted dose ratio was employed as a surrogate for the relative systemic exposure ratio. The results of this analysis indicated that using doses in rodents corresponding to body surface area ratios of 20 or less would identify the carcinogenic potential of these therapeutics.

As a result of the evaluations described above, a minimum systemic exposure ratio of 25 is proposed as an acceptable pharmacokinetic endpoint for high dose selection. This value was attained by approximately 25 percent of compounds tested, is high enough to detect known or probable (IARC 1, 2A) human carcinogenic drugs and represents an adequate margin of safety. Those therapeutics tested using a 25-fold or greater AUC ratio for the high dose will have exposure ratios greater than 75 percent of pharmaceuticals tested previously in carcinogenicity studies performed at the MTD.

Note 5

The rodent AUC's and metabolite profiles may be determined from separate steady state kinetic studies, as part of the subchronic toxicity studies, or dose ranging studies.

Note 6

AUC values in rodents are usually obtainable using a small number of animals (e.g. four or more time points with as few as four animals each), depending on the route of administration and the availability of data on the pharmacokinetic characteristics of the test compound.

Note 7

Equivalent analytical methods of adequate sensitivity and precision are used to determine plasma concentrations of therapeutics in rodents and humans.

Note 8

For example, when protein binding is low in both humans and rodents or when protein binding is high and the unbound fraction of drug is greater in rodents than in man, the comparison of total plasma concentration of drug is acceptable. When protein binding is high and the unbound fraction is greater in man than in rodents, the ratio of the unbound concentrations should be used.

Note 9

Human systemic exposure data may be derived from pharmacokinetic monitoring in normal volunteers and/or patients. In the absence of knowledge of the maximum recommended human daily dose, at a minimum, doses producing the desired pharmacodynamic effect in humans are used to derive the pharmacokinetic data.

Note 10

When using any new endpoint, either pharmacokinetic, pharmacodynamic, or toxicity based for high dose selection it is necessary to carefully consider, prior to carcinogenicity study initiation, if the endpoint can insure the acceptability of the carcinogenicity study. In the United States, it is considered advisable to do this by consultation with the FDA.

Dated: February 23, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4566 Filed 2–24–94; 1:35 pm]

BILLING CODE 4160–01–F

[Docket No. 94D–0015]

International Conference on Harmonisation; Draft Guideline on the Assessment of Systemic Exposure in Toxicity Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guideline entitled, "Toxicokinetics: A Guidance on the Assessment of Systemic Exposure in Toxicity Studies." This guideline was prepared by the Safety Expert Working Group of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This draft guideline is intended to help ensure that the assessment of systemic exposure in toxicity studies to support drug registration is carried out according to sound scientific principles.

DATES: Written comments by May 16, 1994.

ADDRESSES: Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the draft guideline: Alan S. Taylor, Center for Drug Evaluation and Research (HFD–502), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2544.

Regarding the ICH: Janet Showalter, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with technical input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and other interested parties. Through notices such as this, FDA invites public comment on ICH initiatives that have reached the draft guideline stage. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: the European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industry Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, FDA, and the U.S. Pharmaceutical Manufacturers Association. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

At a meeting held on October 27 through 29, 1993, the ICH Steering

Committee agreed that the draft tripartite guideline entitled "The Assessment of Systemic Exposure in Toxicity Studies" should be made available for public comment. The draft guideline will be made available for comment by the European Commission and Japanese Ministry of Health and Welfare, as well as by FDA, in accordance with their respective consultation procedures. After analyzing the comments and revising the guideline, if appropriate, FDA will determine whether it will adopt and issue the guideline. The draft guideline discusses toxicokinetics, which is the generation of pharmacokinetic data in nonclinical toxicity studies or ancillary studies to assess exposure. The objectives of toxicokinetics are: (1) To describe the systemic exposure achieved in animals, its relationship to dose level, and the time course of the toxicity study; (2) to relate the exposure achieved in toxicity studies to toxicological findings; (3) to support the choice of species and treatment regimen in nonclinical toxicity studies; and (4) to supply information which, along with the toxicity findings, will contribute to developing additional nonclinical toxicity studies.

Guidelines are generally issued under §§ 10.85(d) and 10.90(b) (21 CFR 10.85(d) and 10.90(b)), which provide for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to FDA. The agency is now in the process of considering whether to revise §§ 10.85(d) and 10.90(b). Therefore, if the agency issues this guideline in final form, the guideline would not be issued under the authority of §§ 10.85(d) and 10.90(b), and would not create or confer any rights, privileges, or benefits for or on any person, nor would it operate to bind FDA in any way.

Interested persons may, on or before May 16, 1994, submit written comments on the draft guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit single copies. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the draft guideline follows:

Toxicokinetics: A Guidance on the Assessment of Systemic Exposure in Toxicity Studies

1. Introduction

This Note for Guidance concerns toxicokinetics only with respect to the development of pharmaceutical products intended for use in human subjects[1].

In this context, toxicokinetics is defined as the generation of pharmacokinetic data, either as an integral component in the conduct of nonclinical toxicity studies or in specially designed supportive studies, in order to assess systemic exposure. These data may be used in the interpretation of toxicology findings and their relevance to clinical safety issues (see Note 1 for definitions of other terms used in this document).

The Note for Guidance has been developed in order to provide an understanding of the meaning and application of toxicokinetics and to provide guidance on developing test strategies in toxicokinetics. The guidance highlights the need to integrate pharmacokinetics into toxicity testing, which should aid in the interpretation of the toxicology findings and promote rational study design development.

Toxicokinetic measurements are normally integrated within the toxicity studies and as such are described in this document as 'concomitant toxicokinetics' (Note 1). Alternatively, data may be generated in other supportive studies conducted by mimicking the conditions of the toxicity studies.

Toxicokinetic procedures provide a means of obtaining multiple dose pharmacokinetic data in the test species, if appropriate parameters are monitored, thus avoiding duplication of such studies; optimum design in gathering the data will reduce the number of animals required.

Various components of the total nonclinical pharmacokinetics and metabolism programme may be of value in contributing to the interpretation of toxicology findings. However, the toxicokinetic data focuses on the kinetics of a new therapeutic agent under the conditions of the toxicity studies themselves.

Toxicokinetics is thus an integral part of the nonclinical testing programme; it should enhance the value of the toxicological data generated, both in terms of understanding the toxicity tests and in comparison with clinical data as part of the assessment of risk and safety in humans. Due to its integration into toxicity testing and its bridging character between nonclinical and clinical studies, the focus is primarily on the interpretation of toxicity tests and not on characterizing the basic pharmacokinetic parameters of the substance studied.

As the development of a pharmaceutical product is a dynamic process which involves continuous feed-back between nonclinical and clinical studies, no rigid *detailed* procedures for the application of toxicokinetics are recommended. It may not be necessary for toxicokinetic data to be collected in all studies and scientific judgement should dictate when such data may be useful. The need for toxicokinetic data and the extent of exposure assessment in individual toxicity studies should be based on a flexible step-by-step approach and a case-by-case decision making process to provide sufficient information for a risk and safety assessment.

2. The Objectives of Toxicokinetics and the Parameters Which May Be Determined

The primary objective of toxicokinetics is:

- to describe the systemic exposure achieved in animals and its relationship to dose level and the time course of the toxicity study;

Secondary objectives are:

- to relate the exposure achieved in toxicity studies to toxicological findings and contribute to the assessment of the relevance of these findings to clinical safety;
- to support (Note 1) the choice of species and treatment regimen in nonclinical toxicity studies;
- to provide information which, in conjunction with the toxicity findings, contributes to the design of *subsequent* nonclinical toxicity studies.

These objectives may be achieved by the derivation of one or more pharmacokinetic parameters (Note 2) from measurements made at appropriate time points during the course of the individual studies. These measurements usually consist of plasma (or whole blood or serum) concentrations for the parent compound and/or metabolite(s) and should be selected on a case-by-case basis. Plasma (or whole blood or serum) AUC, Cmax, and $C_{(time)}$ (Note 2) are the most commonly used parameters in assessing exposure in toxicokinetic studies. For some compounds it will be more appropriate to calculate exposure based on the (plasma protein) unbound concentration.

These data may be obtained from all animals in a toxicity study, in representative subgroups, or in satellite groups (see 3.5 and Note 3).

Toxicity studies which may be usefully supported by toxicokinetic information include single and repeated dose toxicity studies, and reproductive, genotoxicity, and carcinogenicity studies. Toxicokinetic information may also be of value in assessing the implications of a proposed change in the clinical route of administration.

3. General Principles To Be Considered

3.1 Introduction

In the following paragraphs some general principles are set out which should be taken into consideration in the design of individual studies.

It should be noted that for those toxicity studies whose performance is subject to Good Laboratory Practice (GLP) the concomitant toxicokinetics should also conform to GLP[2,3]. Toxicokinetic studies retrospectively designed to generate specific sets of data under conditions which closely mimic those of the toxicity studies should also conform to GLP.

3.2 Quantification of exposure

The quantification of systemic exposure provides an assessment of the burden on the test species and assists in the interpretation of similarities and differences in toxicity across species, dose groups, and sexes. The exposure might be represented by plasma (serum or blood) concentrations or the AUC's of parent compound and/or metabolite(s). In

some circumstances, studies may be designed to investigate tissue concentrations. When designing the toxicity studies, the exposure and dose-dependence in humans at therapeutic dose levels (either expected or established), should be considered in order to achieve relevant exposure at various dose levels in the animal toxicity studies. The possibility that there may be species differences in the pharmacodynamics of the substance (either qualitative or quantitative) should also be taken into consideration.

Pharmacodynamic or toxicodynamic effects might also give supporting evidence of exposure or even replace pharmacokinetic parameters in some circumstances.

Toxicokinetic monitoring or profiling of the toxicity studies should establish what level of exposure has been achieved during the course of the study and may also serve to alert the toxicologist to non-linear dose related changes in exposure (Note 4) which may have occurred. Toxicokinetic information may allow better interspecies comparisons than simple dose/body-weight (or surface area) comparisons[4].

3.3 Justification of time points for sampling

The time points for collecting body fluids in concomitant toxicokinetic studies should be as frequent as is necessary, but not so frequent as to interfere with the normal conduct of the study or to cause undue physiological stress to the animals (Note 5). In each study, the number of time points should be justified on the basis that they are adequate to estimate exposure (see 3.2). The justification should be based on kinetic data gathered from earlier toxicity studies, from pilot or dose range-finding studies, from separate studies in the same animal model or in other models allowing reliable extrapolation.

3.4 Contribution to the setting of dose levels in order to produce adequate exposure

3.4.1 Introduction

The setting of dose levels in repeat dose toxicity studies is largely governed by the toxicology findings and the pharmacodynamic responses of the test species. However, the following toxicokinetic principles may contribute to the setting of the dose levels.

3.4.2 Low dose levels

At the low dose level, preferably a no-toxic-effect dose level (Note 6), the exposure in toxicity studies (of all kinds) should normally exceed that expected or known to be attained in humans at steady state following therapeutic dose levels. There are, however, cases where this objective may not be achieved even with the maximum dose which can be administered.

3.4.3 Intermediate dose levels

Exposure at intermediate dose levels should normally represent an appropriate multiple (or fraction) of the exposure at lower (or higher) dose levels dependent upon the objectives of the toxicity study.

3.4.4 High dose levels

The high dose levels in toxicity studies will normally be determined by toxicological considerations. However, the exposure achieved at the dose levels used should be assessed.

Where toxicokinetic data indicate that absorption of a compound limits exposure to parent compound and/or metabolite(s) (Note 7), the lowest dose level of the substance producing the maximum exposure should be accepted as the top dose level to be used (particularly when no other dose-limiting constraint applies, Note 8).

Very careful attention should be paid to the interpretation of toxicological findings in toxicity studies (of all kinds) when the dose levels chosen result in non-linear kinetics (Note 4). However, non-linear kinetics should not necessarily result in dose limitations in toxicity studies or invalidate the findings; toxicokinetics can be very helpful in assessing the relationship between dose and exposure in this situation.

3.5 Extent of exposure assessment in toxicity studies

In toxicity studies, systemic exposure should be estimated in an appropriate number of animals and dosed groups (Note 9) to provide a basis for risk assessment.

Concomitant toxicokinetics may be performed either in all or a representative proportion of the animals used in the main study or in special satellite groups (Notes 1, 3 and 5). Normally, samples for the generation of toxicokinetic data may be collected from main study animals, where large animals are involved, but satellite groups may be required for the smaller (rodent) species.

The number of animals to be used should be the minimum consistent with generating adequate toxicokinetic data. Where both male and female animals are utilised in the main study it is normal to estimate exposure in animals of both sexes unless some justification can be made for not so doing.

Toxicokinetic data are not necessarily required from studies of different duration if the dosing regimen is essentially unchanged (see also 4.3).

3.6 Complicating factors in exposure interpretation

Although estimating exposure as described above may aid in the interpretation of toxicity studies and in the comparison with human exposure, a few caveats should be noted.

Species differences in protein binding, tissue uptake, receptor properties, and metabolic profiles should be considered. For example, it may be more appropriate for some compounds to have exposure expressed as the free (unbound) concentrations. In addition, the pharmacological activity of metabolites, the toxicology of metabolites and antigenicity of biotechnology products may be complicating factors. Furthermore, it should be noted that even at relatively low plasma concentrations, high levels of the administered compound and/or metabolite(s) may occur in specific organs or tissues.

3.7 Route of administration

The toxicokinetic strategy to be adopted for the use of alternative routes of administration, for example by inhalation, topical, or parenteral delivery, should be based on the pharmacokinetic properties of the substance administered by the intended route.

It sometimes happens that a proposal is made to adopt a new clinical route of administration for a pharmaceutical product; for example, a product initially developed as an oral formulation may subsequently be developed for intravenous administration. In this context, it will be necessary to ascertain whether changing the clinical route will significantly reduce the safety margin.

This process may include a comparison of the systemic exposure to the compound and its relevant metabolite(s) (plasma AUC and Cmax) in humans generated by the existing and proposed routes of administration. If the new route results in increased AUC and/or Cmax, or a change in metabolic route, the continuing assurance of safety from animal toxicology and kinetics should be reconsidered. If exposure is not substantially greater, or different, by the proposed new route compared to that for the existing route(s) then additional nonclinical toxicity studies may focus on local toxicity.

3.8 Determination of metabolites

A primary objective of toxicokinetics is to describe the systemic exposure to the administered compound achieved in the toxicology species. However, there may be circumstances when measurement of metabolite concentrations in plasma or other body fluids is especially important in the conduct of toxicokinetics:

- When the administered compound acts as a 'pro-drug' and the delivered metabolite is acknowledged to be the primary active entity
- When the compound is metabolised to a pharmacologically or toxicologically active metabolite which would make a significant contribution to the pharmacological or toxicological response, in addition to the compound itself (Note 10).
- When the administered compound is very extensively metabolised and the measurement of plasma or tissue concentrations of a major metabolite is the only practical means of estimating exposure following administration of the compound in toxicity studies (Note 11).

3.9 Statistical evaluation of data

The data should allow a representative assessment of the exposure. However, because large intra- and interindividual variation of kinetic parameters may occur and small numbers of animals are involved in generating toxicokinetic data, a high level of precision in terms of statistics is *not* normally possible or required. Consideration should be given to the calculation of mean or median values and estimates of variability, but in some cases the data for individual animals may be more important than a refined statistical analysis of group data.

3.10 Analytical methods

Integration of pharmacokinetics into toxicity testing implies early development of analytical methods for which the choice of analytes and matrices should be continually reviewed as information is gathered on metabolism and species differences.

The analytical methods to be used in toxicokinetic studies should be specific for

the entity to be measured and of an adequate accuracy and precision[6]. The limit of quantification should be adequate for the measurement of the range of concentrations anticipated to occur in the generation of the toxicokinetic data.

The choice of analyte and the matrix to be assayed (biological fluids or tissue) should be stated and possible interference by endogenous components in each type of sample (from each species) should be investigated. Plasma or whole blood are normally the matrices of choice for toxicokinetic studies.

If the drug substance is a racemate or some other mixture of enantiomers, additional justification should be made for the choice of the analyte [racemate or enantiomer(s)].

The analyte and matrix assayed in nonclinical studies should ideally be the same as in clinical studies. If different assay methods are used in nonclinical and clinical studies they should all be suitably validated[6].

3.11 Reporting

A rationale for the toxicokinetic policy adopted should be reported either in the toxicity study report or in a separate report. A comprehensive account of the toxicokinetic data generated, together with an evaluation of the results and of the implications for the interpretation of the toxicology findings should be given.

An outline of the analytical method should be reported or referenced. In addition, a rationale for the choice of the matrix analysed and the analyte measured (see 3.8 and 3.10) should be given.

4. Toxicokinetics in the Various Areas of Toxicity Testing-Specific Aspects

4.1 Introduction

Based on the principles of toxicokinetics outlined above, the following specific considerations refer to individual areas of toxicity testing. The frequency of exposure monitoring or profiling may be extended or reduced where necessary.

It may be appropriate to take samples from individual animals on a study where this may help in the interpretation of the toxicology findings for these animals.

4.2 Single-dose toxicity studies

These studies are often performed in a very early phase of development before a bioanalytical method has been developed and toxicokinetic monitoring of these studies is therefore not normally possible. Plasma samples may be taken in such studies and stored for later analysis; appropriate stability data for the analyte in the matrix sampled would then be needed.

Alternatively, additional toxicokinetic studies may be carried out *after* completion of a single dose toxicity study in order to respond to specific questions which may arise from the study.

Results from single dose kinetic studies may help in the choice of formulation and in the prediction of rate and duration of exposure during a dosing interval. This may assist in the selection of appropriate dose levels for use in later studies.

4.3 Repeated dose toxicity studies

The treatment regimen (Note 12) and species should be selected whenever possible with regard to pharmacodynamic and pharmacokinetic principles. This may not be achievable for the very first studies, at a time when neither animal nor human pharmacokinetic data are normally available.

Toxicokinetics should be incorporated appropriately into the design of the studies. It may consist of exposure profiling or monitoring (Note 1) at appropriate dose levels at the start and towards the end of the treatment period of the first repeat dose study (Note 13). The procedure adopted for later studies will depend on the results from the first study and on any changes in the proposed treatment regimen. Monitoring or profiling may be extended or reduced, or modified for specific compounds where problems have arisen in the interpretation of earlier toxicity studies.

4.4 Genotoxicity studies

For negative results of in vivo genotoxicity studies, it may be appropriate to have demonstrated systemic exposure in the species used or to have characterized exposure in the indicator tissue[7].

4.5 Carcinogenicity (Oncogenicity) studies

4.5.1 Sighting or dose-ranging studies

Appropriate monitoring or profiling of these studies should be undertaken in order to generate toxicokinetic data which may assist in the design of the main studies (see 4.5.2). Particular attention should be paid to species and strains which have not been included in earlier toxicity studies and to the use of routes or methods of administration which are being used for the first time.

Toxicokinetic data may assist in the selection of dose levels in the light of information about clinical exposure and in the event that non-linear kinetics (Note 4) may complicate the interpretation of the study. Particular attention should be paid to the establishment of appropriate toxicokinetic data when administration is to be in the diet (Note 14).

It is recommended that dose levels in oncogenicity studies generate a range of systemic exposure values that exceed the maximum therapeutic exposure for humans by varying multiples. However, it is recognized that this idealized selection of dose levels may be confounded by unavoidable species-specific problems. Thus, the emphasis of this guidance is on the need to estimate systemic exposure, to parent compound and/or metabolite(s) at appropriate dose levels and at various stages of an oncogenicity study, so that the findings of the study may be considered in the perspective of comparative exposure for the animal model and humans.

In practice, the 'Maximum Tolerated Dose' (MTD) has been used, whenever possible, as the top dose level in these studies. However, it has been suggested[8] that it may be acceptable to select a high dose level based on consideration of the kinetics in humans and in the test species.

For nongenotoxic compounds of comparatively low general toxicity, in addition to a toxicity-based endpoint (MTD) which remains acceptable, it has been proposed[9] reasonable to define a level of animal exposure that would be considered sufficiently great, compared to human exposure, to provide reassurance of an adequate test of carcinogenicity. It is considered important to compare exposure rather than administered dose because the latter does not take into account inter-species differences in pharmacokinetics[9].

4.5.2 The main studies

The treatment regimen and species and strain selection should, as far as is feasible, be determined with regard to the available pharmacokinetic and toxicokinetic information. In practice, the vast majority of these studies are conducted in the rat and mouse. Reassurance should be sought from the toxicokinetic data that the exposure level in the chosen species is consistent with the results from the dose ranging studies.

Concomitant toxicokinetics may be confined to monitoring exposure at appropriate dose levels at a number of stages in the study. Appropriate stages may be early in the study, and after prolonged treatment, for example at one year. It is not considered necessary to monitor exposure beyond one year in these studies. The design for each test should be selected on a compound by compound basis utilizing data gathered from earlier studies (see 4.5.1).

4.6 Reproductive toxicity studies

4.6.1 Introduction

It is preferable to have some information on pharmacokinetics before initiating reproduction studies, since this may suggest the need to adjust the choice of species, study design, and dosing schedules. At this time, the information need not be sophisticated or derived from pregnant or lactating animals[10]. At the time of study evaluation, further information on pharmacokinetics in pregnant or lactating animals may be necessary depending on the results obtained[10].

The limitation of exposure in reproductive toxicity is usually governed by maternal toxicity. Thus, while toxicokinetic monitoring in reproductive toxicity studies may be valuable in some instances, especially with compounds with low toxicity, such data are not generally necessary for all compounds.

Where appropriate, toxicokinetic principles should be applied to determine the exposures achieved in the different stages of the reproduction toxicity studies. A satellite group of female animals may be used to collect the toxicokinetic data.

4.6.2 Fertility studies

The general principles for repeated dose toxicity studies apply (see 4.3). The need to monitor these studies will depend on the dosing regimen used and the information already available from earlier studies in the selected species.

4.6.3 Studies in pregnant and lactating animals

The treatment regimen during the exposure period should be selected on the basis of the toxicological findings and on

pharmacokinetic and toxicokinetic principles.

Toxicokinetics may involve exposure assessment of dams, embryos, fetuses, or newborn at specified days (Note 15). Secretion in milk may be assessed to define its role in the exposure of newborn. In some situations, additional studies may be necessary or appropriate in order to study embryo/fetal transfer and secretion in milk.

Consideration should be given to the possibility that pharmacokinetics may differ in pregnant and non-pregnant animals.

Consideration should be given to the interpretation of reproductive toxicity tests in species in which placental transfer of the substance cannot be demonstrated (Note 16).

5. Supplementary Notes

Note 1 Definitions of expressions appearing in this "Note for Guidance":

Analyte: the chemical entity assayed in biological samples.

Concomitant toxicokinetics: toxicokinetic measurements performed in the toxicity study animals, either in all or in representative subgroups or in satellite groups.

Exposure: exposure is represented by pharmacokinetic parameters demonstrating the local and systemic burden on the test species with the test compound and/or its metabolites. The area under the plasma level concentration-time curve (AUC) and/or the measurement of plasma concentrations at the expected peak-concentration time Cmax, or at some other selected time $C_{(time)}$, are the most commonly used parameters. Others might be more appropriate in particular cases.

Monitor: to take a small number of blood samples (say 1–3) during a dosing interval to estimate $C_{(time)}$ or Cmax.

Profile: to take (say) 4–8 blood samples during a dosing interval to make an estimate of Cmax and/or $C_{(time)}$ and area under the plasma concentration-time curve (AUC).

Satellite groups: groups of animals included in the design and conduct of the toxicity study and housed with the main-study animals, but used primarily for toxicokinetics.

Support: in the context of a toxicity study - to ratify or confirm the design of a toxicity study with respect to pharmacokinetic and metabolic principles. This process may include two separate steps:

a) confirmation using toxicokinetic principles that the animals on a study were exposed to appropriate systemic levels of the administered compound (see 3.4) and/or its metabolite(s).

b) confirmation that the metabolic profile in the species used was acceptable; data to support b) will normally be derived from metabolism studies in animals and in humans.

Validate: in the context of an analytical method - to establish the accuracy, precision, reproducibility, response function and the specificity of the analytical method with reference to the biological matrix to be examined and the analyte to be quantified[6].

Note 2 Symbols and definitions according to "Manual of Symbols, Equations and Definitions in Pharmacokinetics", Committee for Pharmacokinetic Nomenclature of the American College of Clinical Pharmacology, Philadelphia, PA, May 1982:

Cmax - Maximum (peak) plasma concentration

$C_{(time)}$ - Plasma concentration at a specified time after administration of a given dose

tmax - Time to reach peak or maximum concentration following administration

$AUC_{(0-t)}$ - Area under concentration-time curve from zero to time t. It should be noted that $AUC_{(0-infinity)}$ is a special case of $AUC_{(0-t)}$.

Other measurements, for example urinary excretion, may be more appropriate for some compounds. Other derived parameters, for example bioavailability, half-life, fraction of unbound drug, and volume of distribution may be of value in interpreting toxicokinetic data. Thus, the selection of parameters and time points has to be made on a case-by-case basis considering the general principles as outlined in Section 3.

Note 3 Satellite groups (Note 1) to toxicity studies should be housed in conditions identical to those provided for the main test animals and be subject to the same dosing procedures and animal husbandry procedures.

Note 4 Increases in exposure may arise unexpectedly as a result of non-linear kinetics[11] due to saturation of a clearance process. Increasing exposure may also occur during the course of a study for those compounds which have a particularly long plasma half-life. Careful attention should also be paid to compounds which achieve high plasma Cmax values over comparatively short time periods within the dosing interval. Conversely, unexpectedly low exposure may occur during a study as a result of auto-induction of metabolic enzymes.

Note 5 If samples are taken from main study animals it should be considered whether samples should be taken from *all* the dosed animals and the controls in order to treat all animals on the study in the same way, or whether samples should be taken from representative subgroups of the same size.

Note 6 In this context, a 'no-toxic-effect dose level' (deemed to be the same as 'no-observed-adverse-effect dose level') is defined as a dose level at which some pharmacological response may be observed, but at which no adverse effect is found.

Note 7 In these circumstances it should be established that absorption is the rate limiting step and that limitations in exposure to the administered substance are not due to an increased clearance by metabolism.

Note 8 The limits placed on acceptable volumes which can be administered orally to animals may constrain the dose levels achievable for comparatively non-toxic compounds administered as solutions or suspensions.

Note 9 It is often considered unnecessary to assay samples from control groups, but samples may be collected and then assayed if it is deemed that this may help in the interpretation of the toxicity findings, or in the validation of the assay method.

Note 10 Measurement of metabolite concentrations may be especially important when documentation of exposure to human metabolite(s) is needed in the nonclinical toxicity studies in order to demonstrate adequate toxicity testing of these metabolites[5].

Note 11 It is recognized that measurement of metabolite(s) as a part of toxicokinetic evaluation serves only to assess exposure and cannot account for possible reactive intermediate metabolites[12].

Note 12 Treatment regimen encompasses dosage, formulation, route of administration, and dosing frequency.

Note 13 The first repeat dose study incorporating toxicokinetic data for each species is normally of 14 days' duration or longer.

Note 14 Additional studies may be necessary in order to compare exposure to the compound administered in diet and by gavage or by routes different from the intended clinical route.

Note 15 Separate pharmacokinetic studies may be needed in order to establish the pharmacokinetic profile in species and strains selected for reproductive toxicity studies which have not been previously selected for general toxicity studies. It should be noted that while it is important to consider the transfer of substances entering the embryo-fetal compartment, fetal exposure is the parameter which is most often assessed in practice and expressed as 'placental transfer'.

Note 16 For practical reasons, it is normally accepted that placental transfer has not been demonstrated if the concentration in the whole fetus does not exceed 1% of the maternal plasma concentration.

7. References

1 Design of Toxicokinetic Studies, Smith D. A., Humphrey M. J., and Charuel, *Xenobiotica*, 1990, Vol. 20, No. 11. 1187–1199.

2 Food and Drug Administration, Department of Health and Human Services, Statement dated June 9th 1993.

3 Commission of the European Communities, Statement on Applicability of Good Laboratory Practice (III/3824/92).

4 Opportunities for Integration of Pharmacokinetics, Pharmacodynamics, and Toxicokinetics in Rational Drug Development, Peck C. C. et al., *Pharmaceutical Research*, 1992, Vol. 9, No. 6, 826–833.

5 Proceedings of The First International Conference on Harmonisation, Brussels 1991. Ed: D'Arcy, P. F. and Harron, D. W. G. (1992), page 188.

6 Analytical methods validation: Bioavailability, Bioequivalence and Pharmacokinetic Studies, Shah, V. P. et al., *European Journal of Drug Metabolism and Pharmacokinetics*, 1991, Vol. 16, No. 4, 249–255.

7 ICH Joint Position Paper: Genotoxicity, 1993.

8 Proceedings of The First International Conference on Harmonisation, Brussels 1991. Ed: D'Arcy, P. F. and Harron, D. W. G. (1992), pages 185 and 331.

9 ICH Position Paper: 'High Dose Selection for Carcinogenicity Studies', 1993.

10 ICH Tripartite Guideline: 'Guideline on Detection of Toxicity to Reproduction for Medicinal Products', 1993.

11 Gibaldi M. and Perrier D., 'Pharmacokinetics' Second Edition, Chapter 7, Marcel Dekker Inc., New York (1982).

12 What is an appropriate measure of exposure when testing drugs for carcinogenicity in rodents? Monro, A., *Toxicology and Applied Pharmacology*, 1992, *112*, 171–181.

Dated: February 23, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–4569 Filed 2–24–94; 1:35 pm]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Food Advisory Committee

Date, time, and place. March 9 and 10, 1994, 8 a.m., Salon B, Sheraton Crystal City Hotel, 1800 Jefferson Davis Hwy., Arlington, VA 22202.

Type of meeting and contact person. Open committee discussion, March 9, 1994, 8 a.m. to 5 p.m.; open committee discussion, March 10, 1994, 8 a.m. to 12:45 p.m.; open public hearing, 12:45 p.m. to 1:45 pm., unless public participation does not last that long; open committe discussion, 1:45 p.m. to 5 p.m.; Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727, or Catherine M. DeRoever, Advisory Committee Staff (HFS–22), 202–205–4251, FAX 202–205–4970.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person by close of business March 4, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. If necessary, comments may be limited to 5 minutes per participant.

Open committee discussion. The committee will undertake a scientific discussion of the safety review of whole foods produced by new biotechnologies. A genetically modified tomato currently under consideration by the agency will serve as the focus of the discussion.

FDA regrets that it is publishing this notice in the **Federal Register** less than 15 days prior to the meeting because of scheduling difficulties and the press of other committee business. The next regularly scheduled meeting of the committee is tentatively set for April 6 through 8, 1994, with an agenda scheduled to cover 3 days. Attempts were made to schedule a committee meeting in March with sufficient time for at least a 15-day public notice. However, it was not possible to find a date during that period on which a quorum of committee members could meet with responsible staff from the agency and other affected parties. The agency has decided that it is in the public interest to hold this scientific discussion on March 9 and 10, 1994, even if there is not time for the customary 15-day public notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: February 23, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–4691 Filed 2–25–94; 11:10 am]

BILLING CODE 4160–01–F

Public Health Service

Subcommittee of the National Vaccine Advisory Committee (NVAC), Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing the forthcoming meeting of an Ad Hoc Subcommittee on Childhood Vaccines.

DATES: Date, Time and Place: March 15, 1994, at 8:30 a.m. to 5 p.m., 6130 Executive Boulevard, Conference Room G, Rockville, Maryland 20852. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Chester A. Robinson, D.P.A., Acting Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, HHH Building, room 730E, 200 Independence Avenue, SW., Washington, DC 20201, (202) 401-8141.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues to be discussed by the Subcommittee. Because of limited seating, those desiring to make such presentations should make a request to the contact person before March 9, and submit a brief description of the information they wish to present to the Subcommittee. Those requests should include the names and addresses of proposed participants. A maximum of 10 minutes will be allowed for a given presentation, but the time may be adjusted depending on number of persons presenting. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the Chairperson's discretion.

Open Subcommittee Discussion: The Subcommittee will discuss the Institute of Medicine's (IOM) report entitled "Adverse Events Associated with Childhood Vaccines" and the implications of the findings in the report for several DHHS activities. The agenda will be announced at the beginning of the meeting.

A list of Subcommittee members and the charter of the NVAC Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: February 22, 1994.

Chester A. Robinson,

Acting Executive Secretary, NVAC.

[FR Doc. 94-4563 Filed 2-28-94; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-94-1051; FR-3667-D-01]

Amendment of Delegation of Authority from the Secretary of Housing and Urban Development to Officials of the Office of General Counsel

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of amendment of delegation of authority.

SUMMARY: This Notice amends a Delegation of Authority from the Secretary of HUD to officials of the Office of General Counsel so that it grants the authority of the General Counsel concurrently to the Deputy General Counsel (Programs & Regulations) and the Deputy General Counsel (Civil Rights & Litigation) as well as the Deputy General Counsel (Operations). The position identified as "Deputy General Counsel" is no longer granted concurrent authority because there is currently no position so identified

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Markison, Assistant General Counsel for Administrative Law, Department of Housing and Urban Development, room 10254, 451 7th Street SW., Washington, DC 20410, (202) 708-9983. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Notice amends a Delegation of Authority from the Secretary of HUD to officials in the Office of General Counsel so that it grants the authority of the General Counsel concurrently to the Deputy General Counsel (Programs & Regulations) and the Deputy General Counsel (Civil Rights & Litigation) as well as the Deputy General Counsel (Operations). The position identified as "Deputy General Counsel" is no longer granted concurrent authority because there is currently no position so identified.

Accordingly, the Delegation of Authority published in the **Federal Register** on January 31, 1989 at 54 FR 4913 (Docket No. D-89-893; FR-2595) is amended as follows:

Amendment of Delegation of Authority

1. Section A of the Delegation of Authority published on January 31, 1989 at 54 FR 4913 (Docket No. D-89-893; FR-2595) is amended by deleting the reference to the Deputy General Counsel, because there is currently no position so identified, and substituting the new positions of Deputy General Counsel (Programs & Regulations) and Deputy General Counsel (Civil Rights & Litigation).

2. Section C, Paragraph 1 of the Delegation of Authority published on January 31, 1989, at 54 FR 4913 (Docket No. D-89-893; FR-2595) is amended by deleting the reference to the Deputy General Counsel, because there is currently no position so identified, and substituting the new positions of Deputy General Counsel (Programs & Regulations) and Deputy General Counsel (Civil Rights & Litigation).

3. Section C, Paragraph 5 of the Delegation of Authority published on January 31, 1989 at 54 FR 4913 (Docket No. D-89-893; FR-2595) is amended by deleting the reference to the Deputy General Counsel, because there is currently no position so identified, and substituting the new positions of Deputy General Counsel (Programs & Regulations) and Deputy General Counsel (Civil Rights & Litigation).

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. § 3535(d)).

Dated: February 17, 1994.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 94-4529 Filed 2-28-94; 8:45 am]

BILLING CODE 4210-32-M

Office of Administration

[Docket No. N-94-3725]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 18, 1994.

David Christy,

Acting Director, IRM Policy and Management Division.

Proposal: Cost Certification Forms.

Office: Housing.

Description of the need for the information and its proposed use: The forms are used by mortgagors and contractors for requests of construction advances and certification of actual cost. The forms are needed by HUD to issue advances and assure that mortgage proceeds are used solely for construction costs.

Form number: FHA–2205–A, HUD–2328, and HUD–92330–A.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of submission: On Occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
FHA–2205–A	75		1		8		600
HUD–2328	500		1		8		4,000
HUD–92330–A	350		1		40		14,000

Total estimated burden hours: 18,600.

Status: Extension.

Contact: Roger Kramer, HUD, (202) 708–0743, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 18, 1994.

Proposal: Evaluation of the HOPE for Elderly Independence Demonstration Program.

Office: Policy Development and Research.

Description of the need for the information and its proposed use: The national evaluation of the HOPE for Elderly Independence Demonstration Program will test the effectiveness of combining housing with supportive services to assist frail elderly persons to continue to live independently. The evaluation will also document how grantees have implemented their demonstrations.

Form number: None.

Respondents: Individuals or Households and State or Local Governments.

Frequency of submission: Biennially.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Evaluation	2,130		1		1.05		2,245

Total estimated burden hours: 2,245.

Status: New.

Contact: Priscilla Prunella, HUD, (202) 708–3700, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 18, 1994.

[FR Doc. 94–4626 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. R–94–1707; FR–3568–N–02]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members

of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 15, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Tenant Participation and Tenant Opportunities in Public Housing (24 CFR 964—FR-3568).

Office: Public and Indian Housing.

Description of the need for the information and its proposed use: The revision of the 24 CFR 964 will allow for broader, more flexible programs aimed at economic uplift for public housing resident organizations to participate and receive grant funds. Family Investment Centers will provide grants to PHAs and IHAs to enable families to have greater access to education and job opportunities to achieve self-sufficiency and independence.

Form number: None.

Respondents: State or Local Governments, Non-Profit Institutions and Small Businesses or Organizations.

Frequency of submission: On Occasion and Recordkeeping.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,500		1		Varies		34,500
Recordkeeping	1,500		1		1		1,500

Total estimated burden hours: 36,000.

Status: Revision.

Contact: Dorothy Walker, HUD, (202) 708-3611, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: February 15, 1994.

[FR Doc. 94-4627 Filed 2-28-94; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. R-94-1655; FR-3384-N-03].

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 15, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Preservation of Multifamily Low-Income Housing (FR-3384).

Office: Housing.

Description of the need for the information and its proposed use: This information collection is the result of statutory requirements resulting from Title III of the Housing and Community Development Act of 1992. The information collection will be used to monitor assistance grant programs and to give residents more information on the status of the projects in which they reside.

Form number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of submission: On Occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	200		1		.2		40

Total estimated burden hours: 40.
Status: Extension.
Contact: Betsy Keeler, HUD, (202) 708–1142, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 15, 1994.

[FR Doc. 94–4628 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3486; FR–3288–N–05]

NOFA for Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations (CBOs), and Resident Councils (RCs) Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990: Technical Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Technical amendment to NOFA.

SUMMARY: This notice amends the NOFA published at 57 FR 40570 (September 3, 1992) and amended at 57 FR 56929 (December 1, 1992) and 58 FR 8766 (February 17, 1993), to allow funding of eligible grant activities prior to the grant award if there is a delay in the award subsequent to submission of an acceptable application package. For a variety of reasons, numerous grantees under this NOFA have not been awarded grants during the appropriate selection timeframe. Due to the time-sensitive nature of the Preservation sales program, grantees in these cases may be precluded from moving forward with activities critical to achieving a resident-supported purchase in a timely manner. This notice amends the current NOFA to allow funding for grant activities performed subsequent to the 30-day departmental application review period, if the Department has not yet awarded grant funds. Because there can be no guarantee of funding prior to grant award, activities performed prior to grant award are performed at the applicant's own risk. All activities performed must have been included in the applicant's original submission package and no funds will be released to the recipient until after a grant is formally awarded. This amendment applies to all grants awarded under this NOFA.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Director, Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street NW., Washington, DC 20410; telephone (202) 708–2300. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300. (Except for the TDD number, telephone numbers are not toll free).

SUPPLEMENTARY INFORMATION: Accordingly, FR Doc. 92–21232, published at 57 FR 40570 (September 3, 1992) and amended at 57 FR 56929 (December 1, 1992) and at 58 FR 8766 (February 17, 1993), is further amended to:

(1) On page 40571, section I.B. fourth paragraph is revised to read as follows:

I. Purpose and Substantive Description

* * * * *

B. Allocation of Amounts

* * * * *

Any expenses incurred by an applicant prior to being awarded a grant under this NOFA will not be reimbursed from the grant unless the grant award is delayed by the Department. In such case, funds for grant activities which are included in the original application submission and performed prior to grant award but beginning no earlier than 30 days after an acceptable application submission may be reimbursed at grant award. Once a Plan of Action is approved and the purchase completed, the purchaser may be reimbursed for certain expenses pursuant to 24 CFR 248.157(m) (6) and (7) that are not covered by grants received under this NOFA.

* * * * *

(2) On page 40573, paragraph I.H. (7) is revised to read as follows:

* * * * *

I. Purpose and Substantive Description

* * * * *

(H) *Ineligible Activities:*

* * * * *

(7) Activities completed prior to the date funding is approved under this NOFA, or in the case of a grant award that is delayed beyond the 30 day application review period, prior to 30 days after an acceptable application submission. In the latter case, all activities must be included in the original grant application submission package and funds will not be released prior to grant award.

* * * * *

Authority: 12 U.S.C. 1715 *et seq.*, 42 U.S.C. 3535(d).

Dated: February 23, 1994.

Nicolas P. Retsinas,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–4533 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–27–P

Office of the Secretary

[Docket No. D–94–1053; FR–3657–D–01]

Delegation of Authority for Indian Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This delegation of authority revokes the authority to administer the Community Development Block Grant Program for Indian Tribes and Alaska Natives presently delegated to the Assistant Secretary for Community Planning and Development and delegates the authority to the Assistant Secretary for Public and Indian Housing.

EFFECTIVE DATE: February 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dominic A. Nessi, Director, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4140, 45 7th Street SW., telephone (202) 708–1015. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 902 of the Housing and Community Development Act of 1992 (Pub. L. 102–550; October 28, 1992) ("Housing Act of 1992") established a new office for Indian and Alaska Native programs to be located within the Office of Public and Indian Housing. The Housing Act of 1992 states that the office is to be headed by the Special Assistant for Indian and Alaska Native Programs. Subsequent Congressional guidance indicated that it would not be inappropriate, however, for the head of the office to have a different job title.

The Department is therefore establishing within the Office of Public and Indian Housing, the Office of Native American programs, to be headed by a Director. According to the statute, the office is to administer and coordinate all programs of the Department relating to Indian and Alaska Native housing and community development. The office is responsible for directing, coordinating, and assisting in managing HUD field offices that administer Indian and Alaska Native programs. The statute also provides that the office is responsible for administering the provision of assistance to Indian tribes

under the Community Development Act of 1974.

In a redelegation of authority appearing elsewhere in the Federal Register today, the Assistant Secretary for Public and Indian Housing is revoking all authority previously redelegated to HUD Regional Administrators with respect to Indian and Alaska Native programs, as well as any further redelegations of that authority, and redelegating the authority (including all authority with respect to the Community Development Block Grant Program for Indian Tribes and Alaska Natives) to the Director, the Deputy Director for Headquarters Operations, and the Deputy Director for Field Operations, Office of Native American Programs.

The present delegation of authority revokes from the Assistant Secretary for Community Planning and Development and delegates to the Assistant Secretary for Public and Indian Housing the power and authority to administer the Community Development Block Grant Program for Indian Tribes and Alaska Natives under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*).

Therefore, the Secretary delegates as follows:

Section A. Authority Delegated

The Secretary of the Department of Housing and Urban Development delegates to the Assistant Secretary for Public and Indian Housing all power and authority with respect to the Community Development Block Grant Program for Indian Tribes and Alaska Natives, pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), except as provided in Section B of this delegation of authority.

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue and be sued.

Section C. Revocation and Supersedure

This delegation revokes in part the delegation of authority to the Assistant Secretary for Community Planning and Development published in the Federal Register on October 25, 1983 at 48 FR 49384, with respect to the Community Development Block Grant Program for Indian Tribes and Alaska Natives, pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) as well as the redelegations of authority published at 43 FR 34102 and 45 FR 67157.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), as amended; Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 15, 1994.

Henry Cisneros,

Secretary, Department of Housing and Urban Development.

[FR Doc. 94–4531 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. D–94–1053; FR–3657–D–02]

Redelegation of Authority for Indian Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Public and Indian Housing is revoking all authority previously redelegated to HUD Regional Administrators with respect to Indian and Alaska Native programs, as well as any further redelegations of that authority, and redelegating that authority to the Director, the Deputy Director for Headquarters Operations, and the Deputy Director for Field Operations, Office of Native American Programs.

EFFECTIVE DATE: February 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dominic A. Nessi, Director, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4140, 451 7th Street SW., telephone (202) 708–1015. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 902 of the Housing and Community Development Act of 1992 (Pub. L. 102–550; October 28, 1992) ("Housing Act of 1992") established a new office for Indian and Alaska Native programs to be located within the Office of Public and Indian Housing. The Housing Act of 1992 states that the office is to be headed by the Special Assistant for Indian and Alaska Native Programs. Subsequent Congressional guidance indicated that it would not be inappropriate, however, for the head of the office to have a different job title.

The Department is therefore establishing within the Office of Public and Indian Housing, the Office of Native American programs, to be headed by a Director. According to the statute, the office is to administer and coordinate all programs of the Department relating to Indian and Alaska Native housing and community development. The office is responsible for directing, coordinating, and assisting in managing HUD field offices that administer Indian and Alaska Native programs. The statute also provides that the office is responsible for administering the provision of assistance to Indian tribes under the Community Development Act of 1974.

In a delegation of authority appearing elsewhere in the **Federal Register** today, the responsibility for administering and delivering the Community Development Block Grant Program for Indian Tribes and Alaska Natives under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), presently delegated to the Assistant Secretary for Community Planning and Development is revoked, and the authority is delegated to the Assistant Secretary for Public and Indian Housing.

The present redelegation of authority revokes all authority previously redelegated by the Assistant Secretary for Public and Indian Housing to HUD Regional Administrators with respect to Indian and Alaska Native programs, and any further redelegations of that authority, and redelegates that authority (including all authority with respect to the Community Development Block Grant Program for Indian Tribes and Alaska Natives) to the Director, the Deputy Director for Headquarters Operations, and the Deputy Director for Field Operations, Office of Native American Programs.

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates to the Director, the Deputy Director for Headquarters Operations, and the Deputy Director for Field Operations, Office of Native American Programs, all authority with respect to the Department of Housing and Urban Development's programs for Indians and Alaska Natives. Among the specific authorities redelegated are:

1. All power and authority with respect to the management and development or acquisition of public housing for Indian families, including the modernization of existing public housing projects for Indian families pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), and the development or acquisition of public housing under the Mutual Help Homeownership Opportunity Program under Section 202 of the Act (42 U.S.C. 1437bb).

2. All power and authority with respect to the HOME Investment

Partnerships (HOME) Program for Indian tribes (42 U.S.C. 12701 *et seq.*).

3. All power and authority with respect to the Indian community development block grant program, pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), as amended.

4. The authority to approve or to approve conditionally homeownership plans submitted by IHAs under the section 5(h) Homeownership Program—pursuant to 24 CFR part 905, subpart P (Sections 905.1001–1021). This includes the authority to execute implementing agreements under 24 CFR 905.1019.

Section B. Authority Excepted

The authority redelegated under Section A does not include the power to sue and be sued or the power to issue or waive rules and regulations.

Section C. Revocation and Supersedure

This redelegation revokes and supersedes all redelegations of authority to Regional Administrators, and any further redelegations of that authority, with respect to Indian and Alaska Native programs.

Among the specific redelegations revoked or revoked in part are:

1. The redelegation of authority published at 57 FR 46401, October 8, 1992.
2. The redelegation of authority published at 57 FR 12516, April 10, 1992, with respect to Indian Housing Authorities only.
3. The redelegation of authority published at 56 FR 56524, November 5, 1991, with respect to Indian Housing Authorities only.
4. The redelegation of authority published at 51 FR 27604, August 1, 1986.

Authority: Section 902, Housing and Community Development Act of 1992; Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 15, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public Housing.

[FR Doc. 94–4532 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–33–M

Office of the General Counsel

[Docket No. D–94–1052; FR–3666–D–01]

Order of Succession, Acting General Counsel

AGENCY: Office of the General Counsel, HUD.

ACTION: Order of succession.

SUMMARY: The General Counsel for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to serve as Acting General Counsel when, by reason of absence, disability, or vacancy in office, the General Counsel is not available to exercise the powers or perform the duties of the Office.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Markison, Assistant General Counsel for Administrative Law, Department of Housing and Urban Development, room 10254, 451 7th Street SW., Washington, DC 20410, (202) 708–9983. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The General Counsel for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to serve as Acting General Counsel when, by reason of absence, disability, or vacancy in office, the General Counsel is not available to exercise the powers or perform the duties of the Office. The authorization to act under this Order is subject to the 120-day limitation of the Vacancies Act, 5 U.S.C. 3348, whereby a vacancy caused by death or resignation of an appointee, whose appointment is vested in the President by and with the advice and consent of the Senate, may be filled temporarily for not more than 120 days.

Accordingly, the General Counsel designates the following order of succession:

Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, the General Counsel is not available to exercise the powers or perform the duties of the Office of the General Counsel, the following are hereby designated to serve as Acting General Counsel:

(1) Deputy General Counsel (Programs & Regulations)
(2) Deputy General Counsel (Civil Rights & Litigation)
(3) Deputy General Counsel (Operations)
(4) Associate General Counsel for Assisted Housing and Community Development
(5) Associate General Counsel for Legislation and Regulations
(6) Associate General Counsel for Program Enforcement
(7) Associate General Counsel for Insured Housing and Finance
(8) Associate General Counsel for Equal Opportunity and Administrative Law
(9) Associate General Counsel for Litigation

These officials shall serve as Acting General Counsel under this order of succession in the order specified herein and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office. If all the officials designated in this order of succession are unable to serve as Acting General Counsel by reason of absence, disability or vacancy in office, officials designated to serve as acting officials for these designated officials (designees) will serve in the same order of succession as their principals.

Officials ranking below the Deputy General Counsel (Operations) in the above Order of Succession, and their designees, while serving as Acting General Counsel, may only take actions with the approval of the Special Assistant to the General Counsel.

Authorization to serve as Acting General Counsel shall not exceed 120 days pursuant to the Vacancies Act, 5 U.S.C. 3348.

Authority: Sec. 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d).

Dated: January 13, 1994.

Nelson A. Díaz,

General Counsel.

[FR Doc. 94–4530 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Manager

[Docket No. D–94–1050; FR3652–D–01]

New Orleans Field Office Region VI (Fort Worth); Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Rita Vinson, Director, Management and Budget Division, Office of Administration, Fort Worth Regional Office, Department of Housing and Urban Development, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905, Telephone (817) 885–5451 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the

powers, functions, and duties redelegated or assigned to the Manager: Provided that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Manager,
2. Director of Community Planning and Development,
3. Chief Counsel,
4. Director of Public Housing,
5. Director of Housing Management,
6. Director of Housing Development,
7. Director of Fair Housing and Equal Opportunity.

This designation supersedes the designation effective September 20, 1993, published in the **Federal Register** issue of November 12, 1993 (58 FR 60047).

Authority: Delegation of Authority by the Secretary of Housing and Urban Development, effective October 1, 1970; 36 FR 3389, February 23, 1971.

Robert J. Vasquez,

Manager, New Orleans Office.

Frank L. Davis,

Acting Regional Administrator—Regional Housing Commissioner, Region VI (Fort Worth).

[FR Doc. 94–4629 Filed 2–28–94; 8:45 am]

BILLING CODE 4210–01–M

U.S. DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–785148

Applicant: Ogden Environmental & Energy Services Co., Inc.

The applicant requests a permit to take (sacrifice) 15 male and 15 female Riverside fairy shrimp (*Streptocephalus wootoni*) for voucher specimens obtained from vernal pools at Naval Air Station, Miramar, San Diego County for scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 24, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–4617 Filed 2–28–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Finding of No Significant Impact and Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Residential Development in Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: D&E Investments, Limited (Applicant), has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse (*Peromyscus polionotus ammobates*), known to occupy lands owned by the Applicant in Gulf Shores, Baldwin County, Alabama.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making requests to the addresses below. The Service is soliciting data on *Peromyscus polionotus ammobates* in order to assist in the requirement of the intra-Service consultation. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before March 31, 1994.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA or HCP may obtain a copy by writing the Regional Office or the Jackson, Mississippi, Field Office. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the field office. Written data or comments concerning the application, EA or HCP should be submitted to the Regional Office. Please reference permit under PRT–787172 in such comments.

Assistant Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, fax 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Wendell Neal at the above Jackson, Mississippi, Field Office.

SUPPLEMENTARY INFORMATION: *Peromyscus polionotus ammobates* is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of *Peromyscus polionotus ammobates* extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The depth of the habitat from the beach inland varies depending on the configuration of the sand dune system and the vegetation. Generally, these habitat zones are considered as primary dune (dunes immediately fronting the beach) supporting sea oats and other widely scattered grasses, an interdune area consisting of other grasses, and sedges, and a secondary dune zone supporting small trees and shrubs. The Applicant proposes to construct a planned unit development, including a 18-hole golf course, multi-family units, and single family residences, on ±251.7 acres of land

located adjacent to and south of Alabama Highway 180, southern side of the Fort Morgan peninsula, Section 29, Township 9 South, Range 2 East, Gulf Shores, Baldwin County, Alabama. The Applicant's property contains *Peromyscus polionotus ammobates* habitat, and recent trapping efforts have confirmed its presence in the primary dune zone and interdune zone in different densities and patterns of utilization. The property contains ±32 acres of designated critical habitat of *Peromyscus polionotus ammobates*. Initial construction of roads and utilities and subsequent development of individual homesites may result in death of or injury to beach mouse incidental to the carrying out of these otherwise lawful activities. Habitat alternation associated with property development may reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in some loss of suboptimal habitat for *Peromyscus polionotus ammobates* and exposure of the Applicant under Section 9 of the Act. This action is inconsistent with the purposes and intent of Section 10 of the Act. The delisting of the *Peromyscus polionotus ammobates* as an alternative was rejected as biologically unjustifiable. Modification of the HCP as an alternative was in part accommodated during the pre-application phase through negotiations between the Applicant and the Service. The HCP attached with the permit is modified to the maximum extent practicable. The proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, placement of walkover structures across sand dunes, continued monitoring of *Peromyscus polionotus ammobates*, control of cats and competitors of *Peromyscus polionotus ammobates*, controls on residential outdoor lighting, storage and maintenance of trash and garbage in scavenger proof containers, and distribution of educational materials to construction personnel and residents. The HCP also provides a funding mechanism for these mitigation measures.

Dated: February 18, 1994.

Nancy C. Coon,

Acting Assistant Regional Director, Ecological Services.

[FR Doc. 94–4547 Filed 2–28–94; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 12, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 16, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Ashley County

Bunckley, H. R., House, 509 E. Parker St., Hamburg, 94000189

Garland County

Gillham House, Co. Rd. 584 N of jct. with US 270, Royal, 94000188

Little River County

Memphis, Paris and Gulf Railroad Depot (Historic Railroad Depots of Arkansas MPS), Jct. of Whitaker Ave. and Frisco St., N corner, Ashdown, 94000192

GEORGIA

Camden County

Kingsland Commercial Historic District, Area surrounding S. Lee St., between King and William Sts., Kingsland, 94000186

MAINE

Oxford County

Churchill Bridge, Mountain Rd. across Bicknell Brook, 1.0 mi. W of jct. with Sodom Rd., Buckfield vicinity, 94000180

Penobscot County

Gut Island Site, Address Restricted, Old Town vicinity, 94000182

Waldo County

Hardscrabble Farm, E side ME 131, 0.5 mi. S of jct. with ME 173, Searsmont vicinity, 94000181

Washington County

Pettegrove, Joshua, House, E side US 1, .25 mi. N of jct. with Shattuck Rd., Red Reach, 94000179

York County

Lower Alewive Historic District, N side Emmons Rd., E of jct. with ME 35, Kennebunk vicinity, 94000178

MINNESOTA

Carlton County

Minneapolis, St. Paul, and Sault Ste. Marie Depot, 840 Folz Blvd., Moose Lake, 86003813

MISSISSIPPI

Jasper County

Archeological Site No. 22JS587, Address Restricted, Bay Springs vicinity, 94000175

NEVADA

Nye County

Sudan Crater, Area 10, Nevada Test Site, Mercury vicinity, 94000183

NEW HAMPSHIRE

Cheshire County

Golden Rod Grange No. 114, W side NH 302, 0.1 mi. S of jct. with Eaton Rd., Swanzy, 94000169

Hillsborough County

Carpenter, Frank Pierce, House, 1800 Elm St., Manchester, 94000168

NEW YORK

Cayuga County

Howland Cobblestone Store [Cobblestone Architecture of New York State MPS], N side Sherwood Rd., just E of jct. with Co. Rd. 348, Scipio, 94000171

Wayne County

Walling Cobblestone Tavern [Cobblestone Architecture of New York State MPS], 7851 Ridge Rd., Hamlet of Wallington, Sodus, 94000173

Wallington Cobblestone Schoolhouse District No. 8 [Cobblestone Architecture of New York State MPS], 6135 N. Geneva Rd., Hamlet of Wallington, Sodus, 94000172

NORTH CAROLINA

Guilford County

Grayson, Dr. C.S., House, 1009 N. Main St., High Point, 94000190

Orange County

Jackson, Jacob, Farm, NC 1002, 0.4 mi. W of NC 1538, Hillsborough, 94000184

Wake County

Apex Historic District, Roughly bounded by N. Elm. N. Salem, Center, S. Salem, and W. Chatham Sts., Apex, 94000185

OHIO

Butler County

Hamilton Historic Civic Center, Roughly bounded by Market St., High St., Court St., and Monument Ave., including High—Main St. Bridge, Hamilton, 94000170

PUERTO RICO

Vieques Municipality

Casa Alcaldia de Vieques, Jct. of Carlos LeBrum St. and Benitez Guzman St., Isabel Segunda, 94000174

SOUTH DAKOTA

Hand County

Hand County Courthouse and Jail [County Courthouses of South Dakota], 415 W. First Ave., Miller, 94000193

Lincoln County

Bergstrom, Magnus O., House, 415 S. Cedar, Canton, 94000196

Tuntland, Peder and Helga, Farmstead, Roughly, 10 mi. NW of Beresford, Beresford vicinity, 94000194

Minnehaha County

Randolph, Dr. Fredrich A., Block, 320 N. Main, Sioux Falls, 94000195

TENNESSEE

Sevier County

Elkmount Historic District, Great Smoky Mountains NP, Off TN 72 SW of Gatlinburg, Gatlinburg vicinity, 94000166

Thomas Addition Historic District, Roughly bounded by Park Rd., Belle Ave., Cedar St., Grace Ave. and Prince St., Sevierville, 94000197

VERMONT

Addison County

Salisbury Fish Hatchery [Fish Culture Resources of Vermont MPS], VT 53, SE of jct. with Smead Rd., Salisbury, 94000176

Bennington County

Jenks Tavern, Jct. of Dorset West Rd. and VT 315, Rupert, 94000191

Washington County

Roxbury Fish Hatchery [Fish Culture Resources of Vermont MPS], W side VT 12A, about 1.0 mi. S of Roxbury, Roxbury vicinity, 94000177

WYOMING

Converse County

Douglas City Hall, 130 S. Third St., Douglas, 94000167

[FR Doc. 94–4548 Filed 2–28–94; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 19, 1994. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 16, 1994.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

New Haven County

Charter Oak Firehouse, 105 Hanover St., Meriden, 94000255

New London County

Colchester Village Historic District, Roughly along Broadway, Hayward, Linwood and Norwich Aves., Cragin Ct., Pierce Ln., Stebbins Rd., Main and S. Main Sts., Colchester, 94000254

Windham County

Knowlton Memorial Hall, 25 Pompey Hollow Rd., Ashford, 94000252

Mixer Tavern, 14 Westford Rd., Ashford, 94000253

INDIANA

Boone County

Scotland Bridge, Lost Rd. (Co. Rd. 200 E) over Sugar Cr., Mechanicsburg vicinity, 94000228

Clinton County

Colfax Carnegie Library, 207 S. Clark St., Colfax, 94000230

Daviess County

Faith Thomas House, 1208 Bedford Rd., Washington, 94000227

Dearborn County

Carnegie Hall of Moores Hill College, 14687 Main St., Moores Hill, 94000229

Elkhart County

Nappanee West Park and Pavilion, Jct. of Nappanee and Van Buren Sts., Nappanee, 94000231

Grant County

Marion Downtown Commercial Historic District, Roughly bounded by 7th, 2nd, Branson and Gallatin Sts., Marion, 94000226

Huntington County

Purviance, David Alonzo and Elizabeth, House, 809 N. Jefferson St., Huntington, 94000225

Jasper County

Rensselaer Carnegie Library, 301 N. Van Rensselaer St., Rensselaer, 94000233

Newton County

McCairn—Turner House, 124 W. Jasper St., Goodland, 94000232

Orange County

First Baptist Church, Jct. of Elm and Sinclair Sts., West Baden Springs, 94000234

St. Joseph County

Dille—Probst House, 520 E. Colfax Ave., South Bend, 94000224

KENTUCKY

Allen County

Whitney, Andrew M., House and Barn, KY 1855 NE of Scottsville, Scottsville vicinity, 94000250

Carlisle County

Stone, George H., House, KY 80, Millburn, 94000223

Logan County

Auburn Historic District, Roughly, along E. and W. Main, N. Lincoln, Perkins, Pearl, Caldwell, Wilson, Maple and Viers Sts., Auburn, 94000222

LOUISIANA

Iberia Parish

New Iberia High School, 415 Center St., New Iberia, 94000236

Lafayette Parish

Evangeline Hotel, 302 Jefferson St., Lafayette, 94000235

MAINE

Cumberland County

Tracy—Causer Block, 505—509 Fore St., Portland, 89001941

MICHIGAN

St. Clair County

Howard Block, 201–205 Huron Ave., Port Huron, 94000251

MISSISSIPPI

Tate County

College Street Historic District (Senatobia MPS), Roughly, along N. Center, College, N. Front, N. Panola, N. Ward and W. Main Sts., Senatobia, 94000206

Downtown Senatobia Historic District (Senatobia MPS), Roughly, along N. and S. Center, N. and S. Front, W. Main, W. Tate and N. and S. Ward Sts., Senatobia, 94000205

North Park Street Historic District (Senatobia MPS), 113–209 W. Park St., Senatobia, 94000208

Panola Street, North, Historic District (Senatobia MPS), 101 S. Panola St., 104, 106 and 108 N. Panola St., Senatobia, 94000207

Panola Street, South, Historic District (Senatobia MPS), 200—401 S. Panola St., Senatobia, 94000204

Senatobia Christian Church (Senatobia MPS), 407 W. Tate St., Senatobia, 94000203

South Ward Street Historic District (Senatobia MPS), Roughly, along Church, W. Gilmore and S. Ward Sts., Senatobia, 94000199

Southeast Senatobia Historic District (Senatobia MPS), Roughly, along S. Park, S. Park (West), E. Gilmore, E. Tate and S. Heard Sts., Senatobia, 94000202

Tate County Agricultural High School Historic District (Senatobia MPS), 510 N. Panola St., Senatobia, 94000201

Tate County Courthouse (Senatobia MPS), 201 S. Ward St., Senatobia, 94000200

NEW YORK

Fulton County

Miller, William, Farm Historic District (Boundary Increase), Co. Rt. 11 W of US 4, Hampton, 94000256

Nassau County

Cold Spring Harbor Laboratory Historic District, Jct. of NY 25A and Bungtown Rd., Laurel Hollow, 94000198

Otsego County

West Main Street—West James Street Historic District, Roughly, along W. Main, W. James, Elm and Center Sts. and Taylor Ave., Richfield Springs, 94000257

Saratoga County

West Side Historic District, Roughly, along Church, Van Dam, State and Washington

Sts., Woodlawn and Grand Aves. and Franklin Sq., Saratoga Springs, 94000258

NORTH CAROLINA

Guilford County

Kellenberger Estate, 1415 Kellenberger Rd., Greensboro, 94000218

Tyrrell County

Columbia Historic District, Roughly bounded by the Scuppernong R., US 64, Road St. and Howard St., Columbia, 94000219

NORTH DAKOTA

Dickey County

Carroll House Hotel, 19 N. Monroe St., Fullerton, 94000221

Walsh County

Pisek School, E end of Main St. at Lovick Ave., Pisek, 94000220

OHIO

Belmont County

St. Clairsville Historic District, E. and W. Main St. between Butler and Sugar Sts., St. Clairsville, 94000246

Butler County

Hughes Manor, 5849 Hamilton—Lebanon Rd., Middletown vicinity, 94000242

Coshocton County

Warsaw Hotel, 102 E. Main St., Warsaw, 94000244

Cuyahoga County

Globe Iron Works Building, 2320 Center St., Cleveland, 94000245

Franklin County

Stoddart Block, 260 S. Fourth St., Columbus, 94000237

Harrison County

Ourant's School, Ourant Rd., W of Cadiz, Cadiz vicinity, 94000241

Lake County

Yager, John and Carrie, House, 7612 S. Center St., Mentor, 94000240

Ottawa County

Ohio State Route 51 Bridge Over the Portage River, OH 51 over the Portage R., Elmore vicinity, 94000239

Summit County

Viall Lodge, 1135 E. Market St., Akron, 94000238

Hesley Temple AME Church, 104 N. Prospect St., Akron, 94000243

PENNSYLVANIA

Westmoreland County

Hannastown Farm, NH of jct. of T825 and PA 64054, Salem Township, Forbes Road, 94000209

PUERTO RICO

Vieques Municipality

Acevedo, Rafael, House, Victor Duteil St. between San Jose and Baldorioty Sts., Isabel Segunda, 94000249

TEXAS

Harris County

Dawson, James A., House, 400 Emerson Ave., Houston, 94000248

Meek, James V., House, 3704 Garrott Ave., Houston, 94000247

WEST VIRGINIA

Braxton County

Gassaway Depot, Between 4th and 5th Sts., Gassaway, 94000215

Cabell County

Ohev Sholom Temple, 949 10th Ave., Huntington, 94000211

Gilmer County

Cedarville School, Jct. of Smith Ave. and Edmond St., Cedarville, 94000210

Jefferson County

Hopewell, Bloomery Rd. (Co. Rd. 27) NE of Bloomery, Charles Town vicinity, 94000214

Logan County

Chafin House, 581 Main St., Logan, 94000217

Marion County

Fairmont Normal School Administration Building, Jct. of Locust Ave. and Bryant St., Fairmont, 94000216

Monongalia County

Anderson, D. I. B., Farm, 3333 Collins Ferry Rd., Morgantown, 94000213

Preston County

Brown, Col. Thomas, House, Co. Rd. 92/4 S of Reedsville, Reedsville vicinity, 94000212

[FR Doc. 94–4549 Filed 2–28–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32452]

City of Oshkosh, WI and Wisconsin Central Ltd.—Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: In response to a petition filed by the City of Oshkosh (City) and Wisconsin Central Ltd. (WCL) this proceeding is instituted to determine whether the City will become a common carrier under the Interstate Commerce Act and whether regulatory approvals are required for an acquisition and consolidation agreement. Interested persons are invited to file comments.

DATES: Written Comments (original and 10 copies) must be filed by March 21, 1994, and concurrently served on the representative of petitioners.

ADDRESSES: Send comments referring to Finance Docket No. 32452 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Commission has authority to issue declaratory and interpretive orders and in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty under 5 U.S.C. 554(e) and 49 U.S.C. 10321. This proceeding is instituted at the request of petitioners to clarify the status of the City as a noncarrier. According to petitioners, under an agreement for rail acquisition and consolidation by and among the City, WCL and Fox Valley & Western Ltd. (FVW),[1] the City has acquired from WCL the right-of-way underlying the rail line between West 20th Avenue and Harrison Street, within the city limits of Oshkosh, between milepost 172.1 and milepost 176.6, a distance of approximately 4.5 miles.[2] WCL has retained ownership of the rail, ties, and other track material, and has retained a permanent unconditional easement to provide freight operations. The sale of the property to the City is a part of a WCL/FVW plan to coordinate and consolidate railroad operations and to improve grade crossings in the Oshkosh area.

Petitioners assert that, although the City acquired the property underlying the rail line, it did not acquire the obligation to provide common carrier service. WCL, not the City, holds itself out to provide freight service to the public. There is no shared use of the rail corridor, petitioners assert; rather, the City will merely own the underlying property and WCL will continue to own the tracks and to provide exclusive freight service. Petitioners conclude that because WCL will retain the common carrier obligation to provide freight service, the limited acquisition by the

[1] WCL and FVW are commonly controlled by Wisconsin Central Transportation Corporation.

[2] The agreement also covers the City's acquisition of FVW right-of-way between milepost 20.1 and milepost 23.0 subject to a pending petition for abandonment exemption in *Fox Valley & Western Ltd.—Abandonment Exemption—In Fond du Lac and Winnebago Counties, WI*, Docket No. AB–402 (Sub-No. 1X) (ICC filed Nov. 10, 1993). According to the City, the sale of this line will not take place until the Commission has authorized its abandonment. Thus, the City's acquisition of the FVW right-of-way is not a subject of this petition for declaratory order.

City of the subject property does not constitute an acquisition of a railroad line subject to the Commission's jurisdiction.

Petitioners request the Commission to issue an order declaring that: (1) the acquisition by the City is not subject to the Commission's jurisdiction; and (2) the acquisition by the City does not make the City a carrier. Copies of the petition are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Decided: February 22, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4578 Filed 2–28–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32429]

Gordon Morris—Continuance in Control Exemption—Morris Leasing Co., LTD.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts Gordon Morris from the prior approval requirements of 49 U.S.C. 11343 *et seq.* to continue in control of Michigan Southern Railroad Company, Inc. and Morris Leasing Co., Ltd., upon the latter's becoming a carrier. The exemption is subject to standard labor protective conditions.

DATES: This exemption will be effective on March 30, 1994.

Petitions to stay must be filed by March 10, 1994.

Petitions to reopen must be filed by March 20, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32429 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Thomas F. McFarland, Jr., 20 North Wacker Drive, Suite 3118, Chicago, IL 60606–3101.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 18, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons, and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–4579 Filed 2–28–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on January 6, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ciment Quebec, Inc., Portneuf, Quebec, CANADA has become a member of PCA effective January 1, 1994, and Dolomite Brick Corporation, an associate member, has changed its name to Baker Refractories, York, PA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015.

The last notification was filed with the Department on October 5, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 18, 1993, 58 FR 60880.

Joseph H. Widmar,

Deputy Assistant Attorney General, Antitrust Division.

[FR Doc. 94–4622 Filed 2–28–94; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Privacy Act of 1974; System of Records; Expansion of Denial or Federal Benefits Project Clearinghouse (DEBAR)

AGENCY: Department of Justice, Office of Justice Programs (OJP).

ACTION: Notice.

SUMMARY: The Office of Justice Programs is publishing, as required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, this notice of an expansion of the system of records to include information pertaining to conviction of individuals for defense contract related felonies as required to implement Section 815 of the 1993 National Defense Authorization Act.

DATES: The Department of Justice has requested a waiver of the 60-day review period from the Office of Management and Budget. The effective date of this notice will be March 31, 1994.

ADDRESSES: Copies of supporting documentation are available for public inspection upon request at the following location: U.S. Department of Justice, Office of Justice Programs, Denial of Federal Benefits Project, 633 Indiana Avenue NW., room 542, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Michael J. Dalich, Director, Denial of Federal Benefits Project, Department of Justice, Office of Justice Programs, at the address above; telephone (202) 307–0630.

SUPPLEMENTARY INFORMATION: Section 815 of the 1993 National Defense Authorization Act (Section 815 of Pub. L. 102–484), provides that individuals convicted of certain defense-contract related felonies are disqualified from employment by defense contractors or first tier subcontractors. The Attorney General has directed the Denial of Federal Benefits Clearinghouse of the Department of Justice to perform certain duties in order that the purpose of the statute might be fulfilled. These duties include maintaining an information clearinghouse for persons so disqualified and forwarding to the General Services Administration (GSA) data concerning court denials of Federal benefits for inclusion in GSA's Lists of Parties excluded from Federal Procurement or Nonprocurement Programs, more commonly referred to as the "Debarment List." The system of records will be expanded in that the Denial of Federal Benefits Project (DFBP) Clearinghouse of the Office of Justice Programs will identify individuals disqualified under the 1993

National Defense Authorization Act and forward that information to the GSA. The Clearinghouse also will provide information on persons so convicted to defense-related contractors and first tier subcontractors as required for determination of employment eligibility purposes.

This notice expands the previous OJP Denial of Federal Benefits Clearinghouse System (DEBAR) system of records notice to include the expanded system for implementation of the requirements of the 1993 National Defense Authorization Act. (Section 815 of Pub. L. 102–484) (55 FR 149, August 2, 1990)

OJP–13

SYSTEM NAME:

Denial of Federal Benefits Clearinghouse System (DEBAR).

SYSTEM LOCATION:

Office of Justice Programs; Denial of Federal Benefits Project (DFBP), 633 Indiana Avenue NW., room 542, Washington, DC 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual convicted of a Federal or State offense involving drug trafficking or possession of a controlled substance who has been denied Federal benefits by Federal or State courts. The expanded system also will include persons convicted of defense-contract related felonies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Executed Denial of Federal Benefits Forms, court orders, Federal Agency Benefits Listings, and notices from U.S. Attorneys concerning convictions of defense-contract related felonies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 21 U.S.C. 853a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system will be disclosed routinely to the General Services Administration (GSA) for inclusion in the publication, *Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs*, More commonly known as the "Debarment List." Records from the system will routinely be disclosed to Federal agencies, defense-related contractors and first-tier subcontractors to verify prior defense-contract related felonies that require such records to deny benefits or employment.

Release of information in an adjudicative proceeding: Records and information within this system may be released in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when:

i. The OJP, or any subdivision thereof; or

ii. Any employee of the OJP in his or her official capacity; or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice, unless it is determined that release of the specific information in a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or a staff person acting on the Member's behalf, when the Member or staff officially requests the information on behalf of, and at the request of, the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored on computer discs or diskettes for use in a computer environment, as well as in manual file folders.

RETRIEVABILITY:

Data is retrievable by name of individual, social security number, or type of conviction.

SAFEGUARDS:

Information contained in the system is maintained in accordance with DFBP procedures. Manual information in the system is safeguarded in locked file cabinets within a limited access room in a limited access building. Access to manual files is limited to personnel who have a need for files to perform official duties. Operational access to information maintained on a dedicated computer system, with computer discs or diskettes, is controlled by levels of security provided by password keys to prevent unauthorized entry, and an audit trail of accessed information. Access is also limited to personnel who have a need to know to perform official duties.

RETENTION AND DISPOSAL:

Data is maintained for current and prior years in a master file. Data is not destroyed, but maintained for historical purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DFBP, Office of Justice Programs, 633 Indiana Avenue, NW., Room 542, Washington, DC 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be in writing, with the envelope and letter marked "Privacy Access Request". Direct the access request to the System Manager listed above. Identification of individuals requesting access to their records will include fingerprinting (28 CFR 20.34).

CONTESTING RECORDS PROCEDURES:

An individual desiring to contest or amend information maintained in the system should direct the request to the System Manager listed above. The request should state clearly and concisely the information being contested, the reasons for contesting the information, and the proposed information amendment(s) sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system are Federal and State courts, individuals convicted of certain drug offenses, and Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Laurie Robinson,

Acting Assistant Attorney General.

[FR Doc. 94–4497 Filed 2–28–94; 8:45 am]

BILLING CODE 4410–18–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94-2 CARP-DD]

Ascertainment of Controversy for 1992 and 1993 Digital Audio Recording Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments.

SUMMARY: The Copyright Office directs all claimants to royalty fees collected for Digital Audio Recording Devices and Media (DART) for 1992 and 1993 to submit comments as to whether a controversy exists as to the distribution of either of these funds. The Office announces the suspension of certain deadlines for distribution of these royalties. The Office also seeks comment as to whether it should consolidate the 1992 and 1993 royalty funds into one proceeding.

DATES: Written comments are due by June 10, 1994.

ADDRESSES: If sent by mail, ten copies of written comments should be addressed to: Copyright Office, Library of Congress, Department 17, Washington, DC 20540. If hand delivered, ten copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 407, First and Independence Avenue SE., Washington DC 20540. In order to ensure prompt receipt of these time sensitive documents, the Office recommends that the comments be delivered by private messenger service.

FOR FURTHER INFORMATION CONTACT: Marybeth Peters, Acting General Counsel, U.S. Copyright Office, Department 17, Library of Congress, Washington, DC 20540. Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, Congress enacted the Audio Home Recording Act (AHRA), which required manufacturers and importers to pay royalties on digital audio recording devices or media that are distributed in the United States. The royalties are deposited with the Copyright Office and distributed by the Copyright Royalty Tribunal to interested copyright parties that file claims with the Tribunal each year during January and February.

The Act provides that the royalties are to be divided into two funds—the Sound Recordings Fund which gets 66⅔% of the royalties, and the Musical Works Fund which gets 33⅓%.

Within each fund, the Act establishes subfunds. The Sound Recordings Fund consists of four subfunds: The first of these—the Nonfeatured Musicians' Subfund—is allocated 2⅚% of the Sound Recordings Fund, and the second subfund—the Nonfeatured Vocalists' Subfund—gets a 1⅜% share; after the shares of these two subfunds are subtracted, two other subfunds—the Featured Recording Artist Subfund and the Sound Recording Owners Subfund—receive 40% and 60% of the remainder respectively. In the Musical Works Fund, there are two subfunds—the Publishers' Subfund and the Writers' Subfund—which each get 50% of that Fund. The Act thus establishes the percentages for each fund and subfund, but left it to the Copyright Royalty Tribunal to decide what each claimant within a subfund would get.

Accordingly, the Act required the Tribunal to ascertain within 30 days after the last day for filing claims—March 30—whether there were any controversies among the claimants as to the proper distribution of the royalties in their fund and/or subfund. If there were any controversies, the Tribunal was to initiate a proceeding immediately and make a final determination concerning distribution within one year.

II. Tribunal Actions in 1993

Last year the Tribunal asked the claimants if there were any controversies in distributing the 1992 DART royalties, and made an initial funding that there were controversies in both the Sound Recording and the Musical Works Funds. 58 FR 17576 (1993).

By the end of 1993 all the claimants to the Musical Works Fund had reached settlements, except for one individual, who asserted that there were controversies in both the Publishers' and the Writers' Subfunds. Concerning the Sound Recordings Fund, there were settlements in three of the four subfunds; however, for the Featured Recording Artists' Subfund, the Gospel Music Coalition, the Alliance of Artists and Recording Companies, Reachout Records International, Inc. and Copyright Management, Inc. had not reached settlements with one corporation and one individual by the end of the last year.

The Tribunal had established December 1, 1993 as the date by which the parties in controversy would be required to file their written direct cases. However, effective December 17, 1993, Congress passed the Copyright Royalty Tribunal Reform Act of 1993: This legislation dissolved the Tribunal and established a new system of copyright arbitration royalty panels (CARPs) to be supported by the Library of Congress and the Copyright Office.

Before the Act was passed, but in anticipation of it, two requests were made of the Tribunal. The parties to the Musical Works Fund asked the Tribunal to consolidate the 1992 DART distribution proceeding with the 1993 DART distribution proceeding (scheduled to begin in 1994), insofar as it applied to that particular fund. The parties to the Sound Recordings Fund did not join with the request for consolidation, but instead asked the Tribunal for a suspension of the procedural date requiring them to file a written direct case by December 1, 1993.

On November 29, 1993, the Tribunal granted both requests, thus consolidating the 1992 and 1993 Musical Works Fund proceedings and suspending the procedural dates for the 1992 Sound Recording Fund proceeding.

III. The New CARP System

As we said, Congress dissolved the Copyright Royalty Tribunal and, effective December 17, 1993, established the CARP system in the Library of Congress. As instructed by the Reform Act, the Copyright Office immediately issued a notice adopting the full text of the former Tribunal's rules and regulations on an interim basis. 58 FR 67690 (1993). Then, on January 18, 1994, the Office published proposed regulations revising the adopted Tribunal rules to adapt them to the requirements of the new CARP system. 59 FR 2550 (1994).

In the January 18, 1994 notice, we stated that we did not consider the Copyright Office to be the successor agency of the Copyright Royalty Tribunal, and that it was Congress' intent to establish an entirely new system. Therefore, the proceedings that the Tribunal had started but not concluded by December 17, 1993 would not be taken up where they had left off, but would be begun anew under the new CARP regime. *Id.* at 2551.

IV. Purposes of This Notice

The first purpose of this notice is to begin anew the 1992 DART royalty distribution proceeding. We are asking the claimants to provide the Copyright Office, by June 10, 1994, with the following information: (a) Whether any controversies exist concerning distribution of 1992 DART royalties; (b) if controversies do exist, the particular subfunds for which they exist; and (c)

if settlements have been made, the identity of the parties who have settled and of those who have not.

The second purpose of this notice is to comply with the statutory obligation to begin the 1993 DART distribution proceeding. We are asking the same questions about 1993 DART as we are asking about 1992 DART: whether any controversies exist, for which subfunds, and who are the settled and non-settled parties.

After the existence of any controversies are determined, AHRA gives the Copyright Office 30 days to distribute those royalties not in controversy. In order to make that determination for both the 1992 and 1993 proceedings, we are asking the claimants who report that they are in controversy to state how much is in controversy in each subfund. The information to be provided should include each claimant's asserted percentage or dollar claim to the subfund, and a brief narrative justifying that asserted claim. In addition, we are asking each claimant who expects to be participating in a CARP proceeding to file a Notice of Intent to Participate, as required by 37 CFR 251.43(a).

Third, we are seeking comment as to the advisability of consolidating the 1992 DART and the 1993 DART distribution proceedings. We are aware that the Tribunal granted a request for consolidation filed by the Musical Works Fund claimants. The reasons the claimants cited at the time was that the 1992 fund, which only included royalties collected between October 28 and December 31 of that year, was relatively small, that the amounts in controversy were necessarily even smaller, that the cost of litigating each fund separately would be high in comparison with the size of the funds, and that the 1992 proceeding, being the first of its kind, would be setting important precedent and would benefit from consolidation with the 1993 proceeding. We should like to learn two things: (1) Whether the claimants who requested consolidation of the 1992 and 1993 DART Musical Works Fund distributions are adhering to their request; and (2) whether the claimants of the Sound Recordings Fund believe that similar consolidations should be made for that fund.

Fourth, as explained below, we are using this notice to announce three-month delays in meeting two DART deadlines this year: the determination of the existence of controversies and the distribution of DART royalties not in controversy.

V. DART Deadlines

The AHRA establishes several statutory deadlines to assure the speedy distribution of DART royalties. Claims are to be filed by the last day of February, each year. The existence of any controversies is to be ascertained by March 30. Distribution of royalties not in controversy are to be authorized to be distributed within 30 days of the finding that they were not in controversy—that is, no later than April 29. Under the earlier law, the Tribunal was to conclude all proceedings to resolve any controversies within one year of declaring the existence of those controversies. The abolition of the Tribunal and the establishment of an entirely new CARP system in the Library of Congress has made the meeting of certain statutory deadlines exceedingly difficult and, in at least three cases, virtually impossible.

The Administrative Conference of the United States has considered the issue of how agencies should respond to circumstances that affect their ability to adhere to schedule, and has issued a series of recommendations concerning statutory time limits. 43 FR 27509 (1978), 1 CFR 305.78–3. The Administrative Conference said:

> It should be recognized that special circumstances, such as a sudden substantial increase in caseload, or complexity of the issues raised in a particular proceeding, or the presence of compelling public interest considerations, may justify an agency's failure to act within a predetermined time. An agency's departure from the legislative timetable should be explained in current status reports to affected persons or in a report to Congress.

Id., at para. 4. The Copyright Office finds that good cause exists for not meeting one earlier, and two current statutory deadlines for the distribution of 1992 and 1993 DART royalties.

Under the law in effect before December 17, 1993, the Tribunal was obliged to conclude the 1992 DART distribution proceeding by April, 1994. However, because the Tribunal no longer exists and because the Copyright Office is not the successor agency to the Tribunal, we cannot be bound by the Tribunal's deadlines. We believe that all proceedings started by the Copyright Office are governed by the new provisions of the Copyright Royalty Tribunal Reform Act of 1993, which sets its own statutory time limits on the Library of Congress and the Copyright Office for conducting CARP proceedings.

Our authority to begin DART distribution proceedings is dependent on having the new CARP system in place. That means adopting extensive new rules after full opportunity for the public to comment has been given. It also involves the time-consuming and important process of identifying a pool of potential arbitrators and evaluating their qualifications, ethical eligibility, and availability in consultation with various arbitration associations. We are acting with the utmost speed in all these areas, but it is obvious that these goals cannot be accomplished in time to begin DART distribution proceedings in April, 1994.

We therefore find that a delay of three months is necessary with respect to two DART deadlines. Instead of declaring the existence of any controversies in 1992 and/or 1993 DART distribution by March 30, 1994, we will make such declaration no later than June 30, 1994. Distribution of royalties not in controversy will be authorized on or before August 1, 1994.

Dated: February 22, 1994.

Barbara Ringer,

Acting Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–4456 Filed 2–28–94; 8:45 am]

BILLING CODE 1410–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–014]

Intent to Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Universal Propulsion Company, Inc., of Phoenix, Arizona, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,160,233, entitled "Fastening Apparatus Having Shape Memory Alloy Actuator," which issued on November 3, 1992. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent

Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATES: Comments to this notice must be received by May 2, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: February 17, 1994.

Edward A. Frankle,

General Counsel.

[FR Doc. 94–4519 Filed 2–28–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CIVILIAN COMMUNITY CORPS

AGENCY: National Civilian Community Corps.

ACTION: Changes and additions to previously published notice of availability of funds.

SUMMARY: The National Civilian Community Corps (NCCC) published a notice in the **Federal Register**, Volume 59, Number 20 on January 31, 1994, announced the availability of funds for a summer national service program. This notice changes the requirement that the NCCC summer youth camp be located in the Northeast region of the United States and expands acceptable locations to any area of the country that meets the criteria published in this notice. Additionally, this notice provides more background information, more details on criteria that will be used to select a non-profit organization to operate the camp, and extends the application due date from February 28, 1994 to March 21, 1994. The primary purpose of the previous notice—to establish a cooperative agreement with a single non-profit organization capable of setting-up and operating a youth camp in support of the summer national service program—remains the same.

DATES: Applications must be received no later than 5 p.m. EST on March 21, 1994, to be eligible. The NCCC will announce its determination not later than March 31, 1994, and reserves the right not to award any funds for this purpose if no acceptable applications are received.

ADDRESSES: To receive an application kit, contact: National Civilian Community Corps, Corporation for National and Community Service, 1100 Vermont Avenue NW. (11th Floor), Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Gregory Knight at (202) 606–5000 ext. 103 or (202) 606–5256 (TDD).

SUPPLEMENTARY INFORMATION:

Background

On September 21, 1993, President Clinton signed into law the National and Community Service Trust Act (the Act), which created the Corporation for National and Community Service. The Corporation's mission is to engage Americans of all ages and backgrounds in service that addresses the nation's education, public safety, health, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that binds us together as a people, and provide educational opportunity for those who make a substantial commitment to service.

The Corporation is a new federal agency that encompasses the work and staff of two existing independent agencies, the Commission on National and Community Service and ACTION. The Corporation also funds the new national service initiative called AmeriCorps, service-learning initiatives in elementary and secondary schools and institutions of higher education, and the new National Civilian Community Corps (NCCC). The Corporation will also engage in efforts to improve the quality of service programs and continue to support the Volunteers In Service To America (VISTA) program and the senior volunteer programs previously sponsored by ACTION.

The National Civilian Community Corps

The NCCC, a new federally managed program under the AmeriCorps umbrella, is in the process of establishing several residential sites across the country for national service. A main objective of NCCC is to utilize excess military capacity and personnel as the Department of Defense (DOD) down-sizes. The purpose, authority, and guidelines for the NCCC are written under Subtitle E of the Act which provides a basis for determining:

(1) Whether residential service programs administered by the Federal Government can significantly increase the support for national service and community service by the people of the United States.

(2) Whether such programs can expand the opportunities for young men and women to perform meaningful, direct, and consequential acts of community service in a manner that will enhance their own skills while contributing to their understanding of civic responsibility in the United States.

(3) Whether retired members and former members of the Armed Forces of the United States, members and former members of the Armed Forces discharged or released from active duty in connection with reduced Department of Defense spending, members and former members of the Armed Forces discharged or transferred from the Selective Reserve of the Ready Reserve in connection with reduced DOD spending, and other members of the Armed Forces not on active duty and not actively participating in a reserve component of the Armed Forces can provide guidance and training under such programs that contribute meaningfully to the encouragement of national and community service.

(4) Whether domestic national service programs can serve as a substitute for the traditional option of military service in the Armed Forces of the United States which, in times of reductions in the size of the Armed Forces, is a diminishing national service opportunity for young Americans.

In accordance with the Act, the Corporation has established the NCCC demonstration program to carry out the purpose of Subtitle E. Under the demonstration program, NCCC Corps members (participants) may receive training and perform service in one of two program components: (1) A national service program or (2) a summer national service program. Both components are residential programs. The members of each program shall reside with other members of the Corps in Corps housing during the period of service. This notice addresses the summer national service program component of the NCCC only. The summer component is tailored to support Corporation objectives for the Summer of Safety.

The Summer of Safety

The Summer of Safety is being launched by the Corporation to respond to the growing fear of and frustration over the levels of crime and violence in every part of the country. The 1994 Summer of Safety will demonstrate the potential of national service to respond to these urgent needs by using the talents and energies of young Americans. The Summer of Safety will specifically address the public safety needs of communities by achieving the following Corporate objectives:

(1) Make direct and demonstrable impacts on crime, violence and fear by identifying and meeting public safety needs.

(2) Build new partnerships and collaborations for safety that capitalize on all of the community's resources.

(3) Demonstrate that young people can help make communities safer.

(4) Stimulate public interest in national service as a means to respond to America's problems.

The Corporation has established a range of Summer of Safety initiatives which will focus on enhancing public safety. The NCCC is sponsoring one of these initiatives which, as stated above, is tailored to support Corporate objectives.

Under the NCCC's sponsored Summer of Safety program, approximately 200 young people, ages 14–17, will do public safety-related service projects with schools, local law enforcement agencies, and community-based organizations. The young people, known as Corps members will receive leadership training and a mix of the best military and civilian youth service programming during their eight weeks at the camp on an underutilized military installation. The broad objectives established by the NCCC to support the Summer of Safety are as follows:

(1) To demonstrate that youth, properly trained and led, can have a direct and demonstrable impact on community public safety.

(2) To demonstrate that 14–17 year old youth Corps members from diverse, economic, geographic, and ethnic backgrounds can work together in teams to address community safety problems and concerns.

(3) To demonstrate that the service-learning model, created by combining the best elements from military training techniques and Civilian Conservation Corps values, is an effective means of preparing youth for public service.

NCCC Summer of Safety Program Overview

The NCCC seeks to set up a cooperative agreement with a single, innovative nonprofit organization (including institutions of higher education) to operate a summer camp for youth 14–17 years of age in support of the Summer of Safety. Preference will be given to organizations with previous experience and demonstrated success in similar operations. The applicant selected will be known as the Cooperator. A cooperative agreement was chosen as the vehicle of funds award (instead of a grant) to allow the NCCC to work hand-in-hand with the Cooperator on this program.

The NCCC is sponsoring only one national summer camp program for the summer of 1994. This camp will run for approximately 8 weeks beginning July 5, 1994. Long range plans are to sponsor additional summer camps in 1995. This notice is for the 1994 camp only. As a demonstration program, future camps will be impacted by the results of the 1994 effort.

The Cooperator selected must handle all aspects of camp operation except where stated otherwise in this notice. The main areas of concern for camp operation include the following: finding and securing a suitable camp location, logistics (food, lodging, supplies, transportation, support, etc.), recruitment of Corps members, hiring of staff, training of staff and Corps members, and identification, development, and performance of community service projects that support the goals of the Summer of Safety.

Eligibility

All nonprofit organizations, including institutions of higher education, may apply to be selected as the Cooperator for this project. Prior experience is highly desirable but not mandatory.

Guidelines

Camp Selection: The summer camp may be located anywhere in the United States on a military base or other under-utilized DOD facility. The applicant must find a suitable camp location and obtain approval for its use. Letters of intent or agreement from installation command personnel should be provided with the application. The applicant should show what services will be provided by the base and what must be provided by the Cooperator. The camp should include suitable living, classroom, and support facilities for the diverse group of up to 200 young men and women aged 14–17. Support facilities should include but not be limited to: food service, laundry, clinic or first aid station, and places for appropriate recreational activities. The camp should not be in an extremely remote area. Travel to and from the camp should be possible on a cost effective basis. Care should be taken to select a camp in an area where community projects can be done near-by the camp location. Although meaningful public safety projects may be accomplished in rural, suburban, or urban areas, excessive travel time from the camp to the project area should be avoided.

Recruitment: As this is a national program, recruitment should be accomplished on a national basis. All recruitment activities for this NCCC Summer of Safety summer camp program are to be accomplished by the Cooperator. Up to 200 Corps members shall be selected. Corps members shall be at least 14 but not over 17 years of age during the period of camp which will be approximately from July 5, 1994 through August 24, 1994. Application procedures and a time period for potential Corps members to return applications will be established by the Cooperator. Also, a fair application review process must be used. Precise guidelines will be coordinated with the selected Cooperator for recruiting Corps members.

In general, Corps members will represent economically, geographically, and ethnically diverse backgrounds. To the extent practicable, at least 50 percent shall be economically disadvantaged youths. The term "economically disadvantaged" follows the guidelines established by the Job Training Partnership Act. A precise definition of this term will be provided by NCCC for the applicant selected as Cooperator. Corps members must be U.S. citizens or permanent residents, have no felony convictions or adjudications, and have no current substance abuse problems (drugs or alcohol). Recruits must have no chronic or life threatening physical conditions. Procedures to make these determinations will be researched and recommended by the applicant. NCCC reserves the right to approve any method(s) of determination to be used.

Reasonable accommodation will be made for Corps members with disabilities. Disabled Corps members must be capable of self-care and able to accomplish project tasks. Disabled recruits will be evaluated on a case-by-case basis and fair methods of evaluation jointly established by the Cooperator and NCCC.

The Cooperator and the NCCC shall establish standards of conduct that apply to Corps members. The Cooperator shall appoint a camp superintendent who will enforce the standards of conduct, through his or her staff, to promote proper moral and disciplinary conditions in the camp. Enforcement methods for standards of conduct shall be jointly determined with the NCCC. If enforcement fails, a Corps member may be dismissed if the superintendent determines the retention of the member in the Corps will jeopardize the enforcement of the standards or diminish the opportunities of other Corps members.

Camp Staff: Applicants will screen, select, and hire a qualified camp staff. The staff may include administrative personnel and Corps member supervisory and training staff as determined necessary by the applicant. All staff personnel should reflect the principles of diversity established by

NCCC, be quality-oriented with high personal standards, and be capable of being good role models for Corps members. An appropriate method of accomplishing a background check and certification of potential staff members should be established by the applicant. Preference will be given to applicants who show intention and ability to recruit qualified retired, discharged, and other inactive members and former members of the Armed Forces, and former VISTA, Peace Corps, and youth service program personnel as staff members. The NCCC will provide trainers and a one-week training program for the camp staff members who will work directly with Corps members. Therefore, plans should be made to have those staff members available to receive training not later than one week prior to the camp start date. The applicant shall be responsible for supervising the camp staff and administrative personnel and for all required personnel actions such as record keeping, salary payments, scheduling, insurance, and all other details.

Corps Member Compensation & Benefits: As stated above, Corps members shall be recruited nationally. They will receive a one-time round-trip transportation allowance to and from the camp location, a living allowance, and an education benefit upon completion of the program. These funds shall all be provided by the NCCC but managed and disbursed by the selected Cooperator. The amount of each funding element will be determined by NCCC and provided to the Cooperator under a jointly established procedure. These funds need not be included in proposals. However, a plan to provide an accounting system to manage and disburse these funds to Corps members should be included and the cost of this service should be shown.

Uniforms: The NCCC will provide uniforms for Corps members and camp staff. Applicants shall manage and distribute clothing items. Clothing items are now being determined by NCCC. An estimate of clothing items includes; 3 shorts, 3 pants, 3 tee shirts, 2 polo shirts, 1 light windbreaker, 1 cap, one pair of sneakers, and one knapsack per camper. Similar items will be available for staff. Spare items will need to be stored, accounted for, and distributed as required. Laundry plans should be considered among other logistics details.

Corps Member Training: NCCC objectives for the Summer of Safety relate directly to the accomplishment of community service projects supporting public safety needs. However, to prepare Corps members to accomplish these projects successfully, careful training and learning must take place. To that end, Corps members will receive training that includes a comprehensive service-learning curriculum designed to promote team building, discipline, leadership, work training, citizenship, and physical conditioning. The NCCC will provide a curriculum to the selected applicant. The Cooperator's camp staff will administer the training to the Corps members. The NCCC reserves the right to be involved closely in all training. The Cooperator may provide additional training and perhaps modify or adapt the curriculum provided by NCCC when changes are coordinated with NCCC and receive NCCC approval. All training must reflect an innovative and structured approach that combines the best of military training techniques, Civilian Conservation Corps values, and service learning models. For the purposes of training, the following definitions apply: (1) *Military training techniques* relate to leadership/followership skills, self discipline, self responsibility, and teamwork; (2) *Civilian Conservation Corps values* focus on love of one's fellowman, personal responsibility for one's own actions, justice, compassion, humility, respect for self and others, concern for the environment, and community service (3) *service learning* with respect to Corps members means a method—(a) under which Corps members learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs, (b) that provides structured time for a Corps member to think, talk, or write about what the Corps member did and saw during an actual service activity, (c) that provides Corps members with opportunities to use newly acquired skills and knowledge in real life situations in their own communities, and (d) that helps to foster the development of a sense of caring for others, good citizenship, and civic responsibility.

Applicants should be innovative in applying or suggesting other areas of training or education that may be available. For example evening instruction in such areas as computers, foreign language, and so forth may be considered. Also, field trips or other activities directly related to the objectives may be proposed for consideration.

Project Development/Service Activities: Community service projects shall focus on public safety needs. All service projects carried out by Corps members shall: (1) Meet an identifiable public need, (2) emphasize the performance of community service activities that provide direct and demonstrable community benefits and opportunities for service learning and skills development, (3) to the maximum extent practicable, encourage work to be accomplished in teams of diverse individuals working together, and (4) include education and training in various technical fields. The Summer of Safety program must consider projects appropriate to the ages and capabilities of the Corps members.

The applicant may consider having Corps members accomplish one relatively large project or a series of smaller projects. The NCCC will work closely with the applicant selected to develop service projects in public safety. Appendix 1 gives suggestions for how the applicant may approach the development of Summer of Safety projects. The applicant should begin to work with the community and describe some candidate projects in the proposal. The NCCC reserves the right of final project approval.

Camp Operations and Logistics: The Cooperator is responsible for all logistical details of camp operations. Areas that must be considered include: medical care and first aid, food for off-site meals during projects, camp transportation, and tools and proper safety equipment for project work. This is by no means an exhaustive list but is provided as examples only. In some cases, innovative solutions may be possible. For example, community groups may agree to provide tools and/or safety equipment needed for Corps members to work on projects. Applicants should develop a time-phased plan or realistic schedule for accomplishing all tasks and include this information with the proposal. A detailed budget must be included as well.

Appropriate opening and closing ceremonies to kick off this program and end it in a positive manner should be planned. Details of these events must be coordinated with NCCC for approval.

The applicant must be prepared to make an on-site presentation to NCCC that explains all aspects of camp operations and program activities. The date for the presentation will be jointly arranged but should be no later than two weeks prior to the camp start date.

Evaluation: Evaluation is an important aspect of the NCCC Summer of Safety camp program. The goal is to take lessons learned from the design of this year's program and apply those lessons to future camps. The applicant should include a detailed evaluation plan consisting of the following

components; (1) progress toward achievement of program objectives, (2) measurement of the quality and effectiveness of service provided to communities, (3) changes in behavior of Corps members, and (4) management effectiveness of the delievery of the total program. Additionally, internal evaluation and monitoring should be a continuous process, allowing for frequent feedback and quick correction of problems. The selected Cooperator will be asked to present a briefing of lessons learned to NCCC at the end of the Summer of Service camp and provide periodic reports throughout the summer.

Application Procedures

An application kit can be requested by writing to or calling the NCCC using the address or phone numbers listed in this notice. Applications must consist of the following items:

(1) A narrative description consisting of not more than 25 typed pages.

(2) Completion of an application for Federal Assistance (Form 424) with budget sheet and required assurances (Included in application kit).

(3) A signed and dated certification regarding drug free workplace requirements (Included in application kit).

(4) A signed and dated certification regarding debarment, suspension, and other responsibility matters (primary covered transactions) (Included in application kit).

(5) A signed and dated certification regarding lobbying if the Federal Assistance exceeds $100,000 (Included in application kit).

Proposal Narrative

Applicants should present their proposals in narrative form with the other components of the application package. Where appropriate in the narrative, methods to implement specific plans should be linked with one or more measurable or demonstrable outcomes. Show not only what tasks are planned, but also the conditions and standards by which they will be accomplished (behavioral terms). The narrative should not exceed 25 type written pages and include the following items as a minimum:

1. *Title page:* Show the name and address of legal applicant (include the signature of the authorized executive), the names of any other organizations participating in a partnership and the amount of federal funds requested. A section on the background of the organization may be included showing experience and capability. Attach a short resume or biography of the primary project director.

2. *Location of camp:* Identify a camp location suitable to support 200 Corps members in accordance with the guidelines provided in this notice.

3. *Recruitment plan:* Include a detailed plan for recruiting Corps members nationwide in accordance with the guidelines provided.

4. *Standards of conduct:* A plan for establishing and enforcing standards of conduct for Corps members should be included in accordance with the guidelines. Although establishment of standards of conduct will be a joint Cooperator/NCCC responsibility, the applicant should include plans for dealing with problems that may be anticipated.

5. *Staffing plan:* Applicants should explain in detail how staffing of the camp will be accomplished in accordance with the guidelines.

6. *Funds management plan:* Explain in detail how the compensation and benefit funds for Corps members (described in guidelines) will be managed and disbursed.

7. *Uniform plan:* Explain details of how the uniforms provided by NCCC for Corps members and camp staff will be managed. Include a distribution, storage, and replacement plan.

8. *Training plan:* Include a detailed plan for conducting a training program for Corps members using curriculum and educational materials provided by NCCC and any other training proposed to help meet objectives. Where possible explain any project-specific training anticipated and methods of accomplishment.

9. *Supplementary activities:* Include a detailed explanation of any additional activities proposed for Corps members such as: mentoring, tutoring, skills training, recreation, education, or cultural activities.

10. *Projects:* Include detailed plans to identify and implement public safety projects that meet the criteria of the guidelines provided. Include an overall project development plan including methods to establish good working relationships with the military base, the corps staff, youth corps members, and community leadership. (Community leadership sectors may include, for example, business, labor, foundations, colleges, universities, media, religious organizations, other military services, government, and health care agencies.) Where possible, include appropriate letters showing support from local community leaders and elected/appointed officials.

11. *Project tools and safety equipment:* Explain in detail what tools and safety equipment might be needed for any known or proposed projects. Safety equipment may include such items as safety goggles, gloves, hard hats, or protective clothing. Explain also how tools and safety equipment will be obtained.

12. *Budget:* Provide a detailed budget plan showing how funds will be used. Also, it is desirable to show experience in managing a budget, including evidence of the applicant's fiscal capacity to administer federal funds.

13. *Medical and first aid care:* Provide a detailed plan for providing this service to Corps members and staff.

14. *Transportation:* Explain in detail all aspects of transportation including getting Corps members safely from the camp to the project site(s) and back on a routine basis.

15. *Meals:* Include a plan for providing meals at the camp and at project sites when required.

16. *Evaluation:* Applicants should include an evaluation plan in accordance with the guidelines provided in this notice.

General Criteria for Applicant Selection

Applications will be reviewed and evaluated using the criteria below. Failure to respond to program requirements discussed in this notice may result in the removal of a proposal from further consideration. The narrative portion of the application should not exceed 25 type-written double spaced pages. Please do not bind your proposal, in case additional copies must be made.

The criteria noted below, which are based on the guidelines and requirements contained in this notice, will be used for selection of a Cooperator. Each criteria will be considered up to the total points available as noted.

(1) Quality of Plans and Attention to Detail (60 Points)

- A camp location suitable to support 200 Corps members in accordance with the guidelines provided in this notice is identified.
- The applicant provides evidence of the ability to accomplish all tasks outlined in this notice successfully. This is shown by outlining previous experience and in carefully formulated written plans with a realistic time-phased scheduled for accomplishing all tasks.
- The overall implementation plan is feasible and has a realistic time table.
- Where appropriate, the applicant explains methods to implement plans that are linked to one or more

measurable/demonstrable outcomes. Planned tasks, as well as the conditions and standards by which they will be accomplished, are clearly shown.

• Letters of intent or agreement from command personnel of the chosen military or other DOD location are provided.

• A detailed plan for recruiting Corps members nationwide in accordance with the guidelines of this notice is provided.

• A plan for establishing and enforcing standards of conduct is included and is in accordance with the guidelines of this notice.

• A detailed staffing plan for screening and hiring qualified camp personnel is included and meets the guidelines provided with this notice.

• The staffing plan gives consideration to retired, discharged, and other inactive members and former members of the Armed Forces, former VISTA, Peace Corps, and youth service program personnel.

• The staffing plan ensures the staff is comprised of men and women of diverse ethnic, economic, professional, and geographic backgrounds.

• A detailed explanation shows how funds for Corps members, such as the living allowance and the educational benefit, are to be managed and disbursed.

• Details are given of how Corps member and staff uniforms and related items will be distributed, replaced, cleaned, and stored for issue.

• A detailed plan for conducting training program for Corps members using curriculum and educational materials provided by NCCC is provided.

• Detailed plans for providing additional activities for Corps members such as: mentoring, tutoring, skills training, recreation, education, and cultural activities are included.

• Detailed plans to identify and implement public safety projects that meet the criteria of the guidelines of this notice are provided.

• An overall project development plan, including methods to establish good working relationships with the military base, the corps staff, youth corps members, and community leadership are included.

• Specific plans to identify and coordinate community service projects with the local community are included.

• The plan identifies specific learning projects and methods by which they will be structured to ensure true service learning takes place.

• Plans to involve Corps members in the use of a team approach in daily camp and project activities are clearly shown.

• Individual projects and tasks are appropriately matched to Corps member age level and skills.

• Letters showing support for projects and the Summer of Safety program from local community leaders and elected/appointed officials are included.

• A detailed plan for providing medical and first-aid care to Corps members and staff is provided.

• All aspects of transportation, including getting Corps members safely to and from project sites, is explained in detail.

• A plan for providing off-site meals (at project sites) when required is outlined.

• A plan to supply tools and safety equipment that might be needed to accomplish projects is explained.

2. Evaluation (10 Points)

A detailed evaluation plan is provided designed to: track progress toward achievement of program objectives, measure the quality and effectiveness of service provided to communities, measure the satisfaction of both Corps members and camp staff, and assess management effectiveness. Also, plans show that internal evaluation and monitoring is a continuous process, allowing for frequent feedback and quick correction of problems.

3. Leadership and management (10 Points)

Evidence is provided that the program director(s) and supervisor(s) are well-qualified for their responsibilities, have a reasonable amount of previous project and personnel management experience, and experience in recruiting, selecting and supervising youth participants in community service programs. Evidence of ability to establish and work within a budget is provided.

4. Cost effectiveness (10 Points)

The proposal shows a cost effective approach to the use of Federal funds and Federal/non-Federal resources. The submitted budget is reasonable for the proposed service activities and the identified community projects. Detailed budget plans clearly show how funds will be used.

5. Innovation and replication (10 Points)

The proposal incorporates innovative approaches to community involvement and service. The program is a good model adaptable in other locations and circumstances. A plan for reporting and briefing results of the summer of service program, including lessons learned, to the NCCC staff is included.

Application Review Process

Applications submitted will be reviewed and evaluated by the NCCC according to the above criteria. NCCC reserves the right to ask for evidence of any claims of past performance or future capability. Selection of a Cooperator must be finalized by execution of a Cooperative Agreement which may require discussions between the NCCC and the applicant to resolve any open issues and/or to further develop plans or specific strategies.

Appendix 1

This appendix provides suggestions for how the Cooperator might approach identification of projects for the NCCC Summer of Safety program. This is meant to be thought-provoking and is not a required process. It will be helpful if the Cooperator can do some preliminary work with local communities to identify potential public safety related projects. One approach to the project selection process is to: (1) Find out what the community needs are (what problems are important to the community), (2) identify other community organizations with a stake in the problem that may be recruited for support, and finally, (3) plan realistic response activities. The following information expands on these steps.

I. Identify Crime/Violence Problems To Be Addressed

By working directly with local law enforcement, neighborhoods, attending community meetings, setting up meetings for law enforcement with community groups, contacting and surveying local businesses, public agencies, service organizations, youth groups, senior groups, etc., your organization can identify specific crime problems which confront the community and concern residents. The types of issues most readily identified through this analysis may include:

—Specific population needs (e.g., seniors who are afraid to go to the market after dark, or children who can't use playgrounds because of drug activity, debris or disrepair, or teenagers who get into trouble when a facility—theater, club, etc.—closes for the evening, or groups are targets of hate crimes);

—Physical hazards (e.g., drug houses, vacant structures used for drug trade or other illegal or disorderly purpose, abandoned vehicles, missing street lights, broken fences, dangerous vehicle traffic patterns, open-air drug markets);

—Unreported or undetected criminal activity (e.g., drug use/sales, gang activity, prostitution, domestic violence or fraudulent solicitors/practices).

II. Pick Community Partners or Collaborators

Think broadly about the range of organizations in the community that may become involved or are already involved in reducing crime and violence in the community. Try to identify which ones have missions, resources or experience that may

be useful. Examples are: City agencies, law enforcement, schools, senior or neighborhood centers, public/private organizations, etc. These organizations may be willing to take part or support your efforts to resolve problems.

III. Craft a Specific Problem Response

It may help to have various activities linked with a common theme. For example, "victim support" may include: Support of victim services within the court, notification of victims for court dates and procedures, meeting and accompanying victims to court, providing child care for victims, follow-up on restitution orders, etc.

You should try to ensure the activities are realistic. Ask if the activities will make a difference in the community. It must be realized that not all problems can be solved in a summer program. Other activities for consideration are:

—Involve youth in senior escort service.
—Conduct and disseminate crime prevention surveys and information/advice.
—Undertake community clean-up efforts, focusing on graffiti, vacant lots, alleys, and other sites where fear of crime and disorder are evident.
—Organize neighborhood watch programs.
—Initiate or enhance relationships between law enforcement and local youth organizations.
—Develop a network of "safe houses" or "safe corridors" in neighborhoods, and training parents and children about the program.
—Develop and conduct anti-violence presentations for youth groups.
—Develop and supervise youth activities that incorporate age-appropriate personal safety/violence prevention training; e.g., illicit drug use, impaired driving, etc.
—Establish conflict resolution programs, including outreach, training, and ongoing activities for youth.
—Lead public safety field trips for youth with appropriate orientation; e.g., to jails/prisons, police stations, courts, hospitals, etc.

Dated: February 23, 1994.

Fred Peters,

Deputy Director of Education, Training, & Military Affairs.

[FR Doc. 94–4564 Filed 2–28–94; 8:45 am]

BILLING CODE 4430–81–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–366]

Georgia Power Co., et al., Edwin I. Hatch Nuclear Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Georgia Power Company, acting for itself, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensees), for the Edwin I. Hatch Nuclear Plant, Unit 2 (Hatch or the facility), Facility Operating License No. NPF–5, located in Appling County, Georgia.

Environmental Assessment

Identification of the Proposed Action

The proposed action would change the Hatch Unit 2 Technical Specifications (TS) to increase the allowable main steam isolation valve (MSIV) leakage rate from 11.5 standard cubic feet per hour (scfh) to 100 scfh for any one MSIV and a combined maximum pathway leakage rate of 250 scfh for all four main steam lines, and would delete the TS requirements for the currently installed MSIV leakage control system (LCS).

The proposed amendment is in accordance with the licensee's application dated October 1, 1993, as revised January 6, 1994, and supplemented February 3, 1994.

The Need for the Proposed Action

The proposed amendment is needed to reduce the need for repairs of the MSIVs in order to meet the present, restrictive, leakage requirements; to resolve concerns associated with the current LCS performance capability at high MSIV leakage rates; and to assure a reliable and effective method is available for treating any potential MSIV leakage during a postulated loss of coolant accident (LOCA). Many BWRs have difficulty meeting their MSIV leakage rate limits. Extensive repair, rework and retesting efforts have negative effects on outage costs and schedules, as well as significant impact on ALARA (as low as reasonably achievable) radiological exposure programs for the licensee's staff and labor force. The alternate means proposed by the licensee to treat MSIV leakage makes use of components and systems that can reasonably be expected to remain intact and serviceable following a design basis LOCA. These components are the main steam lines and condenser.

Environmental Impacts of the Proposed Action

The proposed amendment will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite. The proposed action will not increase potential radiological environmental effects due to MSIV leakage beyond those already permitted by the regulations.

MSIV leakage, along with containment leakage, is used to calculate the maximum radiological consequences of a design basis accident. Standard conservative assumptions were used to calculate offsite, control room and the technical support center (TSC) doses, including the doses due to MSIV leakage, which could potentially result from a postulated design basis LOCA at Hatch, and are described in Section 15.1.39 of the Hatch Unit 2 Final Safety Analysis Report (FSAR). The control room, TSC, and offsite doses resulting from a postulated LOCA have recently been recalculated using currently accepted iodine dose conversion factors. This analysis demonstrated that a total leakage rate of 250 scfh results in dose exposures for the control room, TSC, and offsite (exclusion area boundary and low population zone) that remain within the requirements of 10 CFR part 100 for offsite doses and 10 CFR part 50, appendix A, for the control room and TSC.

Deletion of the MSIV Leakage Control System will reduce the overall occupational dose exposures due to the elimination of maintenance and surveillance activities associated with the system. The dose exposure associated with deleting the system will be as low as reasonably achievable and will be less than the dose which would result from maintenance and surveillance activities associated with the present system for the remainder of plant life.

Therefore, radiological releases will not differ significantly from those determined previously, and the proposed amendment does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed action does not affect plant nonradiological effluents and has no other nonradiological environmental impact.

Therefore, there will not be a significant increase in the types or amounts of any effluent that may be released offsite and, as such, the proposed amendment does not involve irreversible environmental consequences beyond those already associated with normal operation of the plant.

Based on its review, the Commission concludes that the proposed amendment is acceptable. The staff has determined that the proposed amendment does not alter any initial conditions assumed for the design basis accidents previously evaluated and the alternate system is capable of mitigating the design basis accidents.

The proposed amendment does not increase the probability or consequences

of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed amendment involves components in the plant which are located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request for the proposed amendment. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of Edwin I. Hatch Nuclear Plant, Unit No. 2, dated March 1978.

Agencies and Persons Consulted

The staff consulted with the State of Georgia regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the application for amendment dated October 1, 1993, as revised January 6, 1994, and supplemented February 3, 1994, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 23rd day of February 1994.

For the Nuclear Regulatory Commission.

Loren R. Plisco,

Acting Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-4560 Filed 2-28-94; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal Hydraulic Phenomena

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on March 15 and 16, 1994, in the East Auditorium at the Westinghouse Nuclear Energy Center, 4350 Northern Pike Road, Monroeville, PA.

Most of the meeting will be closed to the public to discuss information deemed proprietary by the Westinghouse Electric Corporation [5 U.S.C. 552b(c)(4)].

The agenda for the subject meeting shall be as follows:

Tuesday, March 15, 1994—8:30 a.m. until the conclusion of business.

Wednesday, March 16, 1994—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the test programs being conducted by Westinghouse in support of the AP600 passive plant design certification review. The focus of the discussions will be on the Core Make-up Tank (CMT) and Passive Containment Cooling System (PCCS) test programs. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation, the NRC staff, their consultants and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred, including the specific schedule for the sessions open to the public.

Dated: February 23, 1994.

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 94-4556 Filed 2-28-94; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee Meetings on ABB-CE Standard Plant Designs and on Advanced Boiling Water Reactors; Revisions

The meeting of the ACRS Subcommittee on ABB-CE Standard Plant Designs scheduled to be held on March 8, 1994, in Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland has been extended until the close of business on March 9, 1994. Notice of this meeting was previously published in the **Federal Register** on Wednesday, February 23, 1994 (59 FR 8666). All other items pertaining to this meeting remain the same as previously published. For further information please contact the cognizant ACRS staff engineer, Mr. Douglas H. Coe (telephone 301/492-8972) between 7:30 a.m. and 4:15 p.m. (EST).

The meeting of the ACRS Subcommittee on Advanced Boiling Water Reactors scheduled to be held on Wednesday, March 9, 1994, has been cancelled. Notice of this meeting was previously published on Wednesday, February 23, 1994 (59 FR 8666). For further information please contact the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: February 23, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–4554 Filed 2–28–94; 8:45 am]

BILLING CODE 7590–01–M

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued a report entitled "Characterization of Class A Low-Level Radioactive Waste 1986–1996" (NUREG/CR–6147). This manual, prepared for the NRC by S. Cohen and Associates, is now available.

This report characterizes Class A Low-Level Waste shipped for disposal from 1986 through 1990. It was developed as part of a Nuclear Regulatory Commission (NRC) sponsored study to develop a technical information base useful to persons and organizations involved in the management and disposal of low-level radioactive waste and in the regulation of these activities.

Copies of NUREG/CR–6147 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161. A copy is also available for inspection, and copying for a fee, in the NRC Public Document Room, 2120, L Street NW. (Lower Level), Washington, DC.

For further information contact James C. Malaro, Radiation Protection and Health Effects Branch, Mail Stop NL/S–139, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3764.

Dated at Rockville, Maryland, this 25th day of January, 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94–4558 Filed 2–28–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company (Zion Nuclear Power Station, Unit Nos. 1 and 2)

Exemption

I

The Commonwealth Edison Company (the licensee), is the holder of Facility Operating License Nos. DPR–39 and DPR–48 which authorize operation of Zion Nuclear Power Station, Units 1 and 2, at a steady-state power level not in excess of 3250 megawatts thermal. The facility consists of two pressurized water reactors located at the licensee's site in Lake County, Illinois. The licenses provide, among other things, that they are subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

In a letter dated December 3, 1993, the licensee provided an assessment of the reference temperature for pressurized thermal shock (RT_{PTS}) for the design life (32 effective full power years) for the Zion Nuclear Power Station Units 1 and 2 (Zion 1 and 2) reactor vessels and requested an exemption from determining the unirradiated reference temperature (initial RT_{NDT}) in accordance with NB–2331 of Section III of the ASME Boiler and Pressure Vessel Code (ASME Code), as specified in 10 CFR 50.61(b)(2)(i). Prior correspondence commenced with the licensee's letter dated December 13, 1991, that replied to the amendment to 10 CFR 50.61 which was published in the **Federal Register** on May 15, 1991, (56 FR 22300). In a letter dated March 13, 1992, the licensee provided its flux reduction program to ensure the intermediate-to-lower shell circumferential weld for Zion Unit 1 would remain less than the screening criterion through 32 EFPY. In a letter dated May 22, 1992, the licensee used data provided by the Babcock and Wilcox Owners' Group (B&WOG) to address the initial RT_{NDT} and RT_{PTS} for the Zion Unit 1 and 2 reactor pressure vessels (RPVs). With this data, the licensee was able to show that the RPVs will satisfy the pressurized thermal shock (PTS) screening criteria through 32 EFPY. After reviewing the licensee's submittals, the staff requested additional information in a letter dated December 2, 1992. The licensee responded in a letter dated January 28, 1993. On June 9, 1993, the staff met with the licensee to discuss the performance of a modified analysis utilizing improved analytical techniques. In a letter dated September 1, 1993, the licensee provided a summary report demonstrating that the Zion RPVs will not exceed the end of life PTS screening criteria. In another letter dated October 5, 1993, the licensee detailed the development of the methodology utilized in performing the PTS evaluation for the Zion RPVs.

III

The Pressurized Thermal Shock (PTS) rule, 10 CFR 50.61, "Fracture toughness requirements for protection against pressurized thermal shock events," adopted on July 23, 1985, establishes screening criteria that define a limiting level of embrittlement beyond which operation cannot continue without further plant-specific evaluation. The screening criteria are given in terms of reference temperature, RT_{PTS}. The screening criteria are 270°F for plates and axial welds and 300°F for circumferential welds. The RT_{PTS} is defined as the sum of (a) the unirradiated reference temperature, (b) the margin to be added to cover uncertainties in the initial properties, copper and nickel contents, fluence, and calculation procedures, and (c) the increase in RT_{PTS} caused by irradiation. The amount of increase in RT_{PTS} is based on the amount of neutron irradiation and the amount of copper and nickel in the material. The greater the amounts of copper, nickel and neutron fluence, the greater the increase in RT_{PTS} for the material and the lower its fracture resistance. The PTS rule requires that the unirradiated reference temperature be determined from measurements as defined in the ASME Code, Section III, Paragraph NB–2331. The amount of margin is dependent on whether: (a) The material is a weld or a base metal, (b) the unirradiated reference temperature is a generic value or a measured value, and (c) the increase in RT_{PTS} is from credible surveillance material or is from the chemistry factor tables in the PTS rule.

The PTS rule was amended on May 15, 1991. The amended rule changed the method of calculating embrittlement to the method recommended in Regulatory Guide (RG) 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials", and requires licensees to consider the effect of reactor vessel operating temperature and surveillance results on the calculated RT_{pts} value. The licensee provided this assessment in a letter dated July 2, 1992, which contained the licensee's response to Generic Letter (GL) 92–01, Revision 1, "Reactor Vessel Structural Integrity, 10 CFR 50.54(f)". The purpose of GL 92–01 was to obtain information needed to assess compliance with requirements set forth in 10 CFR Part 50, Appendices G and H and commitments made in response to GL 88–11 regarding reactor vessel structural integrity. The licensee's responses to GL 92–01 are being evaluated and will be resolved as an issue separate from this exemption request.

Pressurized Thermal Shock (PTS) Evaluation

Licensee's Evaluation

The licensee reports that the beltline of each reactor vessel consists of a forging, four plates, four longitudinal welds and three circumferential welds. There are sufficient records to identify the heat number and chemical composition (percentage copper and nickel) of all beltline materials.

Unirradiated Reference Temperature

The unirradiated reference temperature for the beltline forgings and plates was determined from test results from the materials. The licensee used a generic value (−5°F) for the unirradiated reference temperature of all beltline weld metals, with the exception of the weld metal identified as WF–70. The unirradiated reference temperature for WF–70 weld metal was determined from drop weight tests and fracture toughness tests from welds fabricated with WF–70 and WF–209–1 weld metal. Since WF–70 and WF–209–1 welds were fabricated using the same heat number of weld wire and the same type of flux, their material properties are considered equivalent. The licensee's data will be discussed in the Staff Evaluation of Unirradiated Reference Temperature for WF–70.

The unirradiated reference temperature that is defined in Section III of the ASME Code, Paragraph NB–2331 is determined from Charpy V–notch (CVN) impact and drop weight tests. These tests have been performed on WF–70 weld metal by the licensees for Zion and Oconee, the B&WOG and Oak Ridge National Laboratory (ORNL). The test results indicate that the unirradiated reference temperature varies from −3°F to +123°F with a standard deviation of 43.1°F and a mean value of 49°F. This wide variability was a surprise to the staff because welds similar to WF–70 were reported to have a mean value of −4.8°F and a standard deviation of 19.7°F. The staff believes that the large uncertainty in unirradiated reference temperature for WF–70 weld metal is due to the low upper-shelf behavior of the material and that the definition of unirradiated reference temperature in the ASME Code is not applicable for material with low upper-shelf behavior like WF–70 weld metal. The licensee has proposed to determine the unirradiated reference temperature from drop weight and fracture toughness tests instead of the method defined in Section III of the ASME Code. The licensee proposes to define the unirradiated reference temperature as equal to the sum of: (a) the mean value for the nilductility transition temperature, T_{NDT}, from the drop weight test data from WF–70 and WF–209–1 weld and (b) the two standard deviation value determined from the drop weight test data. This method results in a mean value for the T_{NDT} of −56°F and a standard deviation of 14.8°F for WF–70 weld metal. Using these values of T_{NDT} and standard deviation, the unirradiated reference temperature is −26°F for WF–70 weld metal. Since the licensee has not followed the method in Section III of the ASME Code, the licensee's method for determining the unirradiated reference temperature of WF–70 does not meet the requirements of 10 CFR 50.61. The licensee has, therefore, requested an exemption from the requirement to determine the unirradiated reference temperature (initial RT_{NDT}) in accordance with NB–2331 of Section III of the ASME Boiler and Pressure Vessel Code (ASME Code), as specified in 10 CFR 50.61(b)(2)(i).

Increase in RT_{PTS} and Margin

The increase in RT_{PTS} for each beltline material, except WF–70 weld metal, was determined using the chemistry factor tables in the PTS rule. The increase in RT_{PTS} for WF–70 weld metal was determined from Charpy impact tests on WF–70 weld metal irradiated in the Zion Units 1 and 2 surveillance capsules. The increase in RT_{PTS} for WF–70 weld metal was determined using the methodology documented in Section 2.1 of RG 1.99, Revision 2.

The amount of margin for each beltline plate and forging was the amount identified in the PTS rule for base metal with measured unirradiated reference temperature. The amount of margin for each beltline weld, with the exception of WF–70, was the amount identified in the PTS rule for weld metal with generic values of unirradiated reference temperature. The amount of margin for WF–70 weld metal was determined using the standard deviation for the increase in RT_{PTS} from irradiation in RG 1.99, Revision 2, when credible surveillance data is available. This results in a margin value of 28°F for WF–70 weld metal.

Paragraph 10 CFR 50.61(b)(3) requires that RT_{PTS} values which are modified by surveillance data be approved by the Director, Office of Nuclear Reactor Regulation. The staff believes that using the methodology in RG 1.99, Revision 2 for determining the increase in RT_{PTS} from surveillance material is an acceptable alternative to the value determined from the chemistry factor tables in the PTS rule. The staff believes that the amount of margin for WF–70 should be the amount determined using the standard deviation for the increase in RT_{PTS} from irradiation in RG 1.99, Revision 2. This results in a margin value of 28°F and an unirradiated reference temperature of −26°F for WF–70. The reasons for not including the uncertainty of the unirradiated reference temperature in the margin, but adding it to the T_{NDT} will be discussed in the Staff Evaluation of Unirradiated Reference Temperature for WF–70.

RT_{PTS} at Expiration of the Zion 1 and 2 licenses

The licensee has projected that at the expiration of their licenses, WF–70 weld metal in Units 1 and 2 will have RT_{PTS} values of 230°F and 172°F, respectively. Both these values are significantly below the PTS screening criteria in the PTS rule. As a result of the licensee's evaluation of WF–70 weld metal, the limiting material in Unit 1 is a circumferential weld fabricated using WF–154 weld metal and the limiting material in Unit 2 is a circumferential weld fabricated using SA–1769 weld metal. The RT_{PTS} values for these welds at the expiration of the Units 1 and 2 licenses are 268°F and 269°F, respectively. Both of these values are significantly below the PTS screening criterion, 300°F, in the PTS rule.

Staff Evaluation of Unirradiated Reference Temperature for WF–70

As discussed previously, the licensee and the B&WOG have concluded that determination of unirradiated reference temperature via the CVN procedure of NB–2331 of Section III of the ASME Code is not appropriate for the Zion beltline welds fabricated with WF–70 weld metal. The staff recognizes that the ASME Code procedure, when applied to lower upper shelf materials such as WF–70, may not produce a reasonable determination of unirradiated reference temperature. The staff has, therefore, encouraged the licensee to pursue alternate approaches to determine the unirradiated reference temperature for WF–70. The approach selected by the licensee and the B&WOG involves analysis of WF–70 fracture toughness data in accordance with the Draft ASTM Standard on Fracture Toughness in the Transition Range (Draft 5, Rev. 3–3–93). The purpose of the licensee's analysis is to demonstrate that the above methodology "bounds" the fracture toughness data and can be indexed to the ASME fracture toughness reference curves. The indexing to either the K_{IC} or K_{IR} curves is used to show that the reference temperature determined from drop weight tests provides an

appropriate unirradiated reference temperature for WF–70.

At a meeting with the licensee on June 9, 1993, the staff acknowledged the merit of the ASTM approach and encouraged the licensee to pursue it to completion. At that time, the staff also indicated that the licensee should consider constraint adjustments and strain rate effects on the data. In particular, the staff questioned the basis for directly indexing the Babcock and Wilcox (B&W) dynamic fracture toughness data to the ASME K_{IR} curve with respect to the differing strain rates involved in generation of the data. The licensee subsequently submitted a B&W report (BAW–2202, September, 1993) which addresses its revised analysis for the determination of the unirradiated reference temperature.

The staff has independently evaluated the data provided in BAW–2202 and the previous report (BAW–2100, January, 1993) in accordance with the Draft ASTM Standard on Fracture Toughness in the Transition Range. The staff analysis, presented in the attached Figure 1, considered both constraint and rate effects on the data. Figure 1 presents the B&W dynamic fracture toughness data as the open symbols. The solid symbols represent the same data constraint corrected using the procedure suggested by Anderson and Dodds, 1993. The ASTM curves (K_{jc} median, 95% CL and lower bound) were derived from the constraint-corrected data at 0°F where it can be seen that the magnitude of the correction was small. It is seen that the ASTM K_{jc} lower bound curve effectively bounds all of the data with the possible exception of the constraint-corrected point at +132°F. However, the specimen at +132°F exhibited a significant amount of ductile tearing prior to failure by cleavage. It is known that the Anderson-Dodds procedure will "over-correct" for constraint in such instances.

With respect to strain rate effects, the B&W dynamic data were generated at a rate of approximately 7×10^4 ksi $\sqrt{in/sec}$. This rate is on the threshold of the rates achieved in the crack arrest tests which constitute the ASME K_{IR} curve. Figure 1 also shows a direct comparison between the B&W dynamic fracture toughness data and some recently available crack arrest data on WF–70 from the ORNL. While the crack arrest data are generally conservative in comparison to the B&W data, it is seen that the ASTM K_{jc} lower bound curve also bounds the ORNL data. On the basis of this analysis, the staff finds the methodology of indexing the B&W dynamic data to the K_{IR} curve acceptable.

In conclusion, the staff analysis which addresses constraint and rate effects has shown the fracture toughness based procedure for determination of unirradiated reference temperature to be acceptable for WF–70. As shown in Figure 1, the ASME K_{IR} curve, with a reference temperature of −26°F bounds all of the constraint-adjusted data and the ASTM curves up to approximately 140°F. This analysis therefore supports an unirradiated reference temperature of −26°F for the WF–70 material.

Other procedures for determination of RT_{NDT} may serve as acceptable alternatives to NB–2331 contingent on staff review and approval. However, it should be noted that the staff acceptance of the alternative procedure in this evaluation was contingent on the analysis of a significant amount of fracture toughness data for the WF–70 weld metal. Acceptance of such a procedure in a case where little or no fracture toughness data were available would be difficult in the absence of an officially sanctioned consensus standard.

As part of the resolution of low-upper-shelf reference temperature issues on a generic basis, the ASME Code has tasked the Failure Modes of Components Committee of the Pressure Vessel Research Council (PVRC) to consider alternate procedures for the determination of unirradiated reference temperature. To this end, the PVRC recently held a ½ day workshop on "K_{IR} Curves and RT_{NDT}" on October 11, 1993, where the ASTM fracture toughness based approach was highlighted. As a result of the workshop, it is expected that the Committee will be able to make recommendations to the ASME Code by December 31, 1994.

Irradiation Temperature and Surveillance Material Test Results

The methods of calculating the increase in RT_{PTS} in the PTS rule and in RG 1.99, Revision 2 were empirically derived from surveillance data from U.S. commercially operated nuclear reactor vessels. The methods are valid for a nominal irradiation temperature of 550°F. Irradiation below 525°F is considered to produce embrittlement greater than the values predicted in the PTS rule and RG 1.99, Revision 2.

In its response to GL 92–01, the licensee reported that the cold leg temperature during nuclear systems power operation varied linearly between 547.0°F at 0 percent power and 529.4°F at 100 percent power. Hence, irradiation occurred at temperatures exceeding 525°F and the methodologies in the PTS rule and RG 1.99, Revision 2 are applicable to Zion Units 1 and 2.

Regulatory Guide and 1.99, Revision 2 indicates that about a best-fit line to the surveillance data, scatter should be less than 28°F for welds and for fluence of two or more orders of magnitude, the scatter should be less than 56°F. Zion 1 has four irradiated surveillance data points and Zion 2 has three irradiated surveillance data points from WF–70 weld metal. The maximum difference between the measured increase in reference temperature and the best fit line is 20°F. Since this is less than 28°F, the increase in RT_{PTS} and the associated standard deviation may be based on the methodology in Section 2.1 of RG 1.99, Revision 2.

Conclusions

Based on the Zion 1 and 2 irradiation temperature and surveillance data, the methodologies in the PTS rule and RG 1.99, Revision 2 are applicable to Zion 1 and 2. As a result of its review, the staff concludes that the licensee's method of determining the unirradiated reference temperature is an acceptable alternative to the method described in NB–2331 of Section III of the ASME Code because staff and licensee analyses indicate that the fracture toughness data are bounded by the ASME K_{IR} curve with an unirradiated reference temperature of −26°F. However, since the unirradiated reference temperature was not determined in accordance with the method in Section III of the ASME Code, an exemption to the PTS rule is required. The RT_{PTS} values for all beltline materials will be below the PTS screening criteria when the Zion 1 and 2 licenses expire. 10 CFR 50.12(a)(1) allows the Commission to grant exemptions which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Since the licensee's method of determining the unirradiated reference temperature is an acceptable alternative to the method in NB–2331 of Section III of the ASME Code, RT_{PTS} values for WF–70 weld metal that are calculated using the licensee's method are authorized by law and will not present an undue risk to the public health and safety and are consistent with the common defense and security. For the same reason, the staff finds that application of the regulation would not serve the underlying purpose of the rule, which is to ensure that reactor pressure vessels in service are not susceptible to fracture as a result of pressurized thermal shock. On this basis, the staff finds that the licensee has demonstrated that there are special

circumstances present as required by 10 CFR 50.12(a)(2).

References

(1) "Properties of Weld Wire Heat Number 72105 (Weld Metals WF-70 and WF-209-1), BAW-2100, January, 1993.

(2) "Test Practice (Method) for Fracture Toughness in the Transition Range," Draft 5, Rev. 3-3-93, presented at the ASTM E08 Committee Meetings, Atlanta, GA, May, 1993.

(3) "Fracture Toughness Characterization of WF-70 Weld Metal," BAW-2202, September, 1993.

(4) "Simple Constraint Corrections for Subsize Fracture Toughness Specimens," T.L. Anderson and R.H. Dodds, Jr., ASTM STP 1024, 1993, pp. 93-105.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to a requirement of 10 CFR 50.61:

For Zion Nuclear Power Station, Units 1 and 2, the licensee's method of determining the unirradiated reference temperature (initial RT_{NDT}) from drop weight and fracture toughness tests is an acceptable alternative to the method in NB-2331 of Section III of the ASME Code as specified in 10 CFR 50.61(b)(2)(i).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the subject exemption will not have a significant effect on the quality of the human environment (59 FR 4727).

Dated at Rockville, Maryland this 22nd day of February 1994.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Director of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94-4555 Filed 2-28-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-414]

Duke Power Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-52 issued to Duke Power Company (the licensee) for operation of the Catawba Nuclear Station, Unit 2, located in York County, South Carolina.

The proposed amendment would change the method of measuring the reactor coolant system flow rate (Technical Specifications 2.0 and 3/4.2) during the 18-month surveillance for Catawba, Unit 2.

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:

(1) This amendment will not significantly increase the probability or consequence of any accident previously evaluated.

No component modification, system realignment, or change in operating procedure will occur which could affect the probability of any accident or transient. The change in method of flow measurement will not change the probability of actuation of any Engineered Safeguard Feature or other device. The actual flow rate will not change. The consequences of previously-analyzed accidents will not change as a result of the new method of flow measurement.

(2) This amendment will not create the possibility of any new or different accidents not previously evaluated.

No component modification or system realignment will occur which could create the possibility of a new event not previously considered. The elbow taps are already in place, and are used to monitor flow for the Reactor Protection System. They will not initiate any new events.

(3) This amendment will not involve a significant reduction in a margin of safety.

As described in [the licensee's application], the change in method of RCS [reactor coolant system] flow measurement will provide a more accurate indication of the flow. The actual flow rate will not be affected. The revised setpoints for low reactor coolant flow are driven by changes to statistical allowances and do not represent substantive, or less conservative, changes. There is not significant reduction in a margin of safety.

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 signficiant 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.

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.

Written comments may be submitted by mail to the Rules Review and Directives 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. Federal workdays. 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 March 31, 1994, 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 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 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 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 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.

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 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) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 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 presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 10, 1994, 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 docket room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 22nd day of February 1994.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-4559 Filed 2-28-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-00810, License No. 21-00278-02, General License, 10 CFR 31.5 EA 93-234]

Michigan Technological University, Houghton, MI; Order Imposing Civil Monetary Penalty

I

Michigan Technological University (Licensee) is the holder of Byproduct Material License No. 21-00278-02 issued by the Nuclear Regulatory Commission (NRC or Commission) on April 25, 1958. The license was amended in its entirety on December 17, 1991, and is due to expire on December 31, 1996. The license authorizes the Licensee to possess byproduct materials for laboratory research, cesium-137 and americium-241 for use in a moisture/density gauge, nickel-63 for use in a gas chromatograph, and hydrogen-3 targets for a neutron generator, in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on August 26 through September 27, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated November 26, 1993. The Notice stated the nature of the violations, the positions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by a letter dated December 17, 1993. In its response, the Licensee requested that the proposed civil penalty be mitigated in its entirety or at least 50 percent of the base civil penalty. Further, the Licensee admitted Violations I.A through I.D, I.G., I.H, II, III, and IV, denied Violation I.E in part, and denied Violations I.F. and V.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed in the Notice for the violations should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $3,750 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations I.E., I.F, and V of the Notice referenced in section II above, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 22nd day of February 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusions

On November 26, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for thirteen violations identified during an NRC inspection on August 26 through September 27, 1993. Michigan Technological University responded to the Notice in a letter dated December 17, 1993. In its response, the Licensee requested that the proposed civil penalty be mitigated in its entirety or at least by 50 percent of the base civil penalty. Further, the Licensee admitted Violations I.A through I.D, I.G, I.H, II, III, and IV, denied Violation I.E in part, and denied Violations I.F. and V. The NRC's evaluation and conclusions regarding the Licensee's requests are as follows:

Restatement of Violation I.E

I. Condition 19.A of License No. 21–00278–02 requires that the Licensee conduct its program in accordance with statements, representations and procedures contained in applications dated June 30 and November 12, 1991, including enclosures.

E. Part 4 of the letter dated November 10, 1991, enclosed with the Licensee's application dated November 12, 1991, entitled, "Summary of Planned Inventory and Possession Limits of the Users of Radioactive Materials in Liquid Form," states that Dr. Murthy's possession limit for phosphorus-32 is 2 millicuries and that Dr. Leuking's possession limit for tritium is 2 millicuries and for sulfur-35 is 0.5 millicuries.

Contrary to the above, from approximately January through July 1993, Dr. Murthy possessed 5 millicuries of phosphorus-32 and Dr. Leuking possessed 5 millicuries of tritium and 3 millicuries of sulfur-35.

Summary of Licensee's Response to the Violation I.E

The Licensee denied Violation I.E in part. The licensee stated that the user limits remained within University limits for users of radioactive materials. The Licensee, therefore, holds rigidly to control possession within those limits for the University spelled out in the license. While Dr.'s Murthy and Leuking possessed radioactive materials in excess of their individual limits, neither user's inventory impacted the University's limits.

NRC Evaluation of Licensee's Response to Violation I.E

Although the Licensee's possession of radioactive materials remained within the University limits specified in the license, the two individual users did, in fact, violate the individual limits which were incorporated in License Condition 19.A, by reference to Part 4 of the letter dated November 10, 1991, enclosed with the Licensee's application dated November 12, 1991. Therefore, the NRC concludes that Violation I.E is valid.

Restatement of Violation I.F

I. Condition 19.A of License No. 21–00278–02 requires that the Licensee conduct its program in accordance with statements, representations and procedures contained in applications dated June 30 and November 12, 1991, including enclosures.

F. Part 3 of the letter dated November 10, 1991, enclosed with the Licensee's application dated November 12, 1991, entitled, "The Radiation Safety Program and DRU Concept," lists the duties and responsibilities of the DRUs. Item c. of the list states that the DRU will keep a log book of the receipt, use, and disposition of their radioisotopes.

Contrary to the above, from approximately January through July 1993, Dr. Murthy, a DRU, did not log the disposition of the quantities of phosphorus-32 that were disposed as liquid radioactive waste in the sanitary sewer and the quantities of solid radioactive waste that were transported out of the laboratory.

Summary of Licensee's Response to Violation I.F

The Licensee asserted that the alleged violation resulted from the interpretation made by the inspector of information posted in the log. Neither the responsible DRU nor assigned graduate laboratory assistants were present at the time of the inspection. This observation would not have occurred had any one of the three responsible persons been present during the inspection. In Dr. Murthy's procedures, liquid phosphorus-32 is never disposed of down the sanitary sewer as radioactive waste. Generally all radioactive phosphorus-32 compounds are used within one to two weeks after receipt. All radioactive phosphorus-32 waste, solid and liquid, is then stored in the hazardous material storage building for greater than ten half-lives from the date received and then disposed of as non-radioactive waste. Dates

received, users, quantities used, and quantities left in vials are timely entered in the radioactive compound log columns. Disposal columns are left open until decayed materials are brought back and disposed of as non-radioactive materials. Hand written notes are made in the margin of the log forms to act as reminders to properly dispose of the waste. This process could have been satisfactorily explained to the inspector had any of the three responsible lab persons been present. To prevent reoccurrence of misinterpretation, Dr. Murthy has been advised of the necessity to follow standard procedures when maintaining the log records.

NRC Evaluation of Licensee's Response to Violation I.F

Although neither the responsible DRU (Dr. Murthy) nor the assigned graduate laboratory assistants were present during the inspection of this item, the inspector was assisted by the RSO when Dr. Murthy's laboratory was visited. The RSO indicated that liquid radioactive waste was disposed to the sewer via the hot sink located in a designated fume hood in the laboratory. This fume hood also contained laboratory trash that was contaminated with phosphorus-32.

The inspector measured radiation dose rates from the hot sink drain that indicated 3 millirem per hour. The inspector also confirmed that the measured radiation dose rates in the hot sink were not generated from the laboratory trash that was also stored in the fume hood. The radiation dose rate measurements indicated that phosphorus-32 had been disposed as liquid radioactive waste to the sewer via the hot sink in the fume hood in the manner described by the RSO.

In addition, the inspector evaluated, with the assistance of the RSO, Dr. Murthy's written records for receipt, use, and disposal of phosphorus-32 and tritium. The records were formatted as a balance sheet for radioactivity. The balance sheets indicated dates and activities of phosphorus-32 received and used by Dr. Murthy's graduate laboratory assistants. However, the balance did not indicate the activities disposed as liquid and solid radioactive waste. As indicated by the Licensee's response dated December 17, 1993, Dr. Murthy did not follow standard procedures when maintaining the records of radioactive waste in that Dr. Murthy did not account for liquid radioactive waste that was disposed via the hot sink and solid radioactive waste that was transferred from the laboratory. Therefore, NRC concludes that Violation I.F is valid.

Restatement of Violation V

V. 10 CFR 31.5(c)(3) requires, in part, that any person who acquires, receives, possesses, uses or transfers byproduct material in a device pursuant to a general license shall assure that installation involving the radioactive material is performed: (1) in accordance with the instructions provided by the labels; or (2) by a person holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to perform such activities.

Contrary to the above, from approximately 1976 until August 26, 1993, installation of the Licensee's Texas Nuclear Model 5176 and three Kay Ray Model 7030B density gauges each containing cesium-137, was not performed in accordance with the instructions provided by the labels or by a person holding a specific license pursuant to 10 CFR Parts 30 and 32 or from an Agreement State to perform such activities. Specifically, the density gauges were not permanently installed on a pipeline in a manner consistent with the installation requirements.

Summary of Licensee's Response to Violation V

The Licensee stated that the portable carts for four (4) density gauges were fabricated at Michigan Technological University. Upon receipt from the manufacturers, the gauges were permanently installed on the carts. Upon completion of the installation they were inspected and tested by representatives of the manufacturers. The portable carts are necessary to make various temporary installations on various pilot-plant projects. These temporary installations do not alter the factory approved testing and installation. The Licensee asserted that the alleged violation stems from the fact that its carts are prototype carts and not of the standard manufactured model. Because its gauges are mounted on portable carts rather than stationary, the pipe moves when the density gauges move.

NRC Evaluation of Licensee's Response to Violation V

Although the Licensee installed the four density gauges on portable carts that were fabricated by the Licensee, the sealed source and device evaluation of the gauge performed by NRC and the State of Texas did not review and approve use of the density gauges in a portable fashion. The manufacturer did not furnish to the Licensee specific instructions for installation and use of the density gauges on portable carts. The density gauges were designed and evaluated as devices that would be installed in a permanent location by instructed individuals who are specifically authorized by NRC or an Agreement State to install or relocate the device. Therefore, NRC concludes that Violation V is valid.

Summary of Licensee's Request for Mitigation

The Licensee denied the breakdown in the control of licensed activities in its December 17, 1993 answer to the Notice. While the Licensee admitted some of the violations stated in the NRC's letter, the Licensee believed that in no instance was any violation driven by willful intent to evade compliance, nor was there reckless disregard for radiation safety and health. Further, the Licensee believed that as its improved safety procedures were reestablished and after its management team had been restructured, each instance of noncompliance would have ultimately been discovered and corrected by persons entrusted with the responsibility for radiation safety on its campus. The Licensee asserted that these violations came about as the result of a temporary condition that existed at the University. While the NRC inspection hastened the discovery and correction of the problem areas, given time, the Licensee would have discovered all the infractions found by the NRC inspector and made necessary corrections without NRC intervention. The Licensee stated that both management and the Radiation Safety Officer insist on compliance with the radiation safety program and its requirements. Given these facts, the Licensee requested that the proposed civil penalty be mitigated in its entirety or at least by 50 percent of the base civil penalty.

NRC Evaluation of Licensee's Request for Mitigation

The NRC determined that the thirteen violations represented a breakdown in the control of licensed activities. The root cause of the violations was an apparent lack of management attention to the radiation safety program by Michigan Technological University's administration, the Radiation Safety Committee, and the Radiation Safety Officer following the replacement of the upper two echelons of management at the university. The violations are related and collectively represented a potentially significant lack of attention or carelessness toward licensed responsibilities and were classified as Severity Level III in accordance with Supplement VI.C.7 of the Enforcement Policy (10 CFR Part 2, Appendix C).

With regard to your concern that these violations were willful or reckless, the NRC did not characterize the violations as willful. Had the NRC characterized the violations as willful (i.e., careless disregard or deliberate), the severity level would have been increased and the base civil penalty would have been increased in accordance with Table 1A and 1B of the Enforcement Policy. In addition, if the violations involved the deliberate intent to violate NRC requirements, the Commission might have taken additional enforcement action, including issuance of appropriate orders to modify, suspend or revoke your license.

The NRC acknowledges the improvements of the safety procedures and the significant management changes made by the Licensee. The staff views the Licensee's improvements in the radiation safety program as ongoing and that the Licensee, as it asserts, may have ultimately discovered and corrected each instance of noncompliance by persons entrusted with the responsibility for radiation safety on its campus. However, this assertion does not alter the fact that violations and noncompliance with NRC requirements existed and were identified by the NRC. As a result, the base civil penalty was escalated 50 percent for NRC identification in accordance with the Enforcement Policy.

Based on the above, the staff concludes that mitigation is not warranted based on the licensee's request for mitigation.

NRC Conclusion

Based on its evaluation of the Licensee's response, the NRC staff concludes that the violations did occur as stated, and that an adequate basis for mitigation of the civil penalty has not been provided by the Licensee. Accordingly, NRC concludes that a civil monetary penalty of $3,750 should be imposed by order.

[FR Doc. 94–4561 Filed 2–28–94; 8:45 am]

BILLING CODE 7590–01–M

Pacific Gas & Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

[Docket No. 50–275 and 50–323]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–80 and DPR–82 issued to Pacific Gas & Electric Company (the licensee) for operation of the Diablo Canyon Nuclear Power Plant located in San Luis Obispo County, California.

The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise TS 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation," as follows:

(1) Table 3.3–3, functional unit 6.c.2), channels to trip, would be changed from 2/steam generator in one steam generator to 2/steam generator in any 2 steam generators.

(2) Table 3.3–4 would be changed as follows:

a. Functional Unit 4.e., Negative Steam Pressure Rate—High, trip setpoint and allowable value, would be changed from −100 psi/sec and −105.4 psi/sec to 100 psi and 105.4 psi, respectively.

b. A note would be added stating that the time constants utilized in the rate-lag controller for Negative Steam Pressure Rate—High, are equal to 50 seconds.

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:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to the Start Turbine-Driven Pump, function is administrative in nature and does not involve any modifications to any plant equipment or affect plant operation.

The Negative Steam Pressure Rate—High, function is not involved in any accident initiation sequences.

Although the safety function of the Negative Steam Pressure Rate—High, function is to protect against a steam line break (SLB) below P–11 [pressurizer pressure low (P–11) setpoint], the consequences of a SLB are more limiting at higher pressures and, therefore, SLB is analyzed at the more limiting reactor coolant system (RCS) conditions. The proposed change more adequately defines the trip setpoint and allowable value to be consistent with the original intent of [license amendment request] LAR 92–05 and actual plant practice. This clarifying change does not involve a change to the actual values or the manner in which they are used.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to the Start Turbine-Driven Pump, function is administrative in nature, does not involve any physical alterations to any plant equipment, and causes no change in the method by which any safety-related system performs its function.

The Negative Steam Pressure Rate—High, function is not involved in any accident initiation sequences. No new operating configuration is being imposed by the Negative Steam Pressure Rate—High, function that would create a new failure scenario. In addition, no new failure modes are being created for any plant equipment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the change involve a significant reduction in a margin of safety?

The proposed change to the Start Turbine-Driven Pump, function corrects an administrative error in Table 3.3–3 and does not effect any safety analysis.

The proposed change to the Negative Steam Pressure Rate—High, function does not involve any changes to the actual values or the manner in which they are used. There is no impact of the proposed change on any safety analysis assumption.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

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.

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.

Written comments may be submitted by mail to the Rules and Directives Review 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. Federal workdays. 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 March 31, 1994, 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 California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407. 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, 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.

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) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore R. Quay, Director, Project Directorate V]: 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 Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 17, 1994, 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 California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 23rd day of February 1994.

For the Nuclear Regulatory Commission.

Sheri R. Peterson,

Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–4557 Filed 2–28–94; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[BAC: 7710–FW–P]

Notice of Commission Briefing

February 18, 1994.

Notice is hereby given that members of the Postal Rate Commission and staff will be briefed by Frank Neri of the United States Postal Service Office of Systems Implementation and Support and Michael Tidwell of the United States Postal Service, Office of the General Counsel on the developmental.

technical, and operational aspects of the Remote Video Bar Coding program of the U.S. Postal Service, on Wednesday, March 2, 1994 at 10:30 a.m.

A report of the briefing will be on file in the Commission's Docket Section. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94–4573 Filed 2–28–94; 8:45 am]

BILLING CODE 7710–FW–P

[BAC: 7710–FW–P]

McGraw-Hill, et al.; Cancellation of Visit and Notice of Commission Briefing

February 18, 1994.

Notice is hereby given that Commission visits previously scheduled for February 22, 23, 24, and 25, 1994, notice of which was published on February 18, 1994 (59 FR 8279), had to be cancelled due to scheduling conflicts. In lieu of one of the intended visits, notice is hereby given that representatives of Readers Digest Association, Inc., will make an oral presentation to members of the Commission and staff in the Commission's offices in Washington, DC, at 4 p.m. on March 3, 1994.

A report of the presentation will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94–4572 Filed 2–28–94; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33658; File No. SR–PSE–93–29]

Self Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Time Within Which Members Must Notify the Exchange of Changes of Address

February 23, 1994.

On November 1, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the time within which a member or member firm must notify the Exchange of a change to the address at which notices may be served upon such member or member firm, from 60 calendar days to 15 business days.

The proposed rule change was published for comment in the **Federal Register** on December 23, 1993.[3] No comments were received on the proposed rule change. This order approves the proposal.

PSE Rule 1.13 currently provides that Exchange members and member firms must submit to the Exchange any changes to their address where notices may be served within sixty (60) calendar days of such change.[4] The Exchange believes that a shorter period of time for notifying the Exchange of such changes of address is appropriate due to the need for the Exchange to contact members and member firms promptly regarding membership requirements, requests for information in regulatory investigations, the commencement of disciplinary actions, and other such matters. Accordingly, the current proposal amends PSE Rule 1.13 to require that members and member firms notify the Exchange within fifteen (15) business days of any change to the address at which such notices may be served.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5).[5] Specifically, the proposed change will ensure that the PSE is notified on a timely basis of member or member firm address changes, which should help the PSE in its regulatory responsibilities under the Act. Further, the Commission believes that 15 business day notification is not an unreasonable time period to notify the PSE of an address change, and will serve to foster more efficient communications between the Exchange and its members and member firms.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–PSE–93–29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4582 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

February 22, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rules 12f–1 thereunder for unlisted trading privileges in the following securities:

Empresas La Moderna S.A. de C.V.
American Depositary Shares, No Par Value (File No. 7–12036)
First USA, Inc.
Common Stock, $.01 Par Value (File No. 7–12037)
Hyperion 1997 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–12038)
Istituto Mobiliare Italiano SPA de C.V.
American Depositary Shares, No Par Value (File No. 7–12039)
McArthur/Glen Realty Corp.
Common Stock, $.01 Par Value (File No. 7–12040)
Brazilian Equity Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12041)
Geon Company
Common Stock, $.01 Par Value (File No. 7–12042)
Health & Rehabilitation Properties Trust
Shares of Beneficial Interest, No Par Value (File No. 7–12043)
Harveys Casino Resorts
Common Stock, $.01 Par Value (File No. 7–12044)
Post Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12045)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] Securities Exchange Act Release No. 33349 (December 15, 1993), 58 FR 68184 (December 23, 1993).

[4] See also PSE Constitution, Art. VIII, § 1(g), which provides that "[e]very member and member firm shall register with the Exchange addresses and subsequent changes thereof where notice may be served."

[5] 15 U.S.C. 78f(b)(5) (1982).

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30–3(a)(12) (1993).

20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions or unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4524 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

February 22, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following security:

Guardian Bancorp
Common Stock, No Par Value (File No. 7–12071)

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commissions, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4523 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

February 22, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Commercial Net Lease Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–12049)
Corestates Financial Corp.
Common Stock, $1.00 Par Value (File No. 7–12050)
Duke Power Co.
6.375% Pfd. Stk. A 1993 Ser., $25.00 Par Value (File No. 7–12051)
First Maryland Bancorp
7.875% Non-Cm. Pfd. Stk. Ser. A (File No. 7–12052)
Gables Residential Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12053)
Glimcher Realty Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–12054)
G.T. Developing Markets Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12055)
Hillhaven Corp.
Common Stock, $.75 Par Value (File No. 7–12056)
JP Realty, Inc.
Common Stock, $.0001 Par Value (File No. 7–12057)
Kendall International, Inc.
Common Stock, $.01 Par Value (File No. 7–12058)
Osmonics, Inc.
Common Stock, $.01 Par Value (File No. 7–12059)
Plantronics, Inc.
Common Stock, $.01 Par Value (File No. 7–12060)
Quantum Restaurant Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12061)
Reynolds Metals Co.
Pfd. Red. Inc. Div. Equity Sec. PRIDES (File No. 7–12062)
Rowe Furniture Corp.
Common Stock, $1.00 Par Value (File No. 7–12063)
Savannah Electric & Power Co.
6.64% Pfd. Stk., $25.00 Par Value (File No. 7–12064)
Southdown, Inc.
Pfd. Stk. Cm. Cv. Ser. D, $.05 Par Value (File No. 7–12065)
Travelers, Inc.
Common Stock, $1.25 Par Value (File No. 7–12066)
Travelers, Inc.
Depositary Shares (Rep. 1/2 sh. 9.25% Pfd. Stk. Ser. D) (File No. 7–12067)
Travelers, Inc.
Depositary Shares (Rep. 1/10 sh. 8.125% Cm. Pfd. Stk. Ser. A) (File No. 7–12068)
Stewart Information Service Corporation
Common Stock, $.01 Par Value (File No. 7–12070)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4526 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Inc.

February 22, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Guardian Bancorp
Common Stock, No Par Value (File No. 7–12046)
Unionfed Financial Corporation
Common Stock, $.01 Par Value (File No. 7–12047)
Top Source, Inc.
Common Stock, $.001 Par Value (File No. 7–12048)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1994, written data, views and arguments concerning the above-referenced

application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4525 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 22, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Empresas La Moderna S.A. de C.V.
American Depositary Shares (File No. 7–12021)
Morgan Stanley Africa Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12022)
National Health Investors, Inc.
Cum. Cv. Pfd. Stock (File No. 7–12023)
Gables Residential Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12024)
American Paging, Inc.
Common Stock, $.01 Par Value (File No. 7–12025)
Summit Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–12026)
Chiquita Brands International, Inc.
Non Voting Cum. Pfd. Stock (File No. 7–12027)
Kaiser Aluminum Corporation
8.255% PRIDES Conv. Pfd. Stock, $.05 Par Value (File No. 7–12028)
Morgan Stanley Finance Plc
7.70 Cap. Units (File No. 7–12029)
National Health Investors, Inc.
8.5% Cum. Conv. Pfd. Stock, $.01 Par Value (File No. 7–12030)
Fountain Powerboat Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–12031)
Public Service Electric and Gas Company
6.75 Pc. Cum. Pfd. Stock, $25 Par Value (File No. 7–12032)
Bufete Industrial S.A.
American Depositary Shares (File No. 7–12033)
Martin Marietta Materials, Inc.
Common Stock, $.01 Par Value (File No. 7–12034)
Istituto Mobiliare Italiano SPA
American Depositary Shares, Lit 5000 Par Value (File No. 7–12035)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–4522 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20094; No. 812–8772]

Great American Reserve Insurance Co., et al; Application for Order

February 23, 1994.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Great American Reserve Insurance Company ("GARCO"), Great American Reserve Variable Annuity Account E ("Account E"), and Garco Equity Sales, Inc. ("GARCO Sales") collectively, ("Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of Account E of mortality and expense risk charges in connection with the offer and sale of certain flexible purchase payment group and individual variable annuity contracts.

FILING DATE: The application was filed on January 13, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o William R. Radez, Jr., Esq., Great American Reserve Insurance Company, 11815 N. Pennsylvania Street, Carmel, Indiana 46032; and c/o Michael Berenson, Esq., or Ann B. Furman, Esq., Jorden, Burt, Berenson & Klingensmith, suite 400-East, 1025 Thomas Jefferson Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Yvonne Hunold, Senior Counsel (202) 272–2676, or Michael Wible, Special Counsel (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. GARCO is a stock life insurance company and an indirect wholly owned subsidiary of CCP Insurance, Inc. ("CCP"). CCP is an affiliate of, and controlled by, Conseco, Inc. ("Conseco"), a publicly owned financial services holding company. GARCO offers life insurance and variable and fixed rate annuities.

2. Account E is a separate account of GARCO. On January 13, 1994, Account E filed on Form N–8A a notification of registration as a unit investment trust under the 1940 Act (File No. 811–8288) and a registration statement on Form N–4 under the Securities Act of 1933 (File No. 33–74092) in connection with

certain Flexible Purchase Payment Group and Individual Deferred Variable Annuity Contracts ("Contracts"). Account E is used by GARCO to fund the Contracts.

Account E currently is divided into subaccounts which invest in corresponding portfolios of the Conseco Series Trust ("Conseco Trust"). In the future, Account E may establish other sub-accounts which will invest in other portfolios of the Conseco Trust or other investment companies registered under the 1940 Act. Account E also may be used to fund other variable annuity contracts offered by GARCO.

3. GARCO Sales, a wholly owned subsidiary of GARCO, is the principal underwriter of the Contracts. GARCO Sales is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc.

4. The Conseco Trust is an open-end diversified management investment company registered under the 1940 Act. Shares of the Conseco Trust are registered under the Securities Act of 1933. The Trust is a series fund currently consisting of five separate investment portfolios: Money Market, Government Securities, Common Stock, Asset Allocation and Corporate Bond Portfolios.

Conseco Capital Management, Inc. ("CCM") a registered investment adviser under the Investment Advisers Act of 1940, provides investment advisory services to the Trust. For its services, CCM is paid a fee based upon each Portfolio's average monthly net asset value at the following annual rates: .25% for the Money Market Portfolio; .50% for the Government Securities Portfolio and the Corporate Bond Portfolio; and .55% for the Asset Allocation Portfolio.

5. The Contracts require certain minimum initial payments and permit certain additional payments. Contractowners may, after deductions for applicable charges, direct allocation of payments made under the Contracts among the subaccounts of Account E. Contractowners may make withdrawals of account value, subject to certain restrictions. A Guaranteed Death Benefit will be payable.

The account value under the Contracts increases or decreases depending upon the investment performance of the subaccounts of Account E to which value has been allocated. The Contracts provide either fixed or variable annuity payments which are determined on the basis of annuity tables specified in the Contracts, the annuity option selected and, in the case of variable annuities, the investment performance of Account E.

6. Various fees and expenses are deducted under the Contracts, including, among others, up to 3.5% for state premium taxes, if assessed, which will be deducted from the Contracts' account value either at annuitization or when the tax becomes due. Additionally, an administrative fee of $30 will be charged annually and upon surrender of the Contract for its full value. The $30 fee will be deducted pro rata according to the account values in each sub-account of Account E and the fixed account under the Contracts. An administrative charge equal to .15% of the subaccount assets on an annualized basis will also be deducted. The administrative fees are intended to reimburse GARCO for expenses relating to maintenance of the Contracts and for the operation of Account E and GARCO in connection with the Contracts. Applicants represent that these fees are based upon GARCO's current estimates of the administrative costs for such services over the lifetime of the Contracts. These fees are guaranteed never to be increased during the term of the Contracts, and are not designed or expected to generate a profit. Applicants rely on Rule 26a–1 under the 1940 Act to assess such fees.

7. While no sales charges are deducted from premium payments, the Contracts are subject to a contingent deferred sales charge ("CDSC") in the event of a withdrawal or surrender, subject to certain conditions. After the first Contract year, Contractowners may withdraw without a withdrawal charge ("Free Withdrawal Amount") the greater of up to 10% of Contract Value, or the Contract Value divided by the owner's life expectancy, or any purchase payments that have been in the Contract more than six Contract Years. Withdrawals in excess of the Free Withdrawal Amount will be subject to the following deferred sales charges over a six year period:

Contract year	CDSC (percent)
1	9
2	9
3	8
4	7
5	5
6	3
Thereafter	0

Withdrawal charges may also be imposed when certain annuity options are selected. No withdrawal charge is made from annuity payments under a selected option involving life time payments or from amounts paid due to the death of a participant. In no event, however, will cumulative deductions exceed 8.5% of cumulative purchase payments made under the Contracts. Under certain circumstances, the CDSC, administrative and other expense charges may be reduced or eliminated. Applicants rely on Rule 6c–8 under the 1940 Act to impose the withdrawal charge.

8. Each subaccount also will be assessed a charge each valuation period for mortality and expense risks assumed by GARCO at an effective annual rate of 1.25%, consisting of .75% for mortality risks and .50% for expense risks assumed by GARCO. These charges are designed to compensate GARCO reasonably for the assumption of mortality and expense risks assumed under the Contracts.

9. The mortality risk assumed by GARCO under the Contracts arises from its contractual obligation to make periodic payments in accordance with annuity rates and other contract provisions set forth in the Contracts regardless of how long all Annuitants or any one Annuitant may live. GARCO thus assumes the risk that Annuitants, as a class, may live longer than has been estimated by its actuaries, and Contractowners are assured that neither longevity nor an improvement in life expectancy, generally, will have an adverse effect on annuity payments. GARCO also incurs a mortality risk in connection with the Guaranteed Death Benefit.

10. The expense risk assumed by GARCO is the risk that its actual expenses of administering the Contracts and Account E will exceed the proceeds of the administrative charges assessed under the Contracts.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is 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.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a

reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions under section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of Account E of the 1.25% charge for the assumption of mortality and expense risks. Applicants represent that the 1.25% per annum mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels, death benefit guarantees, guaranteed annuity rates, and other contract charges and options. Based upon this review, Applicants have concluded that the mortality and expenses risk charges are within the range of charges determined by industry practice. Applicants will maintain at GARCO's principal executive office, available to the Commission, a memorandum setting forth in detail the products analyzed and the methodology and results of GARCO's comparative review.

4. Applicants acknowledge that the withdrawal charges under the Contracts may be insufficient to cover all costs relating to distribution of the Contracts. In such circumstances, the charge for mortality and expense risks may be a source of profit which would be available to pay GARCO's distribution expenses not reimbursed by applicable withdrawal charges. GARCO has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit Account E and the Contractowners. The basis for that conclusion will be set forth in a memorandum which will be maintained by GARCO at its principal administrative office and made available to the Commission upon request.

5. Account E will invest only in underlying funds which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons," as defined under section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and 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. Accordingly, Applicants request exemptions under section 6(c) of the 1940 Act from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the assessment of the mortality and expense risk charges with respect to the Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4581 Filed 2–28–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20093; 812–8694]

Sierra Trust Funds, et al.; Notice of Application

February 23, 1994.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Sierra Trust Funds (the "Trust"), currently consisting of the following portfolios: Global Money Fund, U.S. Government Money Fund, California Money Fund, U.S. Government fund, Corporate Income Fund, California Municipal Fund, Florida Insured Municipal Fund, National Municipal Fund, Growth and Income Fund, Emerging Growth Fund, International Growth Fund, Short term Global Government Fund, Short Term High Quality Bond Fund, and Growth Fund (collectively, the "Funds"), Sierra Investment Advisors Corporation (the "Advisor"), and Sierra Investment Services Corporation (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities, and to impose, and under certain circumstances waive, a contingent deferred sales charge ("CDSC") on the redemption of certain shares. The order would supersede a prior order (the "Prior Order") and would permit the Funds to impose CDSC schedules that may be different from the one described in the Prior Order, and to waive the CDSC in certain additional circumstances.

FILING DATE: The application was filed on November 22, 1993 and amended on January 7, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 21, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, 9301 Corbin Avenue, suite 333, Northridge, California 91328–1160.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, (202) 272–3809 or Robert A. Robertson, Branch Chief, (202) 272–3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end management investment companies registered under the Act. Each Fund has entered into an investment advisory agreement with the Advisor pursuant to which the Advisor provides investment advisory services to the Fund. Each Fund also has entered into a distribution agreement with the Distributor pursuant to which the Distributor acts as the principal underwriter for the Fund.

2. Each of the Funds, except the money market Funds, are offered to investors at net asset value plus a front-end sales load, and all of the Funds have adopted distribution plans pursuant to rule 12b–1 under the Act. The rule 12b–1 plans currently provide for payments to the Distributor at the annual rate of up to 0.25% of each Fund's net assets. The money market Funds are offered to investors at net asset value without the imposition of front-end sales loads.

3. Under the Prior Order, shares of certain Funds (the "Non-Money

Funds") may be subject to a CDSC upon redemption.[1] Subsequent to the granting of the Prior Order, the SEC's Division of Investment Management provided no-action assurance to the Trust in the event the Trust ceased the CDSC arrangement permitted by the Prior Order on certain redemptions of shares acquired after a particular date and imposed a front-end sales load on purchases after that date, and waived the CDSC on certain redemptions of shares in addition to those permitted under the Prior Order.[2]

4. Applicants request an order on behalf of themselves and all other registered investment companies for which the Advisor, the Distributor or any entity controlling, controlled by, or under common control with the Advisor or the Distributor acts as adviser or distributor in the future. Applicants propose to establish a multiple distribution arrangement (the "Variable Pricing System"). Under the Variable Pricing System, each of the Funds would have the opportunity to provide investors with the option of purchasing different classes of shares. The existing shares, "Class A shares," would be subject to a conventional front-end sales load and a lower rule 12b–1 distribution fee. "Class B shares" would be subject to a CDSC and a higher rule 12b–1 distribution fee. The sales loads, distribution and service fees under rule 12b–1 will be structured to comply with the provisions of Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD").

5. Applicants may from time to time create one or more additional classes of shares, the terms of which may differ from the Class A shares and Class B shares, but only in the following respects: (i) The amount of fees permitted by different rule 12b–1 plans, (ii) the shareholder servicing expenses permitted by non-rule 12b–1 shareholder services plans, (iii) voting rights with respect to a class's rule 12b–1 plan, (iv) different designations, (v) the impact of any incremental transfer agency fees directly attributable to a particular class of shares, and (vi) different exchange privileges among Funds or conversion features.

6. Initially, applicants will not offer a class of shares with a feature providing for automatic conversion of such shares to shares of the other class. The Funds may in the future, however, offer a class of shares that automatically will convert after a period of time to shares of another class. Any conversions will be done at net asset value, so that the value of each shareholder's account immediately before conversion will be the same as the value of the account immediately after conversion.

7. Any exchange privilege offered by a Fund would provide that shares of a class of that Fund would be exchanged only for shares of the same class of another Fund that is part of the same "group of investment companies" as defined in rule 11a–3 under the Act. In addition, the right of any shareholder to exchange into a class subject to a sales load will comply with rule 11a–3.

8. Under the Variable Pricing System, all expenses incurred by a Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each such class, except that each class's net asset value and expenses will reflect the expenses associated with that class's rule 12b–1 plan (if any), including any costs associated with obtaining shareholder approval of such plan, any incremental shareholder servicing fees attributable to a particular class, and any other incremental expenses subsequently identified that should be properly allocated to a particular class which shall be approved by the SEC pursuant to an amended order. As a result, the net asset value per share of the classes will differ at times.

9. Applicants also request an exemption to permit the Funds to impose CDSC schedules that may be different from the Prior Order and to waive the CDSC for certain additional types of redemptions. The requested exemption would supersede the Prior Order. An investor's proceeds from a redemption of Class B shares made within a specified period of purchase of such shares may be subject to a CDSC, which is paid to the Distributor. The amount of any applicable CDSC will be calculated by multiplying the applicable percentage charge by the lesser of (a) the net asset value of the shares at the time of purchase or (b) the net asset value of the shares at the time of redemption.

10. The CDSC will not be imposed on redemptions of shares purchased more than a fixed number of years prior to the redemptions or on shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of dividends and capital gain distributions and then of other shares held by the shareholder for the longest period of time. This will result in the charge, if any, being imposed at the lowest possible rate.

11. The Funds may waive or reduce the CDSC on (a) automatic cash withdrawals if the amount withdrawn per month is equal to or less than 5% of the value of the shareholder's shares in a Fund at the time the withdrawal plan commences; (b) redemptions of shares in connection with post-retirement distributions and withdrawals from IRAs, Keogh Plans or custodial accounts pursuant to section 403(b)(7) of the Code, redemptions that result from tax-free returns of excess contributions pursuant to section 408(d)(4) or (5) of the Code, or redemptions made within one year following the death or disability of a shareholder; (c) redemptions by (i) employees or retired employees of the parent corporation of the Distributor or any of its affiliates and members of their immediate families and IRAs, Keogh plans and employee benefit plans for such employees or retired employees; (ii) directors, trustees, officers or advisory board members, or persons retired from such positions, of any investment company for which Sierra Advisors or an affiliate serves as investment advisor; (iii) registered representatives or full-time employees of dealers that sell Fund shares; (iv) employees of any of the Funds' sub-advisors; and (v) retirement plans created pursuant to section 457 of the Internal Revenue Code of 1986, as amended; (d) redemptions by institutional investors that invest at least $1 million in one or more of the Funds in the aggregate; and (e) redemptions by shareholders who have suffered financial loss as a result of a hardship resulting from living in an area that has experienced a recent natural disaster, such as a flood, fire, hurricane, tornado or earthquake. The term "hardship" shall be defined as an immediate and heavy financial need occurring in the personal affairs of a shareholder as determined by Fund management. If the Funds waive or reduce the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and 18(i) to the extent that the Variable Pricing System may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent that

[1] *GW Sierra Trust Funds*, Investment Company Act Release Nos. 17013 (June 16, 1989) (notice) and 17061 (July 11, 1989) (order).

[2] *GW Sierra Trust Funds*, (pub. avail. Dec. 21, 1990).

the allocation of voting rights may violate section 18(i). Applicants believe that the Variable Pricing System does not raise any of the concerns that section 18 was designed to ameliorate. The proposal does not involve borrowings and does not affect the Funds' existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds. Applicants further believe that the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans is equitable and will not discriminate against any group of shareholders.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder. Applicants believe that the CDSC permits shareholders to have the advantage of greater investment dollars working for them from the time of their purchase than if a sales load were imposed at the time of purchase.

Applicants' Conditions

Applicants agree that the order of the SEC granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences among the classes of shares of the Fund will relate solely to: (i) The amount of fees permitted by different rule 12b–1 plans, (ii) the shareholder servicing expenses permitted by non-rule 12b–1 shareholder services plans, (iii) voting rights with respect to a class's rule 12b–1 plan, (iv) different designations, (v) the impact of any incremental transfer agency fees directly attributable to a particular class of shares, (vi) different exchange privileges among Funds or conversion features.

2. The trustees of each of the Funds, including a majority of the independent trustees, will approve the Variable Pricing System. The minutes of the meetings of the trustees of each of the Funds regarding the deliberations of the trustees with respect to the approvals necessary to implement the Variable Pricing System will reflect in detail the reasons for the trustees' determinations that the proposed Variable Pricing System is in the best interests of both the Funds and their respective shareholders.

3. On an ongoing basis, the trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Advisor and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Advisor and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

4. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Funds including a majority of the trustees who are not interested persons of the Funds. Any person authorized to direct the allocation and disposition of moneys paid or payable by the Funds to meet class expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. Any shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditure made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. The trustees of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to the class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day and will be in the same amount, except that distribution and shareholder servicing payments relating to each respective class of shares will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert (the "Independent Examiner") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon the written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the various classes of shares and this representation will be concurred with by the Independent Examiner in the initial report referred to in condition (8) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent

Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Independent Examiner, or appropriate substitute Independent Examiner.

10. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive any compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

11. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Funds with respect to the Variable Pricing System will be set forth in guidelines which will be furnished to the trustees.

13. Each fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each case of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of each Fund's net asset value and public offering price will present each class of shares separately.

14. The applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that each Fund may make pursuant to its rule 12b-1 plan in reliance on the exemptive order.

15. Any class of shares with a conversion feature ("Purchase Class") will convert into another class of shares ("Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except the New Purchase Class will convert into New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 3 any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the Adviser and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–4580 Filed 2–28–94; 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 by March 31, 1994. 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 3d 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: Loan Closing Documents.

Form No.: SBA Forms 147, 148, 159, 160, 160A, 529, 928, 1059.

Frequency: On Occasion.

Description of Respondents: SBA Loan Applicants.

Annual Responses: 25,451.

Annual Burden: 152,706.

Dated: February 18, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–4604 Filed 2–28–94; 8:45 am]

BILLING CODE 8025–01–M

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 by March 31, 1994. 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: Nominate a Small Business Person or Advocate of the Year.

Form No.: 77660 N/A.

Frequency: Annually.

Description of Respondents: Organizations nominating a small business leader for small business advocacy awards.

Annual Responses: 500.

Annual Burden: 1083.

Dated: February 18, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–4605 Filed 2–28–94; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of thee 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 by March 31, 1994. 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: Disaster Home Loan Application.

Form No.: SBA Forms 5C, 739, and 1632.

Frequency: On Occasion.

Description of Respondents: Applicants requesting SBA Disaster Home Loans.

Annual Responses: 26,100.

Annual Burden: 52,200.

Dated: February 17, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–4606 Filed 2–28–94; 8:45 am]

BILLING CODE 8025–01–M

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 March 31, 1994. 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: Questionnaire for Section 503 Development Company.

Form No.: SBA Form 1301.

Frquency: On Occasion.

Description of Respondents: State and Local Development Companies.

Annual Responses: 10.

Annual Burden: 20.

Title: Questionnaire for Company Doing Business with a Section 503 Development Company.

Form No.: SBA Form 1302.

Frequency: On Occasion.

Description of Respondents: State and Local Development Companies.

Annual Responses: 80.

Annual Burden: 160.

Dated: February 16, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–4608 Filed 2–28–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0548]

Exeter Venture Lenders, L.P.; Issuance of a Small Business Investment Company License

On December 8, 1993, a notice was published in the **Federal Register** (58 FR 64637) stating that an application had been filed by Exeter Venture Lenders, L.P., New York, New York, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) for a license to operate as a small business investment company.

Interested parties were given until close of business January 7, 1994 to submit their comments to SBA. No comments were received.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0548 on February 7, 1994, to Exeter Venture Lenders, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 17, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–4607 Filed 2–28–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended February 18, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49413.
Date filed: February 14, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1544 dated December 3, 1993, USA-Europe Resos r–1 to r–26.
Proposed Effective Date: April 1, 1994.

Docket Number: 49414.
Date filed: February 14, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0634 dated January 28, 1994, Europe-Southeast Asia Resos r-1 to r-30.
Proposed Effective Date: April 1, 1994.

Docket Number: 49417.
Date filed: February 15, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0564 dated December 17, 1993, TC3 Areawide (Except UST) r–1 to r–6; TC3 Reso/P 0566 dated December 17, 1993, Within South Asian Sub. r–7 to r–12; TC3 Reso/P 0567 dated December 17, 1993, Japan/Korea-SE Asia (Except UST) r–13 to r–33; TC3 Reso/P 0569 dated December 17, 1993, SE Asia-S.Asia Subc (Except UST) r–34 to r–41; TC3 Reso/P 0571 dated December 17, 1993, S.Asian Subc-SW Pacific r–42 to r–49; TC3 Reso/P 0572 dated December 17, 1993, SE Asia-SW Pacific (except UST) r–50 to r–54; TC3 Reso/P 0574 dated December 17, 1993, Within SE Asia (except UST) r–55 to r–62; TC3 Reso/P 0576 dated December 17, 1993, Within Southwest Pacific r–63 to r–67; TC3 Reso/P 0578 dated December 17, 1993, Japan-Korea Resos r–68 to r–79; TC3 Reso/P 0579 dated December 17, 1993, Japan-Korea-S.Asian Subc r–80 to r–92; TC3 Reso/P 0580 dated December 17, 1993, Japan/Korea-SW Pacific r–93 to r–106; TC3 Reso/P 0581 dated December 17, 1993, Japan/Korea-Australia r–107 to r–126; TC3 Reso/P 0582 dated December 17, 1993, Japan/Korea-New Zealand Resos r–127 to r–144.
Proposed Effective Date: April 1, 1994.

Docket Number: 49418.
Date filed: February 15, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0565 dated December 14, 1993, TC3 Areawide (US Territories) r–1 to r–4; TC3 Reso/P 0568 dated December 17, 1993, Japan/Korea-Southeast Asia (UST) r–5 to r–17; TC3 Reso/P 0570 dated December 17, 1993, Southeast Asia-South Asian Subc (UST) r–18 to r–21; TC3 Reso/P 0573 dated December 17, 1993, Southeast Asia-SW Pacific (UST) r–22 to r–25; TC3 Reso/P 0575 dated December 17, 1993, Within Southeast Asia (UST) r–26 to r–33; TC3 Reso/P 0577 dated December 17, 1993, With Southwest Pacific (UST) r–34 to r–37.
Proposed Effective Date: April 1, 1994.

Docket Number: 49420.
Date filed: February 16, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0630 dated January 18, 1994, Europe-Southwest Pacific Resos r–1 to r–22.
Proposed Effective Date: April 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–4576 Filed 2–28–94; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart V During the Week Ended February 18, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48574.
Date filed: February 18, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 18, 1994.
Description: Amended Application of American Trans Air, Inc. for certificate authority to permit operation of scheduled foreign air transportation of persons, property and mail between New York and Riga, Latvia nonstop or via Belfast, Northern Ireland or Shannon, Republic of Ireland. ATA requests that Riga, Belfast and Shannon be named as coterminal points to permit maximum flexibility in scheduling.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–4577 Filed 2–28–94; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 22, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0118.
Form Number: None.
Type of Review: Reinstatement.
Title: Declaration by Originating Artist, or Seller, or Shipper That Goods Imported are Original Works of Art.
Description: This declaration is needed to insure that original works of art are in fact originals and, therefore, permitted free entry into the United States.
Respondents: Individuals or households, Non-profit institutions.
Estimated Number of Respondents/Recordkeepers: 7,215.
Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 2,766 hours.

OMB Number: 1515–0154.
Form Number: CF 339.
Type of Review: Extension.
Title: User Fees.
Description: The collection of information is necessary for Customs to

effectively collect fees from private and commercial vessels, private aircraft, operators of commercial trucks, entering the United States and recipients of certain dutiable mail entries for certain official services.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 200,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 16 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 53,330 hours.

Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–4589 Filed 2–28–94; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

February 22, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: IRS Form 8023–A.

Type of Review: New collection.

Title: Corporate Qualified Stock Purchases.

Description: Form 8023–A is used by corporations that acquire the stock of another corporation to elect to treat the purchase of stock as a purchase of the other corporation's assets. The IRS uses Form 8023–A to determine if the purchasing corporation reports the sale of its assets on its income tax return and to determine if the purchasing corporation has properly made the election.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 201.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—8 hours, 37 minutes.

Learning about the law or the form—1 hour, 5 minutes.

Preparing and sending the form to the IRS—1 hour, 17 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 2,207 hours.

OMB Number: 1545–0132.

Form Number: IRS Form 1120X.

Type of Review: Revision.

Title: Amended U.S. Corporation Income Tax Return.

Description: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or Form 1120–A. The data is used to determine if the correct tax liability has been reported.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 67,302.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—12 hours, 12 minutes.

Learning about the law or the form—1 hour, 8 minutes.

Preparing the form—3 hours, 14 minutes.

Copying, assembling, and sending the form to the IRS—32 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,151,537 hours.

OMB Number: 1545–0928.

Regulation ID Number: EE–35–85 NPRM and EE–110–84 (TD 8037); and TD 8219 (Final).

Type of Review: Extension.

Title: Notices, Elections and Consents Under the Retirement Equity Act of 1984.

Description: The notices referred to in this Treasury decision are required by statute and must be provided by employers to retirement plan participants to inform participants of their rights under the plan or under the law. Failure to timely notify participants of their rights may result in loss of plan benefits.

Respondents: State or local governments; Businesses or other for-profit, Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Estimated Number of Respondents: 750,000.

Estimated Burden Hours Per Respondent: 35 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 435,000 hours.

OMB Number: 1545–1380.

Regulation ID Number: IA–17–90 NPRM.

Type of Review: Extension.

Title: Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

Description: To encourage compliance with the tax laws relating to the mortgage interest deduction, the proposed regulations require the reporting on Form 1098 of points paid on residential mortgages. Only businesses that receive mortgage interest in the course of a trade or business are affected by this reporting requirements.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–4590 Filed 2–28–94; 8:45 am]

BILLING CODE 4830–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Establishment of Dispute Settlement Panel Concerning Certain U.S. Measures on Tobacco

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the Contracting Parties of the General Agreement on Tariffs and Trade (GATT) has decided, pursuant to a request by the governments of Brazil, Chile, Colombia, El Salvador, Guatemala, Thailand, Zimbabwe, and Canada, to establish a dispute settlement panel to review the complaint by these governments against the U.S. provisions regarding tobacco in section 1106 of Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66).

FOR FURTHER INFORMATION CONTACT:

Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, Office of the General Counsel, USTR, 600 17th Street, NW., Washington, DC 20506, (202) 395–7305.

SUPPLEMENTARY INFORMATION: USTR is providing notice of the request for, and establishment of, a dispute settlement panel to examine the consistency of the U.S. measures in section 1106 (which concern tobacco) with the obligations of the United States under the GATT. Eight governments are currently the complaining parties in this dispute, and a ninth has asked to join (Argentina). In addition, there are several countries that have indicated a desire to participate in the panel proceeding as third parties. These include New Zealand, India and the European Community.

Members of the panel have now been selected. The panel is expected to meet as necessary at the GATT headquarters in Geneva, Switzerland, to consider information relevant to the dispute. The panel will then provide a report to the GATT Council detailing its findings and recommendations.

Ira S. Shapiro,

General Counsel.

[FR Doc. 94–4613 Filed 2–28–94; 8:45 am]

BILLING CODE 3190–01–M

Report on Environmental Issues in the Uruguay Round Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for public comments regarding environmental issues in the Uruguay Round Agreements.

SUMMARY: The U.S. Trade Representative intends to prepare a report on environmental issues related to the Uruguay Round Agreements. To assist in the preparation of this report, the U.S. Trade Representative invites public comments on environmental issues related to the Uruguay Round agreements.

FOR FURTHER INFORMATION CONTACT: For further information contact Laura Kneale Anderson, Director for Trade and the Environment, Office of Environmental and Natural Resources, Office of the United States Trade Representative, 600 Seventeenth Street, NW., Washington, DC 20506; telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION:

1. Background

On December 15, 1993, in accordance with section 1103(a)(1) of the Omnibus Trade and Competitiveness Act of 1988 (the Act), President Clinton notified the Senate and the House of Representatives of his intent to enter into trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT).

In section 1101 of the Act the Congress set as the first overall U.S. negotiating objective for the Uruguay Round more open, equitable and reciprocal market access. In accordance with this objective, the Uruguay Round results will provide an unprecedented level of new market access opportunities for exports of U.S. goods and services. Moreover, in fulfillment of the second overall U.S. negotiating objective, the reduction or elimination of barriers and other trade-distorting policies and practices, the Uruguay Round package includes a number of agreements to reduce or eliminate non-tariff barriers to trade. In addition, the Uruguay Round agreements include a number of provisions of environmental interest.

In accordance with the procedures in the Act, the United States will not enter the Uruguay Round agreements until April 15, 1994. After the agreements have been signed, they will be submitted for Congressional approval, together with proposed implementing legislation and a statement of administrative action necessary or appropriate to implement the agreements in the United States. The agreements will not take effect with respect to the United States, and will have no domestic legal force, until the Congress has enacted implementing legislation.

2. Scope of Report

Because of the high priority the Administration places on protecting the environment, and on its desire to inform the public fully on the issues, the U.S. Trade Representative (USTR) plans to produce a report on the likely significance of the Uruguay Round agreements for environmental and conservation issues.

The USTR will submit its report on environmental issues in the Uruguay Round agreements to the Congress in conjunction with the implementing legislation described above. USTR proposes to include the following areas in the report:

(a) Overview of the Uruguay Round agreements;

(b) Trade and environment issues under the current GATT and its associated agreements, as well as background on provisions of environmental interest in the Uruguay Round;

(c) Provisions of the Uruguay Round agreements of environmental interest;

(d) Other possible environmental effects of the Uruguay Round agreements, including effects on specific sectors (such as agriculture, environmental technology and services, transportation, energy, non-renewable resources, wildlife and fisheries, and forest resources); and

(e) U.S. plans for further work on trade and the environment.

3. Public Comments

1. Comments are invited on the possible environmental effects of the Uruguay Round agreements. Any comments must be submitted, in twenty typed copies, no later than noon, March 31, 1994, to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, room 414, 600 Seventeenth Street, NW., Washington, DC 20506. Comments should state clearly the position taken and should describe with particularity the evidence supporting that position. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the U.S. Trade Representative, 600 Seventeenth Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 94–4614 Filed 2–28–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 40
Tuesday, March 1, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 8, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4743 Filed 2–25–94; 1:15 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, March 8, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4744 Filed 2–25–94; 1:15 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Friday, March 11, 1994.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–4745 Filed 2–25–94; 1:15 pm]

BILLING CODE 6351–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–06; Emergency Notice]

TIME AND DATE: Monday, February 28, 1994 at 3:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–644 (Final) (Welded Stainless Steel Pipe from Malaysia)—briefing and vote
5. Outstanding action jacket:
   1. GC–94–005, Sanction for APO breach in an investigation under section 337 of the Tariff Act of 1930
   2. ID–94–03, Industry and Trade Summaries: Air-Conditioning Equipment and Parts; Aircraft and Reaction Engines, Other Gas Turbines, and Parts; Builders Hardware; Fatty Chemicals; Paper Boxes and Bags; and Pesticide Products and Formulations

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Dated: February 24, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–4679 Filed 2–24–94; 4:42 pm]

BILLING CODE 7020–02–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 9:30 a.m., Friday, March 11, 1994.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., 8th Floor Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, (202) 376–2441.

Agenda

I. Call to Order
II. Approval of Minutes, January 5, 1994, Regular Meeting
III. Audit Committee Report: March 7, 1994, Regular Meeting
   a. Receive FY 1993 Audit Report from Outside Auditors
   b. Proposed Changes in the Corporate Investment Policy
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 94–4693 Filed 2–25–94; 10:42 am]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 28, March 7, 14, and 21, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 28

Monday, February 28

2:00 p.m.
Briefing by Commonwealth Edison (Public Meeting)

Tuesday, March 1

10:00 a.m.
Briefing on Proposed Changes to Part 100 (Public Meeting)
(Contact: Leonard Soffer, 301–492–3916)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Issuance of Final Rule Reinstating Nonprofit Education Exemption and Denial of Petition for Rulemaking (Tentative)
(Contact: Michael Rakfy, 301–504–1974)

Week of March 7—Tentative

Thursday, March 10

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–492–4516)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 14—Tentative

Monday, March 14
Briefing by Nuclear Waste Technical Review Board (NWTRB) (Public Meeting)
(Contact: Paula Alford, 703–235–4473)

Friday, March 18

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: Ted Sherr, 301–504–3371)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m/
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Week of March 21—Tentative

There are no meetings scheduled for the Week of March 21.

ADDITIONAL INFORMATION: By a 3–0 vote (Commissioner Rogers was not present) on February 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management Issues"

(Closed—Ex. 2 and 6) be held on February 8, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: February 25, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–4779 Filed 2–25–94 ; 3:13 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 59, No. 40
Tuesday, March 1, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1924, 1930, and 1944

RIN 0575–AB08

Cost Containment and Vulnerability

Correction

In rule document 94-3117 beginning on page 6869 in the issue of Monday, February 14, 1994, make the following correction:

On page 6869, in the third column, under EFFECTIVE DATE:, "March 14, 1994." should read "March 16, 1994."

BILLING CODE 1505-01-D

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Correction

In the Sunshine Act meetings document 94-3363 beginning on page 6676 in the issue of Friday, February 11, 1994, make the following correction:

On page 6676, in the first column, under MATTERS TO BE CONSIDERED: in the third and fourth lines, the phrase "(TA-5)" should read "(TA-55)".

BILLING CODE 1505-01-D

RESOLUTION TRUST CORPORATION

Revised Policy Statement for the Disposition of Residential Units Which Were Previously Subject to Rent and Securities Regulations

Correction

In notice document 94-2475 beginning on page 5450 in the issue of Friday, February 4, 1994 make the following correction:

On page 5451, in the first column, under 4.A.(3), several lines of text was omitted, and should read as set forth below.

"The disaffirmance or repudiation of which the conservator or receiver determines, in its discretion, will promote the orderly administration of the institution's affairs. In circumstances where the RTC determines that performance of the leases is not burdensome and/or their repudiation will not promote the orderly administration of the institution's affairs, the RTC will not repudiate the leases."

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33525; File No. SR-NSCC-93-11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Capital and Clearing Fund Requirements for Users of Mutual Fund Services

January 26, 1994.

Correction

In notice document 94-2321 beginning on page 4959 in the issue of Wednesday, February 2, 1994, make the following correction:

On page 4959, in the second column, and the last line after "On August 23, 1993," insert the following omitted text "NSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on November 12, 1993, to solicit comments from interested persons.[2] Two comment letters were received; both of which were in support of the proposed rule change.[3] As discussed below, this order approves the proposal."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Termination of Restrictions on Importation of, and Certification Requirements for, Nickel and Nickel-Bearing Materials Originating in the Soviet Union or its Successor States

FR Correction

In notice document 94-3225 appearing on page 6675 in the issue of Friday, February 11, 1994, in the second column, the "DATES:" heading should read "EFFECTIVE DATE:".

BILLING CODE 1505-01-D

federal register

Tuesday
March 1, 1994

Part II

Environmental Protection Agency

40 CFR Parts 261, 271, and 302
Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[SWH–FRL–4834–9]

RIN 2050–AD59

Hazardous Waste Management System; Carbamate Production Identification and Listing of Hazardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous six wastes generated during the production of carbamates, to exempt one of these wastes from the definition of hazardous wastes, if it is demonstrated that hazardous air pollutants are not being discharged or volatilized during waste treatment, and to exempt biological treatment sludges generated from the treatment of one of these wastes provided the sludges are not characteristically hazardous. The Agency is also proposing to add 4 generic groups and 70 specific chemicals to the list of commercial chemical products that are hazardous wastes when discarded. Also, EPA is proposing not to list as hazardous certain wastes generated during the manufacture of carbamates. This action proposes to amend the basis for listing hazardous waste by adding the six wastes and hazardous constituents found in the wastes on which the listing determinations are based, and to add 78 compounds to the list of hazardous constituents.

This action is proposed under the authority of under sections 3001(e)(2) and 3001(b)(1) of the Hazardous and Solid Waste Amendments of 1984 (HSWA), which direct EPA to make a hazardous waste listing determination for carbamate wastes. The effect of this proposed regulation, if promulgated, is that these wastes will be subject to regulation as hazardous wastes under subtitle C of RCRA. Additionally, this action proposes to designate the wastes proposed for listing as hazardous substances subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is not taking action at this time to adjust the one-pound statutory reportable quantities (RQs) for these substances.

DATES: EPA will accept public comments on this proposed rule until May 2, 1994. Comments post-marked after this date will be marked "late" and may not be considered. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by March 15, 1994.

ADDRESSES: The official record of this rule-making is identified by Docket Number F–94–CPLP–FFFFF and is located at the following address. The public must send an original and two copies of their comments to: EPA RCRA Docket Clerk, room 2616 (5305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Copies of materials relevant to this proposed rulemaking are located in the docket at the address listed above. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

Requests for a hearing should be addressed to Mr. David Bussard at: Characterization and Assessment Division, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, toll-free, at (800) 424–9346 or at (703) 920–9810. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323 in the Washington, DC metropolitan area. For technical information on the RCRA hazardous waste listings, contact John Austin, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, (202) 260–4789.

For technical information on the CERCLA aspects of this rule, contact: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 603–8760.

SUPPLEMENTARY INFORMATION: The contents of the preamble to this proposed rule are listed in the following outline:

I. Legal Authority
II. Background
A. Introduction
B. Previous Listings
C. Previous Proposed Listings
D. Description of the Industry
III. Summary of Proposed Regulation and Request for Comments
A. Overview of the Proposal
B. Description of the Wastes
C. Basis for Listing Determination
1. Waste Characterization and Constituents of Concern
2. Human Health Criteria and Effects
3. Environmental Damage Cases
4. Mobility and Persistence of Constituents in Carbamate Wastes
5. Risk Analysis
6. Estimating Hazard Quotients: Dose Response Risk Assessment Techniques for Noncancer Endpoints
7. Ecological Risk Assessment
8. Summary of Basis for Listing for Additional K Listings and Other Considerations
9. Summary Basis for a No-Listing Decision on Wastewaters, and Certain Wastewater Treatment Residuals
10. Summary of Basis for Listing for Additional P & U Listings
D. Source Reduction
IV. Applicability of Land Disposal Restrictions Determinations
A. Request for Comment on the Agency's Approach to the Development of BDAT Treatment Standards
B. Request for Comment on the Agency's Approach to the Capacity Analyses in the LDR Program
V. State Authority
A. Applicability of Rule in Authorized States
B. Effect on State Authorizations
VI. CERCLA Designation and Reportable Quantities
VII. Compliance Dates
A. Notification
B. Interim Status and Permitted Facilities
VIII. Executive Order 12866
IX. Economic Analysis
A. Compliance Costs for Proposed Listings
1. Universe of Carbamate Production Facilities and Waste Volumes
2. Method for Determining Cost and Economic Impacts
3. P and U List Wastes
4. Summary of Results
B. Proposed Rule Impacts
X. Regulatory Flexibility Act
XI. Paperwork Reduction Act

I. Legal Authority

These regulations are being promulgated under the authority of sections 2002(a) and 3001(b) and (e)(1) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), and 6921(b) and (e)(1), (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a).

II. Background

A. Introduction

As part of its regulations implementing Section 3001(e) of the Resource Conservation and Recovery

Act of 1976, as amended (RCRA), EPA published a list of hazardous wastes that includes hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. In this action, EPA is proposing to amend this section to add six wastes generated during the production of carbamate chemicals. In addition, under the authority of section 3001 of RCRA, EPA has promulgated in 40 CFR 261.33 a list of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded. In this action, the Agency is proposing to add four generic and 70 specific materials to this list.

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in 40 CFR 261.21 through 261.24), are also hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). Accordingly, the Agency is proposing to list the proposed wastes in this action as CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4. EPA is not taking action at this time to adjust the one-pound statutory RQs for these substances.

The following discussion briefly summarizes prior regulatory actions affecting wastes from the carbamates industry, and presents an overview of the industry.

B. Previous Listings

A number of carbamate products and wastes have previously been listed as hazardous wastes when discarded. The Agency notes that neither the scope of the existing hazardous waste listings (described below) nor their regulation under CERCLA are affected in any way by this proposal. EPA is not soliciting comments concerning these listings and does not intend to respond to any such comments received.

The following carbamate wastes from the production of ethylenebisdithiocarbamic acid (EBDC) and its salts have already been listed as hazardous wastes based on the presence of the carcinogen ethylene thiourea (ETU) in the wastes (51 FR 37725, October 24, 1985):

K123—Process Wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.

K124—Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.

K125—Purification solids (including filtration, evaporation, and centrifugation solids) from the production of ethylenebisdithiocarbamic acid and its salts.

K126—Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.

In addition, EPA has promulgated in 40 CFR 261.33 a list of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded which includes the carbamate materials listed in Table 1.

TABLE 1.—CARBAMATE HAZARDOUS WASTE LISTINGS

Waste No.	Name(s) used in CFR	CAS No.
P045	2-Butanone, 3,3-dimethyl-1- (methylthio)-, O- [(methylamino)- carbonyl] oxime	391696–18–4
P070	Aldicarb	116–06–3
P066	Methomyl	16752–77–5
U062	Diallate Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2- propenyl) ester	2303–16–4
U114	Carbamothioic acid, 1,2-ethanediylbis- salts and esters Ethylene bisdithiocarbamate acid, salts, & esters	1111–54–6a
U178	Carbamic acid, methylnitroso-, ethyl ester	615–52–2
U238	Carbamic acid, ethyl ester Ethyl carbamate	51–79–6
U244	Thiram	137–26–8

[1] CAS number given for parent compound only.

In addition, EPA classified certain carbamate products and wastes as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs) and include the carbamate wastes in Table 2.

TABLE 2.—LIST OF CURRENTLY REGULATED CARBAMATE CERCLA HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CAS No.	Final RQ (lbs)
Aldicarb	116–06–3	1
Carbaryl	63–25–2	100
Carbofuran	1563–66–2	10
Diallate	2303–16–4	100
Ethyl carbamate	51–79–6	100
Ethylene- bisdithiocarbamic acid, salts & esters	111–54–6	5000
Methomyl	16752–77–5	100
Methiocarb	2032–65–7	10
Mexacarbate	315–18–4	1000
Thiofanox	39196–18–4	100
Carbamic acid, methylnitroso-, ethyl ester	615–3–2	1
Thiram	137–26–8	10
Triethylamine	121–44–8	5000
K123		10
K124		10

TABLE 2.—LIST OF CURRENTLY REGULATED CARBAMATE CERCLA HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CAS No.	Final RQ (lbs)
K125		10
K126		10

C. Previous Proposed Listings

The carbamates listed in Table 3 were proposed to be included in the list of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded under 40 CFR 261.33 (49 FR 49784, December 21, 1984). These carbamate listings were proposed in response to a petition by the State of Michigan to include 109 chemicals to the lists in 40 CFR 261.33. This rule was never finalized. Today the Agency is reproposing a number of carbamate chemicals, that were also part of the Michigan petition. EPA is not soliciting comments concerning any other compounds contained in the December 21, 1984, notice and does not intend to respond to any such comments received.

TABLE 3.—1984 PROPOSED CARBAMATE HAZARDOUS WASTE LISTINGS

Proposed waste No.	Name(s) used in FR	CAS No.
P127	Carbofuran	1563–66–2
P128	Mexacarbate	315–18–4
U271	Benomyl	17804–35–2
U277	Sulfallate	95–06–7
U278	Bendiocarb	22781–23–3
U279	Carbaryl	63–25–2
U280	Barban	101–27–9
U336	Ziram	137–30–4

Additionally, a number of acutely toxic carbamate products have been proposed under section 302(A)(2) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) as Extremely Hazardous Substances for addition to Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). These carbamate compounds are listed in Table 4. The Extremely Hazardous Substances Proposal (54 FR 3388, January 23, 1989) has also not been promulgated. The Agency requests additional comment only for those carbamates listed in Table 4, which were previously proposed only for addition to Table 302.4. The Agency does not intend to respond to comments received on other constituents in the January 23, 1989, notice.

TABLE 4.—PROPOSED EXTREMELY HAZARDOUS SUBSTANCES AND PROPOSED RQS

CAS No.	Chemical name (common name)	Proposed RQ pounds
26419–73–8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate)	1
57–64–7	Benzoic acid, 2-hydroxy, compd. with (3aS-cis)- 1,2,3,3a,8,8a-hexahydro-1,3a,8- trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostimigine salicylate).	1
119–38–0	Carbamic acid, dimethyl-, 3-methyl-1-(1- methylethyl)-1H-pyrazol-5-yl ester (Isolan)	1
1129–41–5	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)	1
644–64–4	Carbamic acid, dimethyl-,1- (dimethylamino)carbonyl)-5-methyl-1H-pyrazol-3- yl ester (Dimetilan)	1
23135–22–0	Ethanimidothioic acid, 2-(dimethylamino)-N- [[methylamino carbonyl] oxy]-2-oxo-, methyl ester (Oxamyl)	1
17702–57–7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4- [[(methylamino)carbonyl]oxy]phenyl]- (Formparanate)	1
23422–53–9	Methanimidamide, N,N-dimethyl-N'-[3- [[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	1
64–00–6	Phenol, 3-(1-methylethyl), methyl carbamate (UC 10854)	1
2631–37–0	Phenol, 3-methyl-5-(1-methylethyl)-methyl carbamate (Promecarb)	1
57–47–6	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a- hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)- (Physostigmine).	1

D. Description of the Industry

The U.S. carbamates manufacturing industry is a very diverse industry in both products manufactured and companies that make up the industry. The carbamates manufacturing industry is made up of four major classes of compounds with distinct functional characteristics. These include carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates.

In 1990, the carbamate industry in the U.S. was composed of 64 chemical products produced by 20 manufacturers at 24 facilities. The majority of the carbamate manufacturers are located in the eastern half of the United States with only four facilities located west of the Mississippi River. There are carbamate manufacturers located in 13 states. The total domestic production of carbamates in 1990 was approximately 112,000 metric tons (MT). In 1990, individual carbamate products were manufactured at a rate of between 2.5 and 14,000 metric tons per year. Carbamates are manufactured at very different rates depending on the type of product. Typically, dithiocarbamates are produced in smaller quantities than other classes of carbamates. Based on

the results of EPA's RCRA § 3007 survey, the typical carbamate facility manufactures one carbamate product or one chemical class of carbamate products. Of the 24 carbamate manufacturing facilities 14 produce only dithiocarbamates. Five of these 14 only produce one dithiocarbamate product. Of the remaining ten carbamate manufacturers 5 produce one carbamate product. Three of the remaining 5 manufacturers produce a single class of carbamates (e.g., carbamate, carbamoyl oxime, or thiocarbamate) and 2 produce more than one class of carbamate. Carbamate products are widely used as active ingredients in pesticides (i.e., herbicides, insecticides, and fungicides). Dithiocarbamates are also manufactured for use in the rubber processing industry as rubber accelerators. Uses have also been found for carbamates in the wood preserving and textiles industries.

The commercial manufacture of carbamates currently includes five chemical reaction processes: (1) Reaction of an isocyanate with an alcohol to form a carbamate, (2) reaction of an amine and a chloroformate to form a carbamate, (3) reaction of an isocyanate and an organic oxime to form a carbamoyl oxime, (4) reaction of an organic chlorothioformate and an amine to form a thiocarbamate, and (5) the reaction of an amine with carbon disulfide in the presence of a metal salt to form a dithiocarbamate. The primary raw materials used in the production of these products will vary depending on the final product. The Carbamate Background Document [1] (available in the RCRA Docket at EPA Headquarters—see **ADDRESSES** section) and the sources cited therein describe these production processes more thoroughly.

Most carbamate, carbamoyl oxime, and thiocarbamate facility operations are organized along similar process lines with a carbamate intermediate preparation phase (e.g. alcohol or oxime), the carbamolation step, and product and reactant recovery phase. Dithiocarbamate production facilities are generally run as batch operations where the reactants are put into a stirred reaction vessel and allowed to come to reaction completion. Facilities typically operate with a common wastewater treatment plant for all facility operations.

[1] The Background Document consists of Engineering Analysis of the Production of Carbamates, Carbamate Waste Listing Support: Health Effects Background Document, Assessment of Risks from the Management of Carbamate Wastes, and other supporting documents. Because of the confidential nature of the information in the Engineering Analysis, it has been classified as Confidential Business Information (CBI), and is not available to the public. However, a concise summary of this document has been assembled for the public docket. EPA's procedures governing the handling of information claimed as confidential, including procedures for challenging a CBI determination are found at 40 CFR Part 2.

III. Summary of the Proposed Regulation and Request for Comments

A. Overview of the Proposal

Under section 3001(e) of RCRA, EPA must make listing determinations on wastes generated by specific industries, including the carbamate industry. The carbamate industry can be divided into three major segments that include carbamates and carbamoyl oximes, thiocarbamates, and dithiocarbamates. This rule, if finalized, will satisfy the section 3001(e) requirement to make hazardous waste listing determinations for wastes from the carbamate industry. This action proposes to list as hazardous six wastes generated during the production of carbamates:

K156—Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.

K157—Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.

K158—Bag house dust, and filter/separation solids from the production of carbamates and carbamoyl oximes.

K159—Organics from the treatment of thiocarbamate wastes.

K160—Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.

K161—Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust, and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.)

Under the authority of section 3001 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), and EPA's regulations at 40 CFR 261.11, EPA has promulgated in 40 CFR 261.33 a list of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded. The phrase "commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use, and which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. Section 261.33 also lists as hazardous wastes off-specification variants and the residues and debris from the clean-up of spills of these chemicals if discarded (§ 261.33 (b) and (d)). Finally § 261.33 lists as hazardous wastes the containers that have held those chemicals listed in § 261.33(e), if they are discarded, unless the containers have been triple-rinsed with a solvent capable of removing the chemical, or have been decontaminated in an equivalent manner.

In listing waste as hazardous at § 261.33, the Agency intends to encompass those hazardous chemical products which, for various reasons, are sometimes disposed in pure or diluted form. The regulation is intended to designate chemicals themselves as hazardous waste, if discarded.

A chemical substance is listed in 40 CFR 261.33(e), if it meets the criteria of § 261.11(a)(2); that is, it is acutely hazardous because it has been found to be fatal to humans in low doses or in the absence of data on human toxicity, it has been shown in animal studies to have an oral (rat) LD50 of less than 50 milligrams per kilogram, a dermal (rabbit) LD50 of less than 200 milligrams per kilogram, an inhalation (rat) LC50 of less than 2 mg/L, or is otherwise capable of causing or significantly contributing to serious illness.

Chemical substances which pose toxic threats to human health or the environment are listed in 40 CFR 261.33(f). For the purposes of identifying wastes to be included on this list of toxic discarded commercial products, off-specification species, container residues , and spill residues thereof, the Agency considers principally the nature of the toxicity (see 40 CFR 261.11(a)(3)(i)) and its concentration (see 40 CFR 261.11(a)(3)(ii)).

This action proposes that the 22 substances listed in Table 5 be added to the list of acutely hazardous wastes. The commercial chemical products bendiocarb and ziram were previously proposed to be listed as toxic hazardous wastes (49 FR 49784). Today the Agency is proposing to list these two chemicals as acutely hazardous, based on more current toxicity information. This action also proposes that four generic groups and 48 specific substances listed in Table 6 should be added to the list of toxic hazardous wastes because all of these compounds meet the criteria for listing hazardous wastes contained in 40 CFR 261.11(a)(3).

The Agency requests comments on the proposed listing of the above wastes, particularly those identified as K156–

K161 wastes, and on the option of not listing these wastes. EPA requests comments on the data used in this proposed listing determination, the methodology and assumptions used in the risk assessment, and other analyses supporting the proposed listings.

TABLE 5.—LIST OF PROPOSED ACUTE HAZARDOUS WASTES

Hazardous waste No.	Acutely hazardous wastes—CAS name (common name in parentheses)	CAS No.
P185	1,3-Dithiolane-2-carboxaldehyde, 2,4- dimethyl-, O- [(methylamino)carbonyl]oxime (Tirpate)	26419–73–8
P187	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)	22781–23–3
P127	7-Benzofuranol, 2,3-dihydro-2,2- dimethyl-,methylcarbamate (Carbofuran)	1563–66–2
P188	Benzoic acid, 2-hydroxy, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro- 1,3a,8-trimethylpyrrolo[2,3-b]indol-5- yl methylcarbamate ester (1:1) (Physostigmine salicylate).	57–64–7
P189	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3- dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan)	55285–14–8
P190	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)	1129–41–5
P191	Carbamic acid, dimethyl-, 1- [(dimethylamino)carbonyl]-5-methyl-1H- pyrazol-3-yl ester (Dimetilan)	644–64–4
P192	Carbamic acid, dimethyl-, 3-methyl-1- (1-methylethyl)-1H-pyrazol-5-yl ester (Isolan)	119–38–0
P193	Carbamic acid, [1,2- phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl)	23564–05–8
P194	Ethanimidothioc acid, 2- (dimethylamino)-N- [[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl)	23135–22–0
P195	Ethanimidothioic acid, N,N′- [thiobis[(methylimino)carbonyloxy]]bis- , dimethyl ester (Thiodicarb)	59669–26–0
P196	Manganese, bis(dimethylcarbamodithioato-S,S′)-, (Manganese dimethyldithiocarbamate)	15339–36–3
P197	Methanimidamide, N,N-dimethyl-N′-[2- methyl-4- [[(methylamino)carbonyl]oxy]phenyl]- (Formparanate)	17702–57–7
P198	Methanimidamide, N,N-dimethyl-N′-[3- [[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	23422–53–9
P128	Phenol, 4-(dimethylamino)-3,5-dimethyl- , methylcarbamate (ester) (Mexacarbate)	315–18–4
P199	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate (Methiocarb)	2032–65–7
P200	Phenol, 2-(1-methylethoxy)-, methylcarbamate (Propoxur)	114–26–1
P201	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb)	2631–37–0
P202	Phenol, 3-(1-methylethyl), methyl carbamate (Hercules AC–5727)	64–00–6
P203	Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone)	1646–88–4
P204	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8- trimethyl-, methylcarbamate (ester), (3aS-cis)-(Physostigmine).	57–47–6
P205	Zinc, bis(dimethylcarbamodithioato- S,S′)-, (Ziram)	137–30–4

TABLE 6.—LIST OF PROPOSED TOXIC HAZARDOUS WASTES

Hazardous waste No.	Toxic hazardous wastes—IUPAC Name (Common name in parentheses)	CAS No.
U360	Carbamates, N.O.S.	
U361	Carbamoyl Oximes, N.O.S.	
U362	Thiocarbamates, N.O.S.	
U363	Dithiocarbamate acids, salts and/or esters, N.O.S. (This listing includes mixtures of one or more dithiocarbamic acid, salt, and/or ester).	
U279	1-Naphthalenol, methylcarbamate (Carbaryl)	63–25–2
U364	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol)	22961–82–6
U365	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate)	2212–67–1
U366	2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-(Dazomet)	533–74–4
U367	7-Benzofuranol, 2,3-dihydro-2,2- dimethyl- (Carbofuran phenol)	1563–38–8
U368	Antimony, tris (dipentylcarbamodithioato-S,S′)-(Antimony trisdipentyldithiocarbamate)	15890–25–2
U369	Antimony, tris[bis(2- ethylhexyl)carbamodithioato-S,S′]-, (Antimony tris(2- ethylhexyl)dithiocarbamate)	15991–76–1
U370	Bismuth, tris(dimethylcarbamodithioato-S,S′)-, (Methyl bismate)	21260–46–8
U371	Carbamic acid, [(dimethylamino)iminomethyl)] methyl, ethyl ester monohydrochloride (Hexazinone intermediate).	65086–85–3
U280	Carbamic acid, (3-chlorophenyl)-, 4- chloro-2-butynyl ester (Barban)	101–27–9
U372	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)	10605–21–7
U373	Carbamic acid, phenyl-, 1-methylethyl ester (Propham)	122–42–9
U374	Carbamic acid, [[3- [(dimethylamino)carbonyl]-2- pyridinyl]sulfonyl]-phenyl ester (U9069)	112006–94–7
U271	Carbamic acid, [1- [(butylamino)carbonyl]-1H- benzimidazol-2-yl]-, methyl ester (Benomyl)	17804–35–2
U375	Carbamic acid, butyl-, 3-iodo-2-propynyl ester (Troysan Polyphase)	55406–53–6
U376	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium dimethyldithiocarbamate).	144–34–3
U377	Carbamodithioic acid, methyl,- monopotassium salt (Potassium n-methyldithiocarbamate)	137–41–7
U378	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Busan 40)	51026–28–9
U277	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate)	95–06–7
U379	Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate)	136–30–1
U380	Carbamodithioic acid, dibutyl-, methylene ester (Vanlube 7723)	10254–57–6
U381	Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate)	148–18–5
U382	Carbamodithioic acid, dimethyl-, sodium salt (Dibam)	128–04–1
U383	Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate) (Busan 85)	128–03–0
U384	Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium)	137–42–8
U385	Carbamothioic acid, dipropyl-, S-propyl ester (Vernolate)	1929–77–7
U386	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate)	1134–23–2
U387	Carbamothioic acid, dipropyl-, S- (phenylmethyl) ester (Prosulfocarb)	52888–80–9

TABLE 6.—LIST OF PROPOSED TOXIC HAZARDOUS WASTES—Continued

Hazardous waste No.	Toxic hazardous wastes—IUPAC Name (Common name in parentheses)	CAS No.
U388	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S- (phenylmethyl) ester (Esprocarb)	85785-20-2
U389	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2- propenyl) ester (Triallate)	2303-17-5
U390	Carbamothioic acid, dipropyl-, S-ethyl ester (Eptam)	759-94-4
U391	Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate)	1114-71-2
U392	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate)	2008-41-5
U393	Copper, bis(dimethylcarbamodithioato- S,S')-, (Copper dimethyldithiocarbamate)	137-29-1
U394	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213)	30558-43-1
U395	Ethanol, 2,2'-oxybis-, dicarbamate (Reactacrease 4-DEG)	5952-26-1
U396	Iron, tris(dimethyl carbamodithioato- S,S')-, (Ferbam)	14484-64-1
U397	Lead, bis(dipentyl carbamodithioato S,S')-	36501-84-5
U398	Molybdenum, bis(dibutyl carbamothioato)di-.mu.-oxodioxodi-, sulfurized	68412-26-0
U399	Nickel, bis(dibutyl carbamodithioato- S,S')-(Nickel dibutyldithiocarbamate)	13927-77-0
U400	Piperidine, 1,1'- (tetrathiodicarbonothioyl)-bis-(Sulfads)	120-54-7
U401	Bis(dimethyl thiocarbamoyl) sulfide (Tetramethylthiuram monosulfide)	97-74-5
U402	Thioperoxydicarbonic diamide, tetrabutyl (Butyl Tuads)	1634-02-2
U403	Thioperoxydicarbonic diamide, tetraethyl (Disulfiram)	97-77-8
U404	Ethanamine, N,N-diethyl- (Triethylamine)	121-44-8
U405	Zinc, bis[bis(phenylmethyl)carbamodithioato- S,S']- (Arazate)	14726-36-4
U406	Zinc bis(dibutylcarbamodithioato- S,S')-(Butyl Ziram)	136-23-2
U407	Zinc, bis(diethylcarbamodithioato- S,S')-(Ethyl Ziram)	14324-55-1

As a result of the Agency's studies, a number of generic groups of wastes produced from the manufacture of carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates were not found by the Agency to require additional regulation as a listed hazardous waste under RCRA. The Agency is therefore proposing to not list as hazardous the following categories of wastes:

—Spent carbon and wastewater treatment sludges from the production of carbamates and carbamoyl oximes
—Wastewaters from the production of thiocarbamates and treatment of wastes from thiocarbamate production
—Process Wastewater (including supernates, filtrates, and washwaters) from the production of dithiocarbamates
—Reactor vent scrubber water from the production of dithiocarbamates
—Organic wastes (including spent solvents, solvent rinses, process decantates, and still bottoms) from the production of dithiocarbamates

Pursuant to HSWA, the Agency has collected information that supports the addition of these six wastes to 40 CFR 261.32. The Agency proposes to add K156, K157, K158, K159, K160, and K161 to 40 CFR 261.32 because the wastes satisfy the criteria in 40 CFR 261.11(a)(1–3) for listing hazardous wastes. Based on the similarity of wastes from the production of each functional chemical class (carbamates/carbamoyl oximes, thiocarbamates, and dithiocarbamates), the Agency is proposing to identify wastes from each functional chemical class grouped by class and physical properties. Each of the six waste groups proposed for listing as hazardous wastes meets the definition of hazardous wastes by typically and frequently exhibiting toxicity, persistence, and mobility.

Carbamate wastes that satisfy the proposed hazardous waste listing descriptions are not limited to the five typical production processes described above in section II.D. Wastes from any process that produces any of the four major functional carbamate classes (i.e., carbamates, carbamoyl oximes, thiocarbamates, and dithiocarbamates) would be subject to hazardous waste regulation.

The proposed hazardous waste listings are intended to encompass the wastes generated from any carbamate manufacturing, including the wastes generated when carbamates are produced as intermediates. For example, a facility may produce a carbamate intermediate to be used directly as a raw material in another process. Similar wastes are generated from the production of the carbamate whether it is the final product or an intermediate product.

Upon promulgation of these proposed listings, all wastes meeting the listing descriptions would become hazardous wastes and would require treatment, storage, or disposal at permitted facilities. Residuals from the treatment, storage, or disposal of the wastes included in this proposed listing also would be classified as hazardous wastes by the "derived-from" rule (40 CFR 261.3(c)(2)(i)). For example, ash or other residuals from treatment of the listed wastes would be subject to the hazardous waste regulations. Also, 40 CFR 261.3(a)(2)(iv) (the "mixture" rule) provides that any mixture of a listed waste and a solid waste is itself a RCRA hazardous waste with certain limited exceptions.

However, when these wastes are recycled as described in 40 CFR 261.2(e)(1)(iii) or 261.4(a)(8), they are not solid wastes and are not subject to hazardous waste regulations. For example, if a waste is collected and returned in a closed-loop fashion to the same carbamate process, the waste would not be regulated. To meet the exemption, the waste must meet the three key requirements outlined in the rules and in 50 FR 639 (January 4, 1985): (1) The material must be returned to the original process from which it was generated without first being reclaimed; (2) the production process to which the materials are returned must use raw materials as principal feedstocks; and (3) the material must be returned as a substitute for raw material feedstock in the original production process. (The regulations contain other recycling exclusions as well, but the provisions referenced above are the principal ones most likely to be applicable to the wastes at issue in this proposal.)

B. Description of the Wastes

While the Agency has observed that carbamate manufacturing processes differ according to product and raw materials, many similarities in the wastes generated exist. The proposal to list K156 through K161 and to not list other groupings of wastes from this industry is based on the similarity of the production processes used by carbamate manufacturers and the similarity of the wastes generated by these facilities. In the course of the Agency's evaluations, wastes within similar processes were

grouped by like physical properties due to their similar management, and to facilitate the development of potential land disposal treatment standards (see 40 CFR 268.2(f)). Wastewaters with less than 1 percent by weight of total organic carbon (TOC) and less than 1 percent by weight of total suspended solids (TSS) were grouped as aqueous. Liquids that contained equal to or greater than 1 percent by weight of TOC were grouped as organic, and wastes that contain equal to or greater than 1 percent by weight of TSS were grouped as solids. When process and wastes characterizations are taken into account, ten waste groups result.

Group 1 consists of organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. The Agency is proposing that these wastes be listed as Hazardous Waste Number K156.

Group 2 wastes include wastewaters (including scrubber waters, condenser waters, washwaters, separation waters) from the production of carbamates and carbamoyl oximes. Group 2 wastewaters are proposed to be listed as Hazardous Waste Number K157.

Group 3 consists of solids from the production of carbamate and carbamoyl oxime products. These wastes are typically generated from the filtration of liquid products and include such wastes as baghouse dusts, dust collector bags, and process precipitates, and may contain high levels of carbamate product. From this generic waste grouping, wastewater treatment sludges and spent carbon from the production of carbamates and carbamoyl oximes are not proposed for listing. The decision not to list these wastes and other waste groupings is discussed in detail in section III.C.8. Group 3 baghouse dusts and filter/separation solids are proposed to be listed as Hazardous Waste Number K158.

Group 4 wastes include organics from the treatment of thiocarbamate wastes. These wastes are generated from the treatment of the brine wastewater from the carbamolation reaction, and are proposed to be listed as Hazardous Waste Number K159.

Group 5 wastes are wastewaters from the production of thiocarbamates and treatment of wastes from thiocarbamate production. EPA is proposing not to list this group of wastes.

Group 6 wastes are the solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes. These wastes include spent catalysts generated from the production of chlorothioformates, filter cakes from the filtration of product to remove byproduct amine chlorides, and solid wastes resulting from the treatment of waste brine from the carbamolation step. The Agency is proposing to list Group 6 wastes as Hazardous Waste Number K160.

Group 7 wastes include process wastewater (including supernates, filtrates, and washwaters) and Group 8 includes reactor vent scrubber water from the production of dithiocarbamates. EPA is proposing not to list group 7 or group 8 wastes.

Group 9 wastes include purification solids, baghouse dust, and floor sweepings from the production of dithiocarbamates. In many cases these wastes are the residues resulting from the filtration of a liquid product, and includes filtration media, filters, filter cloths, centrifugation solids, evaporation solids, or dryer wastes. Group 9 wastes are proposed for listing as Hazardous Waste Number K161.

Group 10 wastes include organic wastes (including spent solvents, solvent rinses, process decantates, and still bottoms) from the production of dithiocarbamates. EPA is proposing not to list this group of wastes.

Based on data collected from industry by the 1990 RCRA section 3007 survey, engineering site visits, and sampling and analysis, the Agency believes that each of the waste groups typically contain significant concentrations of hazardous constituents. Table 7 identifies the constituents of concern for the carbamate waste streams. The Agency conducted sampling and analysis of each of these wastes to support this proposed hazardous waste listing determination. The following section, III.C., presents this data and additional health effects data, which are the basis for the Agency's proposal to list or not list the wastes studied in this rulemaking.

The total reported generation rate of these wastes in 1990 was approximately 841,000 metric tons. Tables 8 and 9 present the characteristics of, and management method used for these wastes by group.

TABLE 7.—WASTE STREAM CONSTITUENTS

Waste group	Constituent
1—Organic Carbamate/Carbamoyl Oxime Wastes.	Acetone, acetonitrile, acetophenone, aniline, benomyl, benzene, carbaryl, carbendazim, carbofuran, carbosulfan, chlorobenzene, chloroform, odichlorobenzene, hexane, methanol, methomyl, methyl ethyl ketone, methyl isobutyl ketone, methylene chloride, naphthalene, phenol, pyridine, toluene, triethylamine, xylene.
2—Aqueous Carbamate/Carbamoyl Oxime Wastes.	Acetone, carbon tetrachloride, chloroform, formaldehyde, methomyl, methyl isobutyl ketone, methyl chloride, methyl ethyl ketone, methylene chloride, ophenylenediamine, pyridine, triethylamine.
3—Solid Carbamate/Carbamoyl Oxime Wastes.	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, hexane, methanol, methylene chloride, phenol, xylene.
4—Organic Thiocarbamate Wastes.	Benzene, butylate, eptam, molinate, pebulate, vernolate.
5—Aqueous Thiocarbamate Wastes.	Benzene, butylate, eptam, molinate, pebulate, toluene, vernolate, xylene.
6—Solid Thiocarbamate Wastes.	Butylate, eptam, cycloate, molinate, pebulate, vernolate.
7—Aqueous Dithiocarbamate Process Waters.	Carbon disulfide, dithiocarbamate product, xylene.
8—Aqueous Dithiocarbamate Scrubber Wastes.	Carbon disulfide, dithiocarbamate product, methylene chloride, n-nitrosodimethylamine.
9—Solid Dithiocarbamate Wastes.	Carbon disulfide, dithiocarbamate product, xylene.
10—Organic Dithiocarbamate Wastes.	Carbon disulfide, dithiocarbamate product, hexane, toluene, xylene.

TABLE 8.—1990 WASTE MANAGEMENT BY RCRA HAZARDOUS WASTE IDENTIFICATION AND GROUP

[metric tons/year] [1]

Waste classification	Non-haz.	As-haz.	Corr.	Ignit.	TC	I&TC	I&C	TC&C	Unknown
Group 1	46,398	1,912	69,780	1,980	1.5	2,302	2,773	.....	1,368
Group 2	140,145	3,735	246,595	6.8	41.9	.....	.....	.....	Varies.
Group 3	9,729	0.4	14.8	5.5	12.3	.....	.....	.....	.....
Group 4	.....	.....	.....	.....	.....	549	.....	.....	.....
Group 5	.....	.....	130,664	.....	.....	.....	.....	.....	.....
Group 6	.....	77	.....	.....	588	.....	.....	.....	.....
Group 7	43,810	7,218	9	1.1	380,430	.....	.....	.....	230
Group 8	46,054	.....	49.1	.....	[2] 0	.....	.....	1,055	89
Group 9	3,493	195	.....	3.1	15.8	.....	.....	.....	205
Group 10	.....	46.8	.....	162.9	.....	65.4	.....	.....	91
Total	289,629	13,185	447,112	2,159	381,090	2,916	2,773	1,055	1,983

Non-Haz.: Managed as nonhazardous waste
As-Haz.: Managed as a hazardous waste
Characteristically Hazardous Wastes
Ignit.: Ignitable (40 CFR 261.21)
Corr.: Corrosive (40 CFR 261.22)
I&C: Ignitable and corrosive
I&TC: Ignitable and TC
TC&C: TC and corrosive
TC: Toxicity Characteristic (40 CFR 261.24)
[1] Wastes may have several classifications; therefore, the total mass of each waste group may exceed the actual mass.
[2] There is a toxic stream in Group 8 but it was not generated in 1990.

TABLE 9.—CURRENT WASTE MANAGEMENT BY WASTE TYPE AND QUANTITY

[metric tons/year]

Group	1	2	3	4	5	6	7	8	9	10	Total
Recycle/Reuse	1,601	.....	26	.....	.....	.....	701	57	64	180	2,629
Incineration	3,263	1,975	18	549	.....	.....	.....	50	2	98	5,955
Fuel Blending	.....	.....	.....	.....	.....	.....	.....	.....	.....	24	24
Boiler	6,360	.....	.....	.....	.....	.....	.....	.....	.....	.....	6,360
POTW	.....	20,497	.....	.....	.....	.....	42,599	45,957	.....	.....	109,053
PrOTW	2,922	4,986	.....	.....	.....	.....	1,410	23	.....	.....	9,341
WWTP	112,292	238,751	.....	.....	130,664	.....	4,670	.....	.....	.....	486,377
Subtitle C Landfill	.....	.....	.....	.....	.....	665	.....	.....	193	.....	858
Subtitle D Landfill	.....	.....	1340	.....	.....	.....	.....	.....	3,199	.....	4,539
Deep Well Injection	.....	.....	.....	.....	213,582	.....	1,517	100	.....	.....	215,199
Other	.....	.....	6	.....	.....	.....	645	13	.....	65	729
Total	126,438	266,209	1,390	549	344,246	665	51,542	46,200	3,458	367	841,064

POTW—Publicly Owned Treatment Works
PrOTW—Privately Owned Treatment Works
WWTP—Wastewater Treatment Plant

C. Basis for Listing Determination

1. Waste Characterization and Constituents of Concern

The Agency has conducted significant data gathering efforts in order to evaluate each of the criteria for listing hazardous wastes found at 40 CFR 261.11. In conducting its investigation before proposing to list a specific waste under 40 CFR 261.32, the Agency characterized the waste based on survey information, engineering analysis, and sampling and analysis. The constituents of concern in this proposal were identified by these methods and are proposed as the basis for listing and for addition to appendix VII of 40 CFR part 261 (see Table 7). The toxic constituents of concern which are the basis of this and possibly future hazardous waste listing determinations are being proposed for addition to appendix VIII of 40 CFR part 261 pursuant to 40 CFR 261.11(a)(3).

This section summarizes the information concerning waste characterization and constituents of concern that EPA has gathered to support this proposed listing. Other compounds also have been identified in these wastes but are not presented as constituents of concern because they are either not sufficiently toxic, are present at low concentrations, or do not migrate through the environment under reasonable conditions.

Information regarding the identity and concentration of the compounds found in carbamate wastes from EPA sampling during engineering site visits is presented in summary form in the Appendix A of the "non-CBI" Engineering Analysis of the Production of Carbamates, which is available in the Public Docket for this proposed rulemaking. See "ADDRESSEES" section.

The constituents of concern are found at varying levels in each of the carbamate waste streams proposed for listing. Despite differences in constituents and concentrations, each of the wastes proposed for listing exhibit similar levels of potential hazard and are also amenable to similar treatment technology. The Agency therefore is proposing to regulate wastes from each of these processes together under the K156 through K161 listings.

Table 10 lists the constituents found at concentrations above the level of concern (the Agency's rationale for identifying a concentration level of

concern is detailed in the following section) from wastes sampled and analyzed by the Agency during the course of the engineering analysis of wastes in the carbamate industry and effluent guideline development under sections 405 (d) and (e) of the Clean Water Act (CWA), or reported present by the manufacturer in response to the Agency's RCRA section 3007 questionnaire. This table presents a compilation of all concentration data for each group of waste studied. Additional constituents were detected at concentrations below the level of concern. All of the collected data is presented in the carbamates engineering analysis. However, the risk analysis described in section III.C.5. of this preamble used only the results of the carbamate industry study.

TABLE 10.—RANGE OF CONCENTRATIONS FOR CONSTITUENTS OF CONCERN

Group	Constituent of concern	No. of streams	Max. conc. (ppm)	Min. conc. (ppm)	Mean conc. (ppm)	Median conc. (ppm)
1	acetone	8	900,000	13	214,502	96,000
	acetonitrile	3	400,000	50,000	176,667	80,000
	acetophenone	1	890.7	890.7	890.7	890.7
	aniline	1	3.8	3.8	3.8	3.8
	benomyl	2	20,000	22	10,011	10,011
	benzene	1	350	350	350	350
	carbaryl	1	100,000	100,000	100,000	100,000
	carbendazim	2	80,000	22.3	40,011	40,011
	carbofuran	3	10,000	2,490	7,497	10,000
	carbosulfan	3	350,000	9	117,433	2,290
	chlorobenzene	1	1,800	1,800	1,800	1,800
	chloroform	1	1.2	1.2	1.2	1.2
	o-dichlorobenzene	1	12,000	12,000	12,000	12,000
	hexane	8	200,000	42	73,755	65,000
	methanol	10	910,000	9.23	359,033	130,100
	methomyl	2	38.7	1.06	19.9	19.9
	methyl ethyl ketone	4	500,000	58	151,240	7,300
	methyl isobutyl ketone	6	650,000	21,000	335,167	210,000
	methylene chloride	7	150,000	1.6	32,572	20,000
	naphthalene	1	6,440	6,440	6,440	6,440
	phenol	5	128,700	0.0138	28,706	3,000
	pyridine	6	130,000	920	63,570	49,750
	toluene	3	980,000	290	334,163	22,200
	triethylamine	2	286,000	580	143,290	143,290
	xylene	6	996,100	7,300	449,200	570,000
2	acetone	12	4,000	0.3	338.3	2.9
	carbon tetrachloride	1	0.51	0.51	0.51	0.51
	chloroform	5	8.6	0.024	2.3	0.57
	formaldehyde	1	48	48	48	48
	methomyl	5	40,000	0.0016	10,750	49.5
	methyl isobutyl ketone	5	300	0.8	78.3	12
	methyl chloride	5	4,200	0.0076	840.9	3.5
	methyl ethyl ketone	5	10,000	1.1	3,400.7	300
	methylene chloride	15	4,100	0.074	285.9	1.4
	o-phenylenediamine	1	77.4	77.4	77.4	77.4
	pyridine	3	13,600	17.6	4,687	443
	triethylamine	5	7,380	7.4	1,901	9.8
3	benomyl	2	20,000	0.3	10,000	10,000
	carbendazim	2	20,000	0.3	10,000	10,000
	carbofuran	2	700,000	6.8	350,003	350,003
	carbosulfan	1	100,000	100,000	100,000	100,000
	chloroform	1	2,600	2,600	2,600	2,600
	hexane	1	3,800	3,800	3,800	3,800
	methanol	2	69.5	58	63.8	63.8
	methylene chloride	3	13,000	0.047	6,000	5,000
	phenol	2	5,000	0.346	2,500	2,500
	xylene	2	135,100	610	67,855	67,855
4	butylate	1	50,000	50,000	50,000	50,000
	eptam	1	50,000	50,000	50,000	50,000
	molinate	1	50,000	50,000	50,000	50,000
	pebulate	1	50,000	50,000	50,000	50,000
	vernolate	1	50,000	50,000	50,000	50,000
5	benzene	1	0.15	0.15	0.15	0.15
	butylate	2	1.2	0.3	0.8	0.8
	eptam	3	170	0.14	57	1.7
	molinate	2	39	7.5	23.3	23.3
	pebulate	3	0.71	0.015	0.27	0.09
	vernolate	2	0.16	0.021	0.09	0.09
6	benzene	1	1,100	1,100	1,100	1,100
	toluene	1	9,400	9,400	9,400	9,400
	butylate	2	8,800	7,400	8,100	8,100
	eptam	3	401,000	12,000	271,333	271,333
	molinate	1	22,000	22,000	22,000	22,000

TABLE 10.—RANGE OF CONCENTRATIONS FOR CONSTITUENTS OF CONCERN—Continued

Group	Constituent of concern	No. of streams	Max. conc. (ppm)	Min. conc. (ppm)	Mean conc. (ppm)	Median conc. (ppm)
	pebulate	1	500	500	500	500
	vernolate	1	620	620	620	620
	xylene	1	201	201	201	201
7	carbon disulfide	1	94,000	94,000	94,000	94,000
	xylene	4	5,000	1,000	3,750	4,500
	dithiocarbamate product	8	10,000	10,000	10,000	10,000
8	carbon disulfide	5	5,000	0.028	1,178	15
	methylene chloride	2	0.57	0.490	0.53	0.53
	n-nitrosodimethylamine	1	104	104	104	104
	piperidine	1	65,000	65,000	65,000	65,000
	dithiocarbamate product	5	6,960	42.4	2,039	70.9
9	carbon disulfide	2	420	15	218	218
	dithiocarbamate product	81	1,000,000	1,000	505,201	450,000
	xylene	2	240,000	240,000	240,000	240,000
10	carbon disulfide	5	1,000,000	4,000	676,800	950,000
	hexane	7	1,000,000	600,000	942,857	1,000,000
	toluene	2	50,000	50,000	50,000	50,000
	xylene	2	600,000	600,000	600,000	600,000

2. Human Health Criteria and Effects

The Agency uses health-based levels, or HBLs, to evaluate levels of concern of toxic constituents in various media. In establishing HBLs, EPA evaluates a wide variety of health effects data and existing standards and criteria. EPA uses any Maximum Contaminant Level (MCL) promulgated under the Safe Drinking Water Act as an HBL for contaminants in aqueous streams. MCLs are Drinking Water Standards promulgated under section 1412 of the Safe Drinking Water Act of 1974 (SDWA), as amended in 1984 for both carcinogenic and noncarcinogenic compounds. In setting MCLs, EPA considers a range of pertinent factors (see 52 FR 25697–98, July 8, 1987). For other media, or if there is no MCL, EPA uses an oral reference dose (RfD), an inhalation reference concentration (RfC), and/or a carcinogenic slope factor (CSF) to derive the HBL, in conjunction with various exposure assumptions and, for carcinogens, a risk level of concern. The Agency relies on standard intake and exposure assumptions to derive HBLs. Standard daily intake assumptions are: 2 liters of water; 20 cubic meters of air; 200 mg of soil for six years (children) and 100 mg of soil for 24 years (adults). For carcinogens, the daily intake is averaged over a 70 year lifetime; for noncarcinogens, the daily intake is averaged over a daily period of exposure. The risk level of concern may vary, but for the purpose of deriving HBLs in the following discussion, the minimal or threshold risk level of concern is taken as 10^{-6} (i.e., one incremental cancer risk in a million based on lifetime exposure). A given constituent may have an RfD, and RfC, and/or a CSF, depending on the variety and nature of the toxic effects exhibited. The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population, including sensitive subgroups, that is likely not to present appreciable risk of deleterious effects during a lifetime. The CSF is an estimate of the upper bound confidence limit of the lifetime risk of developing cancer, per unit dose, which results from the application of a low-dose extrapolation procedure. When available, EPA uses RfDs, RfCs, and CSFs that have been verified by the Agency's Reference Dose/Reference Concentration (RfD/RfC) Work Group or Carcinogen Risk Assessment Verification Endeavor (CRAVE). If no verified value exists, other estimates of RfDs, RfCs, and CSFs are examined to determine if they are appropriate for use in establishing HBLs. Health-based levels in water and soil, and the criteria used to establish them, are shown in Table 11 for the constituents identified in the carbamate wastes. A more detailed discussion of the toxicity of these constituents is included in the background document "Carbamate Waste Listing Support: Health Effects Background Document" and associated materials for this proposal and is available from the Public Docket at EPA Headquarters. See **ADDRESSES** section.

TABLE. 11.—ORAL AND INHALATION TOXICITY INFORMATION FOR WASTE CONSTITUENTS

Constituents	RfD (mg/kg/day)	Oral CSF (mg/kg/day)$^{-1}$	RfC (mg/m^3)	Inhalation CSF (mg/kg/day)$^{-1}$	HBL water (mg/L)	HBL soil (mg/kg)	MCL (mg/L)	Toxicity
Acetone (67–64–1).	1E–1 (1)	N* (1,7)	N (1,7)	N (1,7)	4E+0	8E+3	N (1,6)	Systemic: Increased liver and kidney weights, and nephrotoxicity.
Acetophenone (98–86–2).	1E–1 (1)	N (1,7)	N (1,7)	N (1,7)	4E+0	8E+3	N (1,6)	Systemic: General toxicity.
Aniline (62–53–3).	N (1,7)	5.7E–3 (1)	1E–3 (1)	N (1,7)	6.25E–3	1.0E+2	N (1,6)	Cancer: Spleen tumors. Systemic: Spleen toxicity.
Anthracene (120–12–7).	3E-1 (1)	N (1,7)	N (1,7)	N (1,7)	1E+1	3E+4	N (1,6)	Systemic: Phototoxic dermatitis, inflammation of the gastrointestinal tract.
Antimony (7440–36–0).	4E–4 (1,6,7)	N (1,7)	N (1,7)	N (1,7)	6E–3	3E+1	0.006 (6)	Systemic: Increased mortality and altered blood glucose and cholesterol levels.

TABLE. 11.—ORAL AND INHALATION TOXICITY INFORMATION FOR WASTE CONSTITUENTS—Continued

Constituents	RfD (mg/kg/day)	Oral CSF (mg/kg/day)$^{-1}$	RfC (mg/m^3)	Inhalation CSF (mg/kg/day)$^{-1}$	HBL water (mg/L)	HBL soil (mg/kg)	MCL (mg/L)	Toxicity
Arsenic (7440-38-2).	3E-4 (1)	1.75E+0 (1)	N (1,7)	1.5E+1 (1)	5E-2	4E-1	0.05 (6)	Cancer: Respiratory system tumors. Systemic: Hyperpigmentation, keratosis, and possible vascular complications.
Barium (7440-39-3).	7E-2 (1)	N (1,7)	5E-4 (7)	N (1,7)	2E+0	6E+3	2 (6)	Systemic: Oral; increased blood pressure. Inhalation: Fetotoxicity.
Benomyl (17804-35-2).	5E-2 (1)	N (1,7)	N (1,7)	N (1,7)	2E+0	4E+3	N (1,6)	Systemic: Fetotoxicity (decreased pup weanling weights).
Bensulide (741-58-2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Neuro-muscular pathology[b].
Benz[a]-anthracene (56-55-3).	2E-1 (92)[c]	2E+1 (92)	N (1,7)	N (1,7)	1E-4	3E-2	0.0001 PMCL (6)	Cancer: Liver hepatoma. Systemic: Respiratory system effects.
Benzene (71-43-2).	N (1,7)	2.9E-2 (1)	N (1,7)	2.9E-2 (7)	5E-3	2E+1	0.005 (6)	Cancer: Human leukemia.
Benzo[b]-fluoranthene (205-99-2).	N (1,7)	7.3E-1 (TEF[d])[e]	N (1,7)	N (1,7)	2E-4	9E-1[a]	0.0002 PMCL (6)	Cancer: Lung adenomas and epidermoid carcinomas, putative forestomach tumors.
Benzo[k]-fluoranthene (207-08-9).	N (1,7)	7.3E-2 (TEF[d])[e]	N (1,7)	N (1,7)	2E-4	9E+0[a]	0.0002 PMCL (6)	Cancer: Lung adenomas and epidermoid carcinomas, putative forestomach tumors.
Benzoic acid (65-85-0).	4E+0 (1,7)[f]	N (1,7)	N (1,7)	N (1,7)	1E+2	3E+5	N (1,6)	Systemic: Practically safe to humans and animals.
Butylamine (109-73-9).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Butylate (2008-41-5).	5E-2 (1)	N (1,7)	N (1,7)	N (1,7)	2E+0	4E+3	N (1,6)	Systemic: Increased relative liver weights.
Cadmium (7440-43-9).	5E-4[a], 1E-3[b] (1)	N (1,7)	N (1,7)	6.3E+0 (1)	5E-3	8E+1	0.005 (6)	Cancer: Human lung, tracheal, and bronchial tumors. Systemic: Significant proteinuria.
Carbendazim (10605-21-70).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Reproductive effects.
Carbofuran (1563-66-2).	5E-3 (1)	N (1,7)	N (1,7)	N (1,7)	4E-2	4E+2	0.04 (6)	Systemic: RBC and plasma cholinesterase inhibition, and testicular and uterine effects.
Carbon disulfide (75-15-0).	1E-1 (1)	N (1,7)	1E-2 (7)	N (1,7)	4E+0	8E+3	N (1,6)	Systemic: Oral; Fetal toxicity and teratogenicity. Inhalation: Fetal toxicity.
Carbon tetrachloride (56-23-5).	7E-4 (1)	1.3E-1 (1)	N (1,7)	5.2E-2 (1)	5E-3	5E+0	0.005 (6)	Cancer: Liver tumors. Systemic: Liver lesions.
Carbosulfan (55285-14-8).	1E-2 (1)	N (1,7)	N (1,7)	N (1,7)	4E-1	8E+2	N (1,6)	Systemic: Decreased body weight.
Chlorobenzene (108-90-7).	2E-2 (1)	N (1,7)	2E-2 (7)	N (1,7)	1E-1	2E+3	0.1 (1)	Systemic: Histopathological changes in liver.
Chloroform (67-66-3).	1E-2 (1)	6E-3 (1)	N (1,7)	8.1E-2 (1)	5.8E-3	1E+2	N (1,6)	Cancer: Kidney tumors. Systemic: Fatty cyst formation in liver.
Chromium VI (18540-29-9).	5E-3 (1)	N (1,7)	N (1,7)	4.2E+1 (1)	1E-1	4E+2	0.1 (6)	Cancer: Human lung tumors. Systemic: Kidney and liver damage, and cardiovascular and gastrointestinal effects.
Chrysene (218-01-9).	N (1,7)	7.3E-2 (TEF[d])[e]	N (1,7)	N (1,7)	2E-4	9E-0[a]	0.0002 PMCL (6)	Cancer: Putative forestomach tumors.
Cyanide (57-12-5).	2E-2 (1)	N (1,7)	N (1,7)	N (1,7)	2E-1	2E+3	0.2 (6)	Systemic: Degenerative neurotoxicity, and thyroid effects.
Cycloate (1134-23-2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: neurotoxicity skeletal muscle myopathy. (2)[i].
Dibutylamine (111-92-2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
1,2-Dichlorobenzene (95-50-1).	9E-2 (1)	N (1,7)	2E-1 (7)	N (1,7)	6E-1	8E+3	0.6 (6)	Systemic: Oral; Liver pathology. Inhalation: Decreased relative spleen weight.
1,3-Dichlorobenzene (541-73-1).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Hemoglobin changes and liver and kidney damage.
1,4-Dichlorobenzene (106-46-7).	N (1,7)	2.4E-2 (7)	7E-1 (7)	N (1,7)	7.5E-2	3E+1	0.075 (6)	Cancer: Liver tumors. Systemic: Liver damage.
Diethylphthalate (84-66-2).	8E-1 (1)	N (1,7)	N (1,7)	N (1,7)	3E+1	7E+4	N (1,6)	Systemic: Decreased growth rate, food consumption, and altered organ weights.

TABLE. 11.—ORAL AND INHALATION TOXICITY INFORMATION FOR WASTE CONSTITUENTS—Continued

Constituents	RfD (mg/kg/day)	Oral CSF (mg/kg/day)$^{-1}$	RfC (mg/m^3)	Inhalation CSF (mg/kg/day)$^{-1}$	HBL water (mg/L)	HBL soil (mg/kg)	MCL (mg/L)	Toxicity
Dimethylamine (124–40–3).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Liver fatty degeneration and necrosis, and tubular degeneration of the testes. (2) i.
Dimethyldodecylamine (112–18–5).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Respiratory tract effects.
Dipropylamine (142–84–7).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Eptam (EPTC) (759–94–4).	2.5E–2 (1)	N (1,7)	N (1,7)	N (1,7)	8.8E–1	2E+3	N (1,6)	Systemic: Degenerative cardiomyopathy.
Esprocarb (85785–20–2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Ethylbenzene (100–41–4).	1E–1 (1)	N (1,7)	1E+0 (1)	N (1,7)	7E–1	8E+3	0.7 (6)	Systemic: Liver and kidney effects.
2-Ethylhexylamine (104–75–6).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Fluoranthene (206–44–0).	4E–2 (1)	N (1,7)	N (1,7)	N (1,7)	1E+0	3E+3	N (1,6)	Systemic: Kidney effects, increased liver weights, hematological alterations.
Formaldehyde (50–00–0).	2E–1 (1)	N (1,7)	N (1,7)	4.5E–2 (1)	7E+0	2E+4	N (1,6)	Cancer: Nasal cavity tumors. Systemic: Gastrointestinal histopathology.
Hexachloroethane (67–72–1).	1E–3 (1)	1.4E–2 (1)	N (1,7)	1.4E–2 (1)	3E–3	5E+1	N (1,6)	Cancer: Hepatocellular carcinoma. Systemic: Atrophy and degeneration of kidney tubules.
Hexane (110–54–3).	6E–2 (7)	N (1,7)	2E–1 (1)	N (1,7)	2E+0	5E+3	N (1,6)	Systemic: Oral; nervous system effects, testicular atrophy. Inhalation: Neurotoxicity (electrophysiological alterations), and epithelial lesions in the nasal cavity.
Hexylamine (111–26–2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Isopropanol (67–63–0).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Lead (7439–92–1).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Cancer: Renal tumors. Systemic: Neurotoxic, adverse hematopoietic, and reproductive and developmental effects.
Mercury (7439–97–6).	3E–4 (7)	N (1,7)	3E–4 (7)	N (1,7)	2E–3	3E+1	0.002 (6)	Systemic: Damage to brain, kidneys, and developing fetuses.
Metam-Sodium (137–42–8).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Developmental effects. (A).
Methanol (67–56–1).	5E–1 (1)	N (1,7)	N (1,7)	N (1,7)	2E+1	4E+4	N (1,6)	Systemic: Alterations in liver enzyme levels, and decreased brain weight.
Methomyl (16752–77–5).	2.5E–2 (1)	N (1,7)	N (1,7)	N (1,7)	9E–1	2E+3	N (1,6)	Systemic: Kidney and spleen pathology.
Methylamine (74–89–5).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Data not available.
Methyl chloride (74–87–3).	N (1,7)	1.3E–2 (7)	N (1,7)	6.3E–3 (7)	3E–3	5E+1	N (1,6)	Cancer: Renal tumors in mice from intermittent inhalation exposure. Systemic: Liver and kidney effects, and degeneration and atrophy of the seminiferous tubules.
Methylene chloride (75–09–2).	6E–2 (1)	7.5E–3 (1)	3E+0 (7)	1.6E–3 (1)	5E–3	9E+1	.005 (6) PMCL	Cancer: Liver tumors. Systemic: Adverse liver effects.
Methyl ethyl ketone (78–93–3).	6E–1 (1)	N (1,7)	1E+0 (1,7)	N (1,7)	2E+1	5E+4	N (1,6)	Systemic: Decreased fetal birth weight.
Methyl isobutyl ketone (108–10–1).	5E–2 (7)	N (1,7)	8E–2 (7)	N (1,7)	2E+0	4E+3	N (1,6)	Systemic: Liver and kidney toxicity.
Methyl isothiocyanate (556–61–6).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Data not available.
Molinate (2212–67–1).	2E–3 (1)	N (1,7)	N (1,7)	N (1,7)	7E–2	2E+2	N (1,6)	Systemic: Reproductive toxicity.
Molybdenum (7439–98–7).	5E–3 (1)	N (1,7)	N (1,7)	N (1,7)	2E–1	4E+2	N (1,6)	Systemic: Increased uric acid in the urine, decreased blood copper levels, and painful swelling in the joint in humans.

TABLE. 11.—ORAL AND INHALATION TOXICITY INFORMATION FOR WASTE CONSTITUENTS—Continued

Constituents	RfD (mg/kg/day)	Oral CSF (mg/kg/day)$^{-1}$	RfC (mg/m^3)	Inhalation CSF (mg/kg/day)$^{-1}$	HBL water (mg/L)	HBL soil (mg/kg)	MCL (mg/L)	Toxicity
Nabam (142-59-6).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Cancer: Putative induction of thyroid adenomas and adenocarcinomas, and hepatomas (75).[k,l]
Naphthalene (91-20-3).	4E-2 (7)	N (1,7)	N (1,7)	N (1,7)	1E+0	3E+3	N (1,6)	Systemic: Decreased whole body weight in rats.
Nickel (7440-02-0).	2E-2 (1)	N (1,7)	N (1,7)	8.4E-1 (1)	1E-1	2E+3	0.1 (6)	Cancer: Respiratory system tumors in humans. Systemic: Pulmonary toxicity.
Nitrobenzene (98-95-3).	5E-4 (1)	N (1,7)	2E-3 (7)	N (1,7)	2E-2	4E+1	N (1,6)	Systemic: Adrenal, renal, and hepatic lesions and hematopathology.
N-Nitroso-di-n-butylamine (924-16-3).	N (1,7)	5.4E+0 (1)	N (1,7)	5.6E+0 (1)	6E-6	1E-1	N (1,6)	Cancer: Bladder and gastrointestinal tract tumors.
N-Nitroso-di-n-methylamine (62-75-9).	N (1,7)	5.1E+1 (1)	N (1,7)	4.9E+1 (1)	7E-7	1E-2	N (1,6)	Cancer: Liver tumors.
Oxamyl (23135-22-0).	2.5E-2	N (1,7)	N (1,7)	N (1,7)	9E-1	2E+3	0.2 (6)	Systemic: Cholinesterase inhibition, liver effects, and fetotoxicity.
Pebulate (1114-71-2).	5E-2 (7)	N (1,7)	N (1,7)	N (1,7)	2E+0	4E+3	N (1,6)	No data available.
Phenol (108-95-2).	6E-1 (1,7)	N (1,7)	N (1,7)	N (1,7)	2E+1	5E+4	N (1,6)	Systemic: Developmental effects (stunted growth).
o-Phenylenediamine (95-54-5).	N (1,7)	4.7E-2 (7)	N (1,7)	N (1,7)	7.4E-4	1.4E+1	N (1,6)	Cancer: Liver tumors.
Piperidine (110-89-4).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Developmental and reproductive effects (5).
n-Propylbenzene (103-65-1).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Prosulfocarb (52888-80-9).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	No data available.
Pyrene (129-00-00).	3E-2 (1)	N (1,7)	N (1,7)	N (1,7)	1E+0	3E+3	N (1,6)	Systemic: Kidney effects (renal tubular pathology, decreased kidney weight).
Pyridine (110-86-1).	1E-3 (1)	N (1,7)	5E-3 (53)	N (1,7)	4E-2	8E+1	N (1,6)	Systemic: Increased liver weight.
Selenium (7782-49-2).	5E-3 (1)	N (1,7)	N (1,7)	N (1,7)	5E-2	4E+2	0.05 (total) (6)	Systemic: Clinical selenosis.
Styrene (100-42-5).	2E-1 (1)	N (1,7)	1E+0 (1)	N (1,7)	1E-1	2E+4	0.1 (6)	Systemic: Oral; Red blood cell and liver effects. Inhalation: Human central nervous system effects.
Tetralin (119-64-2).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Kidney effects and cataracts.
Toluene (108-88-3).	2E-1 (1)	N (1,7)	4E-1 (1)	N (1,7)	1E+0	2E+4	1.0 (6)	Systemic: Oral; Altered kidney and liver weights. Inhalation: Neurological effects and degeneration of nasal epithelium.
Triethylamine (121-44-8).	N (1,7)	N (1,7)	7E-3 (1)	N (1,7)	NA	NA	N (1,6)	Systemic: Nasal passage toxicity (inflammation).
1,2,3-Trimethylbenzene (526-73-8).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Diminished weight gain, central nervous system depression, and lymphopenia and neutrophilia (2)[m].
1,2,4-Trimethylbenzene (95-63-6).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Diminished weight gain, central nervous system depression, and lymphopenia and neutrophilia (2).
1,3,5-Trimethylbenzene (108-67-8).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Diminished weight gain, central nervous system depression, and lymphopenia and neutrophilia (2).
Vernolate (Vernam) (1929-77-7).	1E-3 (1)	N (1,7)	N (1,7)	N (1,7)	4E-2	8E+1	N (1,6)	Systemic: Altered liver weight and hematopoiesis, and cholinesterase inhibition, elevated alkaline phosphatase levels, and spinal cord and nerve degeneration (100).
Vinyl acetate (108-05-4).	1E+0 (7)	N (1,7)	2E-1 (1)	N (1,7)	4E+1	8E+4	N (1,6)	Systemic: Nasal tract toxicity (lesions).

TABLE. 11.—ORAL AND INHALATION TOXICITY INFORMATION FOR WASTE CONSTITUENTS—Continued

Constituents	RfD (mg/kg/day)	Oral CSF (mg/kg/day)-1	RfC (mg/m3)	Inhalation CSF (mg/kg/day)-1	HBL water (mg/L)	HBL soil (mg/kg)	MCL (mg/L)	Toxicity
Xylene (1330–20–7).	2E+0 (1)	N (1,7)	N (1,7)	N (1,7)	1E+1	2E+5	10 (6)	Systemic: Central nervous system effects (hyperactivity), decreased body weight, and increased mortality.
o-Xylene (95–47–6).	2E+0 (7)	N (1,7)	N (1,7)	N (1,7)	7E+12	E+5	N (1,6)	Systemic: Central nervous system effects (hyperactivity) and decreased body weight.
Zinc (7440–66–6).	3E–1 (1)	N (1,7)	N (1,7)	N (1,7)	1E+1	3E+4	N (1,6)	Systemic: Decrease in erythrocyte superoxide dismutase (ESOD) in adult females.
Ziram (137–30–4).	N (1,7)	N (1,7)	N (1,7)	N (1,7)	NA	NA	N (1,6)	Systemic: Alteration of liver enzymes and immune responses, spleen enlargement, and developmental effects (77, 2).

N No data found in reference.
NA Inadequate data for calculation of health based level.
a. None available.
b. At an animal oral LOAEL of 89.8 mg/kg/day.
c. Human cancer potency value.
d. Benzo[a]pyrene Toxicity Equivalent Factor.
e. USEPA Provisional Guidance for the Qualitative Risk Assessment of Polycyclic Aromatic Hydrocarbons. 1993.
f. The human per capita intake was used as the critical dose level.
g. Drinking water RfD.
h. Dietary exposure RfD.
i. Inhalation unit risk.
j. At an animal oral LOAEL of 55 mg/kg/day.
k. At animal LOAEL of 97 ppm.
l. Known toxic effect of ethylene bis-dithiocarbamate (EBDC) metabolite of nabam.
m. Exposure to a mixture of (1,2,3-, 1,2,4-, 1,3,5-) trimethylbenzenes.

References
(1) Integrated Risk Information System (IRIS). 1993.
(2) Hazardous Substances Databank (HSDB). 1993.
(5) RTECS (Registry of Toxic Effects of Chemical Substances) July 1992.
(6) Drinking Water Regulations and Health Advisories.
(7) Health Effects Assessment Summary Tables (HEAST). March 1993.
(53) Health and Environmental Effects Profile for Pyridine. June 1986.
(75) Nabam Pesticide Fact Sheet, Office of Pesticide Program, April 1987.
(77) Ziram TOX ONE-LINER. EPA Office of Pesticides, February 20, 1992.
(92) U.S. Environmental Protection Agency, Office of Research and Development, "Evaluation of the Potential Carcinogenicity o Benz(a)anthracene", June 1988.
(100) Vernolate TOX ONE-LINER. EPA Office of Pesticides, September 23, 1991.
(A) Developmental and Reproductive Toxicity Peer Review of Metam-Sodium. EPA Office of Pesticides.

3. Environmental Damage Cases

The nature and severity of the human health and environmental damage that has occurred as a result of improper management is a factor considered in the decision to list wastes as hazardous (see 40 CFR 261.11(a)(3)(ix)). The Agency has limited records of damages resulting directly from the mismanagement of carbamate wastes. Most applicable is Superfund Record of Decision (EPA Region 4): Stauffer/Cold Creek, AL (First Remedial Action), September, 1989 (PB90–186388). In studying this site, which continues to manufacture thiocarbamate products, the Agency found groundwater contaminated by wastes from the manufacture of the products butylate, cycloate, EPTC, molinate, pebulate, and vernolate at levels of concern. Groundwater contamination at this site was attributed to past disposal of waste solids from thiocarbamate manufacture in an on-site unlined landfill.

The Agency has a limited number of reports of adverse environmental effects from carbamate waste streams proposed for listing. However, because pesticide products when formulated for end use may contain from 0.01 to 100 percent active ingredient, EPA believes that reports of adverse environmental impacts such as ground water contamination, fish kills, birds kills, or other non-target impacts are comparable to the possible adverse environmental impacts which could occur should wastes which contain pesticide active ingredients at comparable concentrations be mismanaged in the way pesticide products have been mismanaged. The Agency has collected information on environmental damages caused by improper use of carbamate products, mismanagement of containers previously storing carbamate products, and an accidental spill releasing a large volume of product to surface waters. The EPA believes these incidents are appropriate to consider in proposing listing several waste streams for the following reasons: (1) The wastes the Agency is proposing to list typically contain the carbamate active ingredients found in the products; (2) the concentrations of the active ingredients in the waste streams are typically many times higher than what is found in some formulated products; and, (3) the nature of some of the waste streams is similar to the product (e.g., solid, granular, fines) and would behave similarly if released uncontrolled to the environment.

In the case of carbamate chemicals the Agency has recorded numerous bird kill incidents associated with the use or possible misuse of carbamate products, which the Agency feels are applicable to an open disposal mismanagement scenario of solids. For example, between 1972 and 1991, 107 incidents have been attributed to granular carbofuran and 40 to flowable carbofuran. These incidents resulted in loss of 9,600 and 7,500 birds, respectively.

In general, carbamate products are acutely toxic to aquatic organisms. A number of fish kills have been attributed to carbamate products. From 1980 to 1988, the California Department of Fish and Game's Pesticide Investigations Unit estimated 7,000 to 30,000 fish were killed in the Colusa Basin Drain due to molinate entering the waterway from carbamates in rice fields. The most severe fish kill incident resulted from the July 14, 1991, derailment of a tank car containing 19,500 pounds of metam-sodium, a dithiocarbamate product. As a result of the spill, the surrounding

environment along a 45-mile stretch of the Sacramento River and portions of Lake Shasta were significantly adversely affected. More than 200,000 fish were killed, and several hundred people were treated for eye, skin, and respiratory irritation.

The collected case studies document human exposure and wildlife loss caused by the improper management or misuse of carbamate products. While only a limited number of the carbamate products have documented damage incidents, they do illustrate the potential ecological effects that some carbamate active ingredients can exert if released uncontrolled to the environment. These damage incident reports document contamination in ground water, surface water, air and soil by carbamate products. The Agency currently has a more limited number of damage incidents for the carbamate wastes under consideration for listing. A more extensive discussion of these and additional damage incident reports can be found in risk assessment support document for carbamate wastes included in the docket. See **ADDRESSEES** section.

4. Mobility and Persistence of Constituents in Carbamate Wastes

Mobility is the ability of a constituent to migrate from a waste to a transport medium, such as air, groundwater, or surface water. Persistence is a measure of a constituent's stability or its resistance to degradation in the environment. To assess mobility and persistence, the Agency has identified environmental release and transport pathways representing plausible worst-case management and disposal scenarios. By assessing these pathways, potential exposure can be estimated. Thus, if a constituent is sufficiently mobile and does not degrade as it moves along an environmental pathway, it may potentially reach a receptor and threaten human health and the environment.

The Agency assesses mobility by estimating the concentration at which a constituent could migrate from the waste disposal or storage unit to the underlying aquifer, adjacent soils, or to the air above the unit. The propensity of each specific constituent to either leach, runoff, or volatilize can be estimated using well-established physical parameters as well as historic damage incident cases and transport theories.

To assess the potential hazard posed by the constituents of concern in the wastes, the Agency compared the concentrations of constituents found in the wastes to known [2] health-based levels. The Agency also compared the concentrations that may reach potential human and environmental receptors to the health-based levels. The Agency took into account the possible dilution and attenuation that may occur due to leaching from the waste, movement of waste constituents adsorbed to soil particulates, and subsequent dilution or release to the air as a result of plausible worst-case mismanagement of the waste.

To evaluate the dilution and attenuation associated with leaching from the waste, the Agency considers the physical state of the waste. If the physical state of the waste is solid, the Agency first estimates the leaching rates for the constituents from the waste. A dilution/attenuation factor is applied to account for dispersion in the subsurface from the disposal site into ground water and subsequently to a drinking water source. This dilution and attenuation may occur because of various phenomena, such as hydrolysis, solubility, soil conditions, adsorption onto soil particles, dilution with ground water, and biodegradation to the extent those processes are likely to occur in a plausible worst-case management or disposal scenario.

The Agency believes that liquid wastes are mobile if improperly disposed and that they may reach environmental receptors through groundwater transport or through direct overland flow. The carbamate wastes proposed for listing can be either solids or liquids at ambient temperature.

Ground-water fate and transport have been evaluated by EPA. Evaluations of ground-water transport were conducted in support of the Toxicity Characteristic (TC) (55 FR 11798). In the final TC rule promulgated on March 29, 1990, EPA determined that a dilution and attenuation factor of 100 was appropriate for a reasonable worst-case management of non-specific wastes that may be disposed of in municipal landfills. The factor of 100 was determined assuming no adsorption, or degradation of a chemical.

In assessing the intrinsic risks associated with carbamate wastes, the Agency compared concentrations of constituents found in the wastes to 100 times their HBLs. While many carbamate active ingredients may exhibit break down through rapid hydrolysis at pH extremes or other degradation in the environment, they can be highly mobile in the soil column, and have been documented to reach ground water where these mitigating effects of hydrolysis/degradation are slowed. The factor of 100 times the HBL (i.e., assuming a dilution factor of 100X) in the case of carbamate waste constituents is viewed as a screening level representing a potential level of concern that would warrant further analysis to better quantify potential risks.

Table 12 shows that certain of these wastes contain sufficient levels of the constituents of concern to warrant further analysis. Given the high concentrations of the constituents of concern in comparison to HBLs, the Agency believes that there is the potential for exposure to harmful concentrations of the constituents of concern should the wastes be mismanaged.

TABLE 12.—SUMMARY OF STREAMS EXCEEDING 100 x HBL CONSTITUENT

Waste group	Percentage by waste volume containing hazardous constituent above 100 x HBL	Percentage by number of streams containing hazardous constituent above 100 x HBL
1	82.8	47
2	97.2	88
3	0.75	30.4
4	98.1	64.7
5	99.4	70
6	100	100
7	11.1	51.7
8	0.01	0.16
9	46.2	80
10	87.6	85.7

The mobility of carbamate active ingredients in the soil column is documented in the Agency's Federal Reporting Database System, maintained by the EPA Office of Groundwater and Drinking Water. This database tracks groundwater monitoring data reported from both known pesticide spills and as a result of normal applications. Carbamate active ingredients have been found in the groundwater of 19 states. Concentrations above health base levels of concern have been measured for aldicarb, carbofuran, and oxamyl. (For additional damage incidents cases and details, see the Carbamate Health Assessment Document and associated materials available in the Public Docket at EPA Headquarters. See **ADDRESSES** section, and section III.C.3.) EPA's overall approach to damage case information and the relationship of carbamate active ingredient damage

[2] The Agency acknowledges that it lacks health assessment studies for every substance determined to be present in the wastes sampled as indicated by the data gaps in Table 11. Health assessment studies are and ongoing process where by future studies may uncover additional information not considered in today's rulemaking.

cases to carbamate wastes is discussed earlier in this preamble.

When assessing the air pathway, constituents must be evaluated considering the waste management and transport scenario to determine if they are sufficiently mobile to support an air plume capable of threatening human health. The key parameters used to estimate the mobility of constituents into the air are the vapor pressure of the pure substance and the Henry's Law Constant [3] of the compound.

The Agency has evaluated several air release scenarios using these parameters and has found that a number of constituents present in carbamate wastes, including benzene, chloroform, formaldehyde, methyl chloride, methyl ethyl ketone, methylene chloride, pyridine, triethylamine, and xylene, may present a threat to human health by the air transport pathway. These air transport assessments are consistent with the assessments used by the Agency in its air emissions rule (56 FR 335490, July 22, 1991, "Hazardous Waste Treatment Storage and Disposal Facilities: Emission Standards of Tanks, Surface Impoundments, and Containers: Proposed Rule) and use the Quiescent Surface Model for Inorganic Wastes and the Oil Film Model for Organic Waste to estimate releases from tanks and materials balance calculations for incineration. These models are explained in detail in "Hazardous Waste Treatment, Storage and Disposal Facilities (TSDF) Air Emission Models," Office of Air Quality Planning and Standards, Research Triangle Park, NC. EPA–450/3–87–0026. The model and documentation are included in the docket supporting this proposed rule. See ADDRESSES section.

Evaluation of the air transport assessments can be found in the document Assessment of Risk from the Management of Carbamate Waste and associated materials available in the Public Docket at EPA Headquarters. See ADDRESSES section. The risks associated with the air pathway are further discussed in section III.C.5.

Persistence can be evaluated by considering the various rates of degradation or adsorption that affect the compound during transport. A number of factors can potentially degrade or attenuate a compound during transport. Many of these processes, including biodegradation, photolysis, and adsorption, affect constituent concentrations under certain situations. Under plausible worst-case waste management scenarios, these processes and many others cannot be relied upon to attenuate constituents, because of the limited circumstances under which these mitigating processes could exist.

Table 13 presents the relevant hydrolysis half-lives of each compound in water and air.

TABLE 13.—PERSISTENCE OF CONSTITUENTS OF CONCERN

Constituent	Hydrolysis half-life in water	Hydrolysis half-life in air
Acetone	20 hours	22 days.
Acetonitrile (2)	5.5 days	—
Acetophenone	—	—
Aniline	—	—
Benomyl	<1 week	1 hour.
Benzene (1)	170 hours	17 hours.
Butylate	—	—
Cadmium	—	—
Carbaryl	10.5 days	12 hours.
Carbendazim	—	—
Carbofuran	8.2 weeks	4 hours.
Carbon disulfide.	2 hours	9 days.
Carbon tetrachloride (1).	1,700 hours	1,700 hours.
Carbosulfan	—	—
Chlorobenzene (1).	1,700 hours	170 hours.
Chloroform (1)	1,700 hours	1,700 hours.
Cycloate	—	—
Dibutylamine	12.9 hours	4.4 hours.
o-Dichlorobenzene (1).	1,700 hours	550 hours.
Dimethylamine	1.5 days	5.9 hours.
Eptam	—	—
Hexane	550 hours	17 hours.
Isopropyl alcohol.	5.4 days	1 day.
Lead	—	—
Methanol	2 days	17.8 days.
Methomyl	38 weeks	1.14 months.
Methylamine	1.9 days	22 hours.
Methyl ethyl ketone.	12 days	2.3 days.
Methyl isobutyl ketone.	33 hours	15 hours.
Methyl chloride (1).	2.4 to 24 hours	168 to 672 hours.
Methylene chloride (3).	686 years	Several months.
Methylisothiocyanate.	—	—
Molinate	—	—
Naphthalene (1).	170 hours	17 hours.
o-Phenylenediamine.	—	—
Pebulate	—	—
Phenol	4 days	15 hours.
Pyridine	90 hours	32 days.
Sodium n-methyldithiocarbamate.	—	—
Tetralin	—	—
Toluene (1)	550 hours	17 hours.
Vernolate	—	—
Xylene (1)	550 hours	17 hours.

TABLE 13.—PERSISTENCE OF CONSTITUENTS OF CONCERN—Continued

Constituent	Hydrolysis half-life in water	Hydrolysis half-life in air
Zinc	—	—
Ziram	—	—

—No Data

Unless otherwise specified, all values are from: Howard, Philip H., ed. *Handbook of Environmental Fate and Exposure Data for Organic Chemicals*. 1991.

(1) Mackay, Donald et al. *Illustrated Handbook of Physical-Chemical Properties and Environmental Fate for Organic Chemicals*. 1992.

(2) J. Jackson Ellington et al. *Measurement of Hydrolysis Rate Constants for Evaluation of Hazardous Waste Land Disposal: Volume 2. Data on 54 Chemicals*. 1987. U.S. EPA, Office of Research and Development. EPA/600/3–87/019.

(3) J. Jackson Ellington et al. *Chemical Specific Parameters for Toxicity Characteristic Contaminants*. 1991. U.S. EPA, Office of Research and Development. EPA/600/3–91/004.

In the case of dithiocarbamates, thermal decomposition, hydrolysis, and oxidation can lead to the formation of additional toxic chemicals of concern. Dithiocarbamic acids are extremely reactive and are commonly reacted to form more stable salts. Decomposition products include carbon disulfide, hydrogen disulfide, alkylisothiocyanates such as methylisothiocyanate, and amines. These amines react with nitrogen oxides from the air or other nitrosating ingredients to form highly toxic nitrosoamines. The carcinogenic potential of a number of these nitrosoamines has been studied and found to be significant. The Agency, therefore, believes dithiocarbamate chemicals typically exhibit the characteristic of reactivity and that discarded dithiocarbamate products, off-specification species, container residues, and spill residues of dithiocarbamate products should be managed as reactive hazardous wastes.

5. Risk Analysis

In support of this proposed rulemaking, the Agency estimated the risks that the constituents and waste streams pose to human health and the environment. A more detailed presentation is included in two background documents entitled, "Carbamate Waste Listing Support: Health Effects Background Document" and "Assessment of Risk from the Management of Carbamate Waste," which are included in the docket for this proposed rulemaking. See ADDRESSEES section. The results of the risk assessment are summarized in this section.

[3] Henry's Law Constants are physical chemistry constants which equate the vapor pressure of a slightly soluble gas in contact with a definite mass of liquid at a given temperature.

a. *Baseline Waste Management Practices and Release Potential of Constituents of Concern.* For each proposed waste group, waste management scenarios were developed based on current industry practices. In developing these scenarios, waste management practices, waste management units, treatment processes, and the quantities of waste being managed were identified. For each waste group, RCRA § 3007 questionnaire data which identify waste descriptions, waste quantities, waste management methods, and waste management units were compiled. Site visit reports provided an additional source of information.

Based on this information and best engineering judgment, six waste management practices and the sequence of management units that would be associated with each practice were identified as follows:

(1) Recycled Wastes—covered tank treatment/recycled;
(2) Incinerated Wastes—open tank storage/industrial boiler/landfill ash;
(3) Wastewater Treatment Process Waste—open quiescent or aerated treatment tank;[4]
(4) Fuel Blended Wastes—covered treatment tank;
(5) Landfilled Wastes—open storage tank/landfill wastes; and
(6) Other—open quiescent treatment tank or impoundment.

Table 14 identifies baseline waste management practices and the quantity of the waste groups going to each management practice.

TABLE 14.—APPORTIONMENT OF WASTE STREAM QUANTITIES TO BASELINE MANAGEMENT PRACTICES

Waste codes	Current management practices	Percentage of waste stream
Waste group 1.	Covered Trt. Tank/Recycle	1.
	Open St. Tank/Boiler/Landfill Ash	8.
	WWTP—Open Quiescent Trt. Tank	91.
Waste group 2.	Open St. Tank/Boiler/Landfill Ash	1.
	WWTP—Aerated Trt. Tank	99.
Waste group 3.	Covered St. Tank/Recycle	2.
	Open St. Tank/Boiler/Landfill Ash	1.
	Open St. Tank/Landfill	97.
WWT sludges.	Other—Open Quies. Trt. Impoundment	Less than 1.
	Open St. Tank/Landfill	Greater than 99.
Waste group 4.	Open St. Tank/Boiler/Landfill Ash	100.
Waste group 5.	WWTP—Open Quies. Trt. Tank	100.
Waste group 6.	Open St. Tank/Landfill	100.
Waste group 7.	Covered Trt. Tank/Recycle	1.5.
	WWTP—Open Quies. Trt. Tank	97.
	Other—Open Quies. Trt. Tank	1.5.
Waste group 8.	Covered Trt. Tank/Recycle	Less than 1.
	Open St. Tank/Boiler/Landfill Ash	Less than 1.
	WWTP—Open Quies. Trt. Tank	Greater than 99.
	Other—Open Quies. Trt. Tank	Less than 1.
Waste group 9.	Covered Trt. Tank/Recycle	Less than 1.
	Open St. Tank/Boiler/Landfill Ash	Less than 1.
	Open St. Tank/Landfill	53.
	Covered Trt. Tank—Fuel Blending	Less than 1.
	Other—Open Quies. Trt. Tank	46.
Waste group 10.	Covered Trt. Tank/Recycle	49.
	Open St. Tank/Boiler/Landfill Ash	27.
	Covered Trt. Tank—Fuel Blending	6.
	Other—Open Quies. Trt. Tank	18.

b. *Exposure Pathway Analysis.* For each constituent of concern in each waste group, physical, chemical, and biological properties that can be used to predict environmental persistence, mobility, and bioaccumulation of constituents were identified. These properties include aqueous solubility, octanol water partition coefficient,[5] soil adsorption coefficient, vapor pressure, Henry's Law Constant, bioconcentration factor for fish tissue, bioaccumulation factor for meat and dairy products, air degradation value, and plant uptakes and adherence values. The majority of the collected values were obtained from available literature. In the absence of reported data, estimation methods[6] were used to calculate input parameter values.

For this analysis, all potential exposure pathways were identified for each constituent in each waste stream using information on physical and chemical properties of a constituent, and physical and chemical properties that are associated with persistence and mobility in a specific pathway. For example, a pathway in which a chemical is released from a tank to the air, is transported through the air to the exposed individual, and is directly inhaled by humans would be driven primarily by vapor pressure and Henry's Law Constant. Constituents with high vapor pressures and Henry's Law Constants (such as volatile organic compounds) would be expected to be present in this pathway, where as constituents with low values for these properties (such as metals) would not be expected to show up in this pathway. Damage incident cases and baseline management practices also were examined to determine which constituents have been released to the environment at concentrations presenting a concern and to determine which media and exposure pathways are potentially significant, or are reasonably expected to be released to the environment. For each waste group, Table 15 shows the number of potential exposure pathways identified using this screening method.

[4] The RCRA section 3007 questionnaire data indicated that some wastes were being deepwell injected. However, EPA has received subsequent information that due to the expiration of the facility's deepwell permit these wastes will no longer be deepwell injected but will be sent to wastewater treatment processes once a NPDES discharge is approved. Therefore, waste reported as deepwell injected were assumed to be sent to wastewater treatment.

[5] The octanol water partition coefficient is the ratio of a chemical's concentration in the octanol phase to its concentration in the aqueous phase of a two-phase octanol/water system. Values represent the tendency of the chemical to partition itself between an organic phase and an aqueous phase.

[6] The principle source of estimation methods for input parameters was the "Handbook of Chemical Property Estimation Methods: Environmental Behavior of Organic Compounds" by Warren L. Lyman, William F. Reel, and David H. Rosenblatt, published by McGraw-Hill Book Company in 1982.

TABLE 15.—NUMBER OF POTENTIAL EXPOSURE PATHWAYS IDENTIFIED FOR EVALUATION

Waste stream	Number of constituents of concern	Number of potential exposure pathways
Waste group 1	30	25
Waste group 2	39	31
Waste group 3	4	15
Waste group 4	13	20
Waste group 5	6	18
Waste group 6	14	18
Waste group 7	12	30
Waste group 8	20	31
Waste group 9	17	28
Waste group 10	9	26
WWT sludge	7	5

Based on baseline management practices and damage incident reports, all relevant exposure pathways identified were evaluated for inclusion in the risk analysis. The background document for the risk analysis (Assessment of Risk from the Management of Carbamate Waste) examines potential pathways for specific constituents of concern. Those pathways determined to be plausible were identified for further assessment and only the exposure routes associated with these pathways were considered to be potential exposure routes. These routes included direct inhalation, indirect inhalation of soil and dust, direct soil ingestion, indirect soil ingestion, ingestion of ground-water, ingestion of surface water, ingestion of crops, ingestion of animal/dairy products, and ingestion of fish and shellfish.

c. *Risk Estimates.* i. Overview. In conducting the risk analysis, EPA calculated risk estimates for each waste group/management unit/exposure pathway/exposure route combination. (An example would be direct inhalation of a constituent from Group 1 waste that has been emitted as a gas from a treatment tank.) One exception to this methodology concerned those wastes identified with the following waste management sequence: tank storage/boiler/landfill ash. Preliminary analysis of this exposure route indicated that constituents released from the ash portion of this waste managed in landfills would not pose risks at or above levels of concern for the most exposed individuals (i.e., a risk of 1 in a million for carcinogens or a hazard quotient of one or greater). This level of risk ($<10^{-6}$ for carcinogens or a hazard quotient of <1) is beneath the lower bound of EPA's regulatory level of concern for hazardous waste listing, and for this reason, risk estimates for the portion of waste being landfilled as ash were not made.

The Agency developed baseline risk estimates by selecting plausible mismanagement practices based on information collected in the RCRA 3007 survey for current management operations. For wastewaters, the Agency selected the plausible mismanagement practice to be the current practice of storage and treatment in tanks and boilers. The Agency has no information or reason to believe that if not listed, the wastewaters would likely be managed in a different manner (e.g., unlined surface impoundment). The Agency believes firms would not switch to less protective management methods, such as unlined surface impoundments, because it would be expensive to do so. For sludges and waste solids, the Agency selected the plausible mismanagement to be an unlined industrial landfill. The Agency has information that a portion of these wastes, while not regulated as hazardous, are managed as hazardous with disposal in Subtitle C landfills. However, the Agency lacks adequate information showing, that if not listed as hazardous, the wastes would continue to be disposed in Subtitle C landfills and result in significantly lower estimates of potential risk. The Agency requests comment on this approach to modeling plausible mismanagement practices.

Risk characterization approach. The risk characterization approach follows the recent EPA Guidance on Risk Characterization (Habicht, 1992) and Guidance for Risk Assessment (EPA Risk Assessment Council, 1991). The guidance specifies that EPA risk assessments will be expected to address or provide descriptions of (1) individual risk to include the central tendency and high-end portions of the risk distribution, (2) important subgroups of the population such as highly exposed or highly susceptible groups or individuals, if known, and (3) population risk. In addition to the presentation of results, the guidance also specifies that the results portray a reasonable picture of the actual or projected exposures with an open discussion of uncertainties.

Individual risk. Individual risk descriptors are intended to convey information about the risk borne by individuals within a specified population and subpopulations. These risk descriptors are used to answer questions concerning the affected population, the risk levels of various groups within the population, and the average risk for individuals within a population of interests. The approach used in this analysis for characterizing baseline individual risk included: (1) identifying and describing the population of concern for each exposure route and important subpopulations that would exhibit much higher exposure patterns; (2) conducting screening analyses to obtain bounding and high-end estimates and to determine the sensitivity of the model parameters used in the risk estimation; (3) estimating central tendency and high-end values for the most sensitive parameters in the risk estimation procedures; and (4) calculating risk for each pathway that provide a characterization of the average individual risk and high-end risk descriptors.

Bounding estimates. Screening estimates of risk are developed to determine whether an exposure pathway is of concern and to identify the parameters in the exposure calculation that contribute most to the certainty of the estimate. An initial screening estimate conducted for the potential pathways of concern was a bounding estimate. "Bounding estimates" purposefully overestimate the exposure or dose in an actual population for the purpose of developing a statement that the risk is "not greater than x." These bounding estimates were used to focus the analysis of central tendency and high end risk estimates on the most important pathways and constituents in these pathways.

Following the bounding estimate, all of the parameters used in risk estimation for each of the exposure pathways were systematically evaluated for their relative influence on the risk estimates. This sensitivity analysis provides information as to which of the parameters are the most important to include in the risk analysis.

Central tendency estimates. The central tendency risk descriptors are intended to provide a characterization of risk for the typical situation in which an individual is likely to be exposed. For each waste stream/management practice/constituent/ pathway combination, a central tendency estimate was made. Parameter values for waste stream characteristics, management unit characteristics, environmental fate and transport properties and exposure scenarios were all set at a central tendency value simultaneously.

High-end estimates. The "high-end" of the risk distribution is, conceptually, above the 90th percentile of the actual (either measured or estimated) distribution. As described in the 1992 EPA Risk Assessment Guidance for Risk Managers and Risk Assessors:

The high-end risk descriptor is a plausible estimate of the individual risk for those persons at the upper end of the risk distribution. The intent of this descriptor is to convey an estimate of risk in the upper range of the distribution, but to avoid estimates which are beyond the true distribution. Conceptually, high-end risk means risk above the 90th percentile of the population distribution, but not higher than the individual in the population who has the highest risk. High-end estimates focus on estimates of exposure or dose in the actual population. (EPA Risk Assessment Council, 1991)

The "high-end" risk descriptor is intended to estimate the risk that is expected to occur in a small but plausible high-end segment of the population. The individuals with high-end risk may be members of a special population segment or individuals in the general population who are highly exposed.

If only limited information on the exposure or dose factors is available, the guidance recommends an approach for estimating high-end exposure or risk that identifies the most sensitive parameters and then uses maximum or near maximum values for one or a few of these variables, leaving others at their mean values. The guidance states that maximizing all variables will, in virtually all cases, result in an estimate that is above the actual values seen in the population.

For this analysis, data on exposure were generally not available for estimating specific percentiles of the exposed population for any of the pathways. Nonetheless, limited data were available to develop high-end estimates following the approach described above. All exposure factors for each of the pathways of concern [7] were identified and sensitivity analyses were conducted to identify those parameters that are the most sensitive in the risk estimation process. Based on these sensitivity analyses, a matrix was developed for each exposure pathway of concern that included all of the important parameters. A base case was then established using the arithmetic mean and median values for all of the parameters; this approach provided the average estimate. Then, each parameter was varied using a high-end value while keeping all other parameters at their mean or median value. These were considered high-end estimates of risk.

Upper-tail estimates. An upper-tail estimate is conceptually above the 99th percentile of the cumulative risk distribution. It represents an extreme case, which could occur but is not probable. The EPA developed upper-tail estimates by varying two parameters at the same time using high-end values while keeping all other parameters at their mean or median value. Parameters were varied in a way that did not present inconsistencies, such as low body weight and high intake rate. Also, combinations of high-end values for two parameters at a time that seemed inconsistent or implausible were eliminated.

Population risk. Descriptors of population risk are intended to convey information about the risk borne by the population or population segment being studied. These risk descriptors are used to answer questions concerning the number of cases of a particular health effect that probabilistically could occur within the population during a given time period, the number of persons or percent of the population above a certain risk level or health benchmark (e.g., RfD or RfC), and risk for a particular population segment.

The calculation of population risk based on estimates of risk for all individuals in the population is very data-intensive and such data are normally not available, as is the case for this analysis. As the 1992 EPA Guidelines for Exposure Assessment (57 FR 22888, May 29, 1992) states:

. . . although it has been common practice to estimate the number of cases of disease, especially cancer, for populations exposed to chemicals, it should be understood that these estimates are not meant to be accurate predictions of real (or actuarial) cases of disease. The estimate's value lies in framing hypothetical risk in an understandable way rather than in any interpretation of the term cases.

The population risk estimates for each exposure route addressed in this analysis were based on this approach. The exposure routes described above have associated populations or subpopulations that are distinct, although not necessarily mutually exclusive. For this analysis, population data were collected to approximate the potential number of individuals exposed within a 10 mile radius of a representative facility. Data were collected for land surrounding eight existing carbamate facilities. Population distributions within the eight study areas were then computed using 1990 census tract-level population data to estimate the total number of persons within each study area, as well as subpopulations, including children.

Using these data and central tendency individual risk estimates or hazard quotients (i.e., the ratio of the predicted concentration to the applicable health based level), population risk estimates were calculated. However, for inhalation risk, an overlay of estimated concentration in 160 sectors surrounding a facility was used to more accurately estimate population risk.

ii. Bounding Estimates for Individual Risk. The results of the baseline bounding assessment are provided in the risk assessment support document, "Assessment of Risk from The Management of Carbamate Waste" (RTI, 1993). In conducting the bounding estimates all input parameters were set at high-end values. The bounding estimates were used to identify management practice/constituent/pathway combinations for each waste group that could potentially present risk to individuals at levels of concern. Two general results are of particular importance from this analysis. First, all food chain pathways were found to result in human health risk below levels of concern for all constituents in all waste groups. Second, EPA developed bounding risk estimates for wastewaters and organic liquids managed in surface impoundments from the production of carbamates, thiocarbamates and dithiocarbamates assuming an unlined impoundment. Risks exceeding $1x10^{-6}$ or a hazard quotient of 1 were predicted for ground water ingestion of constituents in waste groups 1 and 2. However, since no case could be documented of untreated waste from groups 1 and 2 currently being managed in unlined surface impoundments, this management scenario was not included for further evaluation in the baseline risk analysis.

iii. Risk Estimates by Exposure Route, Waste Group and Management Practice. This section discusses baseline individual and population risk estimation for direct inhalation, direct soil ingestion, indirect soil ingestion, and ingestion of ground water. For each waste management unit/exposure route combination, the methodologies used in calculating individual and population risk and the resulting risk estimates are presented. The waste/management practice/constituent/pathway combinations discussed in this section include only those with bounding risk estimates of $1x10^{-6}$ or greater for carcinogens and a hazard quotient of 1 or greater for noncarcinogens.

[7] High end estimates were made for only those pathways/constituents associated with a bounding risk estimate of 1×10^{-6} or greater for carcinogens or a bounding hazard quotient of 1 or greater for noncarcinogens. For a chemical constituent of concern, a hazard quotient is the ratio of chemical's waste stream concentration to its reported toxicity benchmark. A quotient of 1 shows that the toxicity benchmark was *not* exceeded.

Direct Inhalation

Individual risk estimates for tanks. The methodology used to estimate risk from the direct inhalation of contaminants by humans is based on the premise that humans live in close proximity to a facility where wastes are managed in tanks. The potential exists for humans to be exposed to hazardous constituents that volatilize from the wastes in the tanks.

For this analysis, EPA estimated the typical and high-end ambient air concentrations using air emission and dispersion models. The EPA model CHEMDAT7 was used for air emissions, the EPA Industrial Source Long Term model (version 2) (ISCLT2) was used for emission dispersion.

For each waste group/management practice/exposure route, Table 16 presents the high-end and central tendency risk estimates for those constituents identified presenting risk at levels of concern (i.e., having a high-end risk estimate greater than or equal to 1×10^{-6} for carcinogens or a hazard quotient greater than or equal to 1 for noncarcinogens). Table 16 also identifies the parameters that significantly defined the lower and upper boundaries of the high-end range.

A detailed discussion of the methodology used to estimate exposure and the various air modeling assumptions and values of the input parameters for high-end and central tendency exposures is found in the risk assessment background document. A sensitive parameter in the air modeling is the distance from the emissions source to the receptor. The Agency used distances of 250 feet and 1000 feet to represent high-end and central tendency receptor distances,[8] respectively. The Agency specifically requests comments on the appropriateness of using these distances in the analysis. The Agency also requests comment on the exposure assumptions for a receptor living in the vicinity of the waste streams being considered in today's proposal. Information requested includes length of time an individual dwells at any one residence in these areas and the amount of time (number of days a year, hours per day) an individual spends in and around the residence.

TABLE 16.—INDIVIDUAL RISK ESTIMATES FOR DIRECT INHALATION: TANKS

Waste No.	Management practice	Constituent of concern	High-end parameters single/double	High-end risk estimate	High-end hazard quotient	Central tendency	
						Risk estimate	Hazard quotient
Waste Group 1 ..	Covered Treatment Tank/Recycle.	Triethylamine	Recept. distance/tank & recept. distance.	NA	4–30	NA	1
Waste Group 1 ..	Open Tank Storage/ Boiler/Landfill Ash.	Methylene Chloride	Recept. dist./conc. & recept. distance.	3E–07—1E–06	NA	3E–08	NA
		Triethylamine	Recept. dist./recept. distance & met. data.	NA	20–40	NA	2
Waste Group 1 ..	WWTP—Open Quiescent Treatment Tank.	Formaldehyde	Quantity/tank & recept. distance.	3E–06—1E–05	NA	6E–07	NA
		Methylene Chloride	Conc./tank & exposure duration.	1E–05—5E–05	NA	3E–06	NA
		Triethylamine	Met data/tank & recept. distance.	NA	500–2000	NA	200
Waste Group 2 ..	WWTP—Aerated Tank.	Carbon Disulfide ...	Quantity/quantity & recept. distance.	NA	0.4–2	NA	0.07
		Carbon Tetrachloride.	Recept. distance/ recept. dist. & expo. dur.	2E–06—7E–06	NA	4E–07	NA
		Chloroform	Quantity/quantity & recept. distance.	1E–06—7E–06	NA	2E–07	NA
		Methyl Chloride	Quantity/conc. & quantity.	4E–05—2E–04	NA	7E–06	NA
		Methyl Ethyl Ketone.	Recept. distance/ conc. & recept. dist.	NA	0.2–1	NA	0.04
		Methylene Chloride	Conc./conc. & quantity.	9E–06—5E–05	NA	9E–07	NA
		Pyridine	Recept. distance/tank & conc.	NA	3–20	NA	0.6
		Triethylamine	Recept. distance/ conc. & distance.	NA	40–200	NA	7
Waste Group 3 ..	Open Tank Storage/ Landfill.	Chloroform	Recept. distance/ recept. dist. & expo. dur.	4E–06—1E–05	NA	4E–07	NA
		Methylene Chloride	Recept. distance/ recept. dist. & expo. dur.	4E–07—1E–06	NA	5E–08	NA
Waste Group 4 ..	Open Tank Storage/ Boiler/Landfill Ash.	Benzene	Recept. distance/ recept. dist. & expo. dur.	5E–05—2E–04	NA	6E–06	NA

[8] From "Hazardous Waste Treatment, Storage, and Disposal Facilities-Organic Air Emissions Standards for Process Vents an Equipment Leaks Final Rule", 55 FR 25454, June 21, 1990.

Population risk estimates for tanks. To estimate the population risk associated with direct inhalation of volatile constituents, the number of individuals that may potentially be exposed over a 70 year period was estimated. Using typical case exposure conditions, population risk was then calculated for each waste/constituent of concern/waste management practice combination. For each combination, estimates were made for individuals exposed in all directions (i.e., north, south, east, and west) out to 10 miles. Exposure concentrations were estimated at 0.25, 0.5, 1.0 miles from the modeled facility in each direction and at 1.0 mile incremental distances thereafter. The number of exposed individuals in each sector is an average of the population data collected at eight carbamate production facilities. For carcinogens, the number of cancer cases occurring over 70 years were calculated based on the individual risk, number of exposed individuals, and number of 9 year cohorts in a 70 year time period. For noncarcinogens, the total number of people exposed to constituent concentrations greater than or equal to the RfCs were identified. For each combination, the estimates were summed across all directions and out to 10 miles to obtain the population risk (Table 17).

TABLE 17.—POPULATION RISK ESTIMATES: TANKS

Waste codes	Current management practices	Constituent of concern	Cancer cases/70 years	People exposed over RfC per 70 yrs
Waste Group 1 ..	Covered Trt. Tank/Recycle	Methylene chloride	1.5E–04	NA
		Triethylamine.	NA	73
	Open St. Tank/Boiler/Landfill Ash	Formaldehyde	2.8E–05	NA
		Methylene chloride	1.4E–04	NA
		Triethylamine	NA	73
	WWTP—Open Quiescent Trt. Tank	Chloroform	1.4E–04	NA
		Formaldehyde	4.8E–03	NA
		Methylene chloride	2.8E–02	NA
		Triethylamine	NA	54,000
Waste Group 2 ..	Open St. Tank/Boiler/Landfill Ash	Methyl chloride	1.3E–05	NA
		Methylene chloride	2.3E–06	NA
	WWTP—Aerated Trt. Tank	Carbon tetrachloride	7.7E–04	NA
		Chloroform	1.2E–03	NA
		Formaldehyde	6.2E–05	NA
		Methyl chloride	3.4E–02	NA
		Methylene chloride	4.4E–03	NA
		Triethylamine	NA	390
Waste Group 3 ..	Open St. Tank/Landfill	Chloroform	1.9E–03	NA
		Methylene chloride	2.3E–04	NA
Waste Group 4 ..	Open St. Tank/Boiler/Landfill Ash	Benzene	2.7E–02	NA
Waste Group 6 ..	Open St. Tank/Landfill	Benzene	1.4E–04	NA

Individual risk estimates for boilers. As discussed above for tanks, the methodology used to estimate baseline individual risk from the direct inhalation of contaminants by humans is based on the premise that humans live in close proximity to a facility where wastes are managed. The potential also exists for humans living in close proximity to a facility to be exposed to hazardous constituents that are emitted from industrial boilers, furnaces or incinerators burning the wastes.

Results from air emission and dispersion modeling using ISCLT2 were used to develop boiler-specific scaled modeled air concentrations (SMACs) for use in calculating ambient air concentrations. These scaled modeled air concentrations represent the downwind concentrations normalized by the feed rate that would result if the boiler emission rate is 1 gram per second (g/s). The SMACs were multiplied by the waste constituent concentrations, estimations of the fraction of the boiler feed that the waste comprised, and a specified destruction and removal efficiency (DRE) to calculate ambient air concentrations. The high-end air concentrations were estimated based on high-end waste constituent concentrations and the boiler-specific coefficient associated with the high-end boiler and meteorological data. The methodology used in calculating the typical case air concentrations used typical case values for the waste constituent concentrations and boiler-specific coefficient. Based on the high end estimates, the potential risk posed by the majority of the constituents in the wastes going to boilers is below levels of concern. The only constituent shown to be of concern (i.e., having a high-end risk estimate greater than or equal to 1×10^{-6} for carcinogens or a hazard quotient greater than or equal to 1 for noncarcinogens) is benzene in waste Group 4. The central tendency and high end range for this constituent are 9×10^{-8} and 4×10^{-7} to 1×10^{-6}, respectively.

Population risk estimates for boilers. Using typical case exposure conditions, EPA estimated the population risk for each waste group/constituent of concern combination for waste managed in boilers, using a methodology similar to that used for air emissions from tanks (Table 18).

TABLE 18.—POPULATION RISK ESTIMATES: BOILERS

Waste codes	Current management practices	Constituent of concern	Cancer cases/70 years	People exposed over RfC per 70 yrs
Waste Group 1 ..	Open tank storage/boiler/landfill ash	Methylene chloride	8.9E–01	NA
Waste Group 2 ..	Open tank storage/boiler/landfill ash	Chloroform	2.0E–07	NA
		Methyl chloride	5.7E–06	NA
		Methylene chloride	7.5E–07	NA
Waste Group 3 ..	Open tank storage/boiler/landfill ash	Methylene chloride	5.7E–08	NA
Waste Group 4 ..	Open tank storage/boiler/landfill ash	Arsenic	9.6E–04	NA
		Benzene	3.4E–03	NA
Waste Group 8 ..	Open tank storage/boiler/landfill ash	Chromium	4.3E–06	NA
		n-Nitrosodibutylamine	1.5E–07	NA
		n-Nitrosodimethylamine	1.4E–04	NA
Waste Group 9 ..	Open tank storage/boiler/landfill ash	Arsenic	2.4E–08	NA
		Cadmium	2.0E–08	NA
		Chromium	4.2E–08	NA
Waste Group 10	Open tank storage/boiler/landfill ash	Chromium	8.2E–07	NA

Individual risk estimates for landfills. The equations used to generate the hazard quotients and risk resulting from inhalation of volatiles were consistent with those presented in EPA's Risk Assessment Guidance for Superfund (RAGS Part B, 1991). The central tendency risk estimates were derived from a 30 year average atmospheric concentration and a 9 year exposure duration. A 30 year exposure duration was used as a high-end exposure duration value when generating the high-end risk estimates.

Central tendency and high-end risk estimates were generated for those constituents with a bounding risk estimate greater than 10^{-6} and a bounding hazard quotient estimate greater than or equal to 1 (Table 19).

TABLE 19.—INDIVIDUAL BASELINE RISK FROM INHALATION OF VOLATILES: LANDFILLS

Waste codes	Current management practices	Constituent of concern	Risk		High-end parameters
			High-end	Central	
Waste Group 3 .	Landfill	Chloroform	8E–05—1E–04	2E–05	Receptor distance and exposure duration.
		Methylene chloride	1E–05—2E–05	3E–06	Receptor distance and exposure duration.
Waste Group 6 .	Landfill	Benzene	1E–05—2E–05	4E–06	Receptor distance and exposure duration.

Population risk estimates for landfills. Population risk for the inhalation of volatile emissions from the landfill is a function of individual risk from inhalation of volatile contaminants and the number of people living in the area where exposure will occur. The population risks were based on centrally tendency risk estimates for individuals.

A sensitive parameter for many of the landfill pathways is the volume and management of the wastes sent to a landfill. To calculate the volatile emissions, waste run-off, and particle generation, EPA assumed the disposal of an annual quantity for each waste stream. The waste is allowed to remain uncovered while the portion of the landfill is active. EPA estimates that the landfill disposal depth is 3 meters and that the density of the waste is 150 kg/m^3, a value resembling highly organic, muck soils. EPA requests comments on these assumptions or any data on these assumptions.

As discussed above regarding population risk estimates from direct inhalation, the number of people living at various distances from a facility were also evaluated for the population risk estimates. A total of 493 people were determined to live within 0.3 miles of the facility. The central tendency risk estimates used in the baseline analyses incorporated a 30 year average air concentration.

The population risk estimates for constituents of concern in waste group 3 are 8×10^{-2} cases over a 70-year period for chloroform, and 1×10^{-2} cases over a 70-year period for methylene chloride. The population risk for benzene, the constituent of concern in waste group 6, is estimated at 2×10^{-2} cases over a 70-year period.

Individual risk estimates for surface impoundments. The sludge waste group was the only untreated waste group currently being managed in surface impoundments. The bounding risk estimates for those constituents in the sludge waste group were below levels of concern. Therefore, further risk evaluations were not required.

Population risks estimates for surface impoundments. The bounding risk estimates did not indicate any constituents of concern. Therefore, further risk evaluations were not required.

Direct Soil Ingestion

Individual risk estimates for landfills. The equations used to quantify risks resulting from ingestion of contaminated soil are consistent with those soil ingestion risk equations contained in EPA RAGS Part B. The exposure durations of 9 years and 30 years were used to represent central tendency and high-end. Obviously, this exposure duration could occur during various stages of life. For this analysis, it was assumed that 6 years of the exposure period was during childhood when soil ingestion is estimated to be highest. This is consistent with the RAGS Part B methodology.

The risk estimates for this pathway are sensitive to the amount of the waste that travels from the landfill to off-site receptors either through run-off or deposition of wind-blown particulates. EPA assumed that landfills do not have run-off controls or that the local terrain, roads, or other engineered controls do not channel run-off from residences.

The Agency requests comment on these assumptions and data on these parameters.

Central tendency and high-end risk estimates were generated for those constituents identified at levels of concern from the bounding risk analysis (Table 20).

TABLE 20.—Individual Baseline Risk From Direct and Indirect Soil Ingestion

Waste codes	Current management practices	Constituent of concern	Risk or hazard		High end parameters
			High end	Central	
Waste Group 3	Landfill	Methylene chloride	1E-07—2E-07	NA	Soil mixing depth and soil intake rate.
Waste Group 6	Landfill	EPTC	4–9	2	Constituent concentration and soil intake rate.
		Molinate	20–40	10	Soil mixing depth and soil intake rate.
Waste Group 9	Landfill	Arsenic	3E-06—4E-06	1E-06	Exposure duration and soil intake rate.
		Antimony	600–1000	300	Constituent concentration and soil intake rate.
		Zinc	1–2	0.4	Constituent concentration and soil intake rate.

Population risk estimates for landfills. Population risk estimates for soil ingestion were not evaluated. The EPA concluded that the general population in the vicinity of the facilities would not have access to the facilities. Therefore, the direct soil ingestion route was not considered an exposure scenario warranting population risk estimates.

Indirect Soil Ingestion

Individual risk estimates for landfills. The same risk estimation methodology used to calculate risks from direct soil ingestion was used to calculate risks resulting from indirect soil ingestion. This scenario considered soil that had eroded from the site to a nearby field. Central tendency and high-end risk estimates were generated for those constituents with bounding risk estimates greater than or equal to 10^{-6} or hazard quotients greater than or equal to 1 (Table 20).

Ingestion of Ground Water

Individual risk estimates for landfills. The equations used to calculate risk resulting from the ingestion of contaminated ground water were consistent with those presented in EPA's RAGS Part B. The ground-water concentration used in the central tendency and high-end risk estimates reflects a 30 year average ground-water concentration. The Multimedia Exposure Assessment Model (MULTIMED), an EPA analytical model, was used to estimate the various contaminants at specific receptor points downgradient from the source for a variety of scenarios. A full discussion of the model and inputs used for this analysis is contained in the report, "Assessment of Risk from the Management of Carbamate Waste" (RTI, 1993), which is available in the docket for this proposed rule. See ADDRESSES section.

Central tendency and high-end risk estimates were generated for those constituents with bounding risk estimates greater than or equal to 10^{-6} or hazard quotients greater than or equal to 1 (Table 21).

The groundwater modeling analysis assumes that groundwater contamination results from the disposal of waste in an on-site unlined landfill. The Agency collected data on well use surrounding the facility in all directions and assumed that the nearest wells are always downgradient of these facilities. The analysis further assumes that groundwater downgradient of the source may be used for drinking water, these wells are on the centerline of the plume, and these wells draw from only the uppermost aquifer. Given the current practice that most carbamate sludges and waste solids are disposed at off-site landfills, the Agency requests comments on the appropriateness of its assumptions, the resulting risk estimates, and the data used by the Agency.

TABLE 21.—INDIVIDUAL RISK ESTIMATES FROM GROUND-WATER INGESTION: LANDFILLS

Waste Code	Current management practice	Constituent of concern	Risk or hazard		High End parameters
			High end	Central	
Waste Group 3	Landfill	Chloroform	1E-07—3E-07	1E-08	Landfill area/leachate conc./recharge rate/infiltration rate & distance to well.
		Methylene chloride	3E-06—9E-06	2E-07	Distance to well and exposure duration.
Waste Group 6	Landfill	Benzene	5E-07—2E-06	3E-08	Landfill area/leachate conc/recharge rate/infiltration rate and distance to well.
		EPTC	10–50	0.1	Landfill area/leachate conc/recharge rate/infiltration rate and distance to well.
		Molinate	60–70	0.6	Distance to well and neutral hydrolysis rate.

Population risk estimates for landfills. In conducting this analysis, EPA estimated the risk to the exposed population from ingestion of ground-water based on the estimates of the population using water from public or private wells and individual risk estimates. Population risk estimates were generated for those constituents which were quantitatively analyzed for the ground-water exposure route.

The number of people using well water was estimated from the results of a land-use survey around 8 carbamate production facilities. For most of the states in which the study areas are located, little information was available on private well-use.

To characterize the spatial distribution of well-water use, EPA contacted public works officials from the urban centers nearest the study areas to determine which portions of the study areas were served by their

municipal facilities. These officials were then asked whether those areas not served by their public water systems are likely to be on private wells, or whether other smaller public utilities serve those areas.

For those areas where smaller public utilities were in operation, those utilities were contacted. Representatives for those smaller utilities (usually serving rural areas adjacent to urban centers) were asked whether they use well water, or pipe in water from the larger municipalities nearby. In addition, the smaller public utilities were asked whether those areas not receiving their service are on private wells. Through this process, it was possible to identify those areas likely to be on well water (both private and public) and those areas likely to be on non-well water.

The land-use survey was also used to determine the location of the well closest to each of the facilities evaluated in the survey. The average of the well location point closest to each facility was approximately 3.7 miles (5,985 m). This distance to the ground water exposure point was used to generate the central tendency risk estimates required for the population risk estimates. The survey results also indicate that there is a total of 672 people within a 3.7 mile radius of the site who use either public or private wells as their drinking water source. The ground water concentration used to calculate the risk represents a 70-year average ground water concentration.

The population risk estimates for the constituents of concern in waste group 3 are 1×10^{-5} cases over a 70-year period for chloroform and 2×10^{-4} cases over a 70-year period for methylene chloride. For waste group 6, the total number of cases per 70-year period resulting from benzene-contaminated ground water is estimated at 4×10^{-5}. The other constituents in this waste stream which were analyzed, eptam (EPTC), molinate, and toluene had hazard quotients less than 1 and were not analyzed further. The population risk posed by the constituent of concern in waste group 9, arsenic, was not significant.

6. Estimating Hazard Quotients: Dose Response Risk Assessment Techniques for Noncancer Endpoints

Table 11 contains RfDs, RfCs, and observed toxic effects for constituents detected in carbamate wastes. Because the noncarcinogens EPTC (eptam), triethylamine, and ziram were significant to the Agency's risk assessment, the Agency is seeking to further quantify the probability of adverse effects resulting from exposures to these chemicals at levels above hazard quotients. Exposure above the hazard quotient is viewed by the Agency to provide an indication that adverse effects similar to those observed in animal studies could also be observed in the exposed human population. However, the likelihood of particular effects above the RfD or RfC cannot be effectively predicted. The Agency is considering using logistic regression on ordered categories (i.e., categorical regression analysis) to provide estimates of risks at exposure levels above the RfD or RfC, and for the probability of adverse population effects. The following sections present an overview of dose-response assessment and categorical regression. A more detailed discussion of the categorical regression methodology is found in a paper Using Categorical Regression Instead of a NOEAL to Characterize a Toxicologist's Judgment in Noncancer Risk Assessment by Richard C. Hertzberg, Ph.D. and Michael L. Dourson, Ph.D. of EPA's Environmental Criteria and Assessment Office. This paper is available in the docket supporting this proposal. See "ADDRESSES" section.

Dose-Response Assessment. Dose-response assessment follows hazard identification in the risk assessment process as defined by the National Academy of Sciences (1983). Dose-response assessment involves the quantitative evaluation of toxicity data to determine the like incidence of the associated effects in humans. The information available for dose-response assessment ranges from well-conducted and controlled studies on human exposures, epidemiology studies with large numbers of subjects and well-characterized exposures, and supportive studies in several animal species, to a lack of human and animal toxicity data with only structure-activity relationships to guide the evaluation. In any case, the Agency considers all pertinent studies in this process. However, only data of sufficient quality are used in the dose-response assessment of a chemical.

The Chronic Reference Dose (RfD), and Reference Concentration (RfC). Given at least a moderate amount of toxicity data, one risk assessment goal is to determine a level of daily exposure that is likely to be without an appreciable risk of deleterious effects during a lifetime. The Agency's Reference Dose (RfD) and Reference Concentration (RfC) approaches strive to include scientific considerations in their determination.

The Agency defines the chronic RfD as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. In addition, the Agency is also using this model for inhalation exposures and similarly defines a Reference Concentration (RfC).

The RfD and RfC are useful as reference points for gauging the potential effects of other doses and for estimating hazard quotients. Doses at the RfD or less (consistent with hazard quotients of 1 or less) are not likely to be associated with any health risks, and are, therefore, assumed likely to be of little regulatory concern. In contrast, as the amount and frequency of exposures exceeding the RfD increase (or the hazard quotient exceeds 1), the probability that adverse effects may be observed in a human population also increases. However, the conclusion that all doses below the RfD are acceptable and that all doses in excess of the RfD are unacceptable cannot be categorically stated because these models cannot effectively predict the likelihood of particular effects above the RfD or RfC.

Another risk assessment goal is to determine or estimate the likely human response to various exposure levels of a particular contaminant. For carcinogens, a dose-response model is appropriate if sufficient data exist. Dose response models for noncancer endpoints are just now starting to be used. The next section highlights a new procedure, categorical regression, for which the Agency asks for comments. The Agency is interested in receiving comments on the categorical regression technique as applied to estimating the probability of effect above a benchmark level, and also on the appropriateness of using this technique in a hazardous waste listing determination.

Categorical Regression. The categories of response used in the analysis correspond to the RfD and RfC derivation: no-observed-effect level (NOEL) = exposure level at which no effects were observed; NOAEL = exposure at which no adverse effects were observed; AEL = exposure at which mild to moderate adverse effects were observed; FEL = exposure at which severe (frank) effects were observed. Categorical regression procedures can be used to model the probabilities of these four categories occurring as a function of exposure level expressed as the logarithm of human equivalent dose or human equivalent concentration and duration of exposure expressed as a proportion of life span. For each of the compounds studied by this technique, a second data set is constructed by identifying and censoring "unreliable"

NOELs or NOAELs from each data set; these "censored" studies would not include measurement of sensitive toxicologic endpoints shown to be of interest, or were studies that tested clearly insensitive species.

The categorical regression model is described as follows: Given a categorical response variable where the K categories are ordered in some fashion, the outcomes can be expressed as numbers 1 . . . . K (e.g., Y=1(NOEL), Y=2(NOAEL), Y=3(AEL), Y=4(FEL)). Categorical regression can be used to express the relationship between category (Y) and an explanatory variable (X) and to estimate, at a specified value of X, the probability of the occurrence of a particular response category (Y=i). The final 3- and 4-category regression equations can be used to estimate the risk of a dose above the RfD or a concentration above the RfC.

7. Ecological Risk Assessment

The degree to which the constituents in a waste or any degradation product of the constituents bioaccumulates in ecosystems, and poses ecological risks when improperly treated, stored or disposed of, or otherwise managed are also considered in the Agency's listing determinations. See 40 CFR 261.11(a)(3). The measure of a chemicals tendency to bioconcentrate is expressed as a bioconcentration factor (BCF). The BCF is calculated by dividing the concentration of the chemical in exposed organism's tissues by the concentration of the chemical in the exposure medium. The values calculated are normalized to a 3% lipid content (typical to fish) for comparison. The higher the BCF, the greater the potential for bioconcentration to levels which would have ecological effects or pose risks to humans through consumption. Table 22 presents BCFs for selected carbamate products. A number of carbamate chemicals show significant potential to bioaccumulate if wastes containing these chemicals were to be mismanaged.

TABLE 22.—BIOCONCENTRATION FACTORS

CAS#	Common name	Estimated bioconcentration factor (BCF) 3% lipid
116-06-3	Aldicarb	3.03
1646-88-1	Aldicarb sulfone (Aldoxycarb)	1
337-71-1	Asulam	1.22
2008-41-5	Butylate	730
63-25-2	Carbaryl	30.5
1563-66-2	Carbofuran	35.8
101-21-3	Chloropropham	241
759-94-4	EPTC (Eptam)	171
2212-67-1	Molinate	88.2
114-26-1	Propoxur	7.02
122-42-9	Propham	45
28249-77-6	Thiobencarb	179
23564-05-8	Thiophanate-methyl	7.31
23031-17-5	Triallate	970

Screening methodology. The EPA performed a screening analysis for ecological risk based on waste stream description, waste management practice, and reasonable release scenarios. Chemical properties of the waste groups were another key component in determining ecological exposure routes. For example, given the fact that most of the chemical constituents had low BCFs, an estimate of exposure to chemicals that bioaccumulate up the food chain was not necessary for most constituents. Taking into account current waste management practices, reasonable release scenarios were established only for those waste streams going to landfills (Waste Groups 3, 6, 9, and Sludges). The remaining waste streams are managed in wastewater treatment plants (WWTP) and on-site treatment tanks, therefore significant releases to either aquatic or terrestrial ecosystems are not likely. Examples of relevant ecological exposure routes stemming from landfills include:

- Direct contact with contaminated soil and surface water that has been contaminated by overland runoff or by air particle deposition, or by groundwater that was contaminated as a result of landfill leachate;
- Direct ingestion of contaminated soil or surface water that has been contaminated by overland runoff, or by air particle deposition, or by groundwater that was contaminated as a result of landfill leachate.

Aquatic ecosystems. A comparison of waste stream chemical concentrations to their respective aquatic benchmarks, such as ambient water quality criteria and LC50s, was used as an initial screening to isolate chemicals of potential ecological concern. Those chemicals whose waste stream concentrations exceeded their aquatic benchmark, were then modeled through various pathways to estimate surface water (river) concentrations of the chemical. Only Ziram in waste group 9 appears at levels of concern in surface waters through the pathways modeled. Wastes solids from the production of the dithiocarbamate ziram were modeled to exceed the LC50 of trout by 11.9 fold for possible air to overland transport of solids to surface waters, and by 8.9 fold for overland transport to surface waters. The Agency concludes that solids from the production of similar dithiocarbamate products would present similar hazards, because of the acute aquatic toxicity exhibited by dithiocarbamates as a chemical class.

Terrestrial ecosystems. A comparison of waste group concentrations of chemicals to their respective terrestrial benchmarks was used as an initial screening to isolate the chemicals of potential concern. Those chemicals whose waste stream concentrations exceeded their terrestrial benchmark, were identified as constituents of concern. Modeling was conducted for each of these constituents through various pathways to estimate exposure concentrations. Since terrestrial organisms could be exposed through several media, chemical concentrations were estimated in soil, in fish, and in river water. A comparison was made of the estimated media concentrations of constituents to five types of terrestrial toxicity data: lowest observable adverse effect level (LOAEL) pertaining mostly

to rat species, oral LD_{50} for rat, dermal LD_{50} for rabbit, bird LD_{50} for a variety of avian species, and reproductive TD_{LO} (the toxic dose having the lowest effect) for rats.

Several constituents are present in the media at concentrations that exceed their respective terrestrial benchmark. Carbofuran in waste group 3 presents a potential hazard to birds, as soil concentrations are estimated to be above the avian LD_{50}. Bensulide, EPTC (eptam), vernolate, butylate and molinate in waste group 6 present potential hazards to mammals, as soil concentrations exceed both oral and dermal LD_{50}s and other criteria. In waste group 9, ziram, molybdenum, dibutylamine, dimethylamine, antimony and zinc are estimated to be present in soils and food chain pathways at levels that may present a hazard to both mammals and birds. Table 23 presents the results of this screening analysis for terrestrial toxicity.

EPA was unable to thoroughly assess exposures of particular animal species, their behavioral habits, and the complex relationships within their ecosystems, in order to quantify the terrestrial risk from carbamate waste.

TABLE 23.—TERRESTRIAL TOXICITY ASSESSMENT

Waste stream	Pathway type	Chemical	CAS	Concentration in media (mg/kg)	Ratio of media conc. to:				
					LOAEL	Oral LD50	Dermal LD50	Bird LD50	Reproduct. TDLo
Waste Group 3 ..	Soil	Carbofuran	1563662	soil—1.417E+0	1.10E–01	2.30E–01	1.30E–03	2.90E+00	2.00E–02
				veg—1.035E–1	8.00E–03	2.10E–02	1.20E–04	2.60E–01	1.50E–03
				fish—1.759E–4	1.40E–05	3.50E–05	2.00E–07	4.40E–04	2.50E–06
				river—1.256E–5 (mg/L)	1.00E–06	2.50E–06	1.40E–08	3.20E–05	1.80E–07
	Soil to Air to Soil.	Carbofuran	1563662	soil—1.417E+0	1.10E–01	2.30E–01	1.30E–03	2.90E+00	2.00E–02
				veg—1.035E–1	8.00E–03	2.10E–02	1.20E–04	2.60E–01	1.50E–03
				fish—8.329E–7	6.70E–08	1.70E–07	9.40E–10	2.10E–06	1.20E–08
				river—5.949E–8 (mg/L)	4.80E–09	1.20E–08	6.70E–11	1.50E–07	8.50E–10
Waste Group 6 ..	Soil	Bensulide	741582	soil—1.175E+3	na	4.30E+00	na	8.50E–01	na
				veg—1.796E+1	na	6.60E–02	na	1.30E–02	na
				fish—4.976E–2	na	1.80E–04	na	3.60E–05	na
				river—5.529E–4 (mg/L)	na	2.00E–06	na	4.00E–07	na
		EPTC	759944	soil—4.000E+4	4.00E+03	4.40E+01	2.70E+01	4.00E+02	4.00E+02
				veg—7.520E+2	7.50E+01	8.20E–01	5.20E–01	7.50E+00	7.50E+00
				fish—1.402E+0	1.40E–01	1.50E–03	9.60E–04	1.40E–02	1.40E–02
				river—2.089E–2 (mg/L)	2.10E–03	2.30E–05	1.40E–05	2.10E–04	2.10E–04
		Vernolate	1929777	soil—4.819E+1	9.60E+00	4.00E–02	na	na	na
				veg—4.753E–1	1.00E–01	4.00E–04	na	na	na
				fish—4.48E–03	9.00E–04	3.70E–06	na	na	na
				river—2.546E–5 (mg/L)	5.10E–06	2.10E–08	na	na	na
		Butylate	2008415	soil—5.054E+2	2.00E+01	1.70E–01	2.50E–01	na	5.10E+01
				veg—3.683E+0	1.50E–01	1.20E–03	1.80E–03	na	3.70E–01
				fish—7.340E–2	2.90E–03	2.40E–05	3.70E–05	na	7.30E–03
				river—2.549E–4 (mg/L)	1.00E–05	8.50E–08	1.30E–07	na	2.50E–05
		Molinate	2212671	soil—7.823E+3	1.96E+03	2.10E+01	2.20E+00	na	na
				veg—2.289E+2	5.70E+01	6.20E–01	6.50E–02	na	na
				fish—1.507E–1	3.80E–02	4.10E–04	4.30E–05	na	na
				river—4.319E–3 (mg/L)	1.10E–03	1.20E–05	1.20E–06	na	na
	Soil to Air to Soil.	Bensulide	741582	soil—1.175E+3	na	4.30E+00	na	8.50E–01	na
				veg—1.796E+1	na	6.60E–02	na	1.30E–02	na
				fish—7.227E–4	na	2.70E–06	na	5.20E–07	na
				river—8.03E–6 (mg/L)	na	3.00E–08	na	5.80E–09	na
		EPTC	759944	soil—4.000E+4	4.00E+03	4.40E+01	2.70E+01	4.00E+02	4.00E+02
				veg—7.520E+2	7.50E+01	8.20E–01	5.20E–01	7.50E+00	7.50E+00
				fish—2.036E–2	2.00E–03	2.20E–05	1.40E–05	2.00E–04	2.00E–04
				river—3.034E–4 (mg/L)	3.03E–05	3.30E–07	2.10E–07	3.00E–06	3.00E–06
		Vernolate	1929777	soil—4.819E+1	9.60E+00	4.00E–02	na	na	na
				veg—4.753E–1	1.00E–01	4.00E–04	na	na	na
				fish—6.508E–5	1.30E–05	5.40E–08	na	na	na
				river—3.697E–7 (mg/L)	7.40E–08	3.10E–10	na	na	na
		Butylate	2008415	soil—5.054E+2	2.00E+01	1.70E–01	2.50E–01	na	5.10E+01
				veg—3.683E+0	1.50E–01	1.20E–03	1.80E–03	na	3.70E–01
				fish—1.066E–3	4.30E–05	3.60E–07	5.30E–07	na	1.10E–04
				river—3.702E–6 (mg/L)	1.20E–07	1.00E–09	1.50E–09	na	3.70E–07
		Molinate	2212671	soil—7.823E+3	1.96E+03	2.10E+01	2.20E+00	na	na
				veg—2.289E+2	5.70E+01	6.20E–01	6.50E–02	na	na
				fish—2.189E–3	5.50E–04	5.90E–06	6.20E–07	na	na
				river—6.272E–5 (mg/L)	1.60E–05	1.70E–07	1.80E–08	na	na
		Dipropylamine	142847	soil—3.973E+3	na	8.60E+00	3.20E+00	na	na
				veg—5.823E+2	na	1.30E+00	4.70E–01	na	na

				fish—9.506E–5	na	2.10E–07	7.60E–08	na	na
				river—3.278E–5 (mg/L)	na	7.10E–08	2.60E–08	na	na
Waste Group 9 ..	Soil	Ziram	137304	soil—1.552E+5	na	5.81E+02	na	1.55E+03	6.21E+02
				veg—7.536E+3	na	2.80E+01	na	7.50E+01	3.00E+01
				fish—1.375E–1	na	5.10E–04	na	1.40E–03	5.50E–04
				river—7.766E–2 (mg/L)	na	2.90E–04	na	7.70E–04	3.10E–04
		Molybdenum	7439987	soil—8.410E+1	6.01E+02	na	na	na	1.40E+01
				veg—1.750E+0	1.30E+01	na	na	na	2.90E–01
				fish—3.881E–4	2.80E–03	na	na	na	6.40E–05
				river—3.881E–5 (mg/L)	2.80E–04	na	na	na	6.40E–06
		Antimony	7440360	soil—3.589E+4	1.03E+05	5.10E+00	na	na	na
				veg—1.198E+2	3.42E+02	1.70E–02	na	na	na
				fish—1.84E–2	5.30E–02	2.60E–06	na	na	na
				river—1.84E–2 (mg/L)	5.30E–02	2.60E–06	na	na	na
		Zinc	7440666	soil—5.107E+4	5.11E+04	na	na	na	na
				veg—3.159E+3	3.16E+03	na	na	na	na
				fish—4.782E+1	4.80E+01	na	na	na	na
				river—2.391E–2 (mg/L)	2.40E–02	na	na	na	na
	Soil to Air to Soil.	Dibutylamine	111922	soil—4.971E+2	na	2.60E+00	4.90E–01	na	na
				veg—1.737E+1	na	9.20E–02	1.70E–02	na	na
				fish—7.066E–5	na	3.70E–07	7.00E–08	na	na
				river—3.533E–6 (mg/L)	na	1.90E–08	3.50E–09	na	na
		Dimethylamine	124403	soil—7.179E+3	na	1.00E+01	na	na	na
				veg—2.079E+4	na	3.00E+01	na	na	na
				fish—8.269E–5	na	1.20E–07	na	na	na
				river—2.067E–4 (mg/L)	na	3.00E–07	na	na	na
		Ziram	137304	soil—1.552E+5	na	5.81E+02	na	1.55E+03	6.21E+02
				veg—7.536E+3	na	2.80E+01	na	7.50E+01	3.00E+01
				fish—1.996E–3	na	7.50E–06	na	2.00E–05	8.00E–06
				river—1.128E–3 (mg/L)	na	4.20E–06	na	1.10E–05	4.50E–06
Waste Group 9 ..	Soil to Air to Soil.	Molybdenum	7439987	soil—8.410E+1	6.01E+02	na	na	na	1.40E+01
				veg—1.750E+0	1.30E+01	na	na	na	2.90E–01
				fish—5.636E–6	4.00E–05	na	na	na	9.30E–07
				river—5.636E–7 (mg/L)	4.00E–06	na	na	na	9.30E–08
		Antimony	7440360	soil—3.589E+4	1.03E+05	5.10E+00	na	na	na
				veg—1.198E+2	3.42E+02	1.70E–02	na	na	na
				fish—2.673E–4	7.60E–04	3.80E–08	na	na	na
				river—2.673E–4 (mg/L)	7.60E–04	3.80E–08	na	na	na
		Zinc	7440666	soil—5.107E+4	5.11E+04	na	na	na	na
				veg—3.159E+3	3.16E+03	na	na	na	na
				fish—6.946E–1	6.90E–01	na	na	na	na
				river—3.473E–4 (mg/L)	3.50E–04	na	na	na	na

8. Summary of Basis for Listing For Additional K Listings and Other Considerations

EPA's decision to propose additional hazardous waste listings represents a determination by the Agency that six carbamate wastes (identified as K156 through K161) meet the criteria for listing as hazardous wastes presented in 40 CFR 261.11. Consequently, EPA is proposing to add these 6 wastes to the list of hazardous wastes from specific sources contained in 40 CFR 261.32. K156 through K161 wastes typically and frequently contain mobile and persistent hazardous constituents at levels such that concentrations of these constituents at human or environmental receptors may exceed one or more human or environmental health-based levels (HBLs) if the wastes are improperly managed. The high concentrations of hazardous constituents in these wastes, the mobility and persistence of the constituents of concern, and the estimated risks associated with those constituents satisfy the criteria set forth in 40 CFR 261.11 for listing a waste as hazardous and provide the basis for listing these wastes as hazardous. EPA is proposing that these wastes from carbamate production be listed as hazardous and subject to the requirements of 40 CFR parts 124, 262–266, 268, 270, and 271 since they are capable of posing a threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise handled.

As described in more detail below, these wastes frequently contain significant concentrations of product material and raw materials listed in Appendix VIII of 40 CFR part 261. These compounds may present a threat to human health and the environment if mismanaged due to their toxicity, mobility, and persistence. These constituents may be carcinogenic, mutagenic, and/or cause other chronic systemic effects if mismanaged. Some of these constituents are highly persistent and are mobile in the environment based on their physical properties and evidence from damage incidents studies collected by the Agency.

EPA in its risk analysis attempted to quantify the magnitude of the risk posed by plausible mismanagement of each of the waste groupings. EPA also notes that significant toxicological data gaps exist for all wastes, precluding a full accounting of the total risk from plausible waste mismanagement and from possible additive or synergistic interactions. The Agency was able to calculate risks for only those constituents of concern for which health-based numbers were available. All these wastes contain significant quantities or percent levels of chemicals which have limited toxicological data from which health-based numbers can not be developed.

The Agency requests comment on the basis for listing these wastes. EPA also requests comment on the data obtained for use in this listing determination, the methodology and the assumptions used in the risk assessment, and on the Agency's decision to list these waste streams. Specifically, the Agency requests comments on the assumptions used in the risk assessment which are highlighted in Section III.C.5 of this preamble. In particular, the Agency requests comments on the assumptions pertaining to characterization of the wastes, the distances from where the waste is managed to a receptor, the operating management practices for carbamate wastes disposed in a landfill, and the exposure frequencies and durations assumed at a receptor.

The Agency also requests comments on the option of not listing these waste streams. The Agency requests comments on the use of carbamate active ingredient damage information in assessing the potential damage from the mismanagement of carbamate waste streams and on the relevance of the historical record on management of these waste streams. In addition, EPA recognizes the volumes of some of the carbamate waste streams are relatively low and the Agency requests comment on whether and how they should be addressed in this listing. The Agency requests comments on whether existing or potential regulations under the Clean Air Act (CAA) or Clean Water Act (CWA), if promulgated, would reduce incremental risks from the mismanagement of carbamate wastes significantly to warrant not listing these wastes. Finally, the Agency also solicits comments on the methodology and assumptions used in the risk assessment. The Agency's risk assessment finds that the central tendency risk estimates are on the order of one in a million, with high end individual risk estimates falling in the range of 10^{-4} to 10^{-6}. EPA requests comments on the representativeness of these high-end scenarios and on the merits of alternative risk management strategies including decisions to list and not to list these waste streams.

The following provides a summary of the rationale for each of the proposed listings based on EPA's consideration of the criteria for listing set forth in 40 CFR 261.11. The supporting data and specific results of the risk assessment are presented elsewhere in this preamble. Results of the Agency's risk assessment estimating individual high-end and central tendency estimates and population estimates are presented in Section III of this preamble.

K156 Carbamate Organic Wastes. From the carbamate/carbamoyl oxime segment of the industry, the Agency is proposing to list organic wastes (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) as Hazardous Waste Number K156. K156 wastes frequently contain high concentrations of volatile solvents such as methylene chloride, methyl chloride, pyridine, and methyl ethyl ketone, and highly toxic products such as carbaryl and carbofuran. For K156 wastes, the primary pathway of concern was found to be air emissions and subsequent transport to nearby residents from the plausible mismanagement in open tanks. The high-end individual exposures were estimated to present cancer risks above a 10^{-6} level, as well as non-cancer effects based on exposures above reference concentrations. The Agency has also collected damage resource information showing the toxicity to wildlife of carbamate active ingredients such as those found in these wastes resulting from their misuse or mismanagement.

K157 Carbamate Wastewaters. K157 wastes frequently contain high concentrations of volatile solvents such as acetone, acetonitrile, acetophenone, aniline, benzene, chlorobenzene, chloroform, o-dichlorobenzene, hexane, methanol, methomyl, methyl ethyl ketone, methyl isobutyl ketone, methylene chloride, naphthalene, phenol, pyridine, toluene, triethylamine, and, xylene as well as toxic products including benomyl, carbaryl, carbendazim, carbofuran, and carbosulfan. The risk assessment primary pathway of concern was found to be air emissions from management in aerated tanks. In this scenario, the high-end individual exposure from volatile solvents were estimated to present inhalation cancer risks above a 10^{-6} level and non-cancer effects based on exposures above reference concentrations. The Agency has collected damage information showing toxicity to wildlife from carbamate active ingredients such as those found in these wastes resulting from the misuse or mismanagement of these chemicals.

In the case of wastewaters proposed for listing as K157, air emissions from current management practices were found to present substantive high-end individual cancer risks, as well as non-cancer effects. In order to control and reduce these emissions, a number of

possible options were considered by the Agency. The Agency believes that industry should implement cost-effective source reduction efforts to reduce the volume and toxicity of the wastes that pose these risks through chemical substitution, process changes, or other measures that could result in the greater recovery and reuse of volatile chemicals in the original production process to reduce the risks. Where process changes are not cost-effective, the Agency believes cost-effective controls should be installed to capture these emissions for reuse or off-site recycling.

Air emissions from hazardous waste treatment, storage, and disposal facilities (TSDFs) can be addressed by regulations under RCRA 3004(n). Currently, standards are in place for process vents and equipment leaks (subparts AA and BB of 40 CFR part 264 and part 265). Regulations to control air emissions from tanks, surface impoundments, containers, and certain miscellaneous units were proposed July 22, 1991 (56 FR 33490). This proposal would add part CC air emission requirements to 40 CFR part 264 and part 265. However, under 40 CFR 264.1(g)(6) and 265.1(c)(10), wastewater treatment units which employ tanks and are subject to regulation under either section 402 or 307(b) of the Clean Water Act are not subject to either the part 264 or 265 standards, and, as such, would not be subject to the CC regulations when promulgated as a final rule. As a result, listing these wastes as hazardous without also changing existing exemptions from waste management rules can not mitigate the risks found, since the current exemptions would also prevent application of part CC air emission standards, when finalized, to these units. As EPA stated when it promulgated the limited permitting exemption, these exemptions "were intended to reduce the regulatory burden on a class of facilities which pose less of a risk to human health and the environment than other types of hazardous waste management facilities" (47 FR 4706). Removal of these exemptions as a means to control the air emissions from this one industry group would defeat this purpose, and necessitate the resource-intensive permitting of thousands of low risk facilities. The Agency is not at this time proposing to remove or amend 40 CFR 264.1(g)(6) and 264.1(c)(10). However, the Agency is exploring additional options to control air emissions from such facilities.

As an alternative to listing this wastewater stream as hazardous and subjecting them to the management control of the air emission under RCRA 3004(n) authority, the Agency also considered the availability of other authorities that specifically direct EPA to control air emissions. The primary statute providing such authority is the Clean Air Act (42 U.S.C. 7401 et seq., as amended by the Clean Air Act of 1990, Public Law 101–549, Nov. 15, 1990). Under the Clean Air Act (CAA), the Agency has proposed a National Emission Standard for Hazardous Air Pollutants (NESHAP) for producers of hazardous organic air pollutants (57 FR 62608). The proposed NESHAP, if promulgated as a Final Rule, would control wastewaters from the production of one of the carbamate products (carbaryl), provided the total hazardous air pollutant (HAP) concentration is 10,000 parts per million by weight, or a total average concentration greater than or equal to 1,000 parts per million by weight and the average flow rate is greater than or equal to 10 liters per minute, but does not impact other carbamate product lines. With the passage of the CAA, the Agency has embarked on a multiyear plan for implementation through the year 2000 (57 FR 44147, July 16, 1992). As explained in the July 16, 1992 notice, the Agency is also developing additional NESHAPs to cover a number of other source categories, but these actions would not fully control the risks associated with the particular wastewaters of concern in the carbamate industry segment. The Agency has also developed draft control technique guidlines (CTGs) under the Clean Air Act (see document No. EPA 453/D–93–056) which may address some air risks at facilities in non-attainment areas. The Agency also plans to develop alternative control techniques (ACTs) which are not mandatory. Because of the limited applicability of the CTGs and ACTs, they will not address all air risks from carbamate facilities.

In order to provide industry with flexibility to allow it to accomplish the Agency's source reduction goals, the Agency is proposing a regulatory strategy which allows for a concentration-based exemption from the listing. For wastewaters from the production of carbamate and carbamoyl oxime chemicals (proposed as hazardous waste code K157), a hazardous waste listing coupled with a concentration-based listing exemption is appropriate to define when the K157 wastewater in tanks ceases to pose an unacceptable risk to human health or the environment. Using models to calculate the atmospheric concentrations of chemicals of concern, the Agency found that for these wastewaters a total concentration of 5 parts per million by weight (ppmwt) would be protective for wastewater containing formaldehyde, methyl chloride, methylene chloride, and triethylamine. For these constituents of concern, the 5 ppmwt level, while protective of air emission risks, would be above the 40 CFR part 268 best demonstrated available treatment (BDAT) level for these constituents in other hazardous wastewaters and current delisting criteria. These treatment standards assume that wastes have been subjected to final treatment prior to disposal. Assuming further wastewater treatment as necessary before discharge, under the "plausible mismanagement" scenario of treatment in open tanks for K157 (see Section III.C.5), the Agency views this level as protective. In addition, EPA notes that the 40 CFR Part 268 land disposal restrictions's would not apply to wastes managed in tanks except to the extent the wastes were also managed in land-based units such as surface impoundments. Therefore, the Agency is proposing a concentration-based exemption to the listing description of these wastewaters.

The Agency is proposing to list as Hazardous Waste Number K157 the "group 2" wastewaters as follows:

K157—Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.

Under § 261.3(a)(2)(iv), a new exemption to the definition of hazardous wastes would be created for these wastewaters. This proposed new exemption would read:

§ 261.3(a)(2)(iv) * * *

(F) One or more of the following wastes listed in § 261.32— wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight.

Under this exemption, wastes which are calculated to contain less than a total concentration of 5 ppmwt for the sum of the four constituents of concern would not be hazardous wastes, and any sludges generated from further biological treatment would not be derived from hazardous wastes,

assuming wastewaters are <5 ppmwt at the point of generation.

The Agency does not intend to determine compliance with this provision by requiring that generators actually monitor the concentration of the constituents of concern in untreated wastewater, but proposes to use the same strategy used in other exemptions for wastewaters discharged into the headworks of a wastewater treatment system found at 40 CFR 261.3(a)(2)(4) (46 FR 56582, November 17, 1981). A generator must be able to demonstrate that the total amount of all constituents of concern that is not converted to product or recovered (i.e., what is discharged or volatilized) during the week divided by the average weekly flow of the process unit discharge to into the headworks of the final wastewater treatment step not exceed the proposed standards.

This demonstration can be made through an audit of various records already maintained at most facilities, including invoices showing material purchases, lists including to whom and how much inventory was distributed and other, similar, operating records. A facility can exclude that portion of the constituents of concern not disposed to wastewaters. No portion of the material of concern which is volatilized may be excluded from the calculation. The Agency requests comment on whether or not specific record keeping requirements should be promulgated. Under current regulations (40 CFR 262.11 and 268.7) generators are required to determine whether their wastes are hazardous. Facilities claiming the exemption would have to be able to demonstrate that they meet the exemption. Such information would be intended to verify compliance with this concentration standard. An EPA inspector would look to this information to verify the assessment made by the generator, and may employ direct analytical testing as further verification. Should either measurement indicate a total concentration greater than 5 ppmwt for the sum of the concentrations of the four chemicals of concern, then the wastes shall be subject to regulation as K157 hazardous waste. In this manner, the Agency seeks to discourage and prevent air stripping or other technologies which would merely continue to volatilize these hazardous air pollutants of concern. The Agency requests comment on using this regulatory strategy to achieve risk reduction.

The Agency is also proposing to specifically exempt biological treatment sludges from the treatment of wastewaters from the production of carbamates and carbamoyl oximes from the definition of hazardous waste. Under § 263.3(c)(2)(ii), a new exemption to the definition of hazardous wastes would be created for sludges from the biological treatment of these wastewaters. This proposed new exemption would read:

§ 261.3(c)(2)(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

Without exemption, a large volume of previously disposed wastes and sludge currently collecting within the various treatment systems would require management as derived from newly identified hazardous waste. However, in the case of the biological sludges from the treatment of carbamate and carbamoyl oxime wastewaters, the Agency could only identify risks resulting from the hazardous volatile air pollutants present in the wastewaters being treated. Neither these air pollutants nor other hazardous substances were found to be accumulating in the biological treatment sludges studied by the Agency. This leads the Agency to believe these sludges do not meet the definition of hazardous waste. Therefore, the Agency is proposing to exempt these sludges derived from the proposed K157 wastes from the definition of hazardous wastes, provided the wastes are not otherwise characteristically hazardous. EPA believes that this exemption is particularly appropriate because of the small number of facilities in this industry and the Agency's through investigation of carbamate wastes, as described elsewhere in this preamble.

K158 Carbamate Baghouse Dust and Filter/Separation Solids. K158 wastes frequently contain percent levels of such products as carbofuran, carbosulfan, benomyl, and carbendazim as well as such solvents as methylene chloride, chloroform, phenol, and xylene. These materials are known to be mobile in soils and may pose risks above a 10^{-6} level by direct exposure or through groundwater transport when landfilled. The product chemicals in K158 wastes are acutely toxic to humans, birds, and fish. The Agency believes that, if mismanaged, carbofuran wastes will present significant risks through a soil pathway for wildlife. The Agency recognizes that there is 549 metric tons of K158 waste generated annually. The Agency has collected damage information showing toxicity to wildlife from carbamate active ingredients such as those found in these wastes resulting from their misuse or mismanagement.

K159 Thiocarbamate Organic Wastes. The Agency is proposing to list organics from the treatment of thiocarbamate wastes as Hazardous Waste Number K159. These wastes frequently contain benzene, and toxic thiocarbamate product materials, such as eptam, molinate, and butylate, at percent levels.

EPA's risk assessment estimated high-end individual cancer risk above a 10^{-6} level for inhalation of benzene, assuming plausible mismanagement in open tanks. In addition, because EPA currently lacks inhalation reference levels for the other constituents (eptam, molinate, and butylate), EPA was unable to evaluate potential risks from volatilization of these other constituents. The Agency has damage case information for these wastes involving groundwater contamination.

K160 Thiocarbamate Solids. The Agency is proposing to list solids (including spent carbon, filter wastes, separation solids and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes as Hazardous Waste Number K160. These wastes contain significant concentrations of benzene and percent levels of thiocarbamate product materials, such as eptam, molinate, and butylate. Also, similar to K159 wastes, the Agency was unable to quantify risks from volatilization of eptam, molinate, and butylate. Assuming plausible mismanagement in an unlined landfill, EPA's risk assessment showed high-end individual cancer risks above a 10^{-6} level and non-cancer effects for the ground water, air, and soil ingestion pathways.

In addition to the human health risk assessment results, EPA has records of mismanagement contributing to ground water contamination. These damage cases are discussed in Section III.C.4 of this preamble. Furthermore, the Agency calculated numerous significant terrestrial ecosystem risks, which are presented in Table 23 of this preamble. There is approximately 665 metric tons of K160 waste generated annually.

K161 Dithiocarbamate Solid Wastes. From the dithiocarbamate segment of the industry the Agency is proposing to list purification solids (including filtration, evaporation, and centrifugation solids), and baghouse dust and floor sweepings as Hazardous Waste Number K161. K161 wastes frequently contain carbon disulfide, heavy metals such as lead, nickel, arsenic, selenium, antimony and cadmium, and are comprised largely of reactive dithiocarbamate product

materials such as metam-sodium and ziram, which are highly toxic to aquatic organisms. Because these products readily react in the environment to form other gases or vapors, such as carbon disulfide, hydrogen sulfide, methylisothiocyanate, and amines, which can oxidize to carcinogenic nitrosoamines, the EPA is proposing to require management of these dithiocarbamate wastes as reactive and toxic hazardous wastes. High-end individual cancer risks above a 10^{-6} level and non-cancer effects for wastes disposed in an off-site landfill were estimated, and significant adverse aquatic or terrestrial ecological effects were predicted from airborne transport. The Agency has also collected damage resource information showing the toxicity to wildlife if the wastes containing dithiocarbamate product were mismanaged or the product was misused.

9. Summary Basis for a No-Listing Decision on Wastewaters, and Certain Wastewater Treatment Residuals

The Agency's decision to propose a "no list" determination for a particular waste or waste stream represents a weight of evidence finding that additional regulation is not required to protect human health and the environment based on currently available information. This in no way implies that there is no potential hazard, or that significant environmental damage could not occur from gross mismanagement of the wastes. However, based on a comprehensive survey of the industry, EPA believes that no significant threat exists from normal or plausible mismanagement.

Wastewaters of groups 5, 7, and 8 are generated throughout the carbamate manufacturing processes. Typically, a facility's wastewaters include reactor and tank washwaters, scrubber waters, condenser waters, process decantates, mother liquors, rinsewaters, equipment washes, and rainwater runoff. Several facilities treat wastewaters on site before discharge to a publicly owned treatment works (POTW) or a privately owned treatment works (PrOTW) or through an on-site wastewater treatment plant and then discharge under a National Pollutant Discharge Elimination System (NPDES) permit. Some wastewaters are incinerated and many are recycled back to the process. The Agency has analyzed several of these wastewaters and found that in some cases they may also contain constituents of concern at significant levels.

Most wastewaters are collected and treated in an on-site wastewater treatment plant. As a result, the effluent from the wastewater treatment plant is subject to either the effluent guidelines and pretreatment standards promulgated for the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) industries (52 FR 42522, November 5, 1987) or the Pesticide Chemicals Manufacturing Effluent Limitations, Guidelines, Pretreatment Standards, and New Source Performance Standards. These pesticide chemical manufacturing effluent limitations, guidelines and standards have been promulgated for a limited number of carbamate pesticides (58 FR 50638, September 28, 1993).

In response to the effluent guidelines, a number of facilities may install steam stripping or other technologies to aid in compliance with the new effluent guidelines. The result of such action could be a reduction in the volatile materials currently reaching the wastewater treatment systems, if the stripper heads are recycled.

In addition to the wastewaters proposed as hazardous waste number K157, the Agency also considered the following possible listings for wastewaters:

Group 5—Wastewaters from the production of thiocarbamates and treatment of wastes from thiocarbamate production.

Group 7—Process Wastewater (including supernates, filtrates, and washwaters) from the production of dithiocarbamates.

Group 8—Reactor vent scrubber water from the production of dithiocarbamates.

A large proportion of these streams are treated on site in tanks before discharge under the Clean Water Act (CWA). Current risks were modeled for air emissions from the wastewater treatment units (i.e., tanks). Although the gross mismanagement of these wastewaters in unlined surface impoundments could result in significant environmental harm, management in unlined surface impoundments currently exists only for wastewaters which have been treated to reduce toxicity. Therefore, the Agency determined that for these wastewaters "plausible mismanagement" would be continued management in the open tanks of the existing treatment systems. The Agency is proposing not to list wastewaters from groups 5, 7, and 8, which were modeled and found to not present significant risks from current management practices.

The Agency requests comment on its decisions not to list these wastes, and in particular on its selection of "plausible mismanagement" of the wastewaters to be the current management in tanks. Had the Agency selected "plausible mismanagement" to be "gross mismanagement" such as management in unlined surface impoundments or discharge without treatment, then the significant intrinsic hazard of these wastes would have likely resulted in significantly greater estimates of potential risk. In this case, the Agency surveyed the entire industry and identified all current management practices to be treatment in tanks, except in the last stages of wastewater treatment. The Agency can foresee no reason for these facilities to abandon their current treatment works, and therefore, it is reasonable for the Agency to conclude, for these wastes in this industry, that current practices constitute "plausible mismanagement."

The treatment of wastewaters generates sludges from aqueous separation, neutralization, and biological treatment. The Agency has found that organic/aqueous separator sludges are concentrated organic residuals containing significant levels of the constituents of concern. In contrast, most of the constituents of concern were not detected in wastewater neutralization and biological sludges from the production of carbamate and carbamoyl oxime products. Constituents present in these wastes, when detected, were typically present at levels below 100 times the HBI. Thus, the Agency is proposing to not exempt biological wastewater treatment sludges derived from the production of carbamate and carbamoyl oxime products from the definition of hazardous wastes and to provide an exemption for the source wastewaters provided hazardous air pollutants have been removed.

In addition, a significant volume of spent carbons are generated from the production of carbamate and carbamoyl oxime products. These spent carbons are currently regulated as D022 hazardous wastes due to the leachable concentration of chloroform absorbed on the spent carbon. During its data collection effort in support of this proposal, the Agency characterized the spent carbons and found chloroform to be the driving contaminant of concern. In the Agency's opinion, existing hazardous waste regulations are adequate for these spent carbons, and therefore proposes to narrow the scope of the waste grouping of solids from the production of carbamates and carbamoyl oximes to focus on bag house dusts and filter/separation solids which are currently not regulated.

Similarly, for organic wastes from the production of dithiocarbamates, the Agency found from its § 3007 Carbamate Industry Survey that all wastes in the grouping were already regulated as either hazardous waste F003 or F005. The Agency feels that these wastes are adequately regulated by existing

regulations, and is proposing not to separately list these wastes as hazardous to avoid redundant regulation.

10. Summary of Basis for Listing For Additional P & U Listings

The 23 materials listed in Table 5 meet the criteria for listing as acute hazardous wastes presented in 40 CFR 261.11(a)(2). They are acutely hazardous because they have been found to be fatal to humans in low doses or in the absence of data on human toxicity, have been shown in animal studies to have an oral (rat) LD50 of less than 50 milligrams per kilogram, a dermal rabbit LD50 of less than 200 milligrams per kilogram, an inhalation (rat) LC50 of less than 2 mg/L, or are otherwise capable of causing or significantly contributing to serious illness. Table 24 presents these commercial chemical products proposed for listing as acute hazardous waste, the oral LD50 (rat), inhalation LC50 (rat), and the dermal LD50 (rabbit). As shown in this table, each of these chemicals meets at least one of these criteria. Consequently, based in part on these aquatic and acute mammalian toxicity data, EPA is proposing to add these 23 materials to the list of hazardous wastes in 40 CFR 261.33(e).

Chemical substances which pose toxic threats to human health or the environment are listed in 40 CFR 261.33(f). For the purposes of identifying compounds to be included on this list, the Agency considers principally the nature of the toxicity (see 40 CFR 261.11(a)(3)(i)) and its concentration (see 40 CFR 261.11(a)(3)(ii)). Concentration of the material will be high because commercial chemicals will consist in a large degree the toxic compound or contain the compound as the sole active ingredient. Table 25 presents aquatic and acute mammalian toxicity data, including the oral LD50 (rat), inhalation LC50 (rat), and dermal LD50 (rabbit), used to support the proposed hazardous waste listing of these toxic commercial chemical products.

In compiling the basic toxicological information contained in Table 25, the Agency found that for many carbamate products or captive intermediates, there was little or no toxicological studies recorded in either the available literature, the Agency's records, or on current Material Safety Data Sheets. To facilitate the assessment of toxicological properties of the chemicals of concern in the production of carbamate chemicals, these chemicals with limited toxicity data were divided into structure-toxicity groups. These groups are:

a. esterase (cholinesterase) inhibiting,
b. other non-cancer toxicity,
c. potentially carcinogenic, and
d. toxic metal (metallocarbamates).

Structure-toxicity surrogates were then selected for each group and their toxicity ascribed to the group members, for which human data are lacking and animal data are inadequate. For most of the constituents, some data on the toxicity of the chemical itself or of its metabolites were available. This information was used to assign the chemicals to one of the four toxicity groups. The assignment of groups was used to develop surrogate health benchmarks for use in the analysis. Although the data were adequate for identifying the toxicity of a chemical, there is considerable uncertainty in assigning surrogate health benchmarks for these chemicals. Further discussion of this approach can be found in "Integrative Evaluation of the Toxicity of Data-Poor Constituents of the Carbamate Waste Listing," available in the docket supporting this proposed rule. See "**ADDRESSES**" section. The Agency believes that this approach is especially valid for such structurally similar chemicals as carbamates. The Agency requests comment on this approach, and any additional toxicity information.

Table 25 also includes four generic listings; one each for each specific chemical group of carbamate products. The Agency feels that these generic descriptions are warranted to help emergency first responders identify the potential hazards of carbamate, carbamoyl oxime, thiocarbamate, and dithiocarbamate products. These descriptions are intended to be analogous to the current Department of Transportation labeling requirements for carbamate pesticides and dithiocarbamate pesticides to speed hazard identification in the advent of future transportation accidents.

The Agency feels such generic product listings are especially appropriate for such structurally similar chemicals as carbamate, carbamoyl oximes, thiocarbamates and dithiocarbamates. As a group this chemicals exhibit significant toxicity to a number of organisms, which has been the basis for the registration and use of a number of these substances as pesticide active ingredients.

As a chemical class dithiocarbamates are highly reactive materials, which are normally utilized as a more stable metal salt. However, even these salts are subject to decomposition to toxic amines, alkylisothiocyanates, and carbon disulfide, and to the oxidation of the amines to form carcinogenic nitrosoamines. The Agency, therefore, believes that the entire class of dithiocarbamate discarded products and spill residues will typically exhibit the characteristic of reactivity and is subject to existing regulation as D003 Characteristic Hazardous Wastes. Because no facility reported current management of these dithiocarbamate products waste as reactive hazardous wastes, the Agency is proposing to separately designate these dithiocarbamate wastes as hazardous wastes.

TABLE 24.—TOXICITY DATA FOR PROPOSED ACUTELY HAZARDOUS COMMERCIAL CHEMICAL PRODUCTS

Proposed waste code	Acutely hazardous wastes CAS name (common name in parentheses)	CAS No.	Oral LD50 (rat) mg/kg	Inh. LC50 (rat) mg/L 4 hr.	Dermal LD50 rabbit mg/kg	Aquatic LC50 mg/L 4 day unless noted
P185	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate).	26419–73–8	1	.....	350	
P186	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[(methylamino)carbonyl]oxime (Thiofanox).	39196–18–4	8.5	0.070	39	
P187	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb).	22781–23–3	64–119 female rat, 72–156 male rat.	0.55 2.2/1hr	566 rat	0.47–1.67 (BG), 1.2–1.5 (Trout), 5.55 (RC).

TABLE 24.—TOXICITY DATA FOR PROPOSED ACUTELY HAZARDOUS COMMERCIAL CHEMICAL PRODUCTS—Continued

Proposed waste code	Acutely hazardous wastes CAS name (common name in parentheses)	CAS No.	Oral LD50 (rat) mg/kg	Inh. LC50 (rat) mg/L 4 hr.	Dermal LD50 rabbit mg/kg	Aquatic LC50 mg/L 4 day unless noted
P127	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate (Carbofuran).	1563-66-2	5	0.017-0.047	885	0.165 (BG), 0.380 (RT)a, 0.872 (FM)a.
P188	Benzoic acid, 2-hydroxy, compd. with (3as-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).	57-64-7	2.5 (mouse)			
P189	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan).	55285-14-8	51	1.53/1hr	>2,000	
P190	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb).	1129-41-5	268	0.475		
P191	Carbamic acid, dimethyl-, 1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan).	644-64-4	25		2,000	0.012/0.5 hr (DM), 0.074/2d (TC).
P192	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester (Isolan).	119-38-0	10.8			10.7 (RT).
P193	Carbamic acid, [1,2- phenylenebis (imino carbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl).	23564-05-8	6,640	1.7	>10,000	11.4/3d (RT), 16/2d (DM).
P194	Ethanimidothioc acid, 2-(dimethylamino)-N- [[(methylamino)carbonyl] oxy]-2-oxo-, methyl ester (Oxamyl).	23135-22-0	2.5 female	0.064 male	740	8.3 (FM).
P195	Ethanimidothioic acid, N,N'-[thiobis [(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb).	59669-26-0	66	0.52	6,310	1.21 (BG), 2.55 (RT).
P196	Manganese, bis(dimethylcarbamodithioato-S,S')-, (Manganese dimethyldithiocarbamate).	15339-36-3	32			
P197	Methanimidamide, N,N-dimethyl-N'-[3-methyl- 4-[[(methylamino)carbonyl] oxy]phenyl]- (Formparanate).	17702-57-7	7.2			
P198	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino) carbonyl]oxy] phenyl]-, monohydro chloride (Formetanate hydrochloride).	23422-53-9	20		10,200	
P128	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester) (Mexacarbate).	315-18-4	14		>500	10.4 (BG), 12 (RT)a, 23.7 (FM), 15.8 (CT)a.
P199	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate (Methiocarb).	2032-65-7	20		>2,000 350 (rat).	0.8 (RT), 0.21 (BG).
P200	Phenol, 2-(1-methylethoxy)-, methylcarbamate (Propoxur).	114-26-1	70	1.44/1hr	800 (Rat)	1.47 (DM), 8.2 (RT)a, 25 (FM)a, 4.8 (BG)a.
P201	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb).	2631-37-0	35		>1,000	28 (TD).
P202	Phenol, 3-(1-methylethyl), methyl carbamate (Hercules AC-5727).	64-00-6	16		40	0.180 (RT).
P203	Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone).	1646-88-4	20	0.14	200	1.017/2d (DL).
P204	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)- (Physostigmine).	57-47-6	3 (mouse)			
P205	Zinc, bis(dimethylcarbamodithioato-S,S')-, (Ziram).	137-30-4	267	0.081	>2,000	0.002/60d (RT), 0.17/4d (FM)[1].

BG: Blue Gill
DS: Daggerblade Shrimp
RT: Rainbow Trout
WM: White Mullet
b: Interperitoneal
CT: Cutthroat Trout
FM: Fathead Minnow
SC: Scud
a: Active ingredient

DP: Daphnia Pulex
DL: Daphnia Laevis
HF: Harlequinfish
TC: Tooth Carp
DM: Daphnia Magna
RC: Red Crayfish
TD: Toad
[1] Recalculation involved

TABLE 25.—TOXICITY INFORMATION FOR PROPOSED TOXIC COMMERCIAL CHEMICAL PRODUCTS

Proposed waste code	Toxic hazardous wastes IUPAC name (common name in parentheses)	CAS No.	Oral LD50 (rat) mg/kg	Inh. LC50 (rat) mg/L 4 hr.	Dermal LC50 rabbit mg/kg	Aquatic LC50 mg/L 4 day unless noted
U360	Carbamates N.O.S					
U361	Carbamoyl Oximes N.O.S					
U362	Thiocarbamates N.O.S					
U363	Dithiocarbamate acids, salts, and/or esters, N.O.S. (This listing includes mixtures of one or more dithiocarbamic acid, salt, or ester.).	.....	.....	.....	.....	
U279	1-Naphthalenol, methylcarbamate (Carbaryl).	63–25–2	230	>3.4	2,000	3.28 (DM), 6.7 (BG), 2.1 (RT), 13.4 (FM).
U364	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol).	22961–82–6	4,640	.....	.....	10 (RT), 25/2d (DM).
U365	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate).	2212–67–1	369	>0.2	3,536	0.32 (BG)a, 14.0 (RT).
U366	2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl-(Dazomet).	533–74–4	320	8.4	7,000	0.28/2d[1] (HF).
U367	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-(Carbofuran phenol).	1563–38–8	.....	.....	.....	16/2d (DP).
U368	Antimony tris (dipentylcarbamodithioato-S,S')-(Antimony trisdipentyldithiocarbamate).	15890–25–2	16,400	.....	16,000	
U369	Antimony, tris[bis(2-ethylhexyl)carbamodithioato-S,S']-, (Antimony tris(2-ethylhexyl)dithiocarbamate).	15991–76–1	16,400	.....	16,000	
U370	Bismuth, tris(dimethylcarbamodithioato-S,S+-, (Methyl bismate).	21260–46–8	>3,000			
U371	Carbamic acid, [(dimethylamino)iminomethyl)] methyl, ethyl ester monohydrochloride (Hexazinone intermediate).	65086–85–3	>11,000			
U280	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban).	101–27–9	527	27.4	23,000	1.16/2d (HF)[1].
U372	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim).	10605–21–7	6,400	.....	>10,000	>3.20 (BG), 0.48 (RT), 0.55/2d (DM).
U373	Carbamic acid, phenyl-, 1-methylethyl ester (Propham).	122–42–9	1,000	.....	>5,000 (Rat).	38 (RT)a, 29 (BG)a, 10 (SC).
U374	Carbamic acid, [[3-[(dimethylamino)carbonyl]-2-pyridinyl]sulfonyl]-phenyl ester (U9069).	112006–94–7	>11,000	>5.7		
U271	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester (Benomyl).	17804–35–2	10,000	>2	>10,000	1.3 (BG), 0.29 (RT), 2.05 (FM)a.
U375	Carbamic acid, butyl-, 3-iodo-2-propynyl ester (Troysan Polyphase).	55406–53–6	372	.....	>2,000	1.1 (RT).
U376	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium dimethyldithiocarbamate).	144–34–3	104 (mouse)			
U377	Carbamodithioic acid, methyl,-monopotassium salt (Potassium n-methyldithiocarbamate).	137–41–7	630	.....	.....	0.012/2d (DM), 0.08 (RT).
U378	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Busan 40).	51026–28–9	590			

TABLE 25.—TOXICITY INFORMATION FOR PROPOSED TOXIC COMMERCIAL CHEMICAL PRODUCTS—Continued

Proposed waste code	Toxic hazardous wastes IUPAC name (common name in parentheses)	CAS No.	Oral LD50 (rat) mg/kg	Inh. LC50 (rat) mg/L 4 hr.	Dermal LC50 rabbit mg/kg	Aquatic LC50 mg/L 4 day unless noted
U277	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate).	95–06–7	850		2,200	
U379	Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate).	136–30–1	670			
U380	Carbamodithioic acid, dibutyl-, methylene ester (Vanlube 7723).	10254–57–6	>16,000		>2,000	
U381	Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate).	148–18–5	1,500		>1,000 (Rat).	0.91/2d (DM).
U382	Carbamodithioic acid, dimethyl-, sodium salt (Dibam).	128–04–1	1,000			0.0064/60d (RT), 0.67/2d (DM).
U383	Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate) (Busan 85).	128–03–0				0.049 (DS).
U384	Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium).	137–42–8	450		800	0.33/1.08d (DM)[1].
U385	Carbamothioic acid, dipropyl-,S-propyl ester (Vernolate).	1929–77–7	1,200		>9,000	2.5 (BG)a, 4.3 (RT)a, 1.8 (SC).
U386	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate).	1134–23–2	1,678		3,000	2.6 (SC)[1].
U387	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb).	52888–80–9	1,820	>4.7	>2,000	
U388	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S-(phenylmethyl) ester (Esprocarb).	85785–20–2	>2,000		>2,000 (rat)	
U389	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester (Triallate).	2303–17–5				6.0/2d (HF)[1].
U390	Carbamothioic acid, dipropyl-, S-ethyl ester (Eptam).	759–94–4	916	4.3	1,460	17 (CT)a.
U391	Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate).	1114–71–2	921		4,640	6.25/2d (WM)[1].
U392	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate).	2008–41–5	4,000		2,000–5,000.	5.5 (BG), 3.6 (RT), 11 (SC).
U393	Copper, bis(dimethylcarbamodithioato-S,S')-, (Copper dimethyldithiocarbamate).	137–29–1				0.15 (FM)[1], 0.32 (BG)[1].
U394	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213).	30558–43–1	>7,000			
U395	Ethanol, 2,2'-oxybis-, dicarbamate (Reactacrease 4–DEG).	5952–26–1	8,300 (mouse)			5.0/2d (RT), 5.0/2d (BG).
U396	Iron, tris(dimethylcarbamodithioato-S,S')-, (Ferbam).	14484–64–1	1,130			.0029/60d (RT), 2.2 (FM), 0.9/2d (DM).
U397	Lead, bis(dipentylcarbamodithioato-S,S')-.	36501–84–5	>10		>4.64	
U398	Molybdenum, bis(dibutylcarbamothioato)-di-.mu.-oxodioxodi-, sulfurized.	68412–26–0	>10,000	>34.4	>10,000	
U399	Nickel, bis(dibutylcarbamodithioato-S,S')- (Nickel dibutyldithiocarbamate).	13927–77–0	17,000			
U400	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-(Sulfads).	120–54–7	200 (mouse) b			
U401	Bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide).	97–74–5				0.038/60d (RT), 2.9/2d (DM).
U402	Thioperoxydicarbonic diamide, tetrabutyl (Butyl Tuads).	1634–02–2	2,350 (mouse)			>0.56/2d (DM).
U403	Thioperoxydicarbonic diamide, tetraethyl (Disulfiram).	97–77–8	8,600			0.009/60d (RT), 0.12/2d (DM).
U404	Ethanamine, N,N-diethyl-(Triethylamine).	121–44–8	460	6/2hr (mouse)	570	137/60d (RT).
U405	Zinc, bis[bis(phenyl methyl)carbamodi thioato-S,S']-(Arazate).	14726–36–4	>2,000			
U406	Zinc, bis(dibutyl carbamodi thioato-S,S')-(Butyl Ziram).	136–23–2	290			

TABLE 25.—TOXICITY INFORMATION FOR PROPOSED TOXIC COMMERCIAL CHEMICAL PRODUCTS—Continued

Proposed waste code	Toxic hazardous wastes IUPAC name (common name in parentheses)	CAS No.	Oral LD50 (rat) mg/kg	Inh. LC50 (rat) mg/L 4 hr.	Dermal LC50 rabbit mg/kg	Aquatic LC50 mg/L 4 day unless noted
U407	Zinc, bis(diethyl carbamodi thioato-S,S')-(Ethyl Ziram).	14324–55–1	2,910			0.24/2d (DM).

BG: Blue Gill
CT: Cutthroat Trout
DL: Daphnia Laevis
DM: Daphnia Magna
DS: Daggerblade Shrimp
FM: Fathead Minnow
HF: Harlequinfish
RC: Red Crayfish
RT: Rainbow Trout
SC: Scud
TC: Tooth Carp
TD: Toad
WM: White Mullet
a: Active ingredient
b: interperitoneal
DP: Daphnia pulex
[1] Recalculation involved

D. Source Reduction

In the Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq., Pub. L. 101–508, November 5, 1990), Congress declared pollution prevention the national policy of the United States. The Act declares that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled or reused in an environmentally safe manner wherever feasible; pollution that cannot be recycled should be treated; and disposal or release into the environment should be chosen only as a last resort. While the Pollution Prevention Act gives first priority to source reduction, RCRA promotes "waste minimization." This section provides a brief discussion of some pollution prevention and waste minimization techniques that facilities may wish to consider exploring.

Pollution prevention, recycle and reuse practices fall into three general groups: Actual production practices, housekeeping practices, and practices that employ the use of equipment that by design promote pollution prevention. Some of these practices/equipment listed below conserve water, others reduce the amount of product in the waste stream, while others may prevent the creation of the waste altogether. EPA acknowledges that some of these practices/equipment may lead to media transfers or increased energy consumption. This information is presented for general information, and is not being proposed as a regulatory requirement.

Production practices include:

- Triple-rinsing raw material shipping containers and returning the rinsate directly to the reactor;
- Scheduling production to minimize changeover cleanouts;
- Segregating equipment by individual product or product "families;"
- Packaging products directly out of reactors;
- Using raw material drums for packaging final products; and
- Dedicating equipment for hard to clean products.

Housekeeping practices include:

- Performing preventative maintenance on all valves, fittings, and pumps;
- Promptly correcting leaky valves and fittings;
- Placing drip pans under valves and fitting to contain leaks;
- Cleaning up spills or leaks in bulk containment areas to prevent contamination of storm or wash wasters.

Equipment that promote pollution prevention by reducing or eliminating waste generation:

- Use of low volume—high pressure hoses for cleaning;
- Drum triple rinsing stations;
- Reactor scrubber systems designed to return captured reactants to the next batch rather than to disposal;
- Construction of material storage tanks with inert liners to prevent contamination of water blankets with contaminants which would prohibit its use in the process;
- Enclosed automated product handling equipment to eliminate manual product packaging; and
- Steam stripping wastewaters to recovery reactants or solvents for reuse.

One or more of these practices was observed to be already implemented at the facilities EPA visited during its engineering site visit and sampling effort in the carbamate industry. The Agency took note that in some cases the ability of a facility to implement further pollution preventions efforts may be inhibited by the manner in which the facility elected to comply with other existing regulations. For example, the Agency observed that facilities dedicated to one or two product lines often dedicated equipment and hence air pollution control scrubbers to the individual processes, where facilities with larger product lines and numerous reactors often chose to treat air emissions in a central control system. The result of this choice is that the facilities with fewer products were able to potentially recover reactants for reuse, while the facilities with central treatment systems generated wastes which were not reusable in any one process. The Agency seeks additional information on any other factors which might inhibit the implementation of the pollution prevention practices described, as well as information on additional pollution prevention practices.

Section 1003 of the Hazardous and Solid Waste Amendments of 1984, a nation policy under the Resource Conservation And Recovery Act (RCRA), was established to "minimize the generation of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling, and reuse and treatment." To further EPA's pollution prevention goals, the Waste Minimization Branch (WMB) in EPA's Office of Solid Waste (OSW) established the RCRA Waste Minimization Action Plan to integrate source reduction and recycling into the National RCRA Program, and RCRA activities into the Agency's Pollution

Prevention Strategy. As part of this effort, EPA attempts to incorporate pollution prevention alternatives in hazardous waste listing determinations.

The residuals reported on EPA's RCRA section 3007 carbamate questionnaire were evaluated for possible pollution prevention opportunities. Each residual and its generating process was examined for a limited number of facilities. As noted in section III.D, a number of possible pollution prevention options were identified for those residuals with waste minimization potential. EPA also performed a literature search to determine the feasibility of the pollution prevention technologies identified. The residuals were then ranked considering quantity of waste generated, impact on the environment, and pollution prevention potential.

A pollution prevention economic analysis was performed for a limited number of facilities. The economic analysis was conducted to estimate the monetary value the carbamate industry forgoes by not instituting pollution prevention programs. Two value components were estimated: Constituent value and avoided costs of disposal. Many constituent values were found in the residuals from the sampling analysis results and/or questionnaire responses. If these constituents were recovered in the production process, it would reduce the cost of raw materials. The avoided cost of disposing of the residuals was estimated using the questionnaire waste management costs. The two component values were added to determine the total revenues of avoided costs (i.e., savings to the facility by implementing pollution prevention programs).

Pollution prevention/waste minimization measures can be tailored to the needs of individual industries, processes, and firms. This approach may make it possible to achieve greater pollution reduction with less cost and disruption to the firm. The Agency's economic analysis of the carbamate industry indicates that there may be monetary benefits to be gained by implementing further waste minimization programs.

The economic analysis result was provided to each individual facility to review and comment. Since the 1990 base year of the questionnaire, some facilities have initiated pollution prevention programs while others had not considered recovering these waste streams until they received the economic analysis but felt there was a possibility for them to reclaim these wastes. The overall theme of the comments from these limited number of facilities indicates that they do not want the current or future regulations to inhibit their ability to perform source reduction and recycling efforts at their facilities.

To this end, the Agency intends to gather information on pollution prevention potential wherever feasible and thus is requesting comment on particular opportunities for additional volume and toxicity reduction through increased recycling or other process changes for carbamate wastes proposed to be listed as hazardous in this rule.

The Agency invites all parties concerned to use this open communication approach to give inputs that might help better promote pollution prevention. Through cooperative efforts such as these, the Agency can better inform the public and make enlightened decisions on regulatory matters. At the same time, the information collected as a response to this proposed rule can be assembled, evaluated, and potentially disseminated through the Agency's technology transfer program, potentially resulting in short-term positive impacts on volume reductions.

Defined process control, waste segregation, and good housekeeping practices can often result in significant volume reduction. Evaluations of existing processes may also point out the need for more complex engineering approaches (e.g., waste reuse, secondary processing of distillation bottoms, and use of vacuum pumps instead of steam jets) to achieve pollution prevention objectives. Simple physical audits of current waste generation and in-plant management practices for the wastes can also yield positive results. These audits often turn up simple non-engineering practices that can be successfully implemented.

Pollution prevention opportunities for the manufacturing processes generating carbamate wastes (K156 through K161) may potentially result in reductions in waste generation.

The Agency is interested in comments and data on such opportunities, including both successful and unsuccessful attempts to reduce waste generation, as well as the potential for volume or toxicity reductions. It is also possible that, owing to previous implementation of waste minimization procedures, some facilities or specific processes have very little potential for decreases in waste generation rates or toxicity. The Agency is particularly interested in such specific information as: (1) Data on the quantities of wastes that have been or could be reduced; (2) a means of calculating percentage reductions that are achievable (accounting for changes in production rates); (3) the potential for reduction in toxicity and mobility of the wastes; (4) the results of waste audits that have been performed; and (5) potential cost savings that can be (or have been) achieved; (6) the feasibility and cost burden that could be faced to reuse/recycle these wastes including an estimated return on investment; (7) lead time required to successfully implement a recovery and/or recycling method; or other methods (such as process modification to improve efficiency) that significantly reduce the volume and/or toxicity of the wastes; and (8) other barriers to implementation.

IV. Applicability of the Land Disposal Restrictions Determinations

A. Request for Comment on the Agency's Approach to the Development of BDAT Treatment Standards

RCRA requires EPA to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984, within six months of the date of identification or final listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). EPA is also required to set "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA Section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Land disposal of wastes that meet treatment standards thus established by EPA is not prohibited. The wastes being proposed for listing in this action would be subject to this requirement once a final rule is promulgated.

A general overview of the Agency's approach in performing analysis of how to develop treatment standards for hazardous wastes can be found in greater detail in section III.A.1 of the preamble to the final rule that set land disposal restrictions (LDR's) for the Third Third wastes (55 FR 22535, June 1, 1990). The framework for the development of the entire Land Disposal Restrictions program was promulgated November 7, 1986. (51 FR 40572).

While the Agency prefers source reduction/pollution prevention and recycling/recovery over conventional treatment, inevitably, some wastes (such as residues from recycling and inadvertent spill residues) will be generated. Thus, standards based on treatment using BDAT will be required to be developed for these wastes, if a

final rule listing them as hazardous is promulgated.

Treatment standards typically are established based on the performance data from the treatment of the listed waste or wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. Treatment standards are established for both wastewater and nonwastewater forms on a constituent-specific basis. The constituents selected for regulation under the Land Disposal Restrictions Program are not necessarily limited to those identified as present in the listings proposed in this action, but include those constituents or parameters that will ensure that the technologies are operated properly.

Although data on waste characteristics and current management practices for wastes proposed in this action have been gathered as part of the administrative record for this rule, the Agency has not completed its evaluation of the usefulness of these data for developing specific treatment standards or assessing the capacity to treat (or recycle) these wastes.

Available treatment performance data show that incineration, chemical hydrolysis, and biological treatment are potentially applicable to carbamate wastes. These technologies have shown some promise, and the data are under review for the purpose of developing treatment standards for K156 through K161. A collection of the available treatment information has been placed in the docket for this rule.

EPA intends to propose treatment standards for K156 through K161 and the proposed P and U wastes in a separate rulemaking. However, EPA specifically is soliciting comment and data on the following as they pertain to the proposed listing of carbamate wastes K156 through K161 as described in this action:

(1) Technical descriptions of treatment systems that are or could potentially be used for these wastes;

(2) Descriptions of alternative technologies that might be currently available or anticipated as applicable;

(3) Performance data for the treatment of these or similar wastes (in particular, constituent concentrations in both treated and untreated wastes, as well as equipment design and operating conditions);

(4) Information on known or perceived difficulties in analyzing treatment residues or specific constituents;

(5) Quality assurance/quality control information for all data submissions;

(6) Factors affecting on-site and off-site treatment capacity;

(7) Information on the potential costs for set-up and operation of any current and alternative treatment technologies for these wastes;

(8) Information on waste minimization approaches.

B. Request for Comment on the Agency's Approach to the Capacity Analyses in the LDR Program

In the land disposal restrictions determinations, the Agency must demonstrate that adequate commercial capacity exists to manage the waste with BDAT standards before it can restrict the listed waste from further land disposal. The Agency performs capacity analyses to determine if sufficient alternative treatment or recovery capacity exists to accommodate the volumes of waste that will be affected by the land disposal prohibition. If adequate capacity exists, the waste is restricted from further land disposal. If adequate capacity does not exist, RCRA section 3004(h) authorizes EPA to grant a national capacity variance for the waste for up to two years or until adequate alternative treatment capacity becomes available, whichever is sooner.

To perform capacity analyses, the Agency needs to determine the volumes of the listed waste that will require treatment prior to land disposal. The volumes of waste requiring treatment depend, in turn, on the waste management practices employed by the listed waste generators. Data on waste management practices for these wastes were collected during the development of this proposed rule. However, as the regulatory process proceeds, generators may decide to minimize or recycle their wastes or otherwise alter their management practices. Thus EPA will update and monitor changes in management practices because these changes will affect the final volumes of waste requiring commercial treatment capacity. Therefore, EPA needs information on current and future waste management practices for these wastes, including the volumes of waste that are recycled, mixed with or co-managed with other waste, discharged under Clean Water Act provisions, and the volumes and types of residuals that are generated by the various management practices applicable to newly listed and identified wastes (e.g., treatment residuals).

The availability of adequate commercial treatment capacity for these wastes determines whether or not a waste is granted a capacity variance under RCRA section 3004(h). EPA continues to update and monitor changes in available commercial treatment capacity because the commercial hazardous waste management industry is extremely dynamic. For example, national commercial treatment capacity changes as new facilities come on-line, as new units and new technologies are added at existing facilities, and as facilities expand existing units. The available capacity at commercial facilities also changes as facilities change their commercial status (e.g., changing from a fully commercial to a limited commercial or captive facility). To determine the availability of capacity for treating these wastes, the Agency needs to consider currently available data, as well as the timing of any future changes in available capacity.

For previous land disposal restriction rules, the Agency performed capacity analyses using data from national surveys including the 1987 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey) and the 1987 National Survey of Hazardous Waste Generators (the Generator Survey). However, these surveys cannot be used to determine the volumes of carbamate wastes requiring treatment, since the wastes were not included in the surveys. Additionally, these surveys may not contain adequate information on currently available capacity to treat newly identified wastes because the data reflect 1986 capacity and do not include facility expansions or closures that have occurred since then. Although adjustments have been made to these data to account for changes in waste management through 1990, this was not done on a consistent basis across all waste management practices.

Data on waste characteristics and management practices have been gathered for the purpose of the carbamates hazardous waste listing determinations in the carbamate RCRA Section 3007 survey. The Agency has compiled the capacity-related information from the survey responses and is soliciting any updated or additional pertinent information.

To perform the necessary capacity analyses in the land disposal restrictions rulemaking, the Agency needs reliable data on current waste generation, waste management practices, available alternative treatment capacity, and planned treatment capacity. The Agency will need the annual generation volumes of waste by each waste code including wastewater and nonwastewater forms, and soil or debris contaminated with these wastes and the quantities stored, treated, recycled, or disposed due to any change of management practices. The Agency also requests data from facilities capable of treating these wastes on their current treatment capacity and any plans they may have in the future to expand or reduce existing capacity. The Agency is

also requesting comments from companies that may be considering developing new hazardous waste treatment capacity. Specifically, the Agency requests information on the determining factors involved in making decisions to build new treatment capacity. Waste characteristics such as pH level, BTUs, anionic character, total organic carbon content, constituents concentration, and physical form may also limit the availability of certain treatment technologies. For these reasons, the Agency requests data and comments on waste characteristics that might limit or preclude the use of any treatment technologies.

V. State Authority

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings proposed in this notice) take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the federal HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Because this proposal (with the exception of the actions proposed under CERCLA authority) will be promulgated pursuant to the HSWA, a state submitting a program modification is able to apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's state authorization regulations (40 CFR part 271) requires that states with final authorization modify their programs to reflect federal program changes and submit the modifications to EPA for approval. The deadline by which the states must modify their programs to adopt this proposed regulation, if it is adopted as a final rule, will be determined by the date of promulgation of a final rule in accordance with § 271.21(e)(2). If the proposal is adopted as a final rule, Table 1 at 40 CFR 271.1 will be amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this proposed rule. These State regulations have not been assessed against the federal regulations being proposed to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law.

It should be noted that authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(i). This proposed rule, if finalized, is neither less stringent than nor a reduction in the scope or the current Federal program and, therefore, states would be required to modify their programs to retain authorization to implement and enforce these regulations.

VI. CERCLA Designation and Reportable Quantities

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in §§ 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA Section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). RQs are the minimum quantity of a hazardous substance that, if released, must be reported to the National Response Center (NRC) pursuant to CERCLA § 103. In this proposal, the Agency is proposing to list the proposed wastes in this action as CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4, but is taking no action to adjust the one-pound statutory RQs for these substances.

Reporting Requirements. Under section 102(b) of CERCLA, all hazardous substances newly designated under CERCLA will have a statutory RQ of one pound unless and until adjusted by regulation. Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or exceeds its RQ shall immediately notify the NRC of the release as soon as that person has knowledge thereof. The toll free number of the NRC is 1–800–424–8802; in the Washington, DC metropolitan area, the number is (202) 426–2675. In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to Know Act of 1986 (EPCRA) requires owners or operators of certain facilities to report the release of a CERCLA hazardous substance to State and local authorities. EPCRA section 304 notification must be given immediately after the release of a RQ or more to the community emergency coordinator of the local emergency planning committee for each area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

If this proposal is promulgated as a final rule, releases equal to or greater than the one-pound statutory RQ will be subject to the requirements described above, unless and until the Agency adjusts the RQs for these substances in a future rulemaking.

TABLE 26.—PROPOSED ONE-POUND STATUTORY RQS FOR PROPOSED K, P, AND U WASTES

Waste code	Constituent of concern	Statutory RQ (pounds)
K156	acetone, acetonitrile, acetophenone, aniline, benomyl, benzene, carbaryl, carbendazim, carbofuran, carbosulfan, chlorobenzene, chloroform, o-dichlorobenzene, hexane, methanol, methomyl, methyl ethyl ketone, methyl isobutyl ketone, methylene chloride, naphthalene, phenol, pyridine, toluene, triethylamine, xylene.	1
K157	acetone, acetonitrile, acetophenone, aniline, benomyl, carbaryl, carbofuran, carbosulfan, chloroform, o-dichlorobenzene, hexane, methanol, methomyl, methyl ethyl ketone, methyl isobutyl ketone, methylene chloride, naphthalene, phenol, pyridine, toluene, xylene.	1
K158	benomyl, carbendazim, carbofuran, carbosulfan, methylene chloride	1
K159	benzene, butylate, eptc, molinate, pebulate, vernolate, thiocarbamate N.O.S	1
K160	benzene, butylate, eptc, molinate, pebulate, vernolate, thiocarbamate N.O.S	1
K161	arsenic, antimony, cadmium, metam-sodium, xylene, ziram, dithiocarbamate product N.O.S	1
P185	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O- [(methylamino)carbonyl]oxime (Tirpate)	1
P187	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb)	1
P188	Benzoic acid, 2-hydroxy, compd. with (3as-cis)- 1,2,3,3a,8,8a-hexahydro-l,3a,8-trimethylpyrrolo[2,3- b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).	1
P189	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro- 2,2-dimethyl-7-benzofuranyl ester (Carbosulfan)	1
P190	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb)	1
P191	Carbamic acid, dimethyl-,1-[(dimethylamino)carbonyl]-5- methyl-1H-pyrazol-3-yl ester (Dimetilan)	1
P192	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H- pyrazol-5-yl ester (Isolan)	1
P193	Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl)	1
P194	Ethanimidothioc acid, 2-(dimethylamino)-N- [[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl)	1
P195	Ethanimidothioic acid, N,N'- [thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb)	1
P196	Manganese, bis(dimethylcarbamodithioato-S,S')- (Manganese dimethyldithiocarbamate)	1
P197	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4- [[(methylamino)carbonyl]oxy]phenyl]- (Formparanate)	1
P198	Methanimidamide, N,N-dimethyl-N'-[3- [[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	1
P201	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb)	1
P202	Phenol, 3-(1-methylethyl), methyl carbamate (Hercules AC-5727)	1
P203	Propanal, 2-methyl-2-(methylsulfonyl)-, O- [(methylamino)carbonyl] oxime (Aldicarb sulfone)	1
P204	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8- trimethyl-, methylcarbamate (ester), (3aS-cis)- (Physostigmine).	1
P205	Zinc, bis(dimethylcarbamodithioato-S,S')-, (T-4)- (Ziram)	1
U360	Carbamates N.O.S	1
U361	Carbamoyl Oximes N.O.S	1
U362	Thiocarbamates N.O.S	1
U363	Dithiocarbamate acids, salts, and/or esters N.O.S., (This listing includes mixtures of one or more dithiocarbamate acid, salt, and/or ester.).	1
U364	1,3-Benzodioxol-4-ol, 2,2-dimethyl- (Bendiocarb phenol)	1
U365	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate)	1
U366	2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl- (Dazomet)	1
U367	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol)	1
U368	Antimony, tris(dipentylcarbamodithioato-S,S')- (Antimony trisdipentyldithiocarbamate)	1
U369	Antimony, tris[bis(2-ethylhexyl)carbamodithioato-S,S']- (Antimony tris(2-ethylhexyl)dithiocarbamate)	1
U370	Bismuth, tris(dimethylcarbamodithioato-S,S'-, (Methyl bismate)	1
U280	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban)	1
U371	Carbamic acid, [(dimethylamino)iminomethyl)] ethyl ester monohydrochloride (Hexazinone intermediate)	1
U372	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim)	1
U373	Carbamic acid, phenyl-, 1-methylethyl ester (Propham)	1
U271	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2- yl]-, methyl ester (Benomyl)	1
U374	Carbamic acid, [[3-[(dimethylamino)carbonyl]-2- pyridinyl]sulfonyl]-phenyl ester (U9069)	1
U375	Carbamic acid, butyl-, 3-iodo-2-propynyl ester (Troysan Polyphase)	1
U376	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium dimethyldithiocarbamate).	1
U377	Carbamodithioic acid, methyl,- monopotassium salt (Potassium n-methyldithiocarbamate)	1
U378	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Busan 40)	1
U379	Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate)	1
U380	Carbamodithioic acid, dibutyl-, methylene ester (Vanlube 7723)	1
U381	Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate)	1
U277	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate)	1
U382	Carbamodithioic acid, dimethyl-, sodium salt (Dibam)	1
U383	Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate) (Busan 85)	1
U384	Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium)	1
U385	Carbamothioic acid, dipropyl-,S-propyl ester (Vernolate)	1
U386	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate)	1
U387	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb)	1
U388	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S- (phenylmethyl) ester (Esprocarb)	1
U389	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3- trichloro-2-propenyl) ester (Triallate)	1
U390	Carbamothioic acid, dipropyl-, S-ethyl ester (Eptam)	1

TABLE 26.—PROPOSED ONE-POUND STATUTORY RQS FOR PROPOSED K, P, AND U WASTES—Continued

Waste code	Constituent of concern	Statutory RQ (pounds)
U391	Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate)	1
U392	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate)	1
U393	Copper, bis(dimethylcarbamodithioato-S,S')- (Copper dimethyldithiocarbamate)	1
U394	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213)	1
U395	Ethanol, 2,2'-oxybis-, dicarbamate (Reactacrease 4-DEG)	1
U396	Iron, tris(dimethylcarbamodithioato-S,S')-, (Ferbam)	1
U397	Lead, bis(dipentylcarbamodithioato-S,S')-1.	
U398	Molybdenum, bis(dibutylcarbamothioato)di-.mu.-oxodioxodi-, sulfurized	1
U399	Nickel, bis(dibutylcarbamodithioato-S,S')- (Nickel dibutyldithiocarbamate)	1
U400	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis- (Sulfads)	1
U401	bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide)	1
U402	Thioperoxydicarbonic diamide, tetrabutyl (Butyl Tuads)	1
U403	Thioperoxydicarbonic diamide, tetraethyl (Disulfiram)	1
U404	Zinc, bis[bis(phenylmethyl)carbamodithioato-S,S']- (Arazate)	1
U405	Zinc, bis(dibutylcarbamodithioato-S,S')- (Butyl Ziram)	1
U406	Zinc, bis(diethylcarbamodithioato-S,S')- (Ethyl Ziram)	1

VII. Compliance Dates

A. Notification

Under the RCRA section 3010 any person generating, transporting, or managing a hazardous waste must notify EPA (or an authorized State) of its activities. Section 3010(a) allows EPA to waive, under certain circumstances, the notification requirement under section 3010 of RCRA. If these hazardous waste listings are promulgated, EPA is proposing to waive the notification requirement as unnecessary for persons already identified within the hazardous waste management universe (i.e., persons who have an EPA identification number under 40 CFR 262.12). EPA is not proposing to waive the notification requirement for waste handlers who have neither notified the Agency that they may manage hazardous wastes nor received an EPA identification number. Such individuals will have to provide notification under section 3010.

B. Interim Status and Permitted Facilities

Because HSWA requirements are applicable in authorized States at the same time as in unauthorized States, EPA will regulate K156 through K161 and the P and U listed wastes until States are authorized to regulate these wastes. Thus, once this regulation becomes effective as a final rule, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized States.

VIII. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because of policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

IX. Economic Impact Analysis

This section of the preamble summarizes the costs and the economic impact analysis (EIA) for the proposed carbamate hazardous waste listings. Based upon the EIA for this proposal, the Agency estimates that the listing of the six carbamate production wastes discussed above may result in nationwide annualized costs of at least $890,000. A complete discussion of the EIA is available in the regulatory docket for this proposed rule in a report entitled "Economic Impact Analysis of the Identification and Listing of Carbamate Production Waste," January 26, 1994.

A. Compliance Costs for Proposed Listings

The remainder of this section briefly describes (1) the universe of carbamate production facilities and volumes of carbamate production wastes in the 6 waste groups proposed for hazardous waste listing, (2) the methodology for determining incremental cost and economic impacts to regulated entities, and (3) the regulatory flexibility analysis. Results of the analysis are summarized in section 3, Tables 30 and 31.

1. Universe of Carbamate Production Facilities and Waste Volumes

In order to estimate costs for the EIA, it was first necessary to estimate total annual generation of carbamate production wastes. As described in section III of this preamble, the carbamate production industry is composed of 64 chemical products produced by 20 manufacturers at 24 facilities. Total annual waste quantities generated by these facilities were derived from a 1990 survey of the carbamate production industry. Table 27 presents the total waste quantities reported, by waste group, for the carbamate production industry.

TABLE 27.—1990 TOTAL WASTE QUANTITIES OF CONCERN, BY WASTE GROUP, REPORTED BY THE CARBAMATE PRODUCTION INDUSTRY

Waste category (Quantities given in Metric tons per year)	Total quantity reported
Category 1—Organic wastes from the production of carbamates and carbamoyl oximes	126,000
Category 2—Wastewaters from the production of carbamates and carbamoyl oximes	269,000

TABLE 27.—1990 TOTAL WASTE QUANTITIES OF CONCERN, BY WASTE GROUP, REPORTED BY THE CARBAMATE PRODUCTION INDUSTRY—Continued

Waste category (Quantities given in Metric tons per year)	Total quantity reported
Category 3—Solids from the production of carbamates an carbamoyl oximes	1,390
Category 4—Organic wastes from the production of thiocarbamates	500
Category 5—Wastewaters from the production of thiocarbamates	344,000
Category 6—Solids from the production of thiocarbamates	700
Category 7—Process wastewater from the production of dithiocarbamates	51,000
Category 8—Reactor vent scrubber water from the production of dithiocarbamates	46,000
Category 9—Purification solids from the production of dithiocarbamates	3,400
Category 10—Organic wastes from the production of dithiocarbamates	400
Total:	*839,500

*Numbers may not add due to rounding.

2. Method for Determining Cost and Economic Impacts

This section details EPA's approach for estimating the incremental compliance cost and the economic impacts attributable to the listing of carbamate production waste. Because the carbamate production industry is relatively small (only 20 manufacturers at 24 facilities in 1990), EPA was able to collect facility-specific information and estimate incremental costs at the waste stream level. The information used in this analysis was collected in 1990 under the authority of a RCRA section 3007 survey; the survey included engineering site visits, and sampling and analysis of waste streams.

Approach to the Cost Analysis

EPA's approach to the cost analysis for this proposal was to compare the cost of current management practices, as reported in the 3007 survey of carbamate production facilities, with the projected cost of management to comply with the RCRA Subtitle C hazardous waste program as would be required by the proposed rule. This difference in cost, when annualized,[9] represents the incremental annual compliance cost attributable to the proposed rule.

Baseline or Current Management Scenario

Relying on survey responses and engineering site visits, EPA was able to determine the current (i.e., 1990) management practices for the handling and disposal of carbamate production wastes. Current management practices varied among facilities and waste streams, and included such practices as off-site incineration, deep-well disposal, on-site destruction in boilers, and off-site landfilling. These current management practices at each facility represent the baseline scenario of the analysis.

As part of the 3007 survey, EPA asked each facility to identify current costs for the management of carbamate production wastes. For this analysis, EPA has relied on and has not changed the industry's own waste-specific estimates concerning the cost of current management. EPA realizes that future events such as waste minimization efforts or increased demand for carbamate products may change waste generation volumes and, thus, future waste management costs.

Post-Regulatory Management Scenarios

In predicting how industry would comply with the listing of carbamate production waste as RCRA hazardous waste, EPA developed nine post-regulatory management scenarios, described below, that represent plausible management reactions on the part of industry. EPA developed these post-regulatory management categories based on its knowledge of current waste management and the physical and chemical properties of the waste.

Management Category (MC) 1: Wastes Currently Managed as Hazardous Waste, Either On or Off Site

EPA assumed in this post-regulatory scenario, that wastes would continue to be managed as in the baseline scenario. On-site hazardous waste management implies that there already exists a RCRA Subtitle C permitted (or interim status) unit at the facility, such as a RCRA permitted incinerator. If wastes are managed as hazardous on site, the incremental change due to the proposed rule would be to modify the RCRA permit (or interim status/permit application) to account for the new listing of carbamate production waste.[10] If wastes are managed as hazardous off site, the incremental change would be the cost from the completion of a waste generator manifest.

Management Category 2: Wastes Currently Managed in Boilers Subject to BIF Requirements[11]

EPA assumed that these wastes would continue to be managed in boilers. If the boiler is on site, costs for a Class II incinerator permit modification and manifest and biennial reporting would be incurred, similar to management Category 1. If the waste is sent to off-site boilers subject to BIF requirements, the only incremental cost would be that for completing the manifest.

Management Category 3: Wastes Currently Managed in On Site, Subtitle D, Non-hazardous Waste Incinerators

EPA assumed that post-regulatory management would be off site at the nearest commercial hazardous waste (i.e., RCRA Subtitle C permitted) incinerator.[12] In addition to the commercial treatment and transportation costs, the post-regulatory management of these wastes would include contingency plan maintenance, biennial reporting, and manifesting.

Management Category 4: Wastes Currently Discharged Under National Pollution Discharge Elimination System (NPDES) Permits, Treated at Publicly Owned Treatment Works (POTWs) Under the Clean Water Act, Privately Owned Treatment Works, or On-Site Wastewater Treatment Systems

EPA assumed that the post-regulatory management of these wastes as a result of this proposal would be the same as baseline management, because the systems or wastes would still be, either exempt from RCRA regulation (see 40 CFR 264.1(g)(6)), or that the systems are already covered under a RCRA permit by rule (see 40 CFR 265.1(c)(10)), and would therefore not incur any significant incremental costs. Consequently, the only incremental cost attributed to this proposal is for contingency plan maintenance and biennial reporting.

Management Categories 5 and 6: Wastes Currently Being Recycled (Category No. 5) or Recovered (Category No. 6)

No incremental cost is attributed to these waste volumes as recycled wastes were assumed to be exempt from RCRA Subtitle C regulation.[13]

[9] Costs are discounted at a rate of 7 percent over a 20 year period.

[10] For this category, EPA assumed that the facility would need a RCRA Class II permit modification to the facility's annual contingency plan maintenance and biennial reporting.

[11] Boilers and Industrial Furnaces.

[12] EPA estimated each of facility-to-commercial incinerator distance from road maps.

[13] Because of the complexities of RCRA recycling and reuse, it is possible that these carbamate production wastes are recycled in a manner that is

Management Category 7: Wastes Currently Managed Off Site in Subtitle D, Non-Hazardous Waste Incinerators

EPA assumed that this waste will continue to be shipped off site, but to the nearest commercial hazardous waste incinerator. In addition to treatment costs, incremental costs would include those for contingency plan maintenance, manifesting, and biennial reporting.

Management Categories 8 and 9: Wastes Currently Managed in Subtitle D Landfills (Category No. 8 for Wastes Managed Off Site, and Category No. 9 for Wastes Managed On Site)

In the post-regulatory scenario, wastes in both categories would be shipped off site to the nearest commercial Subtitle C hazardous waste landfill. Commercial landfilling costs, biennial reporting, and manifesting would present incremental costs associated with this proposal.

Management Category 10: Segregation of Subtitle D Wastes Currently Commingled

In the post-regulatory scenario, wastes currently commingled with industrial or process trash and managed in Subtitle D landfills may incur separation costs. The process trash will be managed in the current fashion, while the listed waste will be managed under Subtitle C facilities. Carbamate producers must devote labor and capital to separate these materials and devote space to storage.

Unit costs for Subtitle C treatment (i.e., incineration) or land disposal, waste transportation between facilities, permit modifications, maintenance of contingency plans, manifesting and biannual reporting system (BRS) reporting are contained in Table 28 below. The total volume of waste affected by each waste management category described above are presented below in Table 29. EPA requests comments on these cost estimates.

TABLE 28.—POST-REGULATORY WASTE MANAGEMENT UNIT COST ESTIMATES

	Cost (1992 $)	Source
Commercial hazardous waste incineration	$1,600 per metric ton	SAIC/ICF analysis.
Commercial hazardous waste landfill	$200 per metric ton	SAIC/ICF analysis.
Hazardous waste transportation	$0.27 per metric ton per mile if under 200 miles $0.24 per metric ton per mile if over 200 miles	SAIC analysis.
Class II on-site hazardous waste landfill permit modification [1].	$80,102	ICF analysis.
Class II on-site hazardous waste incinerator permit modification [1].	$40,585	ICF analysis.
Other class II on-site hazardous waste treatment permit modification.	$7,476	ICF analysis.
Segregation of Industrial Subtitle D waste	$10 per metric ton	EPA estimate.
Maintenance of contingency plan	$200 per facility per year	Source a.
Manifesting [2]	$36 per shipment	Sources b, c.
BRS reporting	$428 per facility per year	Sources c, d.

[1] Permit modification costs were assumed to be incurred no more than once for each type of treatment at each facility. These costs were annualized over 20 years using a discount rate of 7 percent.

[2] Manifest completion costs were assumed to be incurred once a year for each waste shipped off site. One shipment was assumed to equal one truckload of 20 tons.

Sources: a. "Estimating Costs for the Economic Benefits of RCRA Non-compliance," Draft Report prepared by DPRA for Office of Waste Programs Enforcement, U.S. Environmental Protection Agency, May 1993.

b. ICF No. 801 "Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System," June 15, 1992.

c. *Employment and Earnings*, Bureau of Labor Statistics, March 1993.

d. "1991 Hazardous Waste Report," U.S. Environmental Protection Agency.

TABLE 29.—TOTAL CARBAMATE PRODUCTION WASTE QUANTITIES AND TOTAL INCREMENTAL ANNUAL COST INCURRED BY EACH POST-REGULATORY WASTE MANAGEMENT CATEGORY

Post-regulatory waste management scenario	Total quantity of carbamate production waste affected (in metric tons)	Total annualized incremental cost incurred
MC 1	234,000	$25,600
MC 2	6,400	8,200
MC 3	1	700
MC 4	809,900	776,700
MC 5 and 6	2,700	200
MC 7	0	20
MC 8 and 9	200	58,100
MC 10	4,100	41,000
Total [1]	840,000	910,000

[1] Numbers may not add due to rounding.

Specific Analysis of K157 Wastewaters

EPA examined two scenarios for the post-regulatory management of K157 wastewaters. The first scenario assumed that K157 wastewaters would continue to be sent through NPDES-permitted discharges or to POTWs, but that (1) sludge would be managed as hazardous waste, (2) surface impoundments would be closed and converted to tanks. The second scenario assumed that wastewaters would be treated by steam stripping before discharge into centralized wastewater treatment systems. Exemption of these sludges from the definition of hazardous waste was found to not impact the incremental costs, which are dominated by impoundment conversion costs.

not exempt from RCRA permitting and other requirements. Without further investigation of each process configuration it is impossible to determine which wastes would continue to be recycled or recovered in the post-regulatory scenario. There are 2,630 metric tons assigned to management categories 5 and 6, if all this waste was to be shipped off site to a Subtitle C hazardous waste landfill (at $200/metric ton), then the incremental annualized cost reported in this analysis would increase by at least $530,000.

For the first K157 wastewater scenario, EPA reviewed the information collected as part of the RCRA section 3007 survey. The facility-specific information shows that only two facilities employ operational surface impoundments (as of 1990). EPA thus calculated the costs associated with the closure of the surface impoundments and conversion to tanks. The EIA technical background document contains details of these cost calculations. EPA estimated that the costs associated with the first scenario to be approximately $760,000 per year.

For the second K157 wastewater scenario, EPA explored the possibility of off-site steam stripping as well as constructing on-site steam stripping units. EPA identified seven facilities with K157 wastewater streams in significant quantities to merit construction of on-site steam stripping units. For these facilities, EPA calculated rough engineering cost estimates for the on-site systems, both for capital costs and annual operation and maintenance. EPA identified two additional facilities which did not produce significant quantities of K157 wastewaters to merit construction of on-site steam stripping units. For volumes generated by these facilities (approximately 400 tons), EPA estimated the total annualized cost of off-site steam stripping.[14] The total estimated annualized cost for scenario two is $6.4 million.

Because the K157 incremental annualized cost of scenario two is more than seven times that of scenario one, EPA assumed that industry would minimize its cost by adopting the lower-cost management.[15] The costs estimated for scenario one have been used in the total costs for K157 wastes reported below.

3. P and U List Wastes

EPA has not estimated the amounts of P and U wastes that are generated annually by the carbamate producers or wastes resulting from spills or other one-time generation occurrences. EPA would appreciate any comment concerning the costs of on-going P and U waste generation as well as costs resulting from spills and other such incidents. Similarly, EPA has not explored the possible use of carbamate products for the precipitation of metals in the waste treatment of other industries.

4. Potential Remedial Action Costs

In addition to carbamate process wastes, the proposed carbamate hazardous waste listing could affect the management of soils, ground water, and other remedial materials. The Agency's "contained in" policy defines certain remediation wastes "containing" a listed hazardous waste as a RCRA hazardous waste. It is possible that areas of past carbamate waste management, spills, or disposal, which met the proposed K156–K161 listing description at the time they were placed on the land, may still have contaminant concentrations which exceed "contained in" levels. A person who disturbs such material could become a generator of RCRA hazardous waste. The likelihood of this imposing a significant additional burden is low since at least 22 of 24 carbamate production facilities are already permitted TSDFs. Releases from all solid waste management units at these TSDFs, including those that in the future would be found to contain a waste meeting the carbamate listing descriptions, are already covered by facility-wide cleanup rules under 40 CFR 264.101. This issue would be more likely to arise from historical offsite management at facilities that were not TSDs.

There are two remedial possibilities for land containing this material. First, it may be possible to not disturb the contaminated area or manage the material in place with source controls or in situ treatment and thus avoid generating a hazardous waste. Owners may be unable to make full value use of the land. In this case, the cost under this scenario is the difference between the cost of the land at its highest valued use and the cost of the land at the lower value. The Agency also recognizes that under this alternative property owners surrounding these locations may experience a change in their property values but this is difficult to evaluate. Second, owners may excavate the material. If the material contains a hazardous waste owners would bear hazardous waste treatment, disposal, management, and potentially permitting costs. Owners and EPA are likely to prefer the first alternative when that action is protective of human health and the environment.

The Agency requests comment on the likely costs associated with remediation of wastes found to contain the wastes identified for listing in today's proposal. The Agency is interested in estimates of potential remedial wastes that would be defined as hazardous under RCRA because of this proposed listing and the potential management costs. EPA specifically requests comments on the number of carbamate production facilities already subject to federal (e.g., RCRA Corrective Action) or state authorities compelling owners to clean up their entire facility, including areas of past K165–K161 management, both onsite and offsite.

5. Summary of Results

Table 30 presents a summary of estimated national incremental annualized compliance costs, by waste group,[16] associated with this proposal to list certain carbamate production wastes as hazardous.

TABLE 30.—SUMMARY OF ESTIMATED NATIONAL INCREMENTAL ANNUALIZED COMPLIANCE COSTS (1992 DOLLARS/YEAR) [1]

Waste group	RCRA waste code	Annual incremental compliance cost
1	K156	$14,000
2	K157	770,000
3	K158	37,000
4	K159	1,200
6	K160	2,100
9	K161	69,000
Total		[2] 890,000

[1] Numbers may not add up due to rounding.
[2] EPA also estimated the incremental compliance costs associated with waste groups 5, 7, 8 and 10, which are not recommended for listing under today's proposal. If listed, total incremental annual compliance costs for these waste groups are estimated to be $22,000.

Table 30 presents the annual incremental compliance costs as they correspond to the RCRA waste codes proposed for listing (i.e., K156 through K160). Please note that these codes correspond directly to the waste groups proposed for listing under this proposal (i.e., groups 1, 2, 3, 4, 6 and 9). As indicated in Table 30 the total annual incremental compliance cost attributable to this proposal is $890,000. Waste category 2 (i.e., K157—wastewaters from the production of carbamates and carbamoyl oximes) constitutes 86[17] percent of national incremental compliance cost. Waste category 9 (i.e., K161—purification solids, bag-house dust, and floor

[14] Recent vendor quotes of off-site steam-stripping showed a cost of $0.75 per gallon (approximately $200 per metric ton).

[15] EPA also considered facility specific comparisons between scenarios one and two. It should be noted that, under scenario one, given the worst possible case (conversion of three surface impoundments, one tank cover and sludge disposal) costs were still favorable to those that would be incurred by the same facility under scenario two.

[16] For a detailed description of these waste groupings, please refer to Table 27 of this preamble.

[17] The bulk of this cost (99 percent) is attributable to one facility for the conversion of three surface impoundments to tanks. The ratio of total annual incremental cost that would be incurred by this facility, to annual revenues for the entire company, is less than 1 percent.

sweepings from the production of dithiocarbamates) constitutes 5 percent; and waste category 3 (i.e., K158—solids from the production of carbamate and carbamoyl oxime products) constitutes 3 percent of national incremental compliance cost. The remaining 1 percent are distributed among other waste groups.

B. Regulatory Flexibility Analysis

Table 31 presents the estimated annualized incremental compliance costs borne by the five small businesses [18] in the carbamate production industry. The annual incremental cost of the rule for the five facilities ranged from $628 to $772. The greatest ratio of compliance cost to sales is 0.01%, thus, EPA concluded that no small businesses are significantly affected by this rule.

TABLE 31.—RESULTS OF THE REGULATORY FLEXIBILITY ANALYSIS

Facility	Annual incremental cost of rule	Annual sales (millions)	Annual cost of compliance/annual sales (percent)
1	$772	$17.8	<0.01
2	628	110	<0.01
3	664	6.6	<0.01
4	628	45	<0.01
5	736	19	<0.01

X. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered which mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

If, however, the head of the Agency certifies that the rule will not have a significant impact on a substantial number of small entities, no regulatory flexibility analysis is required. Of the 24 entities which are directly subject to this proposed rule, 18 entities would incur incremental compliance costs. Of the 18 affected facilities, 4 entities fit the definition of a "small entity" as defined by the Regulatory Flexibility Act.[19] The annual incremental cost impact to these 4 entities ranges from $600 to $800. For each of the 4 facilities impacted, these annual costs constitute less than 1 percent of total annual sales. EPA believes that these costs do not represent a significant impact. Hence, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), "the Administrator certifies that this rule will not have a significant economic impact on a substantial number of entities."

XI. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: January 31, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR parts 261, 271, and 302 are proposed to be amended as follows:

Part 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.3 is amended by adding paragraphs (a)(2)(iv)(F) and (c)(2)(ii)(D) to read as follows.

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(iv) * * *

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(D) Biological treatment sludge from the treatment of one of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157).

* * * * *

3. Section 261.32 is amended by adding in alphanumeric order (by the first column) the following waste streams to the subgroup "Pesticides" to read as follows.

§ 261.32 Hazardous wastes from specific sources.

* * * * *

[18] A small business is defined by the Small Business Size Regulations (13 CFR part 121) as one with under 500 employees.

[19] According to "EPA Guidelines for Implementing the Regulatory Flexibility Act" (April, 1992), any producer of pesticides and agricultural chemicals (SIC 2879) with less than 500 employees constitutes a "small entity." None of the entities which would incur incremental compliance costs as a result of this proposal have less than 500 employees.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
	* * * * *	
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.	(T)
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.	(T)
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.	(T)
K159	Organics from the treatment of thiocarbamate wastes	(T)
K160	Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.	(T)
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts. (This listing does not include K125 or K126.).	(R,T)
	* * * * *	

4. Sections 261.33(e) and (f) are amended by adding in alphabetic order (by the third column) the following substances to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

(e) * * *

* * * * *

Hazardous waste No.	Chemical abstracts No.	Substance
*	*	* * * * *
P187	22781–23–3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb).
P127	1563–66–2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate (Carbofuran).
P188	57–64–7	Benzoic acid, 2-hydroxy, compd. with (3aS-cis)- 1,2,3,3a,8,8a-hexahydro-1,3a,8- trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).
*	*	* * * * *
P189	55285–14–8	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3- dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan).
P191	644–64–4	Carbamic acid, dimethyl-, 1- [(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan).
P192	119–38–0	Carbamic acid, dimethyl-, 3-methyl-1-(1- methylethyl)-1H-pyrazol-5-yl ester (Isolan).
P190	1129–41–5	Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb).
P193	23564–05–8	Carbamic acid, [1,2- phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl).
*	*	* * * * *
P185	26419–73–8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O- [(methylamino)carbonyl]oxime (Tirpate).
*	*	* * * * *
P194	23135–22–0	Ethanimidothioc acid, 2-(dimethylamino)-N- [[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl).
P195	59669–26–0	Ethanimidothioic acid, N,N'- [thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb).
*	*	* * * * *
P196	15339–36–3	Manganese, bis(dimethylcarbamodithioato-S,S')-, (Manganese dimethyldithiocarbamate).
*	*	* * * * *
P198	23422–53–9	Methanimidamide, N,N-dimethyl-N'-[3- [[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).
P197	17702–57–7	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4- [[(methylamino)carbonyl]oxy]phenyl]- (Formparanate).
*	*	* * * * *
P128	315–18–4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester) (Mexacarbate).
P199	2032–65–7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate (Methiocarb).
*	*	* * * * *
P200	114–26–1	Phenol, 2-(1-methylethoxy)-, methylcarbamate (Propoxur).
P202	64–00–6	Phenol, 3-(1-methylethyl), methyl carbamate (Hercules AC–5727).
*	*	* * * * *
P201	2631–37–0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb).

Hazardous waste No.	Chemical abstracts No.	Substance
*	*	* * * * *
P203	1646–88–4	Propanal, 2-methyl-2-(methylsulfonyl)-, O- [(methylamino)carbonyl] oxime (Aldicarb sulfone).
*	*	* * * * *
P204	57–47–6	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro- 1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)- (Physostigmine).
*	*	* * * * *
P205	137–30–4	Zinc, bis(dimethylcarbamodithioato-S,S')-, (Ziram).
*	*	* * * * *
(f) * * *		
*	*	* * * * *
U369	15991–76–1	Antimony, tris[bis(2-ethylhexyl)carbamodithioato- S,S']-, (Antimony tris(2-ethylhexyl)dithiocarbamate).
U368	15890–25–2	Antimony tris(dipentylcarbamodithioato-S,S')- (Antimony trisdipentyldithiocarbamate).
U365	2212–67–1	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate).
*	*	* * * * *
U364	22961–82–6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol).
U367	1563–38–8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol).
*	*	* * * * *
U401	97–74–5	Bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide).
U370	21260–46–8	Bismuth, tris(dimethylcarbamodithioato-S,S'-, (Methyl bismate).
*	*	* * * * *
U360	.....	Carbamates N.O.S.
U372	10605–21–7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim).
U271	17804–35–2	Carbamic acid, [1-[(butylamino)carbonyl]-1H- benzimidazol-2-yl]-, methyl ester (Benomyl).
U375	55406–53–6	Carbamic acid, butyl-, 3-iodo-2-propynyl ester (Troysan Polyphase).
U280	101–27–9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2- butynyl ester (Barban).
U380	10254–57–6	Carbamodithioic acid, dibutyl-, methylene ester (Vanlube 7723).
U277	95–06–7	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate).
U374	112006–94–7	Carbamic acid, [[3-[(dimethylamino)carbonyl]-2- pyridinyl]sulfonyl]-phenyl ester (U9069).
U371	65086–85–3	Carbamic acid, [(dimethylamino)iminomethyl)] methyl, ethyl ester monohydrochloride (Hexazinone intermediate).
*	*	* * * * *
U373	122–42–9	Carbamic acid, phenyl-, 1-methylethyl ester (Propham).
*	*	* * * * *
U379	136–30–1	Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate).
U381	148–18–5	Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate).
U383	128–03–0	Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate) (Busan 85).
U382	128–04–1	Carbamodithioic acid, dimethyl-, sodium salt (Dibam).
U376	144–34–3	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium dimethyldithiocarbamate).
*	*	* * * * *
U378	51026–28–9	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Busan 40).
U384	137–42–8	Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium).
U377	137–41–7	Carbamodithioic acid, methyl,- monopotassium salt (Potassium n-methyldithiocarbamate).
*	*	* * * * *
U389	2303–17–5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3- trichloro-2-propenyl) ester (Triallate).
U392	2008–41–5	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate).
U391	1114–71–2	Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate).
U386	1134–23–2	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate).
U388	85785–20–2	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S- (phenylmethyl) ester (Esprocarb).
U390	759–94–4	Carbamothioic acid, dipropyl-, S-ethyl ester (Eptam).
U385	1929–77–7	Carbamothioic acid, dipropyl-, S-propyl ester (Vernolate).
U387	52888–80–9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb).
U361	.....	Carbamoyl Oximes N.O.S.
*	*	* * * * *
U393	137–29–1	Copper, bis(dimethylcarbamodithioato-S,S')-, (Copper dimethyldithiocarbamate).

Hazardous waste No.	Chemical abstracts No.	Substance
*	*	*
U363	.....	Dithiocarbamate acids, salts, and/or esters, N.O.S. (This listing includes mixtures of one or more dithiocarbamic acid, salt, or ester.)
*	*	*
U404	101–44–8	Ethanamine, N,N-diethyl- (Triethylamine).
*	*	*
U394	30558–43–1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy- 2-oxo-, methyl ester (A2213).
*	*	*
U395	5952–26–1	Ethanol, 2,2'-oxybis-, dicarbamate (Reactacrease 4-DEG).
*	*	*
U396	14484–64–1	Iron, tris(dimethylcarbamodithioato-S,S')-, (Ferbam).
*	*	*
U397	36501–84–5	Lead, bis(dipentylcarbamodithioato-S,S')-
*	*	*
U398	68412–26–0	Molybdenum, bis(dibutylcarbamothioato)di-.mu.- oxodioxodi-, sulfurized.
*	*	*
U279	63–25–2	1-Naphthalenol, methylcarbamate (Carbaryl).
*	*	*
U399	13927–77–0	Nickel, bis(dibutylcarbamodithioato-S,S')- (Nickel dibutyldithiocarbamate).
*	*	*
U400	120–54–7	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis (Sulfads).
*	*	*
U368	533–74–4	2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5- dimethyl- (Dazomet).
U362	.....	Thiocarbamates N.O.S.
*	*	*
U402	1634–02–2	Thioperoxydicarbonic diamide, tetrabutyl (Butyl Tuads).
U403	97–77–8	Thioperoxydicarbonic diamide, tetraethyl (Disulfiram).
*	*	*
U405	14726–36–4	Zinc, bis[bis(phenylmethyl)carbamodithioato-S,S']- (Arazate).
U406	136–23–2	Zinc, bis(dibutylcarbamodithioato-S,S')- (Butyl Ziram).
U407	14324–55–1	Zinc, bis(diethylcarbamodithioato-S,S')- (Ethyl Ziram).
*	*	*

5. Appendix VII to Part 261 is amended by adding the following waste streams in alphanumeric order (by the first column) to read as follows.

APPENDIX VII TO PART 261.—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazardous waste No.	Hazardous constituents for which listed
*	*
K156	Acetone, acetonitrile, acetophenone, aniline, benomyl, benzene, carbaryl, carbendazim, carbofuran, carbosulfan, chlorobenzene, chloroform, o-dichlorobenzene, hexane, methanol, methomyl, methyl ethyl ketone, methyl isobutyl ketone, methylene chloride, naphthalene, phenol, pyridine, toluene, triethylamine, xylene.
K157	Acetone, carbon tetrachloride, formaldehyde, methomyl, methyl isobutyl ketone, methyl chloride, methylene chloride, o-phenylenediamine, pyridine, triethylamine.
K158	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, hexane, methanol, methylene chloride, phenol, xylene.
K159	Benzene, butylate, eptc, molinate, pebulate, vernolate, thiocarbamate N.O.S.
K160	Benzene, butylate, eptc, molinate, pebulate, vernolate, thiocarbamate N.O.S.
K161	Metam-sodium, xylene, ziram, dithiocarbamate product N.O.S.

* * * * *

6. Appendix VIII of Part 261 is amended by adding the following hazardous constituents in alphabetical order (by the first column) to read as follows.

APPENDIX VIII TO PART 261.—HAZARDOUS CONSTITUENTS

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* * *	* * *		*
A2213	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester.	30558-43-1	U394
* * *	* * *		*
Acetone	2-Propanone	67-64-1	K156
* * *	* * *		*
Aldicarb sulfone	Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime.	1646-88-4	P203
* * *	* * *		*
Antimony tris(2-ethylhexyl)dithiocarbamate	Antimony, tris[bis(2- ethylhexyl)carbamodithioato-S,S']-,	15991-76-1	U369
Antimony trisdipentyldithio-carbamate	Antimony tris (dipentylcarbamodithioato-S,S')-	15890-25-2	U368
* * *	* * *		*
Arazate	Zinc, bis[bis(phenylmethyl) carbamodithioato- S,S']-	14726-36-4	U405
Barban	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester	101-27-9	U280
* * *	* * *		*
Bendiocarb	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate	22781-23-3	P187
Bendiocarb phenol	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,	22961-82-6	U364
Benomyl	Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl]-, methyl ester.	17804-35-2	U271
Bis(dibutylcarbamothioato) dioxodimolybdenum sulfurized.	Molybdenum, bis(dibutylcarbamothioato) dioxodi-, sulfurized	68412-26-0	U389
* * *	* * *		*
Busan 40	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt.	51026-28-9	U378
Butylate	Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester	2008-41-5	U392
* * *	* * *		*
Butyl Tuads	Thioperoxydicarbonic diamide, tetrabutyl	1634-02-2	U402
Butyl Ziram	Zinc, bis (dibutylcarbamodithioato-S,S')-	136-23-2	U406
* * *	* * *		*
Carbaryl	1-Naphthalenol, methylcarbamate	63-25-2	U279
Carbendazim	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester	10605-21-7	U372
Carbofuran	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate	1563-66-2	P127
Carbofuran phenol	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-	1563-38-8	U367
* * *	* * *		*
Carbosulfan	Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro- 2,2-dimethyl-7-benzofuranyl ester.	55285-14-8	P189
* * *	* * *		*
Copper dimethyldithiocarbamate	Copper, bis(dimethylcarbamodithioato-S,S')-,	137-29-1	U393
* * *	* * *		*
Cycloate	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester	1134-23-2	U386
* * *	* * *		*
Dazomet	2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl-	533-74-4	U366
* * *	* * *		*
Dibam	Carbamodithioic acid, dimethyl-, sodium salt	128-04-1	U382
* * *	* * *		*
Dimetilan	Carbamic acid, dimethyl-, 1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester.	644-64-4	P191
* * *	* * *		*
Disulfiram	Thioperoxydicarbonic diamide, tetraethyl	97-77-8	U403

APPENDIX VIII TO PART 261.—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* * *	* * *		*
EPTC (Eptam)	Carbamothioic acid, dipropyl-, S-ethyl ester	759-94-4	U390
* * *	* * *		*
Esprocarb	Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S-(phenylmethyl) ester.	85785-20-2	U388
* * *	* * *		*
Ethyl Ziram	Zinc, bis(diethylcarbamodithioato-S,S')-	14324-55-1	U407
* * *	* * *		*
Ferbam	Iron, tris(dimethylcarbamodithioato- S,S')-,	14484-64-1	U396
* * *	* * *		*
Formetanate hydrochloride	Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride.	23422-53-9	P198
* * *	* * *		*
Formparanate	Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-.	17702-57-7	P197
* * *	* * *		*
Hercules AC-5727	Phenol, 3-(1-methylethyl), methyl carbamate	64-00-6	P202
* * *	* * *		*
Hexane	n-Hexane	110-54-3	K156
Hexazinone intermediate	Carbamic acid, [(dimethylamino)iminomethyl)] methyl, ethyl ester monohydrochloride.	65086-85-3	U371
* * *	* * *		*
Isolan	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester.	119-38-0	P192
* * *	* * *		*
Lead, bis(dipentyl carbamodithioato- S,S')-	Lead, bis(dipentylcarbamodithioato-S,S')-	36501-84-5	U397
* * *	* * *		*
Manganese dimethyldithiocarbamate	Manganese, bis(dimethyl carbamodithioato- S,S')-,	15339-36-3	P196
* * *	* * *		*
Metam Sodium	Carbamodithioic acid, methyl-, monosodium salt	137-42-8	U384
* * *	* * *		*
Methanol	Methyl alcohol	67-56-1	K156
* * *	* * *		*
Methiocarb	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate	2032-65-7	P199
* * *	* * *		*
Methyl bismate	Bismuth, tris(dimethylcarbamodithioato-S,S'-,	21260-46-8	U370
* * *	* * *		*
Methyl isobutyl ketone	4-Methyl-2-pentanone	108-10-1	K156
* * *	* * *		*
Metolcarb	Carbamic acid, methyl-, 3-methylphenyl ester	1129-41-5	P190
* * *	* * *		*
Mexacarbate	Phenol, 4-(dimethylamino)- 3,5-dimethyl-, methylcarbamate (ester).	315-18-4	P128
* * *	* * *		*
Molinate	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester	2212-67-1	U365
* * *	* * *		*
Nickel dibutyldithio carbamate	Nickel, bis(dibutyl carbamodi thioato-S,S')-	13927-77-0	U399

APPENDIX VIII TO PART 261.—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* * *	* * *		*
Oxamyl	Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino) carbonyl] oxy]-2-oxo-, methyl ester.	23135-22-0	P194
* * *	* * *		*
Pebulate	Carbamothioic acid, butylethyl-, S-propyl ester	1114-71-2	U391
* * *	* * *		*
Physostigmine	Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.	57-47-6	P204
Physostigmine salicylate	Benzoic acid, 2-hydroxy, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1).	57-64-7	P188
* * *	* * *		*
Potassium dimethyl dithiocarbamate	Carbamodithioic acid, dimethyl, potassium salt	128-03-0	U383
Potassium n-methyldithiocarbamate	Carbamodithioic acid, methyl,-monopotassium salt	137-41-7	U377
Promecarb	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate	2631-37-0	P201
* * *	* * *		*
Propham	Carbamic acid, phenyl-, 1-methylethyl ester	122-42-9	U373
Propoxur	Phenol, 2-(1-methylethoxy)-, methylcarbamate	114-26-1	P199
* * *	* * *		*
Prosulfocarb	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	52888-80-9	U387
* * *	* * *		*
Reactacrease 4-DEG	Ethanol, 2,2′-oxybis-, dicarbamate	5952-26-1	U395
* * *	* * *		*
Selenium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid.	144-34-3	U376
* * *	* * *		*
Sodium dibutyldithiocarbamate	Carbamodithioic acid, dibutyl, sodium salt	136-30-1	U379
Sodium diethyldithiocarbamate	Carbamodithioic acid, diethyl-, sodium salt	148-18-5	U381
* * *	* * *		*
Sulfads	Piperidine, 1,1′-(tetrathiodicarbonothioyl)-bis-	120-54-7	U400
Sulfallate	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester	95-06-7	U277
* * *	* * *		*
Tetramethylthiuram monosulfide	Bis(dimethylthiocarbamoyl) sulfide	97-74-5	U401
* * *	* * *		*
Thiodicarb	Ethanimidothioic acid, N,N′-[thiobis[(methylimino) carbonyloxy]]bis-, dimethyl ester.	59669-26-0	P195
* * *	* * *		*
Thiophanate-methyl	Carbamic acid, [1,2- phenylenebis (iminocarbonothioyl)] bis-, dimethyl ester.	23564-05-8	P193
* * *	* * *		*
Tirpate	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino) carbonyl] oxime.	26419-73-8	P185
* * *	* * *		*
Triallate	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester.	2303-17-5	U389
* * *	* * *		*
Triethylamine	Ethanamine, N,N-diethyl-	121-44-8	U404
* * *	* * *		*
Troysan Polyphase	Carbamic acid, butyl-, 3-iodo-2-propynyl ester	55406-53-6	U375
* * *	* * *		*
U9069	Carbamic acid, [[3- [(dimethylamino)carbonyl]-2-pyridinyl]sulfonyl]-phenyl ester.	112006-94-7	U374

APPENDIX VIII TO PART 261.—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* * *	* * *		*
Vanlube 7723	Carbamodithioic acid, dibutyl-, methylene ester	10254-57-6	U380
Vernolate	Carbamothioic acid, dipropyl-, S-propyl ester	1929-77-7	U385
* * *	* * *		*
m-Xylene	1,3-Dimethylbenzene	108-38-3	K156
o-Xylene	1,2-Dimethylbenzene	195-47-6	K156
p-Xylene	1,4-Dimethylbenzene	106-42-3	K156
* * *	* * *		*
Ziram	Zinc, bis(dimethylcarbamodithioato-S,S')-, (T-4)-	137-30-4	P204

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

8. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * *	* * *	*	*
[Date of publication of final rule]	Listing Wastes from the Production of Carbamates	[Federal Register page numbers].	[Effective date of final rule].

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

9. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

10. Section 302.4 is amended by adding the following entries in alphabetical order (by the first column) to Table 302.4, and by adding footnote "##" to the table to read as follows. The other appropriate footnotes to Table 302.4 are republished without change.

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
* * *		*		*	*		*
Antimony, tris[bis(2-ethylhexyl)carbamodithioato-S,S']-, (Antimony tris(2-ethylhexyl)dithiocarbamate).	15991761		*1	4	U369		##

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
Antimony, tris(dipentylcarbamodithioato-S,S')- (Antimony trisdipentyldithiocarbamate).	15890252	.....	*1	4	U368	.....	##
* * *		*	*	*			*
1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester (Molinate).	2212671	.....	*1	4	U365	.....	##
* * *		*	*	*			*
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, (Bendiocarb phenol).	22961826	.....	*1	4	U364	.....	##
1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate (Bendiocarb).	22781233	.....	*1	4	P187	.....	##
* * *		*	*	*			*
7-Benzofuranol, 2,3-dihydro-2,2-dimethyl- (Carbofuran phenol).	1563388	.....	*1	4	U367	.....	##
* * *		*	*	*			*
Benzoic acid, 2-hydroxy, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo[2,3-b]indol-5-yl methylcarbamate ester (1:1) (Physostigmine salicylate).	57647	.....	*1	4	P188	.....	##
* * *		*	*	*			*
Bis(dimethylthiocarbamoyl) sulfide (Tetramethylthiuram monosulfide).	97745	.....	*1	4	U401	.....	##
* * *		*	*	*			*
Bismuth, tris(dimethylcarbamodithioato-S,S'-, (Methyl bismate).	21260468	.....	*1	4	U370	.....	##
* * *		*	*	*			*
Carbamates N.O.S	.....	.....	*1	4	U360	.....	##
Carbamic acid, butyl-, 3-iodo-2-propynyl ester (Troysan Polyphase).	55406536	.....	*1	4	U375	.....	##
Carbamic acid, [1-[(butylamino)carbonyl]-1H-benzimidazol-2-yl, methyl ester (Benomyl).	17804352	.....	*1	4	U271	.....	##
Carbamic acid, 1H-benzimidazol-2-yl, methyl ester (Carbendazim).	10605217	.....	*1	4	U372	.....	##
Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester (Barban).	101279	.....	*1	4	U280	.....	##
Carbamic acid, [(dibutylamino)thio]methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester (Carbosulfan).	55285148	.....	*1	4	P189	.....	##
Carbamic acid, [[3-[(dimethylamino)carbonyl]-2-pyridinyl]sulfonyl]-phenyl ester (U9069).	112006947	.....	*1	4	U374	.....	##
Carbamic acid, [(dimethylamino)iminomethyl)] ethyl ester monohydrochloride (Hexazinone intermediate).	65086853	.....	*1	4	U371	.....	##
Carbamic acid, dimethyl-,1-[(dimethylamino)carbonyl]-5-methyl-1H-pyrazol-3-yl ester (Dimetilan).	644644	.....	*1	4	P191	.....	##
Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester (Isolan).	119380	.....	*1	4	P192	.....	##
* * *		*	*	*			*
Carbamic acid, methyl-, 3-methylphenyl ester (Metolcarb).	1129415	.....	*1	4	P190	.....	##
Carbamic acid, [1,2-phenylenebis(iminocarbonothioyl)]bis-, dimethyl ester (Thiophanate-methyl).	23564058	.....	*1	4	P189	.....	##
Carbamic acid, phenyl-, 1-methylethyl ester (Propham).	122429	.....	*1	4	U373	.....	##
* * *		*	*	*			*
Carbamodithioic acid, dibutyl, sodium salt (Sodium dibutyldithiocarbamate).	136301	.....	*1	4	U379	.....	##
Carbamodithioic acid, dibutyl-, methylene ester (Vanlube 7723).	10254576	.....	*1	4	U380	.....	##
Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester (Sulfallate).	95067	.....	*1	4	U277	.....	##
Carbamodithioic acid, diethyl-, sodium salt (Sodium diethyldithiocarbamate).	148185	.....	*1	4	U381	.....	##

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
Carbamodithioic acid, dimethyl, potassium salt (Potassium dimethyl dithiocarbamate).	128030	.....	*1	4	U383	.....	##
Carbamodithioic acid, dimethyl-, sodium salt (Dibam).	128041	.....	*1	4	U382	.....	##
Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid (Selenium dimethyldithiocarbamate).	144343	.....	*1	4	U376	.....	##
Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt (Busan 40).	51026289	.....	*1	4	U378	.....	##
Carbamodithioic acid, methyl,-monopotassium salt (Potassium n-methyldithiocarbamate).	137417	.....	*1	4	U377	.....	##
Carbamodithioic acid, methyl-, monosodium salt (Metam Sodium).	137428	.....	*1	4	U384	.....	##
* * *		*	*		*		*
Carbamothioic acid, bis(2-methylpropyl)-, S-ethyl ester (Butylate).	2008415	.....	*1	4	U392	.....	##
* * *		*	*		*		*
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester (Triallate).	2303175	.....	*1	4	U389	.....	##
Carbamothioic acid, butylethyl-, S-propyl ester (Pebulate).	1114712	.....	*1	4	U391	.....	##
Carbamothioic acid, cyclohexylethyl-, S-ethyl ester (Cycloate).	1134232	.....	*1	4	U386	.....	##
Carbamothioic acid, (1,2-dimethylpropyl) ethyl-, S-(phenylmethyl) ester (Esprocarb).	85785202	.....	*1	4	U388	.....	##
Carbamothioic acid, dipropyl-, S-ethyl ester (EPTC (Eptam)).	759944	.....	*1	4	U390	.....	##
Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester (Prosulfocarb).	52888809	.....	*1	4	U387	.....	##
Carbamothioic acid, dipropyl-, S-propyl ester (Vernolate).	1929777	.....	*1	4	U385	.....	##
Carbamoyl Oximes N.O.S	.....	.....	*1	4	U361	.....	##
* * *		*	*		*		*
Copper, bis(dimethylcarbamodithioato-S,S')-(Copper dimethyldithiocarbamate).	137291	.....	*1	4	U393	.....	##
* * *		*	*		*		*
Dithiocarbamate acids, salts, and/or esters N.O.S., (This listing includes mixtures of one or more dithiocarbamate acid, salt, and/or ester.).	.....	.....	*1	4	U363	.....	##
1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-[(methylamino)carbonyl]oxime (Tirpate).	26419738	.....	*1	4	P185	.....	##
* * *		*	*		*		*
Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester (A2213).	30558431	.....	*1	4	U394	.....	##
Ethanimidothioc acid, 2-(dimethylamino)-N-[[(methylamino)carbonyl]oxy]-2-oxo-, methyl ester (Oxamyl).	23135220	.....	*1	4	P194	.....	##
* * *		*	*		*		*
Ethanimidothioic acid, N,N'-[thiobis[(methylimino)carbonyloxy]]bis-, dimethyl ester (Thiodicarb).	59669260	.....	*1	4	P195	.....	##
* * *		*	*		*		*
Ethanol, 2,2'-oxybis-, dicarbamate (Reactacrease 4-DEG).	5952261	.....	*1	4	U395	.....	##
* * *		*	*		*		*
Iron, tris(dimethylcarbamodithioato-S,S')-(Ferbam).	14484641	.....	*1	4	U396	.....	##
* * *		*	*		*		*
Lead, bis(dipentylcarbamodithioato-S,S')-(Lead bisdipentyldithiocarbamate).	36501845	.....	*1	4	U397	.....	##
* * *		*	*		*		*
Manganese, bis(dimethylcarbamodithioato-S,S')-(Manganese dimethyldithiocarbamate).	15339363	.....	*1	4	P196	.....	##

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
* * *		*		*	*		*
Methanimidamide, N,N-dimethyl-N'-[3-[[(methylamino)carbonyl]oxy]phenyl]-, monohydrochloride (Formetanate hydrochloride).	23422539	.....	*1	4	P198	.....	##
Methanimidamide, N,N-dimethyl-N'-[2-methyl-4-[[(methylamino)carbonyl]oxy]phenyl]-(Formparanate).	17702577	.....	*1	4	P197	.....	##
* * *		*		*	*		*
Molybdenum, bis(dibutylcarbamothioato)di-.mu.-oxodioxodi-, sulfurized.	68412260	.....	*1	4	U398	.....	##
* * *		*		*	*		*
Nickel, bis(dibutylcarbamodithioato-S,S')-(Nickel dibutyldithiocarbamate).	13927770	.....	*1	4	U399	.....	##
* * *		*		*	*		*
Phenol, 3-(1-methylethyl), methyl carbamate (Hercules AC–5727).	64006	.....	*1	4	P202	.....	##
Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate (Promecarb).	2631370	.....	*1	4	P201	.....	##
* * *		*		*	*		*
Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-(Sulfads).	120547	.....	*1	4	U400	.....	##
* * *		*		*	*		*
Propanal, 2-methyl-2-(methylsulfonyl)-, O-[(methylamino)carbonyl] oxime (Aldicarb sulfone).	1646884	.....	*1	4	P203	.....	##
* * *		*		*	*		*
Pyrrolo[2,3-b]indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-(Physostigmine).	57476	.....	*1	4	P204	.....	##
* * *		*		*	*		*
2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-(Dazomet).	533744	.....	*1	4	U366	.....	##
Thiocarbamates N.O.S.	.....	.....	*1	4	U362	.....	##
* * *		*		*	*		*
Thioperoxydicarbonic diamide, tetrabutyl (Butyl Tuads).	1634022	.....	*1	4	U402		
Thioperoxydicarbonic diamide, tetraethyl (Disulfiram).	97778	.....	*1	4	U403	.....	##
* * *		*		*	*		*
Zinc, bis(dimethylcarbamodithioato-S,S')-, (Ziram).	137304	.....	*1	4	P205	.....	##
Zinc, bis(diethylcarbamodithioato-S,S')-(Ethyl Ziram).	14324551	.....	*1	4	U407	.....	##
Zinc, bis(dibutylcarbamodithioato-S,S')-(Butyl Ziram).	136232	.....	*1	4	U406	.....	##
Zinc, bis[bis(phenylmethyl)carbamodithioato-S,S']-(Arazate).	14726364	.....	*1	4	U405	.....	##
* * *		*		*	*		*
K156 Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.	.....	.....	*1	4	K156	.....	##
K157 Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes (This listing does not include sludges derived from the treatment of these wastewaters).	.....	.....	*1	4	K157	.....	##
K158 Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.	.....	.....	*1	4	K158	.....	##
K159 Organics from the treatment of thiocarbamate wastes.	.....	.....	*1	4	K159	.....	##

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA waste No.	Category	Pounds (Kg)
K160 Solids (including filter wastes, separation solids, and spent catalysts) from the production of thiocarbamates and solids from the treatment of thiocarbamate wastes.	.....	.....	*1	4	K160	.....	##
K161 Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust, and floor sweepings from the production of dithiocarbamate acids and their salts (This listing does not include K125 or K126.).	.....	.....	*1	4	K161	.....	##

+—indicates the statutory source as defined by 1, 2, 3, and 4 below.
4—indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
*1—indicates that the 1-pound RQ is a CERCLA statutory RQ.
##—The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

[FR Doc. 94–4051 Filed 2–28–94; 8:45 am]
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federal register

Tuesday
March 1, 1994

Part III

Environmental Protection Agency

40 CFR Part 238
Degradable Plastic Ring Carriers; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 238

[EPA/OSW–FR–93–DPRF–FFFFF; FRL–4842–2]

RIN 2050–AD09

Degradable Plastic Ring Rule

AGENCY: Environmental Protection Agency, EPA.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is issuing this final rule in response to "Degradable Plastic Ring Carriers" (Pub. L. 100–556), which in general provides that EPA shall require plastic ring carriers (for beverage cans) be made of degradable material. The statute requires that such ring carriers must be processed from a material that, in addition to allowing the ring carrier to perform its intended use, degrades quickly and does not pose a greater threat to the environment than nondegradable materials.

The Agency has chosen to require ring carrier processors to test their ring carriers using either a lab or an *in situ* test. The Agency has chosen a degradability performance standard for ring carriers, rather than specify a particular type of degradable plastic, to allow the processors of ring carriers the flexibility to use new technology.

EFFECTIVE DATE: Part 238 is effective on September 1, 1994. The incorporation by reference of American Society of Testing and Materials standards adopted in this rule is approved by the Director of the Federal Register as of September 1, 1994 in accordance with 5 U.S.C. 552(a).

ADDRESSES: The public record for this rulemaking (docket number F–92–DPRF–FFFFF) is located at the Resource Conservation and Recovery Act (RCRA) Docket Information Center, (5305), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. The public docket is located at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260–9327. Copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424–9346. In the Washington, DC metropolitan area, call (703) 412–9810. For information regarding specific aspects of this notice, contact Tracy Bone, Office of Solid Waste (5306), USEPA, 401 M Street SW., Washington, DC, 20460, telephone (202) 260–5649.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
A. Mechanisms of Degradation
B. Factors Affecting Degradation
C. State Laws
D. Other Programs and Investigations Concerning Degradable Plastics
III. Summary of the Proposed Rule
IV. Response to Comment
A. Definition of Terms
B. Testing Degradation
C. Measuring Degradation
D. Time Limit for Degradation
E. Preemption of State Regulations
V. Implementation and Summary of This Final Rule
VI. Administrative Designation and Regulatory Analysis
A. Regulatory Impact Analysis
B. Executive Order 12875
C. Regulatory Flexibility Act
D. Paperwork Reduction Act
VII. References

I. Authority

The Environmental Protection Agency (EPA) is promulgating this rule under the authority of sections 101, 102, and 103 of Public Law 100–556 (the "Act" or "Statute"). Although this statute has been codified in Subtitle B of the Resource Conservation and Recovery Act (42 U.S.C.A. 6914b and 6914b–1), it does not amend RCRA. In section 101 of this law, Congress found that: (1) Nondegradable plastic ring carrier devices have been found in large quantities in the marine environment; (2) fish and other wildlife have become entangled in such ring carriers; (3) such ring carriers can remain intact in the marine environment for decades, posing a threat to fish and other marine wildlife; and (4) sixteen states (as of 1988) had enacted laws requiring that ring carriers be made of degradable material in order to reduce litter and protect fish and wildlife. (As of 1991, eleven additional states have passed laws of this kind.)

As a result of these findings, Congress required EPA under section 103 of the Act to promulgate a rule that would require that plastic ring carriers (as defined in section 102(1)) be made of "naturally degradable material which, when discarded, decomposes within a period established by such regulation." 42 U.S.C. 6914b–1. The period to be established under the rule for such decomposition or degradation is to be "the shortest period of time consistent with the intended use of the item and the physical integrity required for such use." *Id.* Section 102(2) of the Act defines "naturally degradable material" to mean a "material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photodegradation, or hydrolysis." 42 U.S.C. 6914b(2). EPA, however, may not require the use of a degradable ring carrier if it is not "feasible" or if the degradable ring carriers present greater threats to the environment than nondegradable ring carriers. 42 U.S.C. 6914b–1.

II. Background

Concern about the disposal of plastic materials dates back to the early 1970s. Degradable plastics were seen by some as a solution for the problems of littering, landfill capacity, and wildlife entanglement and were developed for agricultural uses (mulch film, seedling pots) as well as medical applications (sutures, implants).

Renewed public concern over solid waste management and resource conservation in the past few years has been met by a resurgence of corporate and academic research into degradable plastics, and by the commercialization of various products designed to degrade. Specifically, there has been great interest in finding new degradable plastics made from non-petroleum-derived materials.

A. Mechanisms of Degradation

Plastics are polymers (chemicals made of repeating subunits) most often derived from petroleum. There are plastics derived from other natural materials that have many of the same properties as petroleum-derived plastics and have been used to make degradable products. Starch, for example, is a naturally-derived plastic that may include over 10,000 linked subunits. Lactic acid is used to make surgical sutures that degrade within the body after the incision has healed.

Plastics degrade by a number of different physical and chemical processes. In photodegradation, light causes physical changes that cause the plastic to become brittle and crumble into small pieces. Fragments may range in size from several centimeters in diameter to invisible macromolecular particles. All ring carriers in use currently, are made from low density polyethylene (LDPE) plastic and degrade in this manner.

Plastics also may be designed to be completely broken down and assimilated into the environment. These plastics differ from those that undergo photodegradation in that chemical

changes occur in the structure of polymer molecules, and the ultimate products are different from the original plastic. This chemical breakdown and alteration may be caused by one of a number of processes, including chemical reactions with natural compounds (*e.g.*, dissolution by naturally-occurring acids) and biological activity (*e.g.*, biodegradation). Degradable plastics also may be designed to combine degradation processes; they may break down to smaller fragments due to photodegradation and then rely on biodegradation to complete the process.

The Agency developed this rule based on data available for the photodegradable petroleum-based plastic ethylene carbon monoxide (E/CO), currently used for ring carriers. EPA discussed, in the proposal (April 7, 1993, 58 FR 18062), new plastic technology that could be used to make ring carriers. EPA does not, however, have specific information or data from plastic technology (other than E/CO) that can be used to process ring carriers. Despite the lack of information on new technology, EPA does not intend to impose any barriers to potential ring carrier products.

B. Factors Affecting Degradation

Two key factors affecting degradation are the time required for degradation and the environment in which degradation takes place. Given enough time or a harsh enough environment, all materials, including plastics not designed to degrade, will degrade. A meaningful definition of degradability must include a time limit that is appropriate for the planned use of and the ultimate method of disposal for the specific degradable product.

Environmental conditions also play a critical role in controlling degradation. The rate of biodegradation is primarily determined by temperature, moisture, and the presence of oxygen. For example, biodegradation is very slow in municipal solid waste landfills since these facilities are generally engineered to exclude water and air. In desert environments, the absence of water retards biodegradation. In northern climates, temperature is typically the factor that controls biodegradation rates. The intensity and wavelengths of light are the most important factors in determining the rate of photodegradation. Light intensity and wavelength also play roles in some types of biodegradation. Public Law 100–556 directs EPA to reduce the threat of entanglement of marine fish and wildlife; therefore, EPA requires degradation be tested under marine conditions (or equivalent laboratory conditions).

C. State Laws

In 1977, the State of Vermont enacted the first law banning the use of nondegradable ring carriers. By the end of 1991, 27 states had passed legislation specifically prohibiting the sale of nondegradable ring carriers. State legislation typically is written to prohibit the sale of nondegradable ring carriers by retail stores. Most of these states indicated that the primary purposes for adopting the legislation were to promote litter reduction and to address wildlife entanglement concerns. The states that have adopted legislation banning nondegradable ring carriers, the dates the legislation took effect, the time limit required for degradation under each state law, and allowable mechanisms for degradation (as of 1992), are listed in reference 4.

D. Other Programs and Investigations Concerning Degradable Plastics

Reflecting the significant public and legislative interest in the use of degradable plastics, a number of organizations have addressed the issues related to degradable plastics in the past few years. These organizations include EPA, the U.S. General Accounting Office, the Congressional Office of Technology Assessment, the U.S. Food and Drug Administration (FDA), the U.S. Federal Trade Commission (FTC), the National Institute of Standards and Technology, the American Society for Testing and Materials (ASTM), the Department of Defense, and many state governments. Except for EPA, ASTM, and the Department of Defense, the organizations and states addressing degradable plastics issues typically are focusing more on litter and landfill capacity problems than on the risk to marine mammals or on degradation in the marine environment.

The ASTM D–20 committee (Ref. 1) has developed standards for testing degradable plastics under certain environmental conditions (including photodegradation and composting). EPA is using two ASTM tests (specifically D–5208–91 and D–3826–91) in this rule. These tests are recommended by ASTM for testing photodegradable plastic film. ASTM is working on a test to simulate and measure degradation under marine conditions which could be used to test biodegradable ring carriers under lab conditions. Because of statutory deadlines, EPA can not wait for ASTM to approve that test; therefore, we have included in this rule an *in situ* test that could be used for biodegradable ring carriers. EPA may, at a future date, review this rule to consider the effect of any new ASTM marine test.

III. Summary of the Proposed Rule

On April 7, 1993 (58 FR 18062), EPA issued a proposal in response to Public Law 100–556. The Agency proposed a degradability performance standard for ring carriers rather than specify a particular type of degradable plastic. The proposed performance standard included the same three factors in this rule's *in situ* test: A physical endpoint for degradation, a time limit for degradation, and marine environmental conditions. In the proposal, EPA referred to these factors as the performance standard.

The proposed performance standard required testing in very specific marine conditions that would be more costly than the currently employed lab tests. Therefore, the proposal also allowed a processor of photodegradable ring carriers to use lab tests to check the degradation of the ring carriers as long as the lab tests were equivalent to the performance standard.

IV. Response to Comment

EPA received comments on the proposed rule from eighteen persons or groups. This section summarizes and addresses the major comments. A discussion of the remaining comments can be found in a background document available in the RCRA Docket Information Center. See the "ADDRESSES" section at the beginning of this rule for information on getting a copy of the document.

A. Definition of Terms

In the April 7, 1993 proposed rule, EPA proposed three definitions: "5 percent elongation at break", "processor" and "ring carrier." EPA received no comments on the definitions for "processor", and "ring carrier"; therefore, they remain unchanged in the final rule. In response to one comment, EPA has changed the definition for "elongation at break". In the proposed rule, EPA defined "5 percent elongation at break" as " * * * computed by dividing the length, at break, of the material before it is tested by the length of the material, at break, after it is stretched * * * " The commenter pointed out that the proposed definition incorrectly divided the original length of the plastic by the length after it has been stretched. The definition found in the final rule language corrects this error as well as defines the term to more closely resemble the ASTM definition.

EPA received many comments on the proposed rule's usage of terms

describing degradability such as: Photodegradation, biodegradation, naturally-derived plastics, and synthetic plastics. The Agency defined and used these terms in the preamble only for the purpose of discussing the issues surrounding degradable plastics; EPA does not use any of these terms in the final rule language. Therefore, regulatory definitions for those terms are not necessary.

EPA added the word "plastic" to the title of the regulation in response to one comment. The commentor expressed concern that this rule may be construed to apply to cardboard beverage carriers. EPA added "plastic" to the title to clarify the scope of this rule as set by Congress in Public Law 100–556. The definitions and requirements of today's regulation are not necessarily relevant to degradable plastics intended for other end uses.

B. Testing Degradation

After the formulation of the resin, environmental conditions are the most important factors for determining the rate of degradation. For example, a photodegradable plastic buried in a landfill will degrade at essentially the same rate as the nondegradable formula of that plastic because there is no source of light to degrade the plastic. The Statute directs the Agency to protect marine wildlife. To achieve this goal, the Agency proposed that ring carriers be tested for degradability by being exposed, "for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters." The Agency proposed that the amount of degradation could then be tested and measured, using ASTM D–3826–91, to show 5 percent elongation at break. In addition to the *in situ* test described above, the proposal also allowed processors of photodegradable ring carriers to use lab tests to check the degradation of the ring carriers (rather than a location below latitude 26 degrees North) as long as the lab tests were equivalent to the *in situ* test. In the preamble to the proposal EPA stated that, for the purpose of testing a photodegradable ring carrier, a lab test following the ASTM test D–5208–91 (using cycle A conditions for 250 light hours) is equivalent to the *in situ* test and could be used by ring carrier processors to meet the proposed regulation. EPA asked for comment on the use of ASTM tests D–5208–91, D–3826–91 and G–26.

Several commenters felt that the ASTM tests for exposure to UV and measurement of elongation at break (ASTM D–5208–91 and D–3826–91, respectively) should be required in the rule language rather than referred to in the preamble and urged that the *in situ* test (referred to in the proposal as the performance standard) should be deleted. The commenters felt that the *in situ* test was vague and not reproducible. The ASTM tests were felt to be easily implemented and reliable.

In response to these comments, EPA decided to include the ASTM tests in the final rule language as an option along with the *in situ* test. EPA decided to not require the ASTM tests alone because of the potential negative effects on future use of biodegradables or other new technology. A purely biodegradable ring carrier (if one is developed) could never pass these tests, which are based on UV absorption and photodegradation rather than biodegradation. As a result, the final rule provides that the processor of a ring carrier may choose either the ASTM lab tests (ASTM D–5208–91 using cycle A conditions for 250 light hours and ASTM D–3826–91) or the *in situ* test (i.e., expose the ring carrier for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters to degrade the ring carrier material and then use D–3826–91 to test for 5 percent elongation at break).

C. Measuring Degradation

The rate and extent of degradation typically are assessed by measuring changes in the physical properties of a material. For degradable plastics, a common method used to quantify the extent of degradation is to assess the "brittleness" of the material by measuring the amount of stress that must be applied before the plastic breaks. Brittleness can be measured in many ways, including tensile strength and the elongation of the plastic prior to breaking.

In the proposed rule, the Agency chose "elongation at break" to measure degradation. There are data that show a close correlation between the loss of elasticity (i.e., becomes brittle) and the rate of degradation. Brittleness can be used to predict the loss of physical integrity of the plastic which correlates to a reduced risk to wildlife from entanglement.

Plastic that has degraded to the point of 5 percent elongation at break will stretch only 5 percent of its original length before crumbling. The LDPE resin used to make ring carriers stretches readily. Ring carriers made from LDPE normally can be stretched to more than several hundred percent of their original length before breaking. Once the plastic material has been exposed to degrading factors, the material becomes more brittle and no longer can stretch very much before the plastic breaks. At approximately one hundred percent elongation at break, ring carriers lose their ability to function and the cans fall out of the carriers (Ref. 2).

"Elongation at break" is accepted by many in the scientific community as an appropriate method for measuring brittleness, and therefore, degradation of degradable plastics. However, some commenters interested in developing new ring carrier technology (for example, a biodegradable plastic ring carrier) expressed concern that elongation at break may not be appropriate for the new technology. Two commenters suggested the use of respirometric tests (using the evolution of carbon dioxide as a measure of biodegradation) for measuring degradation of biodegradable plastics. Respirometric tests are extremely complicated to design and run; in order to measure the carbon dioxide evolution, the experiment must be run under very controlled laboratory conditions. To EPA's knowledge, a respirometric test that reflects the marine environment has not been developed. None of these commenters provided specific suggestions or data on how EPA can measure degradation of materials other than photodegradable plastics. Therefore, EPA has decided to leave the measurement of elongation at break in the final regulation, but has included the *in situ* test as an option for any new technology that may be developed.

D. Time Limit for Degradation

The Agency is required by the statute to establish a time limit for degradation that is "the shortest period of time consistent with the intended use of the item and the physical integrity required for such use." Although it would be ideal to set a time limit that is not expected to pose any risk to marine wildlife, it is likely that some risk to marine wildlife will remain because it is not technically possible to design a ring carrier that degrades immediately upon disposal in a marine environment, but also is strong enough for its intended use (holding beverages).

The Agency investigated whether or not the material currently being used to make ring carriers, E/CO, degrades under marine conditions. EPA requested, but did not receive, any information to suggest that a faster time than measured in the EPA study (Ref. 3) could be achieved by E/CO or any other plastic product (that can also function as a ring carrier). E/CO clearly degrades when exposed to sunlight. Therefore,

the Agency has chosen a time limit for degradation that is based on the best performance observed in actual testing of the E/CO ring carriers currently in use. In a study (Ref. 3) performed by Research Triangle Institute for EPA, it took 35 days for E/CO ring carriers to reach 5 percent elongation at break in the marine environment. The testing was done during the months of June and July, off the coast of Miami, Florida. The time degradable ring carriers require to degrade is a fraction of the time nondegradable ring carriers were estimated to remain intact; therefore, the risk to marine species from degradable ring carriers will be much less than the risk posed by nondegradable ring carriers.

Some commenters felt that E/CO could not meet the requirement within the proposed time period. However, EPA has data to the contrary which is included in the docket to this rule (Ref. 3). Moreover, an E/CO processor commented that they believed E/CO could meet the proposed lab tests.

Several commenters were concerned that the performance standard would inhibit the development of new technology. Commenters also felt that EPA should allow a longer timeframe for biodegradable ring carriers to degrade than for photodegradables because of their greater environmental desirability. EPA disagrees. Although EPA understands the environmental advantages of a biodegradable carrier, the Agency believes that any biodegradable ring carrier must degrade as quickly as E/CO so as to meet the statute's goal of protection of marine fish and wildlife.

Commenters noted that states may misunderstand that the 35 day time limit hinges on testing in a warm and sunny environment. They feared that states other than Florida might require the 35 day timeframe. EPA realizes that a ring carrier that degrades in 35 days in Miami will take longer to degrade in other parts of the country. It will also take longer for a ring carrier to degrade in Miami during winter than during the summer months (seasonal variation of UV is greater than geographic variation).

By establishing the *in situ* test in § 238.30(a), the Agency does not intend to require that a ring carrier degrade to 5 percent elongation at break in 35 days in coastal waters everywhere in the United States. For example, this rule is not requiring a ring carrier be processed so that it degrades within 35 days in northern coastal waters (e.g., Maine). Such a ring carrier may not be able to be marketed nationally because it may degrade too quickly in the south during the summer and, therefore, would not be able to perform its intended function. Therefore, the Agency wishes to emphasize that the *in-situ* test is 35 days in marine conditions in a location below the latitude 26 degrees North, not 35 days in any coastal water in the continental United States.

E. Preemption of State Regulations

Over half of the states have enacted legislation requiring the use of degradable ring carriers. State requirements (Ref. 4) vary widely in timeframes for degradation, definitions of plastic articles covered, testing requirements, and degradation processes. EPA received four comments requesting that this rule preempt State regulations concerning the degradability of plastic ring carriers. Commenters expressed concern that the various state standards could force the processors and distributors of ring carriers to use more than one type of ring carrier rather than the one ring carrier currently used nationally.

EPA understands this concern and, in principle, agrees that one degradable ring carrier should provide adequate protection for fish and wildlife nationwide. However, Congress did not provide authority for this rule to preempt state regulation of degradable ring carriers. Nor does EPA believe Congress intended this rule to preempt more stringent state and local regulations.

The Agency does not intend to interfere with local, state, or other federal programs pertaining to the regulation of degradable plastics.

V. Implementation and Summary of This Final Rule

In summary, today's Final Rule requires that manufacturers and importers of plastic ring carriers test their ring carriers to ensure that they degrade. The processor of a ring carrier may choose either the ASTM lab tests (ASTM D–5208–91, using cycle A conditions for 250 light hours, and D–3826–91) or the *in situ* test (expose for 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters and then, using D–3826–91, test for 5 percent elongation at break).

This rule applies to both processors in the United States and also to any person in the United States importing ring carriers. This rule does not differentiate between ring carriers processed for use in the United States and other countries because, at the time of sale to beverage bottlers, the processor has no knowledge as to where the ring carriers will be sold or used.

Each ring processor and importer must determine that its ring carrier meets this degradable performance standard using either of the tests described in today's rule, before marketing for use the ring carriers. The Agency does not intend for processors and importers of ring carriers to test each shipment of ring carriers to determine if they meet the performance standard; rather they should test the ring carrier each time the ring carrier's formulation or processing procedure changes substantially. Importers must not knowingly distribute ring carriers that do not meet this performance standard and they should seek assurance from the processors that the ring carriers meet the performance standard. If more than one processor manufactures ring carriers using the same ring carrier material and processing conditions, then they do not each have to test their own ring carrier; they may share the test data.

VI. Administrative Designation and Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review because the Agency believes the processors are able to meet these standards without changing current technology.

B. Executive Order 12875

Executive Order 12875, "Enhancing the Intergovernmental Partnership", is

intended to reduce imposition of unfunded federal mandates on state, local and tribal governments. This rule does not impose a mandate on these governments. The requirements of this rule apply solely to the plastic processors of ring carriers and do not compel any action by state, local or tribal governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

This rule will affect ring carrier processors, none of whom are small entities. Small entities are not likely to enter into this market because of the requirements for expensive application equipment and quantities of materials. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule, as promulgated, will not have a significant adverse economic impact on a substantial number of small entities (as defined by the Regulatory Flexibility Act).

D. Paperwork Reduction Act

The Agency has determined that there are no additional reporting, notification, or recordkeeping provisions associated with this rule. Such provisions, were they included, would be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

VII. References

(1) Narayan, Ramani. "Development of Standards for Degradable Plastics by ASTM Subcommittee D–20.96 on Environmentally Degradable Plastics". 1992.

(2) Samaras, Peter, L. Letter to EPA, for ITW Hi-cone. August 31, 1992.

(3) Research Triangle Institute. "Weatherability of Enhanced-Degradable Plastics." Contract No. 68–02–4544. U.S. Environmental Protection Agency, Cincinnati, OH. 1992.

(4) Eastern Research Group. Current Status of State Regulations Requiring Degradable Ring Carriers. March 1992.

List of Subjects in 40 CFR Part 238

Environmental protection, Beverage ring carrier, Biodegradation, Degradable plastic, Degradability standards, Imports, Incorporation by reference, Photodegradation, Ring carrier, Waste treatment and disposal.

Dated: February 16, 1994.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulation is amended by adding part 238 consisting of §§ 238.10, 238.20 and 238.30 to read as follows:

PART 238—DEGRADABLE PLASTIC RING CARRIERS

Subpart A—General Provisions

Sec.
238.10 Purpose and applicability.
238.20 Definitions.

Subpart B—Requirements

238.30 Requirement.

Authority: 42 U.S.C. 6914b–1.

Subpart A—General Provisions

§ 238.10 Purpose and applicability.

The purpose of this part is to require that plastic ring carriers be made of degradable materials as described in §§ 238.20 and 238.30. The requirements of this part apply to all processors and importers of plastic ring carriers in the United States as defined in § 238.20.

§ 238.20 Definitions.

For the purpose of this part:

Percent elongation at break means the percent increase in length of the plastic material caused by a tensile load. Percent elongation at break shall be calculated by dividing the extension at the moment of rupture of the specimen by the initial gage length of the specimen and multiplying by 100.

Processor means the persons or entities that produce ring carriers ready for use as beverage carriers.

Ring carrier means any plastic ring carrier device that contains at least one hole greater than 1¾ inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles.

Subpart B—Requirement

§ 238.30 Requirement.

(a) No processor or person shall manufacture or import, in bulk, ring carriers intended for use in the United States unless they are designed and manufactured so that the ring carriers degrade to the point of 5 percent elongation at break, when tested in accordance with ASTM D–3826–91, "Standard Practice for Determining Degradation End Point in Degradable Polyolefins Using a Tensile Test", after the ring carrier is exposed to, either:

(1) 250 light-hours of UV in accordance with ASTM D–5208–91," Standard Practice for Operating Fluorescent Ultraviolet (UV) and Condensation Apparatus for Exposure of Photodegradable Plastics", using cycle A; or

(2) 35 days, during June and July, to marine conditions in a location below the latitude 26 degrees North, in continental United States waters.

(b) The incorporation by reference of ASTM D–3826–91, "Standard Practice for Determining Degradation End Point in Degradable Polyolefins Using a Tensile Test", and ASTM D–5208–91, "Standard Practice for Operating Fluorescent Ultraviolet (UV) and Condensation Apparatus for Exposure of Photodegradable Plastics," was approved by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the American Society of Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Resource Conservation and Recovery Act (RCRA) Docket Information Center, (5305), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. These materials are incorporated as they exist on the date of the approval and notice of any change in these materials will be published in the **Federal Register**.

[FR Doc. 94–4369 Filed 2–28–94; 8:45 am]

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federal register

Tuesday
March 1, 1994

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR 651

Northeast Multispecies Fishery; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 931076–4052; I.D. 100193A]

RIN 0648–AD33

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). Amendment 5 implements conservation measures to eliminate the overfished condition of the multispecies finfish (groundfish) stocks. This final rule implements the Amendment by imposing a moratorium with exceptions for certain vessels fishing in the fishery, an effort control system to reduce fishing effort over 5 to 7 years, monitoring requirements to track fishing effort, and new permitting and reporting requirements. In addition, the rule increases minimum mesh size requirements for several different areas and expands the area where mesh size is regulated.

EFFECTIVE DATE: March 1, 1994, except for § 651.32(a), which is effective April 15, 1994. Section 651.9(a) (11) and (12), § 651.9(e) (33) and (34), and § 651.27(b) expire at 2400 hours, April 2, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the initial regulatory flexibility analysis (IRFA) contained within the RIR, and the final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906–1097. Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Richard B. Roe, Northeast Regional Director, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, and the Office of Management and Budget (Attention NOAA Desk Officer), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252 or E. Martin Jaffe, Fishery Policy Analyst, 508–281–9272.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) approved at its June 1993 meeting a package of measures for inclusion in Amendment 5 to the FMP. The FMP has been in effect since 1986, and has been amended four times. The two main objectives of Amendment 5 are to eliminate the overfished condition of the principal groundfish stocks (cod, haddock, and yellowtail flounder) by reducing the rate at which fish are caught by 50 percent over the next 5 to 7 years, and to reduce the bycatch of harbor porpoise in the sink gillnet fishery.

Two measures contained in Amendment 5, as originally submitted, were disapproved by the Secretary of Commerce (Secretary) on September 30, 1993, and were not contained in the proposed rule to implement the amendment published on October 27, 1993 (58 FR 57774). Reasons for disapproval of those measures were given in the proposed rule and are not repeated here.

Amendment 5, less the two measures disapproved on September 30, 1993, was approved on January 3, 1994, after consideration of the comments received during the public comment period. This rule implements measures in Amendment 5 that are expected to reduce the fishing mortality rate to such a level as to eliminate overfishing. Since development began on the amendment, the condition of the multispecies finfish stocks continued to decline to record low levels. It is essential that fishing mortality levels be reduced as soon as possible because only then can rebuilding of stocks occur, especially for haddock, cod, and yellowtail flounder.

In approving the amendment, the Director, Northeast Region, NMFS, (Regional Director) notified the Council of several concerns that had been raised during Secretarial review, including that the Council needs to develop specific rebuilding goals, the annual mortality reduction may be set too low in the early years of the amendment, the effort exemption for vessels 45 ft (13.7 m) or less in length may be too permissive, that the overfishing definition for pollock may need to be adjusted, and the sink gillnet measures to reduce harbor porpoise take may not be sufficient. Also, the Council's objective to eliminate overfishing for cod and yellowtail flounder, while certainly a necessary first step, fails to offer specific rebuilding objectives for these species and the Council has been notified that it should begin formulating such objectives as soon as possible.

Incorporation of Emergency Measures Into the Final Rule

On January 3, 1994, NMFS published an emergency rule, at 59 FR 26, effective January 3, 1994, through April 2, 1994, to protect the seriously depleted stocks of haddock. The emergency rule established a 500-lb (226.8-kg) possession limit for haddock; began the closure of an expanded Closed Area II on January 3, 1994, rather than February 1, 1994; and implemented several other measures to protect haddock. This final rule implementing Amendment 5 permanently implements several measures that were contained in both the emergency rule and in the proposed rule for Amendment 5. Other measures in the emergency rule that were not contained in the proposed rule for Amendment 5 are continued in effect by this final rule, but will expire on April 2, 1994, as provided by the emergency rule, unless extended through further rulemaking. A description of these measures follows.

Definitions for "bottom-tending gillnet or sink gillnet", "dredge or dredge gear", "offload", "pair trawl or pair trawling", "scallop dredge vessel", "standard box", "standard tote", and "transfer", which were temporarily added by the emergency rule, are permanently added to § 651.2 by this final rule. Prohibitions on pair trawling in the groundfish fishery, temporarily added at § 651.7(a) (5) and (6) by the emergency rule, are permanently added at § 651.9(e)(27) by this final rule. A prohibition on transfer of multispecies finfish at sea, temporarily added at § 651.7(a)(7) by the emergency rule, is permanently added at § 651.9(e)(3) by this final rule. Prohibitions concerning haddock possession, temporarily added at § 651.7(a) (3) and (4) by the emergency rule, are permanently added at § 651.9(a) (11) and (12) by this final rule. A prohibition concerning sink gillnets, temporarily added at § 651.7(b)(15) by the emergency rule, is permanently added at § 651.9(e)(31) by this final rule. A prohibition concerning entry into Closed Area II of Georges Bank during a specified period of time, temporarily added at § 651.7(b)(16) by the emergency rule, is permanently added at § 651.9(e)(20) by this final rule. A prohibition concerning haddock possession on sea scallop dredge vessels, temporarily added at § 651.7(b)(17), and a prohibition concerning a haddock possession limit temporarily added at § 651.7(b)(18) by the emergency rule, are added at § 651.9(e) (33) and (34), respectively.

effective through April 2, 1994, by this final rule. Prohibitions concerning possession of multispecies finfish harvested by pair trawling, temporarily added at § 651.7(b) (19) and (20) by the emergency rule, are permanently added at § 651.9(e)(27) by this final rule. A prohibition concerning transfer of multispecies finfish from one vessel to another, temporarily added at § 651.7(b)(21) by the emergency rule, is permanently added at § 651.9(e)(5) by this final rule. A prohibition on pair trawling for multispecies finfish, temporarily added at § 651.20(g) by the emergency rule, is permanently added at § 651.20(h)(3) by this final rule. The closure of Closed Area I, temporarily added at § 651.21(c)(1) by the emergency rule, is permanently added at § 651.21(a) by this final rule. The closure of Closed Area II, temporarily added at § 651.21(c)(2) by the emergency rule, is permanently added at § 651.21(b) by this final rule, except that the annual closure period for 1994 is February through May, rather than January through May, as in the emergency rule. The haddock possession limits, temporarily added at § 651.28 by the emergency rule, are added at § 651.27(b), effective through April 2, 1994, by this final rule. Transfer-at-sea measures, temporarily added at § 651.29 by the emergency rule, are permanently added at § 651:30 by this final rule. Closed areas illustrated in Figure 6 to part 651, temporarily added by the emergency rule, are permanently incorporated into Figure 3 to part 651 by this final rule.

Amendment 5 Measures

Success of the amendment is largely dependent on meeting the annual fishing mortality reduction targets. NMFS is concerned that the annual targets may not be adequately protective, particularly during the first years of the plan, although it is recognized that the Council chose to minimize first year restrictions for valid socio-economic concerns. Therefore, it is more critical that the Council responds in a timely way to problems through the framework measure to ensure achievement of the amendment's objectives.

The Council has been requested to make it a priority to reexamine the exemption from effort control for vessels 45 ft (13.7 m) and less. The 45-ft (13.7-m) limit exempts a large number of vessels from effort control measures, thereby creating the possibility that the vessels may significantly reduce any gains from controls on larger vessels. Moreover, establishing a 45-ft (13.7-m) limit for vessels may create more inequities between vessels in the same port than if the minimum had been a smaller size. The Council was asked to consider measures that would prevent modification of vessels longer than 45 ft (13.7 m) to a size that would allow them to be exempt if the Council chose not to reduce the size of vessels being exempted.

The remaining overfishing definitions have been approved, but the definition for pollock needs to be reevaluated. Since the public hearings of May 1993, an assessment on pollock was reviewed and approved by the Stock Assessment and Review Committee of the NMFS Northeast Fisheries Science Center. The assessment indicates that a 25% maximum spawning potential (MSP) level is more appropriate than the 20% MSP obtained by analogy to similar species. Current (1992) fishing mortality for pollock is estimated to be 0.72, while the fishing mortality rate that would produce a spawning stock abundance amount which is 20% of the maximum spawning potential ($F_{20\%}$) is 0.65 and a fishing mortality rate that would produce a spawning stock abundance of 25% of the maximum spawning potential ($F_{25\%}$) is 0.47. Consequently, under either definition, pollock are overfished. Although the measures contained in Amendment 5 will have a collateral benefit on pollock, the Council was requested to reconsider this definition in developing Amendment 6.

The Council and the gillnet fishermen have expressed concern over the default harbor porpoise protection measure. The Council requested, at its February meeting, that implementation of the 4-day blocks out per month for gillnet gear be delayed until April 15, 1994, because it appears unlikely that harbor porpoise will be present in significant numbers until then. Others commented that when significant numbers of porpoises are present, the 4-days out of the fishery per month requirement may not be adequate to protect the porpoises. The final rule makes the 4-day out provision effective April 15, 1994. The Council is requested to take swift action under the harbor porpoise framework measure to ensure the protection of porpoise through the continued examination of the time and area of the gear-out requirement, and if necessary to protect porpoise, to change the provision.

The permit moratorium contained in Amendment 5 continues to be contentious. It becomes even more so as other fisheries establish control dates that some perceive as limiting the options available to fishermen. The Council was asked to work closely with the Mid-Atlantic Fishery Management Council to insure that fishermen continue to have alternatives available, such as the mackerel fishery, which is underexploited and can withstand additional effort. The control date established for the Atlantic mackerel, squid and butterfish fisheries may prevent this fishery being an option for groundfish vessels and the Mid-Atlantic Council was asked to consider this and work with the Council before developing final measures.

This final rule implements: A moratorium on most new entrants into the multispecies finfish fishery; limitations on upgrading of vessel size and engine horsepower; exceptions to the moratorium for vessels using fewer than 4,500 rigged hooks or fishing under a possession limit; an effort-reduction program where vessels fish using a combination of blocks of time out of the fishery and time spent at the dock (Fleet Days-At-Sea(DAS)), unless they elect to take an allocation of actual Individual DAS that vessels may fish for multispecies finfish; exceptions to the effort-reduction program for vessels 45 ft (13.7 m) and less in length, vessels fishing fewer than 4,500 hooks, vessels fishing sink gillnet gear, and vessels at sea for less than a day; a possession limit for scallop dredge vessels; a requirement to purchase and install a Vessel Tracking System (VTS) unit for vessels fishing Individual DAS and vessels that have historically fished with a scallop dredge and otter trawl; a call-in system for other vessels in the Fleet DAS reduction program; a minimum mesh size of 5 and 1/2 inches (13.97 cm) in the Southern New England/Mid-Atlantic area; an increase in the minimum mesh size in the Gulf of Maine/Georges Bank area from 5 and 1/2 (13.97 cm) to 6 inches (15.24 cm); exceptions to the mesh-size regulations for vessels possessing less than the possession limit, and for vessels fishing with purse seine or midwater trawl gear; minimum fish sizes; a prohibition on pair trawling; seasonal mesh requirements in the Stellwagen Bank/Jeffreys Ledge area; a suspension of the closure of Area I except for fixed gear; a modification of Closed Area II in area and time; a closure of an area in the vicinity of the Nantucket Lightship when a research trawl survey index is reached; a requirement that vessels fishing for northern shrimp use a finfish excluder device; permit requirements for vessel operators and dealers; mandatory reporting for permitted vessels and dealers; mandatory observer requirements for vessels if required by the Regional Director; and framework measures to adjust the effort-control program and other measures.

Permit Changes and Applicable Dates

This rule substantially changes the fishing vessel permit application process. Vessel owners must now choose from several different permit categories. This choice will have implications on the future activity of a vessel. The permit category requirements and restrictions are complex and the applicants acting in anticipation of the final rule have been reluctant to choose a permit category, until they have discussed the implications with NMFS. Because of the volume of calls and requests for assistance received from the industry, NMFS has been unable to provide assistance to all those requesting it. To allow additional time for applicants to complete their vessel permit applications, the vessel permit requirement, and related measures, such as effort control measures and possession limits, become applicable on May 1, 1994. To be ensured of having a vessel permit by May 1, 1994, completed vessel permit applications must be received by NMFS by March 31, 1994. Applications received after March 31, 1994, cannot be guaranteed to be processed before May 1, 1994. Until these provisions of the regulations become applicable, vessels holding 1993 multispecies permits can fish for, possess or land multispecies in or from the EEZ.

This change will allow NMFS to continue to provide assistance to the industry so that the industry can make informed choices in a timely way on these important decisions. To further assist the industry, the Regional Director intends to allow vessel owners who believe they mistakenly chose a permit category based on incomplete information, to change permit categories within 30 days of receipt of their 1994 Federal multispecies permit. This change must be requested in writing and is in addition to the one change in category allowed under § 651.4(f)(2)(iv).

The Regional Director has determined that monitoring of vessels in the Fleet DAS reduction program will be accomplished initially through the call-in system. NMFS has reviewed several card monitoring systems to determine their appropriateness for this application. NMFS found that while these systems may serve the need, their cost, reliability, level of sophistication, and the relative newness of the technology make implementation difficult. The Regional Director does not believe that such a system could be made operational by the time of implementation and therefore has reserved the card monitoring system.

In addition, the Regional Director has authorized, pursuant to § 651.29(c), the use of the alternative call-in system as the sole method of notification for the DAS program. Until the Regional Director determines that the VTS is operable and he has provided adequate notification to permit holders, vessels participating in the DAS program must use the call-in system to provide notification of when they are leaving for and returning from fishing trips.

Comments and Responses

Written comments were submitted by Alliance for Community Education, Associated Fisheries of Maine, Center for Marine Conservation, City of Gloucester Mayor-elect Bruce H. Tobey, Commercial Fisheries News, Conservation Law Foundation, East Coast Fisheries Foundation, Inc., Gloucester Fishermen's Wives Association, Gloucester United, Maine Fishermen's Cooperative Association, Maine Gillnetters Association, Marine Mammal Commission, National Italian American Foundation, New England Fishery Management Council, North Shore Chamber of Commerce, Inc., Portland Fish Exchange, Senator George Mitchell, U.S. Coast Guard, and 18 individuals. In addition, letters containing 461 signatures were submitted in support of the Gloucester United comments.

Four VTS vendors provided comment on the proposed monitoring requirements under which they would be certified.

Comment 1: Three associations and four individuals stated that the amendment should be approved.

Response: The comments have been noted and the amendment has been approved.

Comment 2: One association expressed its support for an overall catch quota to ensure populations are not overfished in case measures to limit days at sea are not successful in reducing the amount of fish caught.

Response: The Council did not include overall quotas out of concerns that include possible market disruptions that could result when a quota is caught, small boats and large boats having to compete against each other for available quota, and the difficulty in monitoring quotas among different areas. Instead of an absolute quota, the Council chose the annual harvest targets to be used to gauge progress towards attaining the interim mortality reduction targets. NMFS and the Council are required to perform an annual review to determine what the actual mortality rate is compared to the harvest targets. Rather than quotas, the Council will then be able to modify the other measures contained within the amendment by using the framework to ensure that the targets are not exceeded in future years.

Comment 3: One association expressed concern about NMFS' ability to administer and enforce the amendment and recommended that NMFS enlist the advice of the Council and experienced members of the fishing industry.

Response: Most of the planning for implementation of the amendment and its administration and enforcement has already been done. NMFS will continue to work with the Council to address problems as they arise and will solicit industry advice when appropriate.

Comment 4: One association commented that Amendment 5 will provide further restrictions on small- and medium-sized vessels that are already limited by weather. Vessels will be forced to fish in bad weather and lives will be lost.

Response: The Council, in deliberating the amendment, made a conscious decision to reduce the impacts on small vessels. The possession limit exemption and hook exemption from the permit moratorium, and the 45-foot and day-trip exemptions from effort control were designed with the small and medium sized vessels in mind. Vessels outside these categories will be affected by the combined measures. Whether these vessels will decide to fish in bad weather is unknown, but the Council believes that other factors such as declining stock abundance and the competition for scarce catches are more likely to influence such a decision. NMFS, in approving this amendment, agrees with the Council's conclusions.

Comment 5: One association commented that Amendment 5 measures urge fishermen to go into alternative fisheries. This will be difficult because it costs money to get into a new fishery and banks and lending institutions are hesitant to lend money. Larger vessels that use up their groundfish days will have to resort to small-mesh fisheries to survive.

Response: The declining state of the groundfish resource makes it increasingly difficult to make a successful trip. Vessel owners facing such a decline would normally consider alternatives to groundfish, which the amendment's measures support. A switch to a new fishery may mean a capital investment in new gear. The amendment makes no distinction regarding which vessels may be able to switch to other fisheries and it imposes a consistent possession limit on all vessel size classes when small-mesh

gear is used to lessen the impact on groundfish. Using the framework measure of subpart C, the Council may adjust these measures if it determines that there is a problem.

Comment 6: Six associations and seven individuals recommended that the Secretary enter into negotiated rulemaking under the Negotiated Rulemaking Act of 1990 instead of implementing the moratorium, DAS, and target quotas.

Response: The responses to the recommendation to disapprove the moratorium, the DAS provisions, and target quotas are provided under Comments 7, 35, and 36. Development of fishery management plans and amendments must adhere to procedures provided for in the Magnuson Fishery Conservation and Management Act (Magnuson Act), which established fishery management councils and the development of fishery management plans to ensure public participation by the affected public in the process, similar to the intent of the Negotiated Rulemaking Act. The Magnuson Act development process for Amendment 5 involved active public participation throughout. At its Multispecies Committee and Council meetings, the Council provided ample opportunity and encouraged the public's development of alternative management measures. At the two rounds of public hearings, which were well attended by the fishing industry, several alternative management plans were proposed. Most were analyzed against the Council's objectives and many of the measures proposed were adopted by the Council. Several of these had to be adjusted to ensure that they would meet the amendment's objectives.

Because of the public process that has already occurred, and the many opportunities for comment, there was no need for a negotiated rulemaking. The Council may not have decided on measures favored by all in the fishing industry, but it is the Council's responsibility to exercise its best judgement on what is necessary and appropriate for the fishery under its jurisdiction.

Vessel Permits/Limited Entry Permits

Comment 7: Six associations and eight individuals recommended that the moratorium on vessel permits be disapproved. The commenters stated that the moratorium is not based upon conservation, will change the character of the industry leading to corporate ownership, is irreversible, and was rejected by the fishing industry at public hearings.

Response: A moratorium is important to the effort reduction program because it enhances the predictability of the effect of effort reductions on total mortality and it reduces the impact of the effort reductions on individual participants. To insure some control on the predictability of the effort reduction program, a finite number of units of effort, i.e., fishing vessels, is necessary. Otherwise, the size of the reduction in fishing mortality could not be predicted and would not be known until after the effect of the new vessels that had entered the fishery could be measured. Consequently, the Council would always be playing catch-up with little likelihood of success.

A moratorium is important to controlling the magnitude of the impact of effort reductions on individual participants in the fishery. Without a moratorium, new vessels could continue to enter the fishery. If this occurred, individual vessel time at sea would have to be reduced to compensate for the increase in total time at sea. During the rebuilding program, this would increase the magnitude of the individual reductions in effort proposed and, as the resource improves, even more vessels would be encouraged to enter and any individual gains associated with the improvement in the resource would be dissipated. The unpredictability of future individual reductions would contribute to economic instability in the fleet and the inability of participants to plan for the long term.

The Council proposed the moratorium to ensure long-term gains for those individuals being forced to make short-term sacrifices in the form of effort controls. As the effort control measures achieve fishing mortality reductions and the resource starts to rebuild, new entrants into the fishery would likely harvest the surplus in the absence of a moratorium. Thus, there would be no promise of a "return on investment" for the vessels that are making the sacrifices in the early years of the plan. Moreover, a moratorium provides an incentive to participants to protect their long-term interests. This translates into increased protection for the resource. Effort control measures without a moratorium are less likely to provide conservation benefits because an important restriction on the expansion of total effort would have been eliminated.

It is unknown whether the moratorium will change the character of the industry. It is difficult, if not impossible, to predict the individual vessel's decisions and the circumstances leading to those decisions that would be made to allow such a wholesale change.

The Council allowed for some new entry to the fishery through the use of the 4,500 hook and possession limit exemptions. In providing these exemptions, the Council determined that these activities would not have a significant impact on attaining the goals and objectives of the amendment. These exemptions and the moratorium itself can be reviewed and modified in future years if the Council determines that there is need and that the amendment's objectives could still be met. The Council has also stated its intention that the moratorium be effective only for the duration of the effort reduction program established by this amendment.

While there was some support for the moratorium at the public hearings, the primary rationale for approval is its relationship to the effort reduction program. Absolute acceptance by the industry for a measure, though desired, is not the sole criteria on whether a given measure should be approved.

Comment 8: One association commented that, in § 651.4, the eligibility criteria for a limited entry permit and conditions for upgrading are very similar to those promulgated in the original Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries. With that plan, all the participants agreed that the tendency of the standards was to encourage an "arms race," which consumed capital and complicated effort reduction objectives for years. This should be avoided if possible.

Response: Some of the language and requirements for moratorium permits are similar to those contained in fishery management plan for the Mid-Atlantic surf clam fishery. The Council was aware of the problems experienced in that fishery, because it was consulted and involved in the development of the plan for that fishery. Many of the conditions that occurred in the Mid-Atlantic surf clam fishery after implementation of the moratorium have already occurred in the multispecies fishery. In the multispecies fishery, similar to what happened in the surf clam fishery, there has been a rapid rise in fishing effort brought about by several factors, including longer trips, shorter turnaround time between trips, and increased technology making fishermen more efficient. The Council, therefore, attempted to minimize problems in Amendment 5 by allowing some flexibility in limitations on size and horsepower and by adopting a framework measure to facilitate adjustments to measures.

Comment 9: One association commented that, in § 651.4(q) of the vessel permit requirements, the

provision that a limited access permit is forfeited if not annually renewed is likely to cause fishermen to lose their license permanently because of a technicality. Either an annual renewal notice or other flexibility should be incorporated to avoid serious hardship claims.

Response: Since the inception of annual permit renewals in 1986, NMFS has sent annual permit renewal applications to those issued permits in the previous year. This practice will not change with the implementation of this amendment. However, it will continue to be the vessel owner's responsibility to have a valid Federal Fisheries Permit, maintained on board the vessel, before engaging in fishing for multispecies finfish.

Comment 10: One association questioned whether the restriction on issuance of limited access permits, contained in § 651.4(s) of the vessel permit requirements, meant that a vessel in this fishery could not enter other fisheries. If this is the case, then the commenter stated it would be a clear violation of national standard 6.

Response: Vessels may enter, and are encouraged to enter, other fisheries, so long as they meet the criteria for entry to those fisheries. The section cited does not limit a vessel from entering other fisheries; rather, § 651.4(s) specifies that the permit or fishing history of one vessel may not be used to qualify another vessel at the same time in some other fishery. This means that if the vessel had permits for several fisheries in the past and was still qualified for those fisheries, the permit or history could not be used to qualify a different vessel for another limited entry fishery, and at the same time qualify for a limited access multispecies permit.

Comment 11: One individual expressed support for the hook exemption and requested adoption of a similar exemption for fish traps. The commenter stated that both conserve the stock and fish habitat, and reduce fuel consumption.

Response: A specific exemption for fish traps was not considered by the Council for inclusion in the amendment. This comment is being forwarded to the Council for possible inclusion of a fish trap exemption in a future amendment.

Comment 12: One association supported the moratorium, but opposed the issuance of new permits after only 3 years.

Response: After 3 years, the Council may adjust the criteria for limited entry permits after taking into consideration the fishing mortality goals and objectives of the amendment and conditions in the fishery. This would be accomplished through the framework measures contained in subpart C, which include opportunity for public comment.

Comment 13: One association objected to the requirement for a vessel permit in § 651.4(f)(1), which requires that the names and addresses of shareholders holding more than 25% ownership be provided. The commenter believed that this is an invasion of privacy, is not required by other government agencies, and that the officers of a corporation are a matter of record.

Response: By receiving this information, NMFS will be able to determine who the true owner of a vessel is. It gives a more complete picture that is not available when a vessel owner provides just the corporation name. This is particularly important when determining who is responsible if a violation of a regulation occurs. Without this information, determining whether a particular owner is a repeat violator would also be difficult. To seek this information from other sources would require systematic searches of state records, requiring NMFS to expend an extensive amount of time. It is not an unlawful invasion of privacy because it is only required of vessel owners that voluntarily submit themselves to the highly regulated industry of fishing as a condition to obtaining the privilege to fish with a Federal permit in Federal waters.

Operator Permits

Comment 14: One association commented that, in § 651.5(d) of the operator permit requirements, the requirement for passport photos to be submitted with an application for an operator permit probably adds several hours to the information burden calculation for each applicant under this program, which is not accounted for in the analysis.

Response: The requirement is not for passport photos, but rather passport-size photos, which makes the requirement substantially easier to meet. Regardless, the analysis did take this into account and allowed for 1 hour for response instead of 5 minutes, for example, as specified for applying for a dealer permit. In determining burden estimates, an average is taken.

Some individuals will already have a passport-size photo or have easy access and their burden will be minimal. Other individuals may have to travel to have this service performed. The burden is further reduced by NMFS' intention to allow the operator permit to be valid for multiple years, rather than just 1 year. In any event, the estimate of time does not pose any time constraints on applicants. NMFS will monitor whether the time estimate is correct.

Comment 15: The U.S. Coast Guard commented that the wording under § 651.5(c) in the operator permit requirements, which prohibits operators who have had their operator permit suspended or revoked from being on board a vessel, in any capacity, issued a Federal Fisheries Permit is unenforceable unless all crew members are permitted.

Response: NMFS disagrees that the measure is unenforceable. The intent of this measure is to improve compliance with the measures by those who are most directly able to control the actions of the vessel and crew. The number of operators having their permits suspended or revoked is expected to be relatively few. Information on these individuals, including their picture, can be distributed to the U.S. Coast Guard and other enforcement officials and used during boardings. To require all crew members to obtain a permit would impose too great of an administrative burden on NMFS and crew members for which there would be insufficient improvement in the ability to enforce such a measure. Further, a change such as this is beyond the scope of Amendment 5.

Comment 16: The U.S. Coast Guard commented that § 651.5(d) should require proof of U.S. citizenship to obtain an operator permit.

Response: The Magnuson Act requires that all vessels of the United States that are larger than 5 net tons be documented by the U.S. Coast Guard. Federal law requires that the masters of U.S. documented vessels be U.S. citizens or U.S. nationals. As applied to vessels larger than 5 tons, the Coast Guard's suggestion is duplicative of existing law. As applied to vessels smaller than 5 tons, the adoption of a U.S. citizenship requirement would prevent aliens lawfully admitted to permanent residence in the United States from continuing to serve as masters of small vessels as they endeavor to qualify for U.S. citizenship. For these reasons, NOAA has not adopted the U.S. Coast Guard recommendation.

Comment 17: One association noted that the operator permit requirements in §§ 651.5 and 651.9 are inconsistent with the amendment by failing to exempt recreational vessels.

Response: The intent was to require operator permits for operators of vessels required to obtain federal fishery permits. The final rule provides that if a vessel is exempted from the vessel

permit requirements, then that vessel's operator is exempted from the permit requirement as well.

Comment 18: One association objected to the operator permit condition under § 651.5(c), which prohibits vessel operators from working on board a vessel issued a Federal Fisheries Permit, in any capacity, if the operator permit has been revoked or suspended.

The commenter further stated that guilt should be determined first, and the penalty determined by the Courts, rather than the penalty being agreed to first.

Response: This penalty would be assessed against a vessel operator only if the vessel operator is determined to have been involved in a major violation or is a significant repeat offender of Federal fishing regulations. In all cases, the vessel operator will have an opportunity for a hearing before an administrative law judge. Further, the vessel operator will always have the option of appealing the determination by the agency to a Federal court. The language gives notice to the vessel operator that his/her right and privilege to operate and serve on a federally-permitted fishing vessel is subject to the condition, and that the right may be suspended or revoked in certain circumstances. Without the possibility of suspending or revoking an operator's right to serve in any capacity on a federally-permitted vessel, the purpose of requiring operator's permits would be meaningless. The language also puts the operator on notice that he/she will be responsible for his/her actions and will not be able to move to another vessel, should a suspension occur. It is consistent with a vessel permit suspension, which takes the vessel out of the fishery during the time of suspension.

Reporting and Recordkeeping

Comment 19: One association commented that, in § 651.7(b)(1) of the reporting requirements, the requirement to provide "any other information required by the Regional Director" is overbroad, a standardless delegation, and potentially unconstitutional.

Response: This requirement provides NMFS the flexibility to obtain the information necessary for management, and is not open-ended, since the Regional Director must demonstrate that any additional data requested is necessary to manage the fishery.

Comment 20: One individual stated that the requirements for recordkeeping and reporting are impracticable, of little or no use, and cannot be enforced due to limited resources.

Response: The recordkeeping and reporting requirements are in direct response to the inability to collect complete information under the existing voluntary system and were supported by the fishing industry. The Council's previous attempts at management measures were stymied by the lack of complete information on the fleet. For some areas or classes of vessels, there was little coverage or incomplete coverage. The information collected from the reporting requirements is necessary to, and will be used to monitor, the effects of the various measures being implemented by this rule. Implementation of this rule, along with recent amendments to the Summer Flounder and Atlantic Sea Scallop Fishery Management Plans, will provide for a comprehensive collection of fishery information coastwide. Its requirements can be enforced because of the ability to verify reporting compliance due to the dual requirement that dealers and vessels must report. These requirements have been shown to be enforceable in other fisheries in the Northeast.

Comment 21: One association commented that the reporting burden estimates for the vessel logbook report (5 minutes), dealer logbook report (2 minutes) and operator permit (1 hour) are unrealistic and that they fail to take into account time to read instructions, search existing data sources, gather and maintain the data needed, and complete and review the requirement.

Response: Initially, the time to complete the requirements will be longer than that estimated. As fishermen and dealers become familiar with the report form and requirements, the time to complete and submit the information will decrease. The reporting time estimates for both the vessel and dealer may seem low, but the estimates take into account that most of the information is being collected during the normal course of business and in many cases for dealers, on the same form that is being adopted for the reporting requirement. The report estimates also take into account that the reporting burden will vary between areas and fisheries. Moreover, as stated above, the time estimate does not impose time constraints on those required to report. NMFS will continue to monitor this activity to determine if adjustments to the associated burden time need to be made. NMFS encourages vessel operators and dealers to submit information on the time needed to comply with these reports as such individuals gain experience actually completing logbooks and permit forms.

Vessel Identification

Comment 22: The U.S. Coast Guard commented that the wording under § 651.8(a) regarding vessel identification should be reworded to require the name on each side of the bow and the name of the vessel and homeport at or near the stern. The U.S. Coast Guard further commented that term "if possible" be deleted to eliminate ambiguity.

Response: NMFS has proposed consolidating requirements common to Northeast fisheries in 50 CFR part 622, Northeast Region General Fisheries Permit and Reporting Procedures (58 FR 53172, October 14, 1993). Where this comment is common to requirements in other fisheries, it will be considered in the context of part 622. A final rule implementing consolidated permitting and reporting procedures will be issued after this final rule implementing Amendment 5 is published.

Prohibitions

Comment 23: One association commented that, regarding the prohibition specified in § 651.9(a)(6), it is unreasonable to expect fishermen to enforce the FMP by demanding to see dealer licenses, given the locus of market power in sale transactions, and considering fishermen often have no direct contact with their dealer (i.e., fish are picked up by truck). It would be impossible for fishermen to make the legal conclusion that the permit is "valid."

Response: It is reasonable to expect that fishermen know to whom they are selling their fish, because this information is necessary to know from whom to expect payment. Further, since fishermen must provide this information on the vessel logbook submitted to NMFS, vessel owners will have to make an effort to identify to whom they are selling fish. NMFS will make an effort to identify those permitted dealers purchasing multispecies finfish so that the likelihood of a fishermen selling to an unpermitted dealer will be substantially reduced. If fish are sold to a truck, the truck does not need to be permitted if the truck is used for transportation only. If the truck driver acts as a purchaser, a dealer permit would be needed.

Comment 24: Two associations commented that observer requirements in § 651.0(a)(10) were not disclosed at public hearings. Requiring provision of food, etc., is an uncompensated taking in violation of the Constitution.

Response: Observer requirements have been part of the FMP since implementation of Amendment 4 and were discussed by the Council in public

meetings. In Amendment 4, vessels participating in the Exempted Fisheries Program were required to take a sea sampler if requested by the Regional Director. In the version of Amendment 5 taken to public hearing, observer requirements were included under the midwater trawl exemption. Once the public hearings had concluded, the Council discussed in a public meeting and added the measure to provide consistency with a measure in Amendment 4 to the Fishery Management Plan for Atlantic Sea Scallops. By including the requirement in the proposed rule, the public has been given additional opportunity to comment.

This provision is needed to supplement, rather than replace, the existing Domestic Sea Sampler Program. Several times in the past, when management actions were contemplated, the reaction by some fishermen has been to deny sea sampler's requests to be on board vessels. This seriously hampers NMFS' ability to collect discard, bycatch, and other biological information and as a consequence, management actions were based upon incomplete, though best available, information. This provision will allow the Regional Director to require vessels to carry an observer, if vessels refuse to take sea samplers.

A mandatory observer program is necessary for the management program to be effective. A taking occurs if a regulation denies an owner economically viable use of his/her property. The regulations do not dispossess fishermen or limit the use of their property. It is not equivalent to a seizure of their property or a restraint on entry and use, and therefore does not constitute an unlawful taking.

Comment 25: One association commented that, in § 651.9(b)(2)(i), the requirement for having a certified, operational and functioning VTS unit on board the vessel at all times will force fishermen to have at least two of these units on board the vessel at all times, at a cost of $14,000. No provision has been made to enable fishermen to keep information confidential from third parties with receivers. The VTS has evolved into a complicated, prohibitively expensive, intrusive violation of basic constitutional principles and an end to itself instead of providing NMFS with bare-bones requirements to make the management program work simply and effectively.

Response: The requirement is to have a functioning VTS unit on board the vessel. If the vessel owner believes that the VTS unit is not reliable enough to provide the service required, the vessel owner may decide to purchase another VTS unit. The minimum VTS performance criteria were developed with the rigors of at-sea conditions in mind. The approved VTS vendors have stated that their units meet these specifications. Many of the units are in use on board fishing vessels already and have been found to be reliable and able to withstand weather at sea.

Fishermen subject to the VTS requirement are expected to purchase the units directly from approved vendors. In making such a purchase, the vessel owner should decide whether to include in the purchase contract items such as confidentiality of information, position integrity, etc. NMFS does require that a vessel owner applying for a limited access permit must provide NMFS, the U.S. Coast Guard, and their authorized officers or designees access to the vessel's DAS and location data. All information from the VTS units forwarded to NMFS will be considered data submitted pursuant to 16 U.S.C. 1853(a)(5), which is subject to the confidentiality requirements of 16 U.S.C. 1853(d).

NMFS disagrees with the last comment. The VTS was developed to address the need to monitor effectively basic vessel activities at substantial savings to NMFS. The VTS allows enforcement resources to be deployed where most effective while at the same time monitoring is maintained throughout the fishery. The VTS also provides greater efficiency for vessel operators and greater safety for at-sea operations. Further, the requirement to carry a VTS unit is a condition to participate in a highly regulated industry operating in federally regulated waters. There is no compensable taking of private property under the Fifth Amendment of the Constitution.

Comment 26: One association commented that, in § 651.9(b)(10), the trip notice provision is cast without a negative and thus would make all fishermen violators.

Response: This has been corrected in the final rule.

Comment 27: One association commented that the provision in § 651.9(e)(13) is far too broad and makes no allowance for the rigors of the sea, the vagaries of atmospheric transmission, etc. The fisherman becomes a guarantor of perfect airwaves, which is an impossible burden.

Response: The prohibition refers to a willful act, rather than that which would occur through weather or other Acts of God. The burden will be on NMFS to show that such a willful act has occurred.

Comment 28: An industry association commented that, in § 651.9(e)(31), the requirement that any fisherman must remove from the water sink gillnets is directly in conflict with Magnuson Act prohibitions on hauling or tampering with gear of others.

Response: The final rule has been changed to clarify that a sink gillnet fisherman is required to remove only his or her own gear.

Comment 29: One association commented that in § 651.9(e)(23), recreational vessels are allowed to possess regulated species smaller than the minimum size, which is contrary to Council intention.

Response: The language of § 651.9(e)(23) allows vessels exempted under § 651.9(e)(1)(ii) to be exempted from the requirement. Vessels under this exemption are those fishing in state waters exclusively, without Federal permits, where these regulations are not applicable because of the Councils' and the Secretary's limited authority under the Magnuson Act to regulate fishing activities that occur only in state waters. The Magnuson Act was enacted pursuant to the Constitution's grant of authority to Congress to pass laws that regulate interstate and foreign commerce. The Act authorizes the Secretary to issue such regulations as are necessary and appropriate to implement the Act. The Secretary has determined that keeping track of the location of fishing vessels is essential to conserve and manage the multispecies fishery. A VTS allows the Secretary to ascertain the vessel's location in a cost-effective manner.

Regulated Mesh Areas

Comment 30: One association supported the finfish excluder device requirement contained in § 651.20(a)(3)(ii).

Response: The comment is noted and the measure has been approved.

Comment 31: One association commented that it supported the increase in minimum mesh size to 6 inches (15.24 cm), but that the area should also include Southern New England.

Response: The Council specified different minimum mesh sizes, by area, based upon the different historical fishing patterns that occur there. Prior to this amendment, much of the Southern New England area was not subject to mesh restrictions. Amendment 5 imposes a minimum mesh size restriction throughout the area, thereby providing substantial protection for undersized, immature groundfish. In year 2, the mesh size increases to 6-inch (15.24-cm) square mesh or 5½-inch

(13.97-cm) diamond mesh. Also included in the measures applicable to the Southern New England Area is an area closure triggered when there is an incoming year class of yellowtail flounder that reaches a certain level of abundance as determined by the annual spring bottom trawl survey conducted by NMFS. If further restrictions are necessary, the Council may use the framework measures contained in subpart C to effect changes.

Comment 32: The U.S. Coast Guard commented that the area defined in § 651.20(c) for the Southern New England Regulated Mesh Area (RMA) and its allowance of more than one mesh on board overlaps the boundaries of the Nantucket Lightship Closed Area. The U.S. Coast Guard stated that this creates an enforcement policy that is inconsistent with conservation goals. It recommended that the Southern New England RMA be redrawn to exclude the Nantucket Lightship Closed Area from the more than one mesh on board provision.

Response: The Nantucket Lightship Closed Area closes only when a survey index indicates a strong incoming year class of yellowtail flounder. When such a closure occurs, vessels are prohibited from fishing in the area unless specifically exempted, and the gear types exempted (lobster pot gear, surf clam/ocean quahog dredge gear, hook and line) do not include gear subject to the gear stowage requirement. It is not necessary, therefore, to redraw this area such as was done for the Nantucket Lightship Regulated Mesh Area.

Comment 33: One association commented that it is inappropriate to allow mid-trawlers year-round, unsupervised access to the Gulf of Maine.

Response: Midwater trawlers are subject to a possession limit when fishing with small mesh and are required to fish with the net off the bottom. If NMFS believes that a problem is occurring with this fishery, observers could be deployed to gather information. The vessel reporting requirements will also aid in determining whether this gear is appropriate for use in this area.

Comment 34: One association recommended that the Nantucket Lightship Regulated Mesh Area be disapproved because the area allows smaller mesh size in an area that abounds with haddock, cod and yellowtail flounder.

Response: NMFS is also concerned about this area and about the confusion that can result because of the differences between the adjoining regulated mesh areas and this area. If this requirement were disapproved, however, it would leave this area with no regulated mesh size or one mesh on board requirement. NMFS is requesting the Council reexamine this area and determine whether it is appropriate to allow the smaller minimum mesh size, given the low stock abundance of regulated species occurring there.

Closed Areas

Comment 35: One association commented that, in § 651.21(b)(4), the exemption allowing safe haven in the vicinity of Closed Area II, required for vessel safety, is virtually unattainable. It depends on the National Weather Service (NWS) identifying adverse conditions far out at sea, posting warnings, and the operator being able to contact a U.S. Coast Guard unit in the area. Unless this provision is rational, it will cost lives in transit.

Response: The exemption was requested by fishermen at a meeting of the Council. The criteria for the exemption were developed to ensure that it could not be used to circumvent the regulations. The intent is that when there is a legitimate need, because of bad weather, to seek shelter in deeper water, vessels can enter the closed area. The best criterion for vessels to know when this is allowed is the storm postings of the NWS, which has offshore monitoring capabilities. NMFS is actively discussing with NWS and the National Ocean Survey, the possibility of using the VTS units to collect weather information for offshore areas. If vessels cannot contact a U.S. Coast Guard unit in the area, notice should be provided to a U.S. Coast Guard shoreside facility. NMFS believes these measures are reasonable and adequate to provide vessels a safe route during bad weather. This exemption will be monitored and, if adjustments are needed, they can be made through the framework measures in subpart C.

Effort Control Program

Comment 36: Six associations and eight individuals recommended that the effort control measures be disapproved, citing that this type of management will not achieve conservation because vessels will fish longer, fish closer to shore, target high value species, and the program will be almost impossible to administer and enforce.

Response: The Council chose effort reduction measures rather than relying solely on indirect measures (minimum mesh size, minimum fish size) or other direct measures (vessel or total quotas). In doing so, it believed that the effort control measures would provide greater assurance in achieving the Council objectives, would be less disruptive to the supply of groundfish, and would provide flexibility to vessel operators, thereby balancing the need to prevent overfishing with socio-economic concerns of the fishing industry.

With declining fish stocks, fishermen are already making longer trips with fewer crew members and with less time at the dock between trips. There have already been complaints over the last few years of larger vessels displacing small vessels by working inshore areas. The combination of annual reduction of days at sea allowed, regulated layover time at the dock, and target quotas is designed to meet eventually the objectives of the amendment. It is recognized that there will be adjustments by the fleet in the first few years. Eventually these adjustments will be overcome by the measures resulting in reductions in fishing mortality.

NMFS believes that the effort reduction program can be administered and enforced. Tracking of days at sea can be accomplished shoreside rather than at sea and the VTS and call-in systems will enhance this effort. The VTS system will identify when vessels leave port, when they return to port, which port and where they are at sea. The exemptions for hook vessels, possession limit vessels and vessels 45 ft (13.7 m) and less will substantially reduce the enforcement and monitoring burden.

Comment 37: Six associations and eight individuals recommended that the target quotas be disapproved.

Response: To determine how effective the effort reduction program and other measures are at attaining interim fishing mortality goals and to provide the industry and the public with a quantifiable objective, the Council included target quotas based upon the major groundfish stocks. The target quotas will be determined annually and, if exceeded, the Council will adjust fishing mortality reduction measures to help assure that it does not occur again. If the target quotas had been disapproved, NMFS the Council would have had little information on which to judge the success of individual measures for a given year, and little justification for adjusting management measures in future years. Exceeding a target quota does not result in any automatic regulatory measure.

Comment 38: The Council and one association commented that the layover day requirement specified in § 651.22(c)(1)(ii) should reflect the Council's intent that vessels need to move between docks within port.

Response: In order to monitor effectively vessel DAS activity, it is

necessary for NMFS to be able to track vessel movement. NMFS intends to allow some reasonable movement within port through enforcement discretion, so long as it does not compromise the accurate monitoring of vessel DAS.

Comment 39: One association commented that the provision in Amendment 5 exempting vessels 45 ft (13.7 m) or less, from the effort reduction program, should be changed back to 30 ft (9.1 m), because the longer length allows for too much additional fishing effort.

Response: An exemption length of 45 ft (13.7 m) exempts 1,554 more vessels than would an exemption length of 30 ft (9.1 m). Still, if the 45-ft (13.7 m) exemption was disapproved, there would have been no exemption for smaller vessels from the effort control program. A lack of an exemption from the effort control program for smaller vessels, may have serious negative economic effects on fishermen operating those vessels without sufficient commensurate benefits to the groundfish stocks to justify the lack of such an exemption. The Council has been asked to reexamine the 45-ft exemption, and its effects will be closely monitored. If a change is necessary, it could be implemented through the framework provisions of subpart C.

Minimum Fish Sizes

Comment 40: The U.S. Coast Guard commented that, in § 651.23(d)(i), the minimum fish sizes are only enforceable if the whole fish can be measured. The exception allowing 25 lbs (11.3 kg) of fillets less than the minimum size should be deleted since enforcement officers cannot verify that the fillets originated from legal-size fish.

Response: The 25 lbs (11.3 kg) of fillets allowed per person cannot be offered or intended for sale, trade, or barter. While NMFS agrees that it will be difficult to enforce this requirement, the small amount of fillets allowed and the intended use of the fillets should have a minimal impact on the conservation goals of the FMP. This exemption allows the traditional fishing practice of crew members filleting fish for personal use to continue. If this exemption poses a problem in the future, it may be modified using the framework provisions of subpart C.

Flexible Area Action System

Comment 41: One association commented that the FAAS described in § 651.26, is an overbroad, standardless delegation in violation of the Administrative Procedure Act and the Constitution.

Response: The Flexible Area Action System described in § 651.26 is not a new provision, rather it was implemented through the approval of Amendment 3 to the FMP. The proposed rule republished the entire part and not just the provisions changed or added by Amendment 5. This was done to aid the reader. The commenter is invited to review responses to comments published at the time this section was promulgated.

Monitoring Requirements

Comment 42: One association commented that the presumption in § 651.28(a)(4) is unreasonable because the vessel operator may not know the violation is occurring and thus may fail to collect the evidence to rebut the presumption. A vessel could run through its whole allocation without knowing it, if a battery shorts out.

Response: The VTS unit typically displays a signal when the unit is in communication with an overhead satellite. The vessel operator should be able to determine readily if the unit is functioning or at least enter into agreement with the VTS unit vendor that he/she be notified when the unit is not functioning properly. If the unit is not functioning properly, the vessel operator should respond accordingly and try to correct the problem, and if not able to, gather the evidence necessary.

Comment 43: One association commented that, in § 651.28(a)(7), the definition for tampering must except unknowing activity and such actions as rigging the vessel, raising fishery cones, sailing into fog banks, etc., all of which could affect signal or position accuracy.

Response: Adverse weather typically does not distort the information provided by a VTS unit. This only occurs if the antenna is disrupted or there is an occurrence of extreme weather. Tampering implies a knowing violation. Enforcement discretion will be used in determining violations and whether an action was willful or not.

Comment 44: Four VTS vendors commented that the requirement for polling is not essential for vessel monitoring objectives.

Response: NMFS believes that the polling requirement is an integral component of a monitoring system employing a VTS. Polling will enhance NMFS ability to insure adequacy of its DAS monitoring requirements. Moreover, the use of a VTS will not be limited to just DAS monitoring, but will also be used for closed area and Hague Line surveillance, and other enforcement concerns. Polling will allow NMFS to change the frequency of location reporting in support of specific enforcement operations. This could occur for a given area, individual vessels or groups of vessels. Polling can also be beneficial to search and rescue operations by pinpointing location, speed of drift, etc.

Comment 45: Four VTS vendors commented that the requirement that the VTS provide two-way network communication between the vessel and shore is not essential for vessel monitoring objectives. The commenters stated that vessels are already equipped with radios, telephone, telex, or facsimile equipment.

Response: NMFS believes that two-way communication is necessary. Under § 651.7(b)(1), vessel operators may choose to provide catch information through the VTS unit. Under § 651.29(a)(1), vessels will use the VTS to notify NMFS that they are leaving on a trip that will not involve a groundfish DAS. Allowing reporting such as noted above through the VTS, greatly enhances NMFS' ability to receive information on a timely basis, 24 hours a day. Radios and telephones require someone to be present to receive the call. Telex and facsimile equipment could provide the information, but at greater expense to NMFS through having to input the data to another system. NMFS believes that the two-way communication capabilities will allow VTS to be used for more applications, once established. Consequently, NMFS is not changing the specifications.

Days-at-Sea Notification

Comment 46: One association commented that, in § 651.29 (a) and (b), if the primary system fails or malfunctions and the Regional Director fails to authorize the use of a call-in system, then vessels are not allowed to fish. The Regional Director should be required, not just permitted, to fill the gap.

Response: NMFS recognizes that without a VTS requirement, as written in the proposed rule, vessels would be unable to fish. The final rule has been revised so that initially a call-in system will be required by vessels that will later be subject to VTS requirements when such a system is available. Also, the final rule has been revised so that the Regional Director must authorize a call-in system if a VTS is later shown to be ineffective for monitoring DAS.

Comment 47: One association commented that, in § 651.29(c) (2) and (4), requiring a confirmation by the Regional Director renders the call-in and fax-in useless on nights and weekends

(when most trips start or finish). If the Regional Director fails to confirm the end of the trip, the counting of DAS will run without the fisherman being able to stop it. An alternate to confirmation must be provided.

Response: Confirmation will be automatic through the call-in system or FAX. Neither system will require the vessel operator or owner to be limited to NMFS work hours. The systems have been designed to handle multiple calls and will have sufficient backup such that any inconvenience will be minimized.

Observer Requirements

Comment 48: One association commented that, in § 651.31(c), the requirements applying to an owner or operator regarding at-sea observer coverage represents an unlawful taking, unless compensated.

Response: See response to Comment 24.

Comment 49: One association expressed concern about the cost to the vessel of the observer requirements under § 651.31, citing the expense of liability insurance.

Response: As has been done for the past several years, NMFS will continue to place voluntary sea samplers on board vessels. Whether it is a voluntary sea sampler or a mandatory observer, NMFS will be responsible for the salary, but the vessel will be responsible for adequate accommodations and food. NMFS is not required to provide insurance to the vessel owner regarding liability to the observer. If such insurance is desired by the vessel owner, it will be the owner's responsibility to provide such insurance coverage for the time the observer is on the vessel.

Comment 50: One association commented that the allowance for an observer to inspect and copy communication logs may be an invasion of privacy or an unauthorized disclosure of proprietary information. The requirement to inspect and copy should be restricted to information pertaining to catch and related data.

Response: The final rule requires that only information relating to the catch and related data be provided to the observer.

Sink Gillnet Requirements

Comment 51: One association stated that the amendment does not provide consistent, targeted controls to reduce incidental harbor porpoise mortality and recommended that time and area closures be implemented.

Response: In anticipation of the harbor porpoise framework measure being approved, the Council has been evaluating the feasibility of time/area closures. The measure and implementing rule requiring all gillnets to be out of the water, is intended to serve as the default harbor porpoise mitigation of take measure until such time as another is implemented. It was designed to meet harbor porpoise protection objectives over 5 years. Under the framework measure, the Council will be able to recommend time/area closures for implementation once they are determined to be appropriate.

Comment 52: The Marine Mammal Commission commented that the monthly period of time when sink gillnets are required to be removed from the water should be 16 days per month in year 1, rather than 4 days per month. The 16 days per month should be put into effect pending an assessment of its effect on reducing the incidental take level and/or development of alternative management measures.

Response: Once a fishery management plan or amendment has been formally submitted by a Council, NMFS has authority to approve or disapprove provisions, but has little authority to modify a provision. To disapprove this measure would have eliminated all protection for harbor porpoise and groundfish afforded by this measure, at least in the short term. Indeed, the Biological Opinion prepared for the amendment recommends an accelerated schedule, by initially going to the year 2 schedule of 8 days a month in the first year. As stated previously, the Council's evaluation of time/area closures is being conducted with the goal of implementing such a measure under the framework as soon as possible. If the Council recommends such a measure and it is approved for implementation, the necessary protection may be provided.

Comment 53: The Marine Mammal Commission commented that the proposed critical habitat areas for right whales (Cape Cod Bay and Great South Channel) should be adopted as closed areas, instead of the area designated as Closed Area I.

Response: Much of the proposed critical habitat is already included in Closed Area I and the closure occurs at a time when right whales are present in the area. The Biological Opinion prepared for this amendment determined that Cape Cod Bay and the Great South Channel will not be adversely affected by the Amendment 5 measures. If the proposed critical habitat for right whales becomes final, it may be appropriate at that time to consider such a change under the framework provisions, in subpart C. The exception to this would be Cape Cod Bay, which is under the Commonwealth of Massachusetts' jurisdiction.

Comment 54: The Marine Mammal Commission recommended that the exemption for gillnets from the effort control measures be disapproved.

Response: The Council intends for the exemption to be in place only until such time as it can determine the impact of the harbor porpoise take reduction measures on fishing mortality. Rather than try to reconcile the two measures, the Council chose to concentrate its efforts on reduction of harbor porpoise mortality. It is likely that these measures will reduce fishing mortality. Reducing the time when gillnets are allowed in the water also reduces the time to catch groundfish and take harbor porpoise incidentally. A reduction in time will reduce fishing effort.

Framework Specifications

Comment 55: One individual stated that the framework measures are illegal in that they override and assume the functions of NMFS. The framework measures will not provide the quick reaction needed to conserve small fish.

Response: The framework measures are consistent with the Magnuson Act and other applicable law; NMFS authority is not diminished by this measure or the Council. Measures proposed by the Council must be analyzed and are subject to public comment. Once the Council recommends measures, NMFS will make a determination on the appropriateness of the measures with regard to the Magnuson Act and other applicable law.

The framework measure is not specifically designed to preserve concentrations of small fish. Other permanent measures, such as the increase in minimum mesh size, the Stellwagen Bank and Jeffreys Ledge juvenile protection areas, Nantucket Lightship Closed Area and the Flexible Area Action System are designed to provide protection to juvenile fish. If other areas are determined to need protection or the timing of protection needs to be changed, the framework measure can be used to accomplish this.

Comment 56: One association expressed concern that the amendment's measures may be insufficient to end overfishing and rebuild depleted fish stocks. The commenter expressed hope that the framework measure of subpart C would be followed and that it would allow for sufficient adjustments, if necessary.

Response: NMFS is concerned about the continued decline of the stocks and

that it may be necessary to take further action through the framework measure. NMFS, in approving the amendment, has sent the Council a letter describing this concern and stating NMFS' expectation that the framework provisions will be used to meet the goals and objectives of the Amendment.

Other Comments

Comment 57: One individual raised several questions about the process by which the proposed rule was promulgated, with regard to the submitted amendment and the role of the Council and NMFS.

Response: The Magnuson Act, section 302(h), specifies the functions of Regional Fishery Management Councils. One of these functions is to prepare and submit to the Secretary fishery management plans and amendments for those fisheries that require conservation and management within its geographical area of authority. Under section 303(c), the Magnuson Act specifies that "proposed regulations which the Council deems necessary and appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 304 and 305." The Secretary is then responsible for making any changes necessary for implementation and publishing the proposed regulations. Thus, the Council is responsible for proposing those measures necessary for the conservation and management of the resource. If what a Council proposes is consistent with the Magnuson Act and other applicable law, the Secretary is responsible for the approval and implementation of the proposed measures.

Comment 58: One individual disputed the statement in the Supplementary Information section of the preamble of the proposed rule, that "the FMP has been in effect since 1986, and has been amended four times * * *" The commenter was not aware of any evidence that the FMP had been approved or accepted by the Secretary prior to final rulemaking.

Response: On August 20, 1986, an interim rule (51 FR 29642) was issued, which indicated that the Secretary had partially disapproved the FMP and that the remaining approved measures were implemented for a period ending on September 30, 1987. On September 17, 1987, a final rule (52 FR 35093) was published that implemented Amendment 1, which responded to the deficiencies of the FMP. The approval of Amendment 1 was not conditional and its measures along with the approved FMP measures remained in effect until amended by Amendment 2 (54 FR 4798, January 31, 1989), Amendment 3 (54 FR 52803, December 22, 1989), Amendment 4 (56 FR 24724, May 31, 1991) and now, Amendment 5.

With regard to Amendment 5, the Council, with assistance from NMFS, U.S. Coast Guard, state fishery agencies, academia, and the Mid-Atlantic Fishery Management Council, prepared the amendment and other supporting documents. NMFS prepared the proposed rule, which was reviewed by the Council for consistency with the amendment.

Other comments were received related to approval of the amendment or other concerns, rather than on the proposed rule. These comments included: Comments on the adequacy of the analysis performed by the Council, recommendations for emergency action on haddock, additional measures for yellowtail flounder, recommendations on the proposed listing of harbor porpoise under the Endangered Species Act and action under Marine Mammal Protection Act, recommendations for increased observer coverage under the Marine Mammal Protection Act, reauthorization of the Magnuson Act, the relationship between the Magnuson Act and the Administrative Procedure Act. All comments received were considered in the decision to approve the amendment.

Changes From the Proposed Rule

In § 651.2, in the definition for a "combination vessel" the phrase "and the Atlantic Sea Scallop Fishery Management Plan" was removed to make it clear that qualification for scallop DAS is not required under this part.

In § 651.2, the definition for "DAS (Day(s)-at-sea)" was modified to clarify when a DAS occurs, and a definition for "out of the multispecies fishery or DAS program" was added to distinguish between when a vessel is subject to DAS and when it is not.

In § 651.2, the definition for "Dealer" was modified to include the phrase "issued a valid Federal vessel permit under this part" to clarify that dealers are required to have a permit if they purchase from vessels issued a Federal multispecies permit.

In § 651.2, the phrase "declared out of the multispecies fishery" was replaced with the phrase "out of the multispecies fishery or DAS program" to reflect more accurately the requirements of § 651.22.

In § 651.2, the definition for "scallop dredge vessel" was made consistent with the regulatory requirements by adding a phrase to clarify that a scallop dredge vessel must have been issued or applied for a limited access scallop permit.

In § 651.4, a phrase was added to the introductory text to explain the changes made to the applicability date of this requirement.

In § 651.4, the narrative within the introductory text was modified by adding the word "valid" before the types of permits listed, to provide further clarification.

In §§ 651.4, 651.5 and 651.6, several editorial changes were made to provide consistency between the administrative requirements contained in these sections and similar sections contained in 50 CFR part 650.

In § 651.4(a)(1)(i)(B), the phrase "on or prior to" was replaced with "as of" to reflect the language in Amendment 5 and to clarify the requirement.

In § 651.4, paragraph (a)(1)(i)(B) was modified by adding the word "written" to clarify how this requirement can be met.

In § 651.4, paragraph (a)(3) was modified by adding the word "written" to clarify how this requirement can be met.

In § 651.4(a)(4)(ii), the sentence "For undocumented vessels, net tonnage does not apply" was added to clarify further the requirements for replacement vessels.

In § 651.4(f)(2)(iii), the references to 1994 and 1995 were removed to clarify that this election must be on the permit application in all years.

Section 651.4(f)(2)(v) was rewritten to clarify options for movement between the non-DAS program permit categories.

Section 651.5(a) was modified so that a vessel operator need only carry the operator permit while on board the vessel rather than in possession at all times.

Section 651.5(c) was modified to add the sentence "Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading." This sentence was included under § 651.5(n) in the proposed rule and is repeated in this section in the final rule to increase awareness of this provision.

Section 651.9(b)(10) was modified to clarify what act was actually prohibited.

In § 651.9(c), the phrase "while the vessel, and persons on the vessel, are in possession of or landing more than 500 lbs (226.8 kg) of, or fishing for regulated species" was added to clarify this requirement.

Section 651.9(e)(2)(ii) was divided into paragraphs (e)(2)(ii) and (e)(2)(iii) to clarify the prohibitions.

In § 651.20, paragraphs (a)(2), (b)(2), (c)(2) and (d)(2) have been corrected to cross reference § 651.20 (e) and (f), instead of § 651.20 (f) and (g).

In § 651.20, paragraphs (a)(3)(i), (a)(4)(i)(A), (c)(3)(i), (c)(3)(ii), (d)(3)(i), (d)(3)(ii), (e)(1)(iv), (f)(4), the phrase "the possession limit of regulated species specified under § 651.27(a)" is replaced with "500 lbs (226.8 kg) of regulated species." This is because § 651.27(a) is not implemented until May 1, 1994, and the bycatch requirement for the small mesh fisheries must be implemented on March 1, 1994.

In § 651.22, paragraph (b)(3)(iv), the requirement under § 651.22(c)(1)(i)(E) was added for consistency between an identical requirement between the Fleet DAS and Individual DAS programs.

Section 651.22(d)(1)(i)(C) was revised to clarify what is required to verify the length of a vessel.

Section 651.22(d)(1)(ii) was modified with the addition of the phrase "excepts gillnets and gear not intended to fish for multispecies finfish such as lobster", to provide consistency with the Council's intent for this requirement.

Section 651.22(d)(2) was replaced with paragraphs (2)(i) through (iii) to clarify that sink gillnet vessels greater than 45 ft (13.7 m) in length are exempt from the DAS effort reduction program when using sink gillnet gear exclusively, unless further effort reduction measures are implemented; that when these vessels use other gear and intend to fish for, possess or land, or do possess or land more than 500 lbs. (226.9 kg) of regulated species, they shall be subject to the DAS effort reduction program; and that sink gillnet vessels less than 45 ft (13.7 m) in length are exempt from the DAS effort reduction program unless further effort reduction measures are implemented. These changes clarify what sink gillnet vessels are subject to with regard to the effort reduction program and under which circumstances sink gillnet vessels are exempted from its requirements.

In § 651.22, paragraph (d)(2)(ii), a sentence was added to clarify the requirements for vessel fishing in both the sink gillnet fishery and a DAS program.

Section 651.22,(d)(3) was modified by adding the phrase "except for combination vessels" to clarify that combination vessels are not subject to this requirement.

In § 651.27, paragraph (a)(1), the phrase "vessels issued hook-gear-only permits that are fishing with gear other than hook gear, sink gillnet vessels greater than 45 ft (13.7 m) in length that are fishing with gear other than gillnet gear" was added to further clarify when vessels using this type of gear are subject to the possession limit.

In § 651.28, paragraph (a)(1), the heading and all subsequent references have been revised from "certification" to "approval" to better define the process by which will NMFS select VTS vendors.

In § 651.28(a)(4), the phrase "not participating in the multispecies fishery" was replaced by "declared out of the multispecies finfish fishery" to provide consistency with other sections of the regulations.

Section 651.28(c)(3) has been revised to read, "If the owner of a sink gillnet vessel greater than 45 ft (13.7 m) in length intends to fish for regulated multispecies with gear other than sink gillnet gear on a fishing trip" in order to clarify when a sink gillnet vessel owner is required to provide notice.

In § 651.29, the information requirements under paragraphs (c)(1) and (c)(2) were modified such that the caller's telephone number is required, instead of the caller's address, in order to facilitate administration of this requirement.

In § 651.31(c)(5), the phrase "the vessel's log, communications logs," was deleted because it was determined to be inappropriate..

In § 651.32(a)(1)(i), the phrase "Vessel owners using sink gillnet gear must remove all of their sink gillnet gear" was added to clarify that vessel owners must remove only their own sink gillnet gear.

In § 651.32(a)(2), the phrase "upon issuance of the permit" was deleted to allow the Regional Director more flexibility in form and timing of notification.

In § 651.32, paragraph (c) was corrected to be paragraph (b).

In §§ 651.4 introductory text, 651.4(a), 651.4(b), 651.4(c), 651.9(e)(2) introductory text, 651.22(a), 651.22(b)(1)(i), 651.22(c)(1), 651.22(d)(1)(i), 651.22(e), 651.29(a)(1), 651.29(b), introductory text, and 651.33 introductory text, wording was added to implement these requirements on May 1, 1994, and to clarify that vessels may fish using a valid 1993 multispecies vessel permit until that time.

In §§ 651.5(a), 651.9(a) introductory text, 651.9(e)(1)(i), 651.9(e)(6), 651.9(e)(8), 651.9(e)(9), 651.20 introductory text, 651.20(a)(2), 651.20(a)(3)(ii), and 651.20(c)(4), revisions were made to clarify that all permit holders under this part are subject to these requirements.

Classification

The Council prepared an FSEIS for Amendment 5, which was filed by the Environmental Protection Agency with the Office of the Federal Register. The Assistant Administrator for Fisheries, NOAA, (AA) determined, upon review of the FSEIS and public comments that the preferred alternative of the Amendment is environmentally preferable to the status quo. The FSEIS demonstrates that the preferred alternative contains management measures to eliminate the overfished condition of stocks of groundfish, especially haddock, cod, and yellowtail flounder; provides economic and social benefits to the fishery in the long term; and should provide better balance in the ecosystem in terms of the groundfish resources.

NMFS notified the Small Business Administration during the proposed rule stage that this action may have significant effects on a substantial number of small entities based upon an IRFA prepared by the Council. The IRFA now constitutes an FRFA based on public comments. The FRFA determines that most active vessels that participate in the fishery are considered small entities according to the criteria established by the Small Business Administration. Amendment 5 excludes the smaller vessels (i.e., boats 45 ft (13.7 m) and smaller in length) from effort reduction measures. The regulations would probably not have a significant impact on these vessels, which constitute about 64 percent of the qualified vessels and which landed approximately 15 percent of the groundfish in 1991. However, the proposed reduction in effort may have considerable impacts on those vessels that are still considered small entities which are longer than 45 ft (13.7 m). These small entities constitute 36 percent of the qualified vessels, and landed approximately 85 percent of the groundfish in 1991, and are expected to incur significant short-term losses in revenue that will be offset by long-term gains and greater stability in the fishery.

The rule contains eight new collection-of-information requirements and revises seven existing requirements subject to the Paperwork Reduction Act. These collection-of-information requirements have been approved by the Office of Management and Budget (OMB). Nevertheless, public comments are invited on the burden-hour estimates for the collection-of-information requirements listed below.

The new reporting requirements are:

1. Dealer permits, (§ 651.6—OMB Approval #0648–0202) (5 minutes/response);

2. Operator permits, (§ 651.5—OMB Approval #0648–0202) (1 hour/response);

3. Notice requirements for observer deployment, (§ 651.31—OMB Approval #0648–0202) (2 minutes/response);

4. Proof of installation of vessel tracking system, (§ 651.4(f)(vi)—OMB Approval #0648–0202) (2 minutes/response);

5. Automated vessel tracking system, (§ 651.29(a)—OMB Approval #0648–0202) (0 minutes/response);

6. Vessel call-in or electronic card reporting requirement, (§ 651.29(b)—OMB Approval #0648–0202) (2 minutes/response);

7. Notice of entry/exit of Closed Area II due to hazardous weather, (§ 651.21(b)(iii)(D)—OMB Approval #0648–0202) (2 minutes/response);

8. Vessel logbooks, (§ 651.7(b)—OMB Approval #0648–0212) (5 minutes/response).

Revisions to the existing requirements are:

1. Three new vessel permit categories (limited access, hook-gear-only permits, possession-limit-only permits) (§ 651.4(a), (b), and (c)—OMB Approval #0648–0202) (no increase in burden above that currently associated with vessel permits);

2. Limited access permit denial appeals, (§ 651.4(a)(8)—OMB Approval #0648–0202) (0.5 hours/response);

3. Limited access permits, days at sea appeals (§ 651.22(a)(6)—OMB Approval #0648–0202) (2 hours/response);

4. The Cultivator Shoals Exemption Program (§ 651.20(a)(4)(i)—OMB Approval #0648–0202) (2 minutes/response);

5. The Midwater Trawl Exemption Program (§ 651.20(e)—OMB Approval #0648–0202) (2 minutes/response);

6. Dealer purchase reports (§ 651.7(a)—OMB Approval #0648–0229) (2 minutes/response);

7. Annual processed products reports (§ 651.7(a)(2)—OMB Approval #0648–0018, will be mandatory (2 minutes/response).

Send comments regarding these burden estimates or any other aspect of these collections-of-information, including suggestions for reducing the burdens, to Richard Roe, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**).

This rule is not subject to review under E.O. 12866.

The AA has determined that there is good cause to waive the 30-day delay in effective date normally required by section 553(d) of the Administrative Procedure Act because many of the provisions of this rule must be effective by March 1, 1994 to begin eliminating the overfished condition of some groundfish stocks. Some provisions of the rule do not become applicable by their own terms until dates after March 1, 1994, such as permit requirements described in § 651.4, and requirements for vessels having limited access permits which will be fishing in the individual DAS program and combination vessels to use a VTS as described in § 651.29. A letter sent by the Regional Director to all permit holders advises that the call-in notification procedure described in § 651.29 shall apply to all vessels holding limited access permits until a VTS system is operational, sometime after 6 months after March 1, at which time vessels fishing under the individual DAS program and combination vessel.

List of Subjects in 50 CFR Part 651

Fisheries, Reporting and recordkeeping requirements.

Dated: February 24, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is revised; with § 651.9(a)(11) and (12), § 651.9(e)(33) and (34), and § 651.27(b) expiring at 2400 hours, April 2, 1994; to read as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

Subpart A—General Provisions

Sec.
651.1 Purpose and scope.
651.2 Definitions.
651.3 Relation to other laws.
651.4 Vessel permits.
651.5 Operator permits.
651.6 Dealer permits.
651.7 Recordkeeping and reporting.
651.8 Vessel identification.
651.9 Prohibitions.
651.10 Facilitation of enforcement.
651.11 Penalties.

Subpart B—Management Measures

651.20 Regulated mesh areas and restrictions on gear and methods of fishing.
651.21 Closed areas.
651.22 Effort-control program for limited access vessels.
651.23 Minimum fish size.
651.24 Experimental fishing.
651.25 Gear-marking requirements.
651.26 Flexible Area Action System.
651.27 Possession limits.
651.28 Monitoring requirements.
651.29 DAS notification program.
651.30 Transfer-at-sea.
651.31 At-sea observer coverage.
651.32 Sink gillnet requirements to reduce harbor porpoise takes.
651.33 Hook-gear-only vessel requirements.

Subpart C—Framework Adjustments to Management Measures

651.40 Framework specifications.
Figure 1 to Part 651—Regulated mesh areas.
Figure 2 to Part 651—Nordmore grate.
Figure 3 to Part 651—Closed areas.

Authority: 16 U.S.C. 1801 et seq.

Subpart A—General Provisions

§ 651.1 Purpose and scope.

This part implements the Fishery Management Plan for the Northeast Multispecies Fishery (FMP), as amended by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. These regulations govern the conservation and management of multispecies finfish.

§ 651.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Atlantic sea scallop or *scallop* means the species *Placopecten magellanicus* throughout its range.

Bottom-tending gillnet or sink gillnet means any gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

Butterfish means *Peprilus triacanthus*.

Chair means the Chair of the Multispecies (Groundfish) Oversight Committee of the Council.

Charter and party boats means vessels carrying recreational fishing persons or parties for a per capita fee or for a charter fee.

Codend means the terminal section of a trawl net in which captured fish may accumulate.

COLREGS Demarcation Lines means the lines of demarcation delineating those waters upon which mariners must comply with the International Regulations for Preventing Collisions at Sea, 1972 (33 CFR part 80), and those waters upon which mariners shall comply with the Inland Navigation Rules.

Combination vessel means a vessel that has fished in any one calendar year with scallop dredge gear and otter trawl gear during the period 1988 through 1990, and that is eligible for an allocation of DAS under the FMP and has applied for or been issued a Federal limited access scallop permit.

Committee means the Multispecies (Groundfish) Oversight Committee of the Council.

Council means the New England Fishery Management Council.

DAS (Day(s)-at-sea) means the 24-hour periods of time during which a fishing vessel is absent from port for purposes of multispecies finfish fishing in which the vessel intends to possess or possesses more than the possession limit of regulated multispecies.

Dealer means any person who receives multispecies finfish for a commercial purpose from the owner or operator of a vessel issued a valid Federal vessel permit under this part, other than exclusively for transport on land.

Dredge or *dredge gear* means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of Atlantic sea scallops.

Fishery Management Plan (FMP) means the Fishery Management Plan for Northeast Multispecies Fishery, as amended.

Gillnet means fishing gear comprised of a net hung from a float-line, with a lead-line on the bottom, such that it is designed to be or is configured vertically in the water column to entangle passing fish.

Gross registered tonnage means the gross tonnage specified on the U.S. Coast Guard documentation.

Harbor porpoise means *Phocoena phocoena*.

Harbor Porpoise Review Team (HPRT) means a team of scientific and technical experts appointed by the Council to review, analyze, and propose harbor porpoise take mitigation alternatives.

Herring means Atlantic herring, *Clupea harengus harengus*, or blueback herring, *Alosa aestivalis*.

Hook gear means fishing gear that is comprised of a hook or hooks attached to a line and includes, but is not limited to, longline, setline, jigs, troll line, rod and reel, and line trawl.

Land means to enter port with fish on board, to begin offloading fish, or to offload fish.

Longline gear means fishing gear that is or is designed to be set horizontally, either anchored, floating, or attached to a vessel, and that consists of a main or ground line with three or more gangions and hooks.

Mackerel means Atlantic mackerel, *Scomber scombrus*.

Menhaden means Atlantic menhaden, *Brevoortia tyrannus*.

Midwater trawl gear means trawl gear that is designed to fish for, capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.

Multispecies finfish or finfish means the following finfish:

Gadus morhua—Atlantic cod.
Glyptocephalus cynoglossus—witch flounder.
Hippoglossoides platessoides—American plaice.
Limanda ferruginea—yellowtail flounder.
Macrozoarces americanus—ocean pout.
Melanogrammus aeglefinus—haddock.
Merluccius bilinearis—silver hake.
Pollachius virens—pollock.
Pseudopleuronectes americanus—winter flounder.
Scophthalmus aquosus—windowpane flounder.
Sebastes marinus—redfish.
Urophycis chuss—red hake.
Urophycis tenuis—white hake.

NEFSC means the Northeast Fisheries Science Center of NMFS, NOAA.

Northern shrimp means *Pandalus borealis*.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

Operator means the master, captain, or other individual on board a fishing vessel and in charge of that vessel's operations.

Out of the multispecies fishery or DAS program means the period of time during which a vessel is absent from port for purposes of fishing in which the vessel possesses no more than the possession limit of regulated species.

Pair trawl or pair trawling means to tow a single net between two vessels for the purpose of, or that is capable of, catching multispecies finfish.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Purse seine gear means an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear, or any net designed to be, or capable of being, used in such fashion.

Recreational fishing means fishing that is not intended to, nor does it result, in the barter, trade, or sale of fish.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are not considered recreational fishing vessels.

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

Regulated species means the subset of multispecies finfish that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake.

Reporting month means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means the period of time beginning at 0001 hours local time on Sunday and ending at 2400 hours local time the following Saturday.

Re-rig or re-rigged means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for multispecies finfish.

Rigged hooks means hooks that are baited, or only need to be baited, in order to be fished. Unsecured, unbaited hooks and gangions are not considered to be rigged.

Scallop dredge vessel means any fishing vessel, other than a combination vessel, that uses or is equipped to use dredge gear, and that has been issued or has applied for a Federal limited access scallop permit.

Squid means *Loligo pealei* or *Illex illecebrosus*.

Standard box means a box, typically constructed of wax-saturated cardboard or wood, designed to hold 125 pounds (56.6 kg) of fish plus ice, and that has a volume of not more than 5,100 cubic inches (2.95 cu. ft or 83.57 cm^3).

Standard tote means a box typically constructed of plastic, designed to hold 100 pounds (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 liters, or a volume of not more than 4320 cubic inches (2.5 cubic feet or 70.79 cubic cm^3).

Transfer means to begin to remove, to pass over the rail, or otherwise take away fish from any vessel and move them to another conveyance.

Trip is the period of time during which a fishing vessel is absent from port, beginning when the vessel leaves port and ending when the vessel returns to port.

Under agreement for construction or reconstruction means that the keel has been laid and that there is a written agreement to construct a fishing vessel.

Vessel Tracking System (VTS) means a vessel tracking system as set forth in § 651.28(a) and approved by NMFS for use by multispecies finfish vessels as required by this part.

VTS unit means a device installed on board a vessel used for vessel tracking and transmitting the tracked position as required by this part.

Whiting means *Merluccius bilinearis*.

§ 651.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b), through (e) of this section.

(b) Additional regulations governing domestic fishing for squid, mackerel, and butterfish, which are affected by this part, are found at 50 CFR part 655.

(c) Additional regulations governing domestic fishing for summer flounder, which are affected by this part, are found at 50 CFR part 625.

(d) Additional regulations governing domestic fishing for Atlantic sea scallops, which are affected by this part, are found at 50 CFR part 650.

(e) Nothing in these regulations supersedes more restrictive state management measures for multispecies finfish.

§ 651.4 Vessel permits.

Beginning on May 1, 1994, any vessel of the United States that fishes for, possesses, or lands multispecies finfish, except vessels that fish for multispecies finfish exclusively in state waters, and recreational fishing vessels, must have been issued and carry on board an authorizing letter issued under paragraph (a)(8)(v) of this section, a valid limited access multispecies permit, a valid hook-gear-only permit, or a valid possession-limit-only permit issued under this section. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application.

(a) *Limited access multispecies permits.* Beginning on May 1, 1994, any vessel of the United States that possesses or lands more than the possession limit of regulated species specified under § 651.27(a), except vessels fishing with fewer than 4,500 hooks that have been issued a hook-gear-only permit as specified in paragraph (b) of this section, vessels fishing for regulated species exclusively in state waters, and recreational fishing vessels, must have been issued and carry on board a valid Federal limited access multispecies permit, or an authorizing letter issued under paragraph (a)(8)(v) of this section. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application. To qualify for a limited access multispecies permit, a vessel must meet the following criteria, as applicable:

(1) *Eligibility in 1994.* (i) To be eligible to obtain a limited access multispecies permit for 1994, a vessel must meet one of the following criteria:

(A) The vessel had been issued a Federal multispecies permit as of February 21, 1991, or renewed a Federal multispecies permit in 1991 that was issued before February 21, 1991, and the vessel landed multispecies finfish on at least one trip completed between January 1, 1990, and February 21, 1991, inclusive; or

(B) The vessel was under written agreement for construction or re-rigging, or was under written contract for purchase as of February 21, 1991, and the vessel was issued a Federal multispecies permit and landed multispecies finfish on at least one trip between February 21, 1991, and February 21, 1992; or

(C) The vessel is replacing a vessel that meets any of the criteria set forth in paragraphs (a)(1)(i) (A) or (B) of this section, and the vessel meets the criteria described in paragraph (a)(4) of this section.

(ii) No more than one vessel may qualify, at any one time, for a limited access multispecies permit based on that or another vessel's fishing and permit history, unless authorized by the Regional Director. If more than one vessel owner claims eligibility for a limited access multispecies permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access multispecies permit and the DAS allocation according to paragraph (a)(3) of this section.

(iii) A limited access multispecies permit for 1994 will not be issued unless an application for such permit is received by the Regional Director on or before December 31, 1994.

(2) *Eligibility in 1995 and thereafter.* To be eligible to renew or apply for a limited access multispecies permit after 1994, a vessel must have been issued a limited access multispecies permit for the preceding year, or the vessel must be replacing a vessel that had been issued a limited access multispecies permit for the preceding year, and, if applicable, the vessel must meet the criteria set forth in paragraph (a)(4) of this section. If more than one vessel owner claims eligibility to apply for a limited access multispecies permit based on one vessel's fishing and permit history after 1994, the Regional Director shall determine who is entitled to qualify for the limited access multispecies permit and the DAS allocation according to paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(4) *Replacement vessels.* To be eligible for a limited access permit, the replacement vessel must meet the following criteria:

(i) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel it is replacing as of the date the vessel it is replacing was initially issued a 1994 limited access multispecies permit, as specified on a valid application for a permit under this section; except that, the horsepower of the replacement vessel may not exceed the horsepower of the vessel being replaced if the horsepower of the vessel being replaced has been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access multispecies permit; and

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel being replaced, based on specifications provided in the initial 1994 application for a limited access multispecies permit; except that the length, gross registered tonnage, and net tonnage of the replacement vessel may not exceed the length, gross registered tonnage, and net tonnage of the vessel initially issued a limited access multispecies permit if any or all of these specifications have been increased through upgrade or vessel replacement from that specified when the vessel being replaced initially applied for a 1994 limited access multispecies permit. For purposes of paragraph (a)(2), a vessel not required to be documented under title 46, U.S.C. will be considered to be 5 gross registered tons. For undocumented vessels, net tonnage does not apply.

(5) *Upgraded vessel.* To remain eligible to retain a valid limited access

multispecies permit, or to apply for or renew a limited access multispecies permit, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a 1994 limited access multispecies permit as specified in that vessel's permit application for a 1994 limited access multispecies permit; and

(ii) The vessel's length, gross registered tonnage, and net tonnage may be upgraded, whether through refitting or replacement, only once. Such an increase shall not exceed 10 percent each of the length, gross registered tonnage, and net tonnage of the vessel initially issued a 1994 limited access multispecies permit as specified in that vessel's application for a 1994 limited access multispecies permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size may be increased. This type of upgrade may be done separately from an engine horsepower upgrade.

(iii) A replacement of a vessel that does not result in increasing horsepower, length, gross registered tonnage or net tonnage is not considered an upgrade for purposes of this section.

(6) *Notification of eligibility for 1994.* (i) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the criteria described in paragraph (a)(1) of this section, that they qualify for a limited access multispecies permit if they meet the requirements contained in paragraphs (d) through (h) of this section.

(ii) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access multispecies permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access multispecies permit by meeting the requirements described under paragraphs (e) and (f) of this section and by submitting the information described in paragraphs (a)(1) through (5) of this section. In the event the application is denied, the applicant may appeal as specified in paragraph (a)(8) of this section. If, through either of these procedures, the Regional Director determines that the vessel meets the eligibility criteria, a limited access multispecies permit will be issued to the vessel.

(7) *Consolidation restriction.* Limited access multispecies permits and DAS allocations may not be combined or consolidated.

(8) *Appeal of denial of limited access multispecies permit.*

(i) Any applicant denied a limited access multispecies permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce.

(iv) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(v) *Status of vessels pending appeal of a limited access multispecies permit denial.* A vessel for which an application has been completed and an appeal has been initiated may fish under the Fleet DAS program if it has appealed the denial, the appeal is pending, and the vessel has on board a letter from the Regional Director, authorizing the vessel to fish under the Fleet DAS. The Regional Director will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity pending a final decision on the appeal. The authorizing letter must be carried on board the vessel while participating in the DAS program. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(9) *Adjustments to limited access multispecies permits.* In 1996 and thereafter, the Council may adjust the criteria for issuance of a limited access multispecies permit. In making the adjustment, the Council shall take into consideration the fishing mortality goals and the objectives of the FMP. Any such adjustment may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(b) *Hook-gear-only permit.* Beginning on May 1, 1994, any vessel of the United States that does not have on board a valid limited access multispecies permit or a possession-limit-only permit, except vessels that fish exclusively in state waters for multispecies finfish and recreational fishing vessels, may possess and land multispecies finfish if it never sets, per day, or possesses, more than 4,500 rigged hooks as specified in § 651.33, and has on board a valid hook-gear-only permit. A hook-gear-only permit may be issued to a vessel regardless of whether it qualifies for a limited access multispecies permit. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application.

(c) *Possession-limit-only permit.* Any vessel of the United States that does not have on board a valid limited access multispecies permit or hook-gear-only permit, and that possesses or lands no more than the possession limit of multispecies finfish specified under § 651.27(a), except vessels that fish exclusively in state waters for multispecies finfish and recreational fishing vessels, must have aboard a valid possession-limit-only permit. Until May 1, 1994, vessels that have been issued 1993 Federal multispecies permits, not otherwise subject to permit sanctions due to enforcement proceedings may fish for, possess, or land multispecies finfish in or from the EEZ. Any other vessel of the United States may obtain an interim letter of authorization to fish for, possess, or land multispecies finfish until May 1, 1994, by submitting a 1993 permit application.

(d) *Condition.* Vessel owners who apply for a permit under this section must agree as a condition of the permit that the vessel and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are

subject to all requirements of this part. The vessel and all such fishing, catch, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(e) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access multispecies permits who have not been notified of eligibility by the Regional Director shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified under paragraph (a)(1) of this section. Applications for 1994 limited access multispecies permits under this section will not be accepted after December 31, 1994. Acceptable forms of proof include, but are not limited to, state weigh-out records, packout forms, settlement sheets, grocery receipts, fuel receipts, and bridge logs.

(f) *Information requirements.* (1) In addition to applicable information required to be provided by paragraph (e) of this section, an application for either a limited access multispecies, hook-gear-only, or possession-limit-only permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having owned more than a 25-percent interest; and name and signature of the owner or the owner's authorized representative.

(2) Applications for a limited access multispecies permit must also contain the following information:

(i) The engine horsepower of the vessel as specified in the vessel's most recent permit application for a Federal Fisheries Permit before May 1, 1994. If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to May 1, 1994 such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit before May 1, 1994, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1-year of the date of when the contract for the replacement engine was signed.

(ii) The length, gross tonnage, and net tonnage of the vessel as specified in the vessel's most recent permit application for a Federal Fisheries Permit before May 1, 1994. If the length, gross tonnage, or net tonnage was changed or a contract to change the length, gross tonnage or net tonnage had been entered into prior to May 1, 1994 such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit, sufficient documentation to ascertain the different length, gross tonnage or net tonnage. However, the upgrade must be completed within 1 year of the date of when the contract for the upgrade was signed.

(iii) If the vessel owner is applying to fish under the individual DAS program specified in this section, the application must include such election.

(iv) In 1995, if the vessel owner is applying to fish under a different DAS program than was assigned for 1994, the application must include such election and the vessel must fish only in that category for the entire year.

(v) For 1996 and thereafter, a vessel, when fishing under the DAS program, may fish only under the DAS program assigned to it in 1995, or if not assigned in 1995, the DAS program assigned to it on its initial permit to fish under the DAS program. However, any vessel may elect for any year to fish under a hook-gear-only permit if it meets the requirements specified in paragraph (b) of this section.

(vi) Beginning on September 1, 1994, if the vessel is a combination vessel, or if the applicant elects to take an Individual DAS allocation or to use a VTS unit, although not required, a copy of the vendor installation receipt from a NMFS-certified VTS vendor as described in § 651.28(a).

(g) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (h) of this section.

(h) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904 and under paragraph (a)(9) of this section, the Regional Director shall issue a Federal multispecies vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 651.7; or

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraphs (a)(1)(iii) and (p) of this section; or

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraph (a)(1) and (2) of this section; or

(iv) The applicant applying for a permit for a combination vessel, electing to participate in the Individual DAS program, or electing to use a VTS, has failed to meet all of the VTS requirements as described in § 651.28; or

(v) The applicant has failed to meet any other application requirements stated in this part.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(i) *Expiration.* Federal fishing permits must be renewed annually, and unless renewed will expire upon the renewal date specified in the permit.

(j) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it

otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (m) of this section.

(k) *Replacement.* Replacement permits, for an otherwise valid permit, may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the Federal Fisheries Permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(l) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and owner to whom it is issued.

(m) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Director. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(n) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(o) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(p) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(q) *Limited access multispecies permit renewal.* To renew or apply for a limited access multispecies permit in 1995 and thereafter, a completed application must be received by the Regional Director by December 31 of the year before the permit is needed. Failure to renew a limited access multispecies permit in any year bars the renewal of the permit in subsequent years.

(r) *Abandonment or voluntary relinquishment of limited access multispecies permits.* If a vessel's limited access multispecies permit is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access multispecies permit may be re-issued or renewed based on that vessel's history or to any vessel relying on that vessel's history.

(s) *Restriction on the issuance of limited access multispecies permits to vessels qualifying for other Federal limited access permits.* A limited access multispecies permit may not be issued to a vessel or its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

§ 651.5 Operator permits.

(a) *General.* Any operator of a vessel holding a valid Federal multispecies permit under this part, or any operator of a vessel fishing for multispecies finfish in the EEZ or in possession of multispecies finfish in or harvested from the EEZ, must carry on board a valid operator's permit issued under this part.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under § 651.4. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree as a condition of this permit that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two color passport-size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* Federal operator permits must be renewed annually, and unless renewed will expire upon the renewal date specified in the permit.

(h) *Duration.* A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal operator permit number assigned. An applicant for a replacement permit must also provide two color passport-size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a Federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 651.6 Dealer permits.

(a) All dealers must have been issued and have in their possession a valid permit issued under this part.

(b) *Dealer application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.* Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the certificate of incorporation must be included with the application. If a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 651.7(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Federal dealer permits must be renewed annually, and unless renewed, will expire upon the renewal date specified in the permit.

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal dealer permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 651.7 Recordkeeping and reporting.

(a) *Dealers.*—(1) *Weekly report.* Dealers must send by mail, to the Regional Director, or official designee, on a weekly basis, on forms supplied by or approved by the Regional Director, a report of fish purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information and any other information required by the Regional Director must be provided in the report: name and mailing address of dealer; dealer number; name and permit number of the vessels from which fish are landed or received; dates of purchases; pounds by species; price by species; and port landed. If no fish are purchased during the week, a report so stating must be submitted.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; completion of the other sections on that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

(3) *Inspection.* Upon request by an authorized officer or by an employee of NMFS designated by the Regional Director to make such inspections, the dealer must make permanently available for inspection, copies of the required reports that have been submitted, should have been submitted, or the records upon which the reports were based.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. The dealer must retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be sent and, if mailed, postmarked within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit.

(b) *Vessel owners.*—(1) *Fishing log reports.* The owner of any vessel issued a Federal multispecies permit under § 651.4 must maintain, on board the

vessel, and submit an accurate daily fishing log for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, for example, using the VTS, or through other media. The following information and any other information required by the Regional Director must be provided: Vessel name, U.S. Coast Guard documentation number (or state registration number if undocumented), and permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow-time duration; pounds, by species, of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number.

(2) *When to fill in the log.* Such log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. At the end of a fishing trip, all information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Owners and operators shall, immediately upon request, make the fishing log reports currently in use or to be submitted available for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip.

(4) *Record retention.* Copies of fishing log reports must be retained and available for review for 1 year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

§ 651.8 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part and that is over 25 ft (7.6 m) in length must display its name on the port and starboard sides of its bow and, if possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part that is over 25 ft (7.6 m) in length must display its official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number for vessels not required to be documented under title 46 of U.S.C.

(c) *Numerals.* The official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 feet (19.8 m), and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 651.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel holding a valid Federal multispecies vessel permit issued under this part, issued a permit under § 651.5 or a letter under § 651.4(a)(8)(v), to do any of the following:

(1) Possess or land multispecies finfish smaller than the minimum size as specified in § 651.23.

(2) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 651.7(b).

(3) Fish for, possess, or land multispecies finfish unless the operator of the vessel has been issued an operator's permit under § 651.5, and a valid permit is on board the vessel.

(4) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 651.4(m) or § 651.5(k).

(5) Fail to affix and maintain permanent markings as required by § 651.8.

(6) Sell, transfer, or attempt to sell or transfer to a dealer any multispecies finfish unless the dealer has a valid Federal Dealer's Permit issued under § 651.6.

(7) Land, offload, remove, or otherwise transfer or attempt to land, offload, remove, or otherwise transfer multispecies finfish or fish from one vessel to another vessel or other floating conveyance.

(8) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(9) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(10) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 651.31.

(11) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.27(b)(1).

(12) Land, or possess on board a vessel, more than 500 lbs (226.8 kg) of haddock, as specified in § 651.27(b)(2) or violate any of the other provisions specified in § 651.27(b)(2).

(13) Fish with, set, haul back, possess on board a vessel, or fail to remove from all waters, a sink gillnet during the times specified in § 651.32(b).

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access permit under § 651.4(a) or a letter under § 651.4(a)(8)(v), to do any of the following:

(1) Possess or land more than 500 lbs. (226.8 kg) of regulated species per trip after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22.

(2) If required to have a VTS unit as specified in § 651.28(a) or § 651.29(a):

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 651.28(a) on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage as specified in § 651.29(a).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess, or land multispecies finfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 651.4(a)(5)(i).

(5) Fish for, possess, or land multispecies finfish with or from a vessel that has had the length, gross registered tonnage, or net tonnage of such vessel or its replacement increased or upgraded in excess of limitations specified in § 651.4(a)(5)(ii).

(6) Fail to comply with any requirement regarding the DAS notification as specified in § 651.29.

(7) If not fishing under the VTS system, fail to have on board the vessel

a card issued by the Regional Director, as specified in § 651.29(b).

(8) Fail to notify that a vessel is participating in the DAS program as specified in § 651.29(b).

(9) Fail to comply with the other methods of notification requirements, including a call-in system as specified in § 651.29(c), if required by the Regional Director.

(10) Fail to provide notification of the beginning or ending of a DAS before leaving port or before returning to port, as required under § 651.29 (b) or (c).

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a hook-gear-only permit under § 651.4(b) to fish with, set, or haul back more than 4,500 rigged hooks per day, or to possess on board a vessel more than 4,500 rigged hooks while the vessel, and persons on the vessel, are in possession of or landing more than 500 lbs. (226.8 kg) of, or fishing for regulated species.

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a possession-limit-only permit under § 651.4(c) to possess or land per trip more than 500 lbs (226.8 kg) of regulated species.

(e) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) through (d) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, or land multispecies finfish unless:

(i) The multispecies finfish were being fished for or harvested by a vessel holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), and the operator on board such vessel has been issued an operator's permit under § 651.5 and has a valid permit on board the vessel;

(ii) The multispecies finfish were harvested by a vessel not issued a Federal multispecies permit that fishes for multispecies finfish exclusively in state waters; or

(iii) The multispecies finfish were harvested by a recreational fishing vessel.

(2) Possess or land regulated species in excess of 500 lbs (226.8 kg) per trip on or after May 1, 1994, as specified in § 651.27 unless:

(i) The multispecies finfish were harvested by a vessel that has been issued a limited access permit under § 651.4(a), a hook-gear-only permit under § 651.4(b), or a letter under § 651.4(a)(8)(v); or

(ii) The regulated species were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(3) Land, offload, cause to be offloaded, sell, or transfer; or attempt to land, offload, cause to be offloaded, sell, or transfer multispecies finfish from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 651.7, unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(4) Purchase or receive multispecies finfish, or attempt to purchase or receive multispecies finfish, whether on land or at sea, as a dealer without accurately preparing, submitting in a timely fashion, and retaining the documents required by § 651.7.

(5) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies finfish from one vessel to another vessel, unless both vessels qualify under the exception specified in paragraph (e)(1)(ii) of this section, or unless authorized in writing by the Regional Director.

(6) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any multispecies finfish from a trip unless the vessel is holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), or the multispecies finfish were harvested by a vessel without a Federal multispecies permit that fishes for multispecies finfish exclusively in state waters.

(7) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose in the capacity of a dealer, multispecies finfish taken from a fishing vessel, unless in possession of a valid dealer permit issued under § 651.6; except that this prohibition does not apply to multispecies finfish taken from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(8) Purchase, possess, or receive for commercial purposes multispecies finfish caught by a vessel other than one holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(9) To be or act as an operator of a vessel fishing for or possessing multispecies finfish in or from the EEZ, or holding a Federal multispecies permit under this part without having been issued and possessing a valid operator's permit issued under § 651.5.

(10) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(11) Make any false statement, oral or written, to an authorized officer or employee of NMFS, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any multispecies finfish.

(12) Make any false statement in connection with an application under §§ 651.4 or 651.5 or on any report required to be submitted or maintained under § 651.7.

(13) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(14) Fish with or possess within the areas described in § 651.20(a)(1) nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is exempted under § 651.20(a)(3) or (a)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(15) Fish with or possess within the area described in § 651.20(b)(1) nets of mesh smaller than the minimum size specified in § 651.20(b)(2), unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(16) Fish with or possess within the area described in § 651.20(c)(1), nets of mesh smaller than the minimum size specified in § 651.20(c)(2), unless the vessel possesses no more regulated species than the possession limit specified in § 651.27(a), or unless the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(17) Fish with or possess within the areas described in § 651.20(d)(1), nets of mesh smaller than the minimum size specified in § 651.20(d)(2), unless the vessel possesses no more regulated species than the possession limit specified in § 651.27(a), or unless the nonconforming mesh is stowed in accordance with § 651.20(c)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(18) Enter the area described in § 651.21(a) on a fishing vessel during a

period in which the area is closed, except as specified in that section.

(19) Fish with, set, haul back, have on board a fishing vessel, or fail to remove sink gillnet gear in or from the area specified in § 651.21(a) during the time period specified in § 651.21(a)(1).

(20) Enter the area described in § 651.21(b) on a fishing vessel during the time period specified in § 651.21(b)(3), except as specified by § 651.21(b)(4).

(21) Fish in the area described in § 651.21(c), if the area has been closed as provided for in § 651.21(c), except as provided by § 651.21(c)(5).

(22) Fail to comply with the gear-marking requirements of § 651.25.

(23) Import, export, transfer, land, or possess regulated species that are smaller than the minimum sizes as specified in § 651.23, unless the regulated species were harvested from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(24) Interfere with, obstruct, delay, or prevent by any means lawful investigation or search relating to the enforcement this part.

(25) Fish within the areas described in § 651.20(a)(4) with nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is issued and possesses on board the vessel an authorizing letter issued under § 651.20(a)(4)(i).

(26) Violate any provisions of the Cultivator Shoals Whiting Fishery specified in § 651.20(a)(4).

(27) Fish for, land, or possess multispecies finfish harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 651.20(e), or unless the vessels that engaged in pair trawling qualify for the exception specified in paragraph (e)(1)(ii) of this section.

(28) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 651.20(a)(3)(ii).

(29) Fail to comply with the requirements as specified in § 651.20(a)(5).

(30) Fish for the species specified in § 651.20 (e) or (f) with a net of mesh size smaller than the applicable mesh size by area fished specified in § 651.20, or possess or land such species, unless the vessel is in compliance with the requirements specified in § 651.20 (e) or (f), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(31) Fish with, set, haul back, possess on board a vessel, or fail to remove from the EEZ, a sink gillnet during the times specified in § 651.32(b).

(32) Violate any provision specified under § 651.29.

(33) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.27(b)(1).

(34) Land, or possess on board a vessel, more than 500 lbs (226.8 kg) of haddock in, or harvested from, the EEZ as specified in § 651.27(b)(2) or violate any of the other provisions specified in § 651.27(b)(2).

(35) To purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species from a vessel issued a federal multispecies permit in excess of the possession limit applicable to a vessel as specified in § 651.27.

(f) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(g) *Presumption.* The possession for sale of regulated species that do not meet the minimum sizes specified in § 651.23 for sale will be prima facie evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

§ 651.10 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 651.11 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, harvesting, possessing, or landing multispecies finfish in or from the EEZ and all vessels holding a Federal multispecies permit under this part must comply with the following restrictions on minimum mesh size, gear, and methods of fishing, unless otherwise exempted or prohibited.

(a) *Gulf of Maine/Georges Bank (GOM/GB) regulated mesh area.* (1) *Area definition.* The Gulf of Maine/Georges Bank regulated mesh area is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

GULF OF MAINE/GEORGES BANK REGULATED MESH AREA

Point	Latitude	Longitude
G1	(1)	(1)
G2	43°58′ N.	67°22′ W.
G3	42°53.1′ N.	67°44.4′ W.
G4	42°31′ N.	67°28.1′ W.
G5	41°18.6′ N.	66°24.8′ W.

[1] The intersection of the shoreline and the U.S.-Canada maritime boundary [southward along the irregular U.S.-Canada maritime boundary].

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude	Approximate Loran C bearings
G6	40°55.5′ N.	66°38′ W.	5930–Y–30750 and 9960–Y–43500
G7	40°45.5′ N.	68°00′ W.	9960–Y–43500 and 68°00 W.
G8	40°37′ N.	68°00′ W.	9960–Y–43450 and 68°00 W.
G9	40°30.5′ N.	69°00′ W.	
G10	40°50′ N.	69°00′ W.	
G11	40°50′ N.	70°00′ W.	
G12		70°00′ W.[1]	

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(2) *Mesh-size restrictions.* Except as provided in paragraphs (a)(3) through (5), (e), and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) diamond or square mesh throughout the

entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m) 3 (9 sq. ft (0.81 m²)), or to vessels not holding a Federal multispecies permit under this part and that are fishing exclusively in state waters.

(3) *Small-mesh exemption area.* Notwithstanding the provisions of paragraph (a)(2) of this section, a vessel may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the GOM/GB small mesh exemption area, if the vessel complies with the requirements specified in paragraphs (a)(3)(i) and (ii) of this section, if applicable. The GOM/GB small mesh exemption area is defined as the area between the territorial sea and the straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

GOM/GB SMALL-MESH EXEMPTION AREA

Point	Latitude	Longitude
SM1 ...	41°35′ N.	70°00′ W.
SM2 ...	41°35′ N.	69°40′ W.
SM3 ...	42°49.5′ N.	69°40′ W.
SM4 ...	43°12′ N.	69°00′ W.
SM5 ...	43°41′ N.	68°00′ W.
G2	43°58′ N.	67°22′ W.; (the U.S.-Canada maritime Boundary).

GOM/GB SMALL-MESH EXEMPTION AREA—Continued

Point	Latitude	Longitude
G1	(1)	(1)

1 Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Possession limit exemption.* A vessel may not possess on board or land per trip more than 500 lbs. (226.8 kg) of regulated species.

(ii) *Northern shrimp exemption.* A vessel holding a Federal multispecies permit under this part that is fishing for, harvesting, possessing, or landing northern shrimp, and a vessel fishing for, harvesting, or possessing northern shrimp in the EEZ, must have a properly configured and installed finfish excluder device in any net used to fish for or harvest northern shrimp, during the northern shrimp season as established by the Atlantic States Marine Fisheries Commission (ASMFC). The northern shrimp season is December 1 through May 30, or as modified by the ASMFC. The finfish excluder device must be configured and installed consistent with the following specifications (see Figure 2 to part 651) for an example of a properly configured and installed finfish excluder device):

(A) A finfish excluder device is a rigid or semi-rigid grate consisting of parallel bars of not more than 1 inch (2.54 cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl.

(B) The finfish excluder device must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having first passed between the bars of the grate.

(C) A fish outlet or hole must be provided to allow fish or other objects that are too large to pass between the bars of the grate to pass out of the net. The aftermost edge of this outlet must be at least as wide as the grate at the point of attachment. The fish outlet must extend forward from the grate toward the mouth of the net.

(D) A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(4) *Cultivator Shoal whiting (silver hake) fishery exemption area.* Notwithstanding the provisions of paragraph (a)(2) of this section, a vessel may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the Cultivator Shoal whiting fishery exemption area, if the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section. The Cultivator Shoal whiting fishery exemption area is defined by straight lines connecting the following points in the order stated (see Figure 1 to part 651):

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	Latitude	Longitude	Approximate Loran coordinates	
C1	42°10′ N.	68°10′ W.	13132	43970
C2	41°25′ N.	68°45′ W.	13527	43767
C3	41°05′ N.	68°20′ W.	13495	43627
C4	41°55′ N.	67°40′ W.	13074	43861
C1	42°10′ N.	68°10′ W.	13132	43970

(i) *Requirements.* Vessels fishing in this fishery must have on board an authorizing letter issued by the Regional Director. Vessel owners are subject to the following conditions:

(A) A bycatch limit (as defined in § 651.2) not to exceed 500 lbs (226.8 kg) of regulated species;

(B) A minimum mesh size of 2½ inches (6.35 cm) applied to the first 160 meshes counted from the terminus of the net;

(C) A season of June 15 through October 31, unless otherwise specified by publication of a notification in the **Federal Register**.

(ii) *Sea sampling.* The Regional Director shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The Council shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make the appropriate recommendations to the Regional Director following the procedures specified in subpart C of this part.

(5) *Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area.* During the period March 1 through July 31 of each year, the minimum mesh size for nets in the following area shall be 6 inches (15.24 cm) in all sink gillnets and 6 inches (15.24 cm) square mesh in the last 140 bars of the codend and extension piece of all mobile net gear.

(i) The Stellwagen Bank/Jeffreys Ledge juvenile protection area is defined by straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

STELLWAGEN BANK JUVENILE PROTECTION AREA

Point	Latitude	Longitude	Approximate Loran coordinates	
SB1	42°34.0′ N.	70°23.5′ W.	13737	44295
SB2	42°28.8′ N.	70°39.0′ W.	13861	44295
SB3	42°18.6′ N.	70°22.5′ W.	13810	44209
SB4	42°05.5′ N.	70°23.3′ W.	13880	44135
SB5	42°11.0′ N.	70°04.0′ W.	13737	44135
SB1	42°34.0′ N.	70°23.5′ W.	13737	44295

JEFFREYS LEDGE JUVENILE PROTECTION AREA

Point	Latitude	Longitude	Approximate Loran coordinates	
JL1	43°12.7′ N.	70°00.0′ W.	13369	44445
JL2	43°09.5′ N.	70°08.0′ W.	13437	44445
JL3	42°57.0′ N.	70°08.0′ W.	13512	44384
JL4	42°52.0′ N.	70°21.0′ W.	13631	44384
JL5	42°41.5′ N.	70°32.5′ W.	13752	44352
JL6	42°34.0′ N.	70°26.2′ W.	13752	44300
JL7	42°55.2′ N.	70°00.0′ W.	13474	44362
JL1	43°12.7′ N.	70°00.0′ W.	13369	44445

(ii) Fishing for northern shrimp in the SB/JL juvenile protection area is allowed subject to the requirements of paragraph (a)(3)(ii) of this section, except that no bycatch of regulated species is allowed on board vessels participating in the northern shrimp fishery in the area and during the time period specified in paragraph (a)(5) of this section.

(b) *Nantucket Lightship regulated mesh area.*—(1) *Area definition.* The Nantucket Lightship regulated mesh area is that area bounded by straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

NANTUCKET LIGHTSHIP REGULATED MESH AREA

Point	Latitude	Longitude
NL1	40°50′ N.	69°40′ W.
NL2	40°18.7′ N.	69°40′ W.
NL3	40°22.7′ N.	69°00′ W.
G10	40°50′ N.	69°00′ W.
NL1	40°50′ N.	69°40′ W.

(2) *Mesh-size restrictions.* (i) For 1994, except as provided in paragraphs (e) and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the Nantucket Lightship regulated mesh area, shall be 5½ inches (13.97 cm) diamond or square mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) X 3 ft (0.9 m) (9 sq. ft (0.81 m²)).

(ii) For 1995 and thereafter, except as provided in paragraphs (f) and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the Nantucket Lightship regulated mesh area, shall be 5½ inches (13.97 cm) diamond mesh or 6 inches (15.24 cm) square mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) X 3 ft (0.9 m) (9 square feet (0.81 m²)).

(c) *Southern New England regulated mesh area*—(1) *Area definition.* The Southern New England regulated mesh area is that area bounded on the east by straight lines connecting the following points in the order stated (see Figure 1 Part 651):

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	Latitude	Longitude
G5	41°18.6′ N.	66°24.8′ W.
G6	40°55.5′ N.	66°38′ W.
G7	40°45.5′ N.	68°00′ W.
G8	40°37′ N.	68°00′ W.
G9	40°30.5′ N.	69°00′ W.
NL3	40°22.7′ N.	69°00′ W.
NL2	40°18.7′ N.	69°40′ W.
NL1	40°50′ N.	69°40′ W.
G11	40°50′ N.	70°00′ W.
G12		70°00′ W.[1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts; and on the west by a line running from the shoreline along 72°30′ W. longitude to the outer boundary of the EEZ.

(2) *Mesh size restrictions.* (i) For 1994, except as provided in paragraphs (e) and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or square mesh throughout the net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and are fishing exclusively in state waters.

(ii) For 1995 and thereafter, except as provided in paragraphs (f) and (g) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 5½ inches (13.97 cm) diamond or 6 inches (15.24 cm) square mesh throughout the net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and are fishing exclusively in state waters.

(3) *Exemptions*—(i) *Possession limit exemption.* Vessels in the Southern New England regulated mesh area may fish with or possess nets of mesh size smaller than the minimum size specified in paragraph (c)(2) of this section, provided such vessels do not possess or land per trip more than 500 pounds (226.8 kg) of regulated species.

(ii) *Net stowage exemption.* Vessels possessing more than 500 lbs (226.8 kg) of regulated species may have nets with mesh less than the minimum size specified in paragraph (c)(2) of this section, provided that the net is stowed and is not available for immediate use in accordance with paragraph (c)(4) of this section.

(4) *Net stowage requirements.* Except as provided in paragraphs (c)(3)(i) and (d)(3)(i) of this section, a vessel holding a valid Federal multispecies permit under this part and fishing in the Southern New England or Mid-Atlantic regulated mesh areas may not have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraphs (c)(2) and (d)(2) of this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

(i) A net stowed below deck, provided:

(A) It is located below the main working deck from which the net is deployed and retrieved;

(B) The towing wires, including the "leg" wires, are detached from the net; and

(C) It is fan-folded (flaked) and bound around its circumference; or

(ii) A net stowed and lashed down on deck, provided:

(A) It is fan-folded (flaked) and bound around its circumference;

(B) It is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net; or

(iii) A net that is on a reel and is covered and secured, provided:

(A) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) The codend is removed from the net and stored below deck, or

(iv) Nets that are secured in a manner authorized in writing by the Regional Director.

(d) *Mid-Atlantic regulated mesh area.*—(1) *Area definition.* The Mid-Atlantic regulated mesh area is that area bounded on the east by a line running from the shoreline along 72°30′ west longitude to the intersection of the outer boundary of the EEZ (see Figure 1).

(2) *Mesh-size restrictions.* Except as provided in paragraphs (e) and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, in use, or available for use as described under paragraph (c)(4) of this section, by a vessel fishing in the Mid-Atlantic regulated mesh area shall be that specified in the summer flounder regulations at 50 CFR 625.24(a). This restriction does not apply to vessels that have not been issued a multispecies finfish permit under § 651.4 and are fishing exclusively in state waters.

(3) *Exemptions*—(i) *Possession limit exemption.* Vessels in the Mid-Atlantic regulated mesh area may fish with or possess nets of mesh size smaller than the minimum size specified in paragraph (d)(2) of this section, provided such vessels do not possess or land per trip more than 500 lbs (226.8 kg) of regulated species.

(ii) *Net stowage exemption.* Vessels possessing more than 500 lbs (226.8 kg) of regulated species may have nets with mesh less than the minimum size specified in paragraph (d)(2) of this section, provided that the net is stowed and is not available for immediate use in accordance with paragraph (c)(4) of this section.

(e) *Midwater trawl gear exception.* (1) For regulated mesh areas south of 42°20′ N. latitude, fishing for Atlantic herring or blueback herring, mackerel, and squid may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size, provided that:

(i) Midwater trawl gear is used exclusively;

(ii) The vessel deploying midwater gear is issued an authorizing letter by the Regional Director;

(iii) The authorizing letter is on board the vessel; and

(iv) The bycatch does not exceed 500 pounds (226.8 kg) of regulated species.

(2) For regulated mesh areas north of 42°20′ N. latitude, fishing for Atlantic herring or blueback herring and for mackerel may take place throughout the fishing year with midwater trawl gear of mesh size less than the regulated size, provided that the requirements of paragraphs (f)(1)(i) through (iv) of this section are met.

(f) *Purse seine gear exception.* Fishing for Atlantic herring or blueback herring, mackerel, and menhaden may take place throughout the fishing year with purse seine gear of mesh size less than the regulated size, provided that:

(1) Purse seine gear is used exclusively;

(2) The vessel deploying the purse seine gear is issued an authorizing letter by the Regional Director;

(3) The authorizing letter is on board the vessel; and

(4) The bycatch of regulated species does not exceed 500 lbs (226.8 kg) of regulated species.

(g) *Mesh measurements.* Mesh sizes are measured by a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg. The mesh size will be the average of the measurements of any series of 20 consecutive meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(h) *Restrictions on gear and methods of fishing.*—(1) *Net obstruction or constriction.* A fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (h)(1), head ropes shall not be considered part of the top of the trawl net.

(2) *Mesh obstruction or constriction.* (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (h)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) No vessel may use a net capable of catching multispecies finfish in which the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for multispecies finfish while pair trawling, or possess or land multispecies finfish that have been harvested by means of pair trawling.

§ 651.21 Closed areas.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may use, set, haul back, fish with, or have on board a vessel a sink gillnet in the area known as Closed Area I, defined by paragraph (a)(2) of this section, during the months of February through May.

(i) The use of other gear types may be prohibited in Closed Area I if it is determined that spawning fish are located in the area.

(ii) A determination that spawning fish are present in the area will be based upon available information, such as sea sampling from the NMFS Domestic Sea Sampling Program or from state agency sources, research surveys, fishermen's reports, and any other source of information.

(iii) The determination will be made by the Regional Director, with concurrence from the Council, and implemented, following the procedures specified in subpart C of this part.

(2) Closed Area I is bounded by six straight lines connecting the following points in the order stated (see Figure 3 to Part 651):

Point	Latitude	Longitude
CI1	40°53′ N.	68°53′ W.
CI2	41°35′ N.	68°30′ W.
CI3	41°50′ N.	68°45′ W.
CI4	41°50′ N.	69°00′ W.
CI5	41°30′ N.	69°00′ W.
CI6	41°30′ N.	69°23′ W.; and
CI1	40°53′ N.	68°53′ W.

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may fish or be in the area known as Closed Area II, as defined in paragraph (b)(2) of this section, during the time period specified in paragraph (b)(3) of this section, except as specified in paragraph (b)(4) of this section (see Figure 3 to Part 651).

(2) Closed Area II is bounded by four straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
CII1	41°00′ N.	67°20′ W.
CII2	41°00′ N.	66°35.8′ W.
G5	41°18.6′ N.	66°24.8′ W. (the U.S.-Canada Maritime Boundary)
CII3	42°22′ N.	67°20′ W. (the U.S.-Canada Maritime Boundary); and
CII1	41°00′ N.	67°20′ W.

(3) *Duration.* (i) For 1994 and 1995, no fishing vessel or person on a fishing vessel may fish or be in Closed Area II during the months of February through May.

(ii) For 1996 and after, no fishing vessel or person on a fishing vessel may fish or be in Closed Area II during the months of January through June.

(4) *Exceptions.* Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters;

(ii) Fishing with or using dredges designed and used to take scallops; or

(iii) Seeking safe haven from storm conditions in waters adjacent to the western edge of the closed area. Such fishing vessels may transit through the closed area providing that:

(A) Gale, storm, or hurricane conditions are posted for the area by the National Weather Service;

(B) Such vessels do not fish in the area;

(C) Fishing gear is stowed in accordance with paragraph (c)(4) of this section; and

(D) The vessel provides notice to a patrolling U.S. Coast Guard aircraft or vessel in the vicinity of Georges Bank by high frequency radio (2.182 kHz) of its intention of transitting the closed area and the time and position when the vessel enters the area and the time and position when the vessel exits the closed area.

(5) The Regional Director may open Closed Area II to fishing prior to the scheduled openings in paragraph (b)(3) of this section by notification in the **Federal Register**, if the Regional Director determines that concentrations of spawning fish are no longer in the area.

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may fish in the area known as the Nantucket Lightship Closed Area, defined in paragraph (c)(2) of this section, during the time period specified in the notification provided under paragraph (c)(3) of this section, except as specified in paragraph (c)(5) of this section, if the Regional Director determines that the NEFSC spring standardized bottom trawl survey index of age-2 yellowtail flounder is 12.0 or higher, based upon the number of yellowtail flounder per standardized tow.

(2) The Nantucket Lightship Closed Area is bounded by four straight lines connecting the following points in the order stated (see Figure 3 to Part 651):

Point	Latitude	Longitude
G10	40°50′ N.	69°00′ W.
CN1	40°20′ N.	69°00′ W.
CN2	40°20′ N.	70°20′ W.
CN3	40°50′ N.	70°20′ W.; and
G10	40°50′ N.	69°00′ W.

(3) *Notification.* The Regional Director shall provide notification of the closure through publication in the **Federal Register**.

(4) *Duration.* The area shall remain closed until the end of June of the following year.

(5) *Exceptions.* The closure shall not apply to persons on board vessels or fishing vessels fishing with or using:

(i) Pot gear designed and used to take lobsters;

(ii) Dredge gear designed and used to take ocean quahogs or surf clams; or

(iii) Hook-and-line gear, except that possession of yellowtail flounder by persons or vessels fishing with hook-and-line gear within this area is prohibited.

§ 651.22 Effort-control program for limited access vessels.

(a) Beginning on May 1, 1994, the owner of a vessel issued a limited access permit under the criteria specified in § 651.4(a), unless exempted under § 651.22(d), shall be subject to either the Individual DAS program as specified in paragraph (b) of this section or the Fleet DAS program as specified in paragraph (c) of this section. All such vessels shall automatically be assigned to the Fleet DAS program unless the vessel owner elects to apply for the Individual DAS program and is issued a limited access permit under § 651.4(a), or the vessel has been determined to be a combination vessel and the vessel owner has elected to apply for a limited access permit under § 651.4(a). Limited access permits will indicate the program under which the vessel owner will fish.

(b) *Individual Days-at-Sea*—(1) *Eligibility.* (i) Beginning on May 1, 1994, any vessel that is greater than 45 ft (13.7 m) in length and eligible for a limited access permit, except a combination vessel, may elect to fish under the Individual DAS program by making such election at the time of application for or renewal of a limited access permit. For 1996 and thereafter, the vessel must remain in the DAS program assigned to it in 1995.

(ii) The vessel owner of a vessel that has been determined to be a combination vessel and who has applied for a limited access permit under § 651.4(a) must fish under the Individual DAS program.

(2) *Criteria for determining a vessel's Individual DAS.* The initial DAS assigned to a vessel for purposes of determining that vessel's annual allocation as specified in paragraph (b)(3) of this section shall be calculated as follows:

(i) Calculate the total number of the vessel's multispecies DAS for the years 1988, 1989, and 1990 based on data, information, or other credible evidence available to the Regional Director at the time of election to participate under the Individual DAS program. Multispecies DAS are deemed to be the total number of days the vessel was absent for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used;

(ii) Exclude the year of least multispecies DAS; and

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS, or, if only 1 year remains, use that year's DAS.

(3) *DAS allocations.* (i) Each vessel participating in the Individual DAS program shall be allocated, annually, the maximum number of days at sea it may fish in the multispecies finfish fishery according to the criteria and table specified in paragraph (b)(3)(ii) of this section. A vessel that has declared

out of the multispecies finfish fishery pursuant to the provisions of § 651.29, or has used up its allocated DAS, may leave port without being assessed a DAS as long as it does not possess or land more than the possession limit of regulated species specified under § 651.27(a) and complies with the other requirements of this part.

(ii) *Annual DAS allocations.* Vessels fishing under the Individual-DAS program will receive and be subject to annual allocations of DAS as specified in the following table. These allocations are determined by reducing the vessel's Individual DAS as calculated under paragraph (b)(2) of this section by 10 percent each year, including the first year, for the first 5 years of the effort reduction program.

INDIVIDUAL-DAS ALLOCATION=X DAYS

Year	Annual allocation
1994	x−10% days.
1995	x−20% days.
1996	x−30% days.
1997	x−40% days.
1998	x−50% days.

(iii) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours. DAS for vessels that are under the VTS monitoring system described in § 651.29(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line leaving port and ending with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line upon its return to port.

(iv) All vessels fishing under the Individual DAS program must declare out of the multispecies finfish fishery for at least one 20-day period between March 1 and May 31 of each year, using the notification requirements specified under § 651.29(a). If a vessel owner has not declared, or taken, the period of required time between March 1 and May 31 on or before May 12, the vessel is subject to the possession limit specified under § 651.27(a) during the period May 12 through May 31, inclusive.

(4) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(5) *Notice of initial DAS allocation.* The Regional Director will attempt to notify all owners of vessels that are deemed eligible to be issued a limited access permit pursuant to § 651.4(a)(6) based on data, information, and other evidence available to the Regional Director.

(6) *Appeal of DAS allocation*—(i) *Appeal criteria.* Initial allocations of Individual DAS to a vessel may be appealed to the Regional Director within 30 days of receipt of the notice of a vessel's allocation. Any such appeal must be in writing and be based on one or more of the following grounds:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(7) *Status of vessels pending appeal of DAS allocations.* All vessels, while appealing their Individual-DAS allocation, may fish under the Fleet-DAS program and are subject to all requirements applicable to the Fleet-DAS program unless otherwise exempted, until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for multispecies finfish shall be counted against the Individual-DAS allocation that the vessel may ultimately receive. If, before this appeal is decided, a vessel exceeds the number of days it is finally allocated after appeal, the excess days will be subtracted from the vessel's allocation of days in 1995.

(8) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea for one of the following reasons, and that can document the occurrence through the U.S. Coast Guard, will be credited for the time documented:

(i) Time spent assisting in a U.S. Coast Guard search and rescue operation; or

(ii) Time spent assisting the U.S. Coast Guard in towing a disabled vessel.

(c) *Fleet Days-at-Sea program.* (1) Beginning on May 1, 1994, all vessels issued a limited access permit that are longer than 45 ft (13.7 m) in length that have not elected to fish under the Individual DAS program as specified in paragraph (a) of this section shall be subject to the following effort-control requirements:

(i) *Days in which vessel may not possess more than 500 lbs (226.8 kg) of regulated species.* (A) During each year, beginning with 1994, vessel owners of all such vessels must declare periods of time out of the multispecies fishery totaling at least the minimum number of days listed for each such year in the following schedule. Each period of time declared must be at least 20 consecutive days. At least one 20-consecutive-day period must be declared between March 1 and May 31 of each year:

Year	Days out of multispecies fishing
1994	80
1995	80
1996	128
1997	165
1998	200
1999	233

(B) During each period of time declared, the applicable vessel may not possess more than 500 lbs (226.8 kg) of multispecies.

(C) Adjustments to the schedule of days out of the multispecies fishery, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(D) *Procedure for declaring days.* Fleet DAS participants shall declare their periods of required time under paragraph (c)(1)(i) of this section, following the notification procedures specified in § 651.29(b).

(E) If a vessel owner has not declared, or taken, the period of required time between March 1 and May 31 on or before May 12, the vessel is subject to the possession limit specified under § 651.27(a) during the period May 12 through May 31, inclusive.

(F) If a vessel owner has not declared, or taken, any or all of the remaining periods of time required under paragraph (c)(1)(i) of this section, by the last possible date to meet the requirement, the vessel is subject to the possession limit specified under § 651.27(a) from that date through the end of the year.

(ii) *Layover day requirement.* (A) Fleet DAS participants engaged in a fishing trip that is not during the period of time declared pursuant to paragraph (c)(1)(i) of this section and that is longer than 24 hours must tie-up at the dock at the end of such trip for a period equal to half the time of the DAS accrued on the trip,

based on hourly increments, as recorded through the notification procedures specified in § 651.29(b).

(B) *Accrual of DAS.* DAS under the card or call-in notification systems, described in § 651.29(b) and (d), respectively, shall accrue in hourly increments with all partial hours counted as full hours. A DAS, under either the card or call-in notification system, begins once the card has been read by the reader, or the phone call has been received, and confirmation has been given by the Regional Director. A DAS ends under either the card or phone notification system, when after returning to port, the card has been read by the reader, or the phone call has been received, and confirmation has been given by the Regional Director.

(C) Tie-up time begins to accrue when the Regional Director is notified through the monitoring system that the trip is ended.

(D) A vessel that remains tied to the dock beyond the time required will not be credited with the additional time.

(E) A vessel required to be tied-up at the dock under this part may not fish or leave the dock under any capacity during the tie-up period unless authorized by the Regional Director.

(2) [Reserved]

(d) *Exemptions from effort reduction program* —(1) *Small boat.*

(i) Beginning on May 1, 1994, vessels issued a limited access permit under § 651.4(a) that are 45 ft (13.7 m) or less in length overall, except vessels using sink gillnet gear, will be exempt from the effort reduction program if the vessel and vessel owner comply with the following:

(A) Determination of the length will be through the measurement along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern;

(B) To be eligible for the small-boat exemption, vessels for which construction is begun after May 1, 1994, must be 45 feet (13.7 m) or less in length and must be constructed such that the product of the overall length divided by the beam will not be less than 2.5; and

(C) The measurement of length overall may be verified using U.S. Coast Guard documentation if it is dated after 1984. Otherwise, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the boat's construction plans, or by state registration papers if such documentation accurately states the vessel's length overall as required. A copy of the verification must accompany an application for a Federal multispecies permit issued under § 651.4.

(ii) Vessels fishing under the small boat exemption must bring all gear back to port at the conclusion of a fishing trip, except gillnets and gear not intended to fish for multispecies finfish, such as lobster.

(iii) Adjustments to the small-boat exemption, including changes to the length requirement, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(2) *Sink gillnet vessels.* (i) A sink gillnet vessel greater than 45 ft (13.7 m) in length is exempt from the DAS effort reduction program of this part on all fishing trips during which the vessel fishes for multispecies exclusively with sink gillnet gear, and does not have other gear available for immediate use as described in § 651.20(c)(4), if the vessel owner or owner's authorized representative complies with monitoring requirements set forth in § 651.28(c), unless effort reduction measures are implemented pursuant to subpart C of this part.

(ii) A sink gillnet vessel greater than 45 ft (13.7 m) in length that intends to fish for, possess or land or does possess or land more than 500 lbs (226.8 kg) of regulated multispecies with gear other than sink gillnet gear, or has other gear on board that is not stowed as described in § 651.20(c)(4), at any time during a calendar year may fish under and shall be subject to the DAS effort reduction program of this part, except on trips that qualify for the exemption set forth in paragraph (d)(2)(i) of this section; provided, however, that the owner of such vessel must request to fish under the Individual DAS program or the Fleet DAS program, as applicable, at the time such vessel applies for and is issued a Limited Access permit, and that the vessel complies with the requirement to take periods of time out of the multispecies fishery as required under § 651.22.

(iii) A sink gillnet vessel 45 ft (13.7 m) or less in length is exempt from the DAS effort reduction program of this part unless effort reduction measures are implemented pursuant to subpart C of this part.

(3) *Hook-gear-only vessels.* Vessels issued a limited access permit under § 651.4(a) and fishing with per trip, or possessing on board the vessel, no more than 4,500 rigged hooks are exempt from the effort reduction program of this part, subject to the requirements specified in § 651.33.

(e) *Scallop dredge vessels.* Beginning on May 1, 1994, scallop dredge vessels issued a limited access permit under § 650.4(a), except for combination vessels, may not participate in and are not subject to the DAS program and may not possess regulated species in excess of the possession limit specified under § 651.27(a).

§ 651.23 Minimum fish size.

(a) The minimum fish sizes (total length) for the following species are as follows:

Species	Inches
Cod	19 (48.3 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (27.9 cm)
Redfish	9 (22.9 cm)

(b) The minimum lengths specified by paragraph (a) of this section shall be measured on a straight line from the tip of the snout to the end of the tail.

(c) The minimum size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in this paragraph (c), and to whole fish only, after landing. Fish or parts of fish must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed.

(d) *Exception.* (1) Each person on board a vessel issued a limited access permit and fishing under the DAS program may possess up to 25 lbs (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(e) *Adjustments of minimum size.* (1) In 1994, or at anytime when information is available, the Council will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) The minimum fish size for yellowtail flounder, witch flounder, and

American plaice will be determined from the best available mesh selectivity studies applicable to 5½-inch (13.97-cm) diamond mesh.

(3) The minimum fish size for cod, haddock, pollock, and redfish will be determined from the best available mesh selectivity studies applicable to 6-inch (15.24-cm) diamond mesh.

(4) Upon determination of the appropriate minimum sizes, the Council shall propose the minimum fish sizes to be implemented in 1995, or at anytime thereafter, following the procedures specified in subpart C of this part.

(5) Additional adjustments or changes to the minimum fish sizes specified in paragraphs (a) and (b) of this section, and exemptions as specified in paragraph (c) of this section, may be made at any time after implementation of the final rule as specified under subpart C of this part.

§ 651.24 Experimental fishing.

(a) The Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the multispecies finfish resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the multispecies finfish resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity shall be subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

§ 651.25 Gear-marking requirements.

(a) Bottom-tending fixed gear, including but not limited to gillnets and longlines, designed for, capable of, or fishing for multispecies finfish must have the name of the owner or vessel, or the official number of that vessel, permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to and including north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 feet (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to and including south) of the gear need display only the standard 12-inch (30.5 cm) tetrahedral radar reflector positioned in the same way.

(c) The maximum length of continuous gillnets must not exceed 6,600 feet (2,011.7 m) between the end buoys.

(d) In the Gulf of Maine/Georges Bank regulated mesh area specified in § 651.20(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30 degrees from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

§ 651.26 Flexible Area Action System.

(a) The Chair of the Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies finfish, will determine if the situation warrants further investigation and possible action. In making this determination, the Chair will consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Chair will request the Regional Director to initiate a fact finding investigation to verify the situation.

(b) The Chair will request the Regional Director to publish a notification in the **Federal Register**. The request must include a complete draft of the notification. The Secretary must file the notification at the Office of the Federal Register within 1 business day following receipt of the complete request. Day 1 is designated when the notice is filed with the Office of the Federal Register. The notification will inform the public of:

(1) The problem that is occurring and the need for action;

(2) The Regional Director's initiation of fact finding and verification of the problem;

(3) The date (Day 15) the Regional Director's fact finding report, responding to the Chair's request, will be available for public review;

(4) The date (Day 21) by which a Committee meeting/public hearing will be held and on which the comment period will close;

(5) The potential extent of the area to be affected (defined by common name, latitude/longitude coordinates, and/or LORAN coordinates);

(6) The species affected;

(7) The types of gear used;

(8) Other fisheries potentially impacted;

(9) Predominant ports to be impacted;

(10) The expected duration of action;

(11) The types of action that may be taken, limited to the various management measures currently implemented by the FMP;

(12) The Council's initiation of analysis of the impacts;

(13) The date (Day 15) the Council's impact analysis will be available for public review; and

(14) A request for written comments.

(c) From Day 1 through Day 14, the following activities will take place:

(1) The Regional Director will prepare a fact-finding report that will examine available information from the following sources (in order of priority):

(i) Sea sampling from the NMFS Domestic Sea Sampling Program or from state agency sources;

(ii) Port sampling from the NMFS Statistics Investigation; or

(iii) Any other source of information.

(2) After examining the facts, the Regional Director will provide a technical analysis to determine the magnitude of discard of juvenile and sublegal multispecies finfish and the presence and amount of spawning outside of any area/season restriction. If possible, he/she will provide technical analyses describing the nature of the impacts on the stock managed under the FMP. The report will specify what type of activities will be required to monitor the area/fishery in question if subsequent action is taken under this section. The report shall also include a statement of NMFS' capabilities for administering, monitoring, and enforcing any of the proposed options.

(3) The Council will prepare an economic impact analysis of the potential management options under consideration.

(d) By Day 15, copies of the reports prepared by the Regional Director and the Council will be made available for public review from the Council at Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

(e) By Day 21, provided that it is 6 days after release of the fact-finding

report required by paragraphs (c)(1) and (d) of this section, the Committee will hold a meeting/public hearing at which time it will review the Regional Director's fact-finding report and the Council's impact analysis. Public comment on the reports, alternatives, and potential impacts will be requested for the Committee's consideration. Upon review of all available sources of information, the Committee will determine what course of action is warranted by the facts and make its recommendation to the Regional Director. The Committee's recommendation will be limited to:

(1) Mesh-size restrictions, catch limits, closure of an area to all or certain types of gear or vessels, or other measures less restrictive than the closure, but already contained within and implemented by the FMP;

(2) Between 3 weeks and 6 months in duration; and

(3) Discrete geographical areas, taking into consideration such factors as manageability of the area, readily identifiable boundaries (natural or otherwise), accessibility of the area, and the area's suitability for monitoring and enforcement activities. If the Committee recommends that action is not warranted, and the Regional Director concurs, notification will be published in the **Federal Register** stating that no action will be taken and specifying the rationale behind the Committee's decision.

(f) By Day 23, the Regional Director will either accept or reject the Committee's recommendation. If the Regional Director accepts the Committee's recommendation, the action will be implemented through notification in the **Federal Register**, to be filed with the Office of the Federal Register by Day 26. If the Regional Director rejects the Committee's recommendation, the Regional Director must write to the Committee and explain that the recommended action has been determined not to be consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing.

(g) By Day 26, notice will be sent to all vessel owners holding Federal multispecies permits. The Regional Director will also use other appropriate media, including but not limited to mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(h) Once implemented, the Regional Director will monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the Council's report, and the public comments, are no longer in existence, he will terminate the action by notification in the **Federal Register** and through other appropriate media.

(i) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Director may determine that facts warrant a delayed effective date.

(j) If the date specified above for completion of an action falls on a Saturday, Sunday, or Federal holiday, it shall be performed by the first day that is not a Saturday, Sunday, or Federal holiday. Failure to complete any action by the specified date shall not vitiate the authority of the Regional Director to implement an accepted recommendation of the Committee; provided, that no meeting/public hearing under paragraph (e) of this section may be held prior to the sixth day after the day by which all reports required by paragraphs (c)(1) and (d) of this section have been made available for public review.

§ 651.27 Possession limits.

(a) *Multispecies possession limit.* (1) Beginning on May 1, 1994, vessels subject to effort control programs specified in § 651.22 and persons issued a limited access permit under § 651.4(a), that are not fishing under the DAS program, or have declared out of the DAS program, vessels subject to effort control programs specified in § 651.22 that have used up their DAS allocations, vessels issued hook-gear-only permits that are fishing with gear other than hook gear, sink gillnet vessels greater than 45 ft (13.7 m) in length that are fishing with gear other than gillnet gear, and vessels issued a possession-limit-only permit under § 651.4(c) are prohibited from possessing on a vessel, or landing per trip, more than 500 lbs (226.8 kg) of regulated species.

(2) Vessels subject to the multispecies possession limit shall have on board the vessel at least one standard box or one standard tote.

(3) The regulated species stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the regulated species in a standard box or standard tote if requested by an authorized officer.

(4) The possession limit is equal to 500 lbs (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes.

(b) *Haddock possession limits.*—(1) Scallop dredge vessels.

(i) No person owning or operating a scallop dredge vessel issued a permit under § 651.4 may land, or possess on board a vessel, haddock.

(ii) No person operating a scallop dredge vessel may possess haddock in, or harvested from, the EEZ.

(2) *Other vessels.*—(i) No person owning or operating a vessel issued a permit under § 651.4 may land, or possess on a vessel, more than 500 lbs (226.8 kg) of haddock.

(ii) No person may possess on a vessel more than 500 lbs (226.8 kg) of haddock in, or harvested from, the EEZ.

(iii) Vessels subject to the haddock possession limit shall have on board the vessel at least one standard box or one standard tote.

(iv) The haddock stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the haddock in a standard box or standard tote if requested by an authorized officer.

(v) The haddock possession limit is equal to 500 lbs (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes.

§ 651.28 Monitoring requirements.

(a) *Individual DAS limited access vessels.* By May 1, 1994, unless otherwise authorized or required by the Regional Director under § 651.29(c), vessel owners electing to fish under the Individual DAS program specified in § 651.22(a), and combination vessels, must have installed on board an operational VTS unit that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. Such vessel owners must provide documentation to the Regional Director at the time of application for a limited access permit that the vessel has an operational VTS unit that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. If a vessel has already been issued a limited access multispecies permit without providing such documentation, the Regional Director shall allow at least 30 days for the vessel to install an operational VTS unit, provide documentation that the unit is operational, and provide such documentation to the Regional Director. This VTS unit must be part of an

approved VTS as specified in paragraph (a)(1) of this section.

(1) *Approval.* The Regional Director will annually approve VTSs that meet minimum performance criteria specified in paragraph (a)(2) of this section. Any changes to the performance criteria will be published annually in the **Federal Register** and a list of approved VTSs will be published in the **Federal Register** upon addition or deletion of a VTS from the list. In the event that a VTS is deleted from the list, vessel owners that purchased a VTS unit that is part of that VTS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by the Regional Director.

(2) *Minimum VTS performance criteria.* The basic required features of the VTS are as follows:

(i) The VTS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person on board a fishing vessel or by the vessel owner;

(ii) VTS equipment shall be fully automatic and operational at all times regardless of weather and environmental conditions;

(iii) VTS equipment shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nautical miles offshore and shall provide position accuracy to within 400 m (1,300 ft);

(iv) The VTS shall be capable of transmitting and storing information, including vessel identification, date, time, and latitude/longitude;

(v) The VTS shall provide accurate hourly position transmissions every day of the year. In addition, the VTS shall allow polling of individual vessels or any set of vessels at any time and receive position reports in real time. For the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position;

(vi) The VTS shall be capable of providing network message communications between the vessel and shore. The VTS shall allow NMFS to initiate communications or data transfer at any time;

(vii) The VTS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in ASCII text in a file format acceptable to NMFS;

(viii) The VTS shall be capable of providing vessel locations relative to international boundaries and fishery management areas; and

(ix) The VTS vendor shall be capable of archiving vessel position histories for a minimum of 1 year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc).

(3) *Operating requirements.* All required VTS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(4) *Presumption.* If a vessel's VTS unit fails to transmit an hourly signal of the vessel's position, the vessel shall be presumed to be fishing under the DAS program for that day, or fraction thereof, for as long as the unit fails to transmit a signal. A preponderance of evidence that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the multispecies finfish fishery, as specified in §§ 651.22 and 651.29, or was not at sea, will be sufficient to rebut the presumption.

(5) *Replacement.* Should a VTS unit require replacement, a vessel owner must submit documentation to the Regional Director, within 3 days of installation and prior to the vessel's next trip, verifying that the new VTS unit is part of an operational approved system as described under paragraph (a)(1) of this section.

(6) *Access.* As a condition to obtaining a limited access permit, all vessel owners must allow NOAA/NMFS, the U.S. Coast Guard, and their authorized officers or designees access to the vessels' DAS and location data obtained from its VTS unit at the time of or after its transmission to the vendor or receiver, as the case may be.

(7) *Tampering.* Tampering with a VTS, a VTS unit, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the system or unit's:

(i) Ability to operate properly;

(ii) Signal; or

(iii) Accuracy of computing the vessel's position fix.

(b) *Fleet DAS and other limited access vessels*—(1) *Requirements.* Beginning on May 1, 1994, owners of multispecies vessels with limited access permits under § 651.4(a) who are participating in a DAS program and who are required to, or have chosen to, provide notification without using a VTS, shall be subject to the call-in requirements specified in § 651.29(c).

(2) *Card notification.* [Reserved.]

(c) *Sink gillnet DAS vessels.* Beginning on May 1, 1994, owners of multispecies vessels with limited access permits under § 651.4(a) and who hold permits to participate in either the individual or fleet DAS program and the sink gillnet exemption program under § 651.22(d)(2) are subject to the following requirements:

(1) The vessel owner or owner's representative shall notify the Regional Director prior to leaving port at the beginning of each sink gillnet trip that it will be participating in the sink gillnet fishery by providing notification under § 651.29(b)(1).

(2) Upon returning to port, at the end of each sink gillnet trip, the vessel owner or authorized representative shall notify the Regional Director by providing notice as specified under § 651.29(b)(1).

(3) If the owner of a sink gillnet vessel greater than 45 ft (13.7 m) in length intends to fish for regulated multispecies with gear other than sink gillnet gear on a fishing trip, the owner or the owner's authorized representative shall provide notification of the change in fisheries following the procedures of § 651.29(b)(1). and shall comply with the effort reduction program set forth in § 651.22.

§ 651.29 DAS notification program.

(a) *VTS notification.* Beginning on May 1, 1994, unless otherwise authorized by the Regional Director as specified in paragraph (c) of this section, owners of multispecies vessels with limited access permits that have elected to or are required to use a VTS system shall be subject to the following:

(1) Multispecies vessels at sea are presumed to be fishing under the DAS allocation program unless the vessel's owner or authorized representative declares the vessel out of the multispecies fishery, or declares it into the sink gillnet fishery as required in § 651.28(c), by notifying the Regional Director through the VTS. The owner or authorized representative of any vessel that has been declared out of the multispecies fishery must notify the Regional Director through the VTS prior to leaving port on the vessel's next trip under the DAS program.

(2) If the VTS is not available, or not functional, and if authorized by the Regional Director, a vessel owner must comply with the call-in notification requirements specified in paragraph (c) of this section.

(3) Notification that the vessel is not under the DAS program must be

received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(b) *Call-in notification.* (1) Beginning on May 1, 1994, owners of multispecies vessels with limited access permits under § 651.4(a) who are participating in a DAS program and who are required to, or have chosen to, provide notification without using a VTS, shall be subject to the call-in requirements specified in paragraph (c) of this section.

(2) *Card notification.* [Reserved.]

(c) *Alternative call-in system of notification.* The Regional Director may authorize or require, on a temporary basis, the use of an alternative call-in system of notification. If the call-in system is authorized or required, the Regional Director shall notify affected permit holders through a letter, notification in the **Federal Register**, or other appropriate means. Vessel owners authorized or required by the Regional Director, or required by § 651.28(c), to provide notification by a call-in system shall be subject to the following requirements:

(1) The vessel owner or authorized representative shall notify the Regional Director, prior to leaving port, that the vessel will be participating in the applicable DAS program, or in the sink gillnet fishery as required under § 651.28(c), by calling 508–281–9335 or faxing 508–281–9135, and providing the following information: Vessel name and permit number, owner and caller name and phone number, the type of trip to be taken, the port of departure, and that the vessel is beginning a trip.

(2) A multispecies DAS begins once the call has been received and confirmation given by the Regional Director.

(3) Upon returning to port, the vessel owner or owner's representative shall notify the Regional Director that the trip has ended by calling 508–281–9335 or by faxing 508–281–9135, and providing the following information: Vessel name and permit number, owner and caller name and telephone number, port landed, and that the trip has ended.

(4) A DAS ends when the call has been received and confirmation given by the Regional Director.

(5) Any vessel that possesses or lands more than 500 lbs (226.8 kg) of regulated species shall be deemed in the DAS program for purposes of counting DAS, whether or not the vessel's owner or authorized representative provided adequate notification as required by this part.

(6) Any change in status of a vessel cannot be done after leaving port on any fishing trip.

§ 651.30 Transfer-at-sea.

(a) Vessels permitted under § 651.4 are prohibited from transferring or attempting to transfer fish from one vessel to another vessel, unless authorized in writing by the Regional Director.

(b) All vessels are prohibited from transferring or attempting to transfer multispecies finfish from one vessel to another vessel.

§ 651.31 At-sea observer coverage.

(a) The Regional Director may require observers for any vessel holding a Federal multispecies permit.

(b) Owners of vessels selected for observer coverage must notify the appropriate NMFS Regional or Northeast Fisheries Science Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of any multispecies finfish. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel, upon request, for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel, upon request, to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy any records associated with the catch and distribution of fish for that trip.

§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.

(a) *General.* In addition to the measures specified in §§ 651.20 and 651.21, vessels using, or possessing on board the vessel, sink gillnet gear are subject to the following restrictions:

(1) *Gear removal.* (i) All vessels must remove all their sink gillnet gear from EEZ waters for the number of days per month specified in the schedule below. All vessels issued a Federal Multispecies Limited Access Permit must remove all of their sink gillnet gear from all waters for the number of days per month specified in the schedule below. The Regional Director, in consultation with the Council, will provide the specific dates per month during which all sink gillnets must be removed from the regulated mesh areas according to the schedule below. The days per month shall be consecutive days on the dates of the month specified by the Regional Director according to paragraph (a)(2) of this section.

Year	Days/ month	Total days/per year
1994	4	48
1995	8	96
1996	8	96
1997	12	144
1998	16	192

(2) Annual notification of the specific dates will be sent to all vessels issued a permit under § 651.4.

(3) During the time sink gillnet gear is removed from the water, the vessel may use other gear in accordance with the regulations of this part, provided that the vessel provides adequate notification as specified in § 651.28(c) and complies with the effort reduction program set forth in § 651.22.

(b) *Framework adjustment.* (1) By August 1 of each year, the Council's Harbor Porpoise Review Team (HPRT) shall complete an annual review of harbor porpoise bycatch and abundance data in the sink gillnet fishery, evaluate the impacts on other measures that reduce harbor porpoise take, and may make recommendations on other "reduction-of-take" measures.

(2) At the first Council meeting following the HPRT annual meeting, the team shall make recommendations to the Council as to what adjustments or changes, if any, to the "reduction-of-take" measures should be implemented.

(3) The Council may request at any time that the HPRT review and make recommendations on any alternative "reduction-of-take" measures or develop additional "reduction-of-take" proposals.

(4) Upon receiving the recommendations of the HPRT, the Regional Director will publish notification in the **Federal Register** of any recommended changes or additions to the "reduction-of-take" measures and provide the public with any necessary analysis and opportunity to comment on any recommended changes or additions.

(5) After receiving public comment, the Council shall determine whether to recommend changes or additions to the

"reduction-of-take" measures at the second Council meeting following the meeting at which it received the HPRT's recommendations.

(6) If the Council decides to recommend changes or additions to the "reduction-of-take" measures, it shall make such a recommendation to the Regional Director, which must include supporting rationale, and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the factors specified in § 651.40(d).

(7) The Regional Director may accept, reject, or, with Council approval, modify the Council's recommendation, including the Council's recommendation to publish a final rule. If the Regional Director does not approve the Council's specific recommendation, he/she must provide in writing to the Council the reasons for his/her action prior to the first Council meeting following publication of his/her decision.

§ 651.33 Hook-gear-only vessel requirements.

Beginning on May 1, 1994, vessels, and persons on such vessels, fishing under the hook-gear-only permit specified in § 651.4(b), whether or not the vessel has also been issued a limited access permit under § 651.4(a), are subject to the following requirements throughout the year for which the permit is issued:

(a) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel while the vessel and persons on the vessel are in possession of or landing more than 500 lbs (226.8 kg) of, or fishing for regulated species at any time during the year for which the hook-gear-only permit is issued.

(b) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks.

(1) A hook is considered to be rigged to be fished if the hook and gangion is secured to the ground line of the trawl, whether or not it is baited.

(2) An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is considered to be a replacement hook and is not counted toward the 4,500 hook limit.

(3) A "snap-on" hook is considered to be a replacement hook if it is not rigged or baited.

(c) Adjustments to the hook exemption, hook size and style, and restrictions on gear used, such as crucifiers, in the hook fishery may be implemented or considered by the Council under subpart C of this part.

Subpart C—Framework Adjustments to Management Measures

§ 651.40 Framework specifications.

(a) At least annually, the Regional Director will provide the Council with information on the status of the multispecies finfish resource and provide harvest targets for the upcoming year. The annual harvest targets shall be determined by the Stock Assessment Review Committee and shall be based on the projected fishing mortality rate reductions required under § 651.22 for the principal multispecies stocks (Gulf of Maine cod, Georges Bank cod, Georges Bank haddock, Georges Bank yellowtail flounder, and Southern New England yellowtail flounder).

(b) Within 60 days of receipt of that information, the Council's Plan Development Team (PDT) shall assess the condition of the multispecies finfish resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 651.22, to achieve the target fishing mortality rate and the annual harvest targets determined from that rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response to meet the goals and objectives outlined in the FMP. The PDT shall report its findings and recommendations to the Council. In its report to the Council, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

(c) After receiving the PDT findings and recommendations, the Council shall determine whether adjustments or additional management measures are necessary to meet the goals and objectives of the FMP. After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

(1) DAS changes;
(2) Effort monitoring;
(3) Data reporting;
(4) Possession limits;
(5) Gear restrictions;
(6) Closed areas;
(7) Permitting restrictions;
(8) Crew limits;
(9) Minimum fish sizes;
(10) Onboard observers;
(11) Minimum hook size and hook style;
(12) The use of crucifiers in the hook fishery;
(13) Any other management measures currently included in the FMP.

(d) After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale, and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(e) If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information:

(1) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final

rule based on the factors specified in paragraph (d) of this section, the action will be published in the **Federal Register** as a final rule; or

(2) The Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) The Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(f) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

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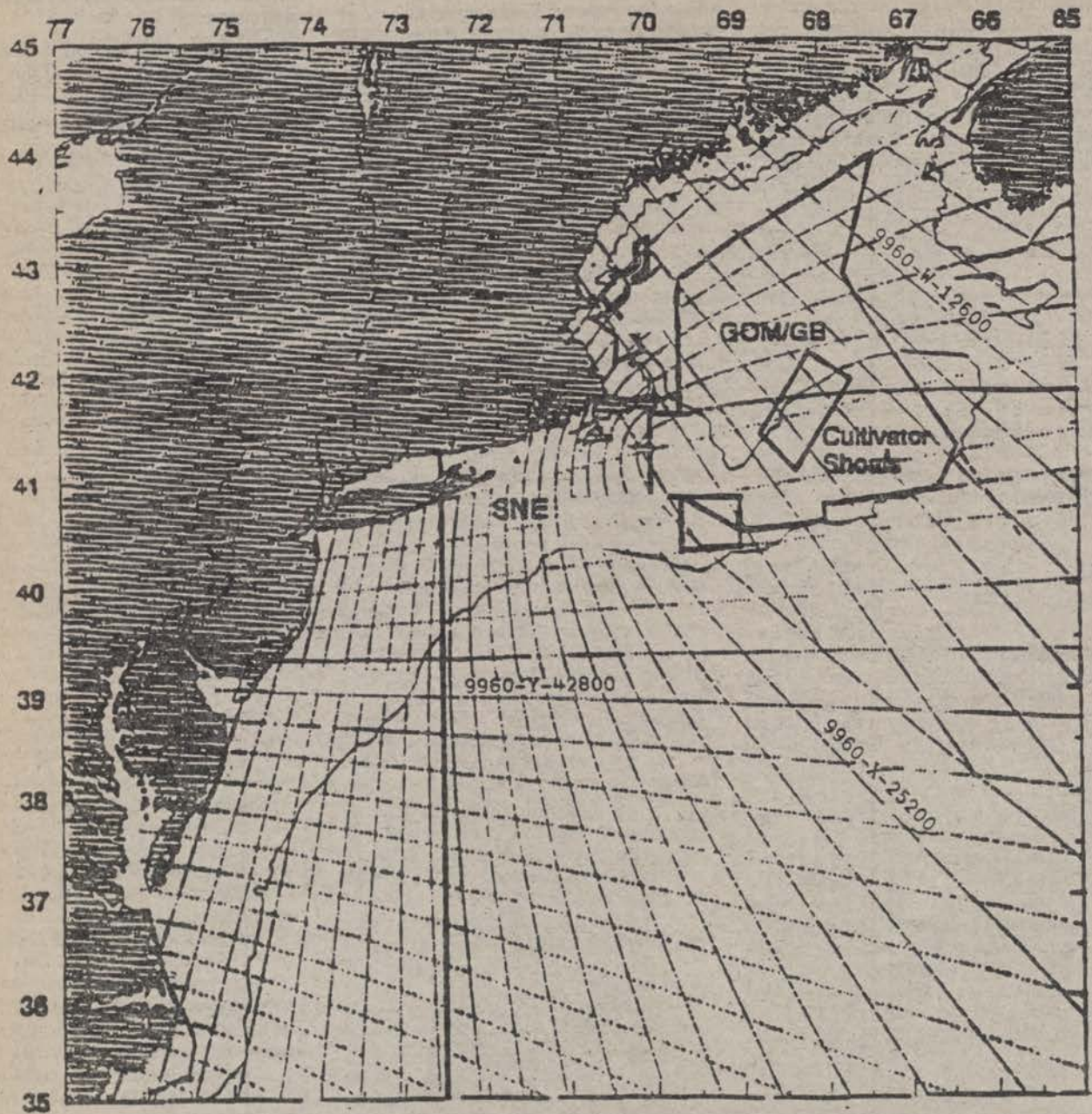

Figure 1 to part 651: Regulated Mesh Areas.

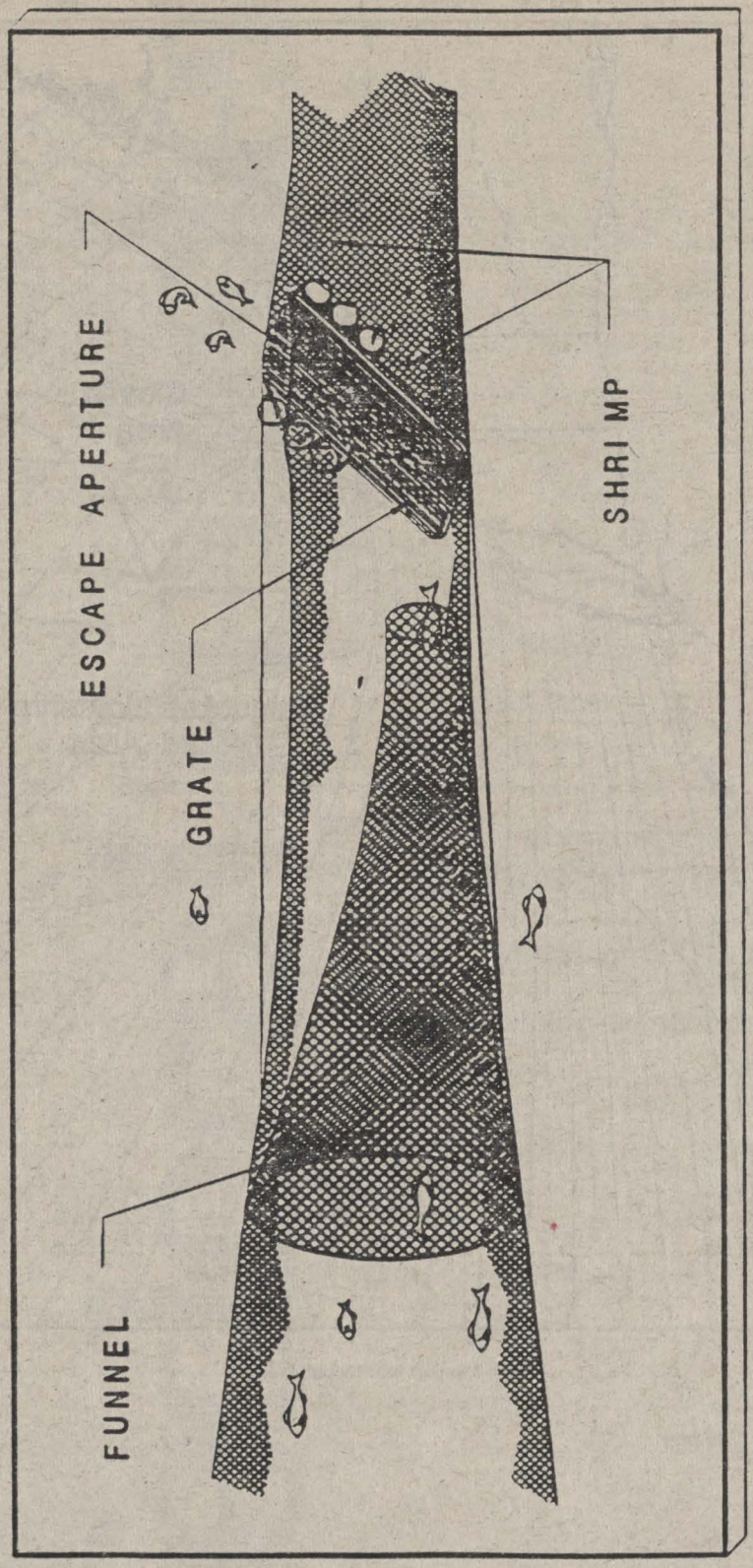

Figure 2 to part 651: Nordmore grate.

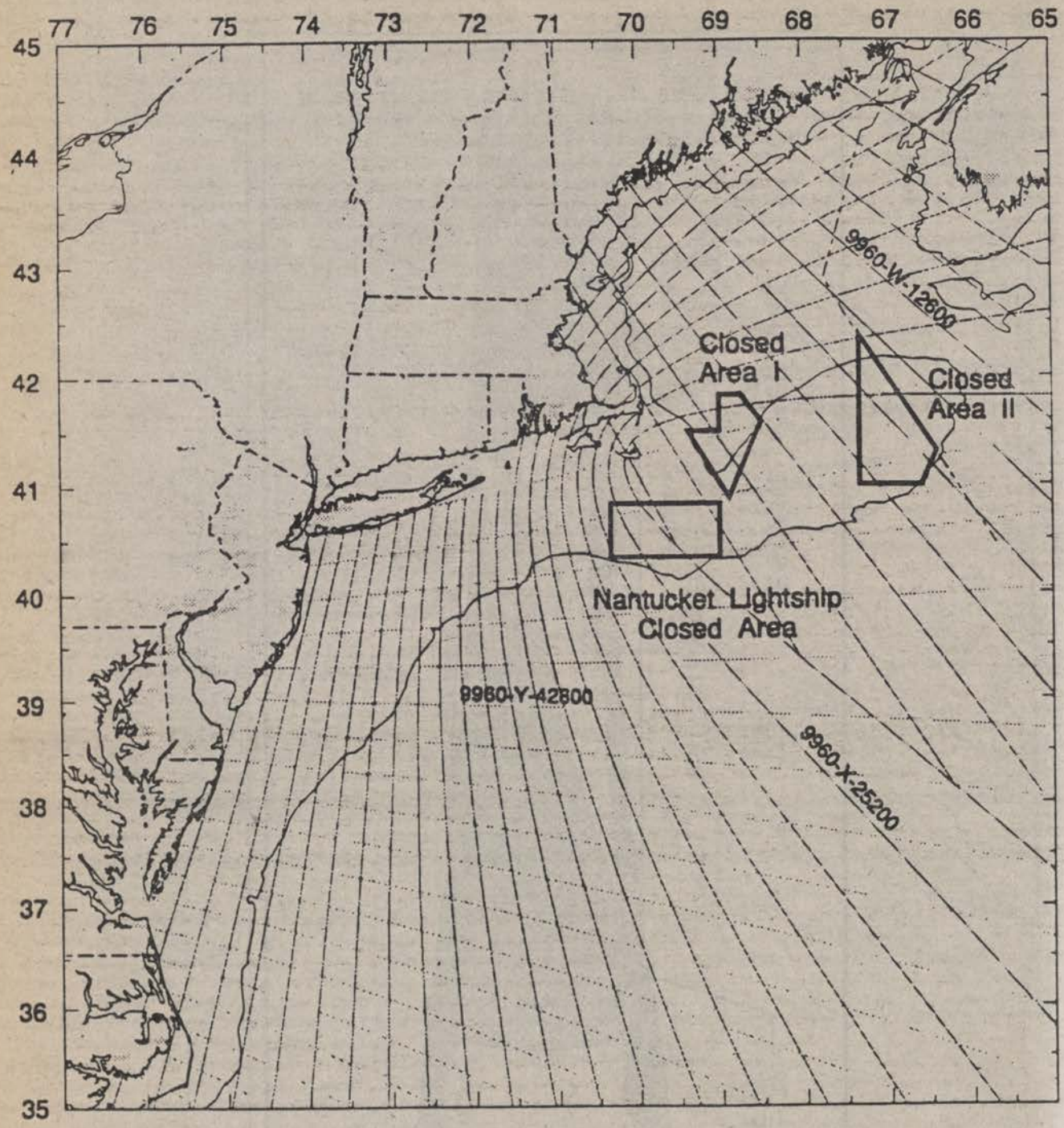

Figure 3 to part 651: Closed Areas.

[FR Doc. 94–4610 Filed 2–24–94; 3:26 pm]

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federal register

Tuesday
March 1, 1994

Part V

Department of Labor

Employment and Training Administration

Job Training Partnership Act; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Proposed Revisions to the Performance Management System, and Proposed Performance Standards for Program Years (PY's) 1994 and 1995

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed revisions to the performance management system, and proposed revisions to the secretary's performance standards; request for comments.

SUMMARY: To comply with the statutory requirements in the Job Training Partnership Act, as amended in 1992, the Department of Labor is proposing changes to State incentive and sanction provisions for programs operated under Title II of the Job Training Partnership Act. Also being introduced are two new performance standards for job training programs serving older workers funded under Section 204.

DATES: These changes to the performance management system will be effective for programs in PY's 1994 and 1995 (July 1, 1994–June 30, 1996).

COMMENTS: Written comments are invited from the public. Comments must be submitted on or before March 31, 1994.

ADDRESSES: Written comments shall be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, room N5631, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Steven Aaronson, Chief, Adult and Youth Standards Unit.

PAPERWORK REDUCTION ACT: Information collection related to this regulation has been approved previously by the Office of Management and Budget, No. 1205–0321. No further information collections or other paperwork requirements of the public are needed.

FOR FURTHER INFORMATION CONTACT: Steven Aaronson, Chief, Adult and Youth Standards Unit. Telephone: 202 219–5487, extension 107 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

The Job Training Reform Amendments of 1992 (Amendments) introduced significant changes in the way job training programs are designed and operated at the local levels. These statutory changes, combined with recent legislative and administrative initiatives to promote high-quality, results-driven, customer-oriented services throughout the Federal Government, are reshaping national and State policy and practices.

Under Section 106 of the amended Job Training Partnership Act (JTPA), the Secretary of Labor is required to set standards for programs serving: (1) Adults and youth under Title II–A and Title II–C; (2) dislocated workers under Title III; and (3) older workers under section 204(d). The Secretary may modify these performance standards no more than every two years, and such modifications cannot be retroactive.

National job training objectives have remained unchanged since 1990 and focus on enhancing the long-term employability and economic self-sufficiency of those most at risk of becoming or remaining unemployed. Current adult measures reflect this emphasis on employment retention and earnings; for youth, employment and skill enhancements are stressed. For this reason, the Secretary's performance measures will be retained for PY's 1994 and 1995.

Numerical levels for these core standards, however, have been updated to reflect the most recent JTPA program experience.

Programs serving older workers were not previously subject to performance standards. Under section 204(d) of JTPA, as recently amended, these programs are now subject to performance standards that are to be focused on increasing employment and earnings including hourly wages, similar to those programs serving other disadvantaged adults. In developing requirements for these performance standards, the special needs and circumstances of this population group were considered. Because field evidence suggests that older workers are much more likely to remain employed once they are placed in jobs, employment at program completion is a fundamental priority. The employment and wage measures together underscore the employment focus of the program, particularly in jobs that are higher paying.

To comply with the new legislative provisions, the Department considered adding specific outcome measures for hard-to-serve participants, and separate outcomes for in-school and out-of-school youth. However, in the interest of avoiding a proliferation of performance measures and limiting local flexibility in programming, additional measures for these three separate groups were not proposed.

States will need to consider, however, the quality of service to out-of-school youth and placements in jobs with employer-assisted benefits when judging service delivery area (SDA) performance and awarding incentive funds. The Department requests comments on whether these proposals adequately address statutory requirements for promoting service to the hard-to-serve population and improving service to out-of-school youth through its existing performance standards and revised incentive award criteria.

Since the Department is undertaking a comprehensive review of its Title III programs, changes in outcome measures will be deferred until this critical assessment is completed. Governors will continue to be required to set an entered employment rate standard for their Title III programs and encouraged to establish an average wage at placement goal. At the same time, the Department will be exploring ways to maximize post-program wages, to better measure skills acquisition and customer satisfaction, and to improve the quality of services provided to dislocated workers.

Financial information will continue to be collected for program management purposes; however, the policy of excluding cost measures from incentive awards will remain unchanged.

Statutory Basis of Performance Standards

Section 106 of JTPA directs the Secretary of Labor to establish performance standards for major job training programs funded under separate JTPA statutory provisions: Title II–A (adult programs), Title II–C (youth programs), and Title III (dislocated worker programs). Section 204(d)(6)(A) of JTPA, as recently amended, for the first time subjects older worker programs to performance standards. Performance standards serve the purpose of assuring Congress that the basic statutory objectives (increased earnings and employment, skills acquisition, and reduced welfare dependency) are being met (29 U.S.C. 1516). On the basis of the Secretary's performance standards, Governors must set performance standards for each of their SDA's and substate areas (SSA's).

The proposed issuance appended to this notice contains revised performance standards levels and implementation instructions to conform the Title II performance management system with the Job Training Reform Amendments of 1992.

Rationale for Retaining Adult Measures

Data on post-program employment and earnings provide the most direct measure of long-term employability. Currently, measures for programs serving adults and adult welfare

recipients capture a participant's employment status and earnings three months after program completion.

The Amendments, however, envision longer periods of employment retention—beyond six months—to measure a job training program's success in preparing its adult participants for long-term employment. Looking toward the feasibility of developing such measures, the Department has awarded grants to 16 States to compare alternative approaches, measures using Unemployment Insurance (UI) wage records versus follow-up survey data, as a basis for assessing and rewarding local program performance. Information on the operational problems of using alternative measures, such as timing for incentive awards and addressing uncovered or out-of-State employment, will be an important part of the pilot project report due in Fall 1994. The Department, in conjunction with State and local staff, will use the results of these State case studies and other information to introduce, where feasible, alternative post-program measures in FY 1995.

Rationale for Retaining Youth Measures

Youth measures have undergone the most refinements since JTPA's inception and now more fully reflect the dual goals of programs serving youth who are enrolled in school, as well as those who are out of school and seeking employment. Additionally, all the required program outcomes in the newly revised youth provisions at Section 106(b)(4), including employment, attainment of employment competencies, dropout prevention and recovery, secondary and post-secondary school completion, and enrollment in advanced training, are encompassed in the current two measures. To address a longstanding concern that employment may not be an appropriate outcome for all youth, the Department will continue its practice of excluding in-school youth—those enrolled in dropout prevention or dropout recovery programs—from the base used to compute the Youth Entered Employment Rate.

Although separate performance measures for in-school and out-of-school youth are not specifically called for in Section 106(b)(4)(B), the Department has carefully examined the implications of a dual performance management system for youth programs. Separate performance measures are not preferred for a number of reasons. One objection to separate performance measures is that they lead to a proliferation of measures, creating confusion at the local level among conflicting policy priorities. In addition, separate measures for in-school and out-of-school youth limit flexibility in program design by penalizing SDA's that do not choose to balance enrollments between in-school and out-of-school youth. In programs serving only small numbers of in-school youth, each terminee would represent a large percentage of in-school terminations. Individual outcomes would therefore have a relatively larger impact on overall performance.

Rationale for New Older Worker (Section 204(d)) Performance Measures

Section 204(d)(6)(A) of JTPA imposes performance standards on State programs serving older workers. Quality employment is a primary goal of these programs and the Department believes that, in the absence of postprogram data, measures surrounding job placements at termination are appropriate at this time. As postprogram information becomes available on the section 204(d) program, the Department will reconsider the possibility of follow-up employment and earnings measures. However, for PYs 1994 and 1995, the Department is proposing to assess programs operated under section 204(d) using an Entered Employment Rate and an Average Wage at Placement measure.

Note: Programs operated under section 204(d) are State programs, even though they may be operated by various local entities. Therefore, the two performance measures will be applied to all older worker programs statewide.

Rationale for Not Establishing Separate Hard-to-Serve Performance Measures

Section 106(b)(7) of JTPA states that Governors shall award incentive grants to SDA's that, in addition to meeting other criteria, "exceed the performance standards established by the Secretary * * * with respect to services to populations of hard-to-serve individuals * * *". This provision could be interpreted as requiring the addition of separate hard-to-serve performance measures to the current JTPA performance standards system.

However, additional performance measures for the hard-to-serve population, *per se*, do not appear to be the best approach for implementing this requirement. The four current adult measures provide critical evaluative data which would preclude their exclusion from the performance standards system. Therefore, additional hard-to-serve performance measures merely would add to the complexity of the system and lead to an unwanted proliferation of measures. In fact, past experience with 12 performance measures provided solid evidence of the pitfalls of introducing such complexity.

Moreover, with the addition of hard-to-serve measures, the core set of performance standards is redundant and, thus, not a useful management tool. It is estimated that over 60 percent of adults and youth currently served in JTPA qualify for one or more hard-to-serve categories. Therefore, it can be argued that the current measures adequately reflect the program goals of increased employment and self-sufficiency among those most in need of JTPA's services, because these individuals constitute a majority of the program's participants. In fact, welfare recipients are already double counted in the current measures; adding outcomes for hard-to-serve groups will result in welfare recipients being counted three times (as adults, as welfare adults, and as hard-to-serve adults).

The Department considered several strategies for avoiding the proliferation of measures while, at the same time, maintaining Congressional intent. The most expedient way to approach the statutory requirement was from a State incentive policy perspective. Therefore, in order for an SDA to be considered eligible to receive any incentive award, the Department is proposing that 65 percent of their terminees (*i.e., both* 65 percent of Title II–A terminees and 65 percent of Title II–C terminees) receiving services beyond objective assessment (*i.e.*, training and/or job search assistance) must be from the legislatively defined hard-to-serve categories.

This requirement serves as a "gate" in determining an SDA's eligibility for incentive awards, thus ensuring the Congressional objective that program be rewarded on the basis of both high levels of service to the hard-to-serve and good performance. In the absence of such a gate, both State and local administrators expressed concerns that local programs could exceed their performance standards and thus be rewarded, even if service levels to the hard-to-serve fall below the legislatively required floor of 65 percent.

Excluding individuals participating in the program, but receiving only objective assessment, from the determination of eligibility for incentive awards is consistent with existing Department policy of excluding such individuals from the performance standards universe.

Rationale for Including Improved Service to Out-of-School Youth and Employer-Assisted Benefits Incentive Award Criteria

Section 106(b)(7) of JTPA includes, among other required criteria for awarding incentive grants to SDA's, improved service to out-of-school youth and job placements that provide employer-assisted benefits. Governors will be required to reward model out-of-school youth programs either identified by the Department of Labor or recognized by the State or SDA as having a demonstrated record of success. Considerable flexibility will be given to Governors in establishing a method for doing so.

The Act is not at all directive with regard to rewarding employment in jobs offering fringe benefits. In the absence of *any* data on what constitutes a reasonable national estimate of job placements with employer-assisted benefits in JTPA, the Department has given States considerable flexibility in establishing incentive policies that promote such placements. Once relevant data become available from JTPA's management information system, the Department will be able to offer more guidance to States.

Because numerous types of employer-assisted benefits are available which are more or less typically provided, the Department needs to ensure some degree of uniformity. It is proposed that the States use a standardized definition. The definition used in JTPA's newly instituted Standardized Program Information Report (SPIR) provides this comparability. This definition requires that the job offer employer-assisted health benefits; but the individual does not have to actually receive such benefits. Again, in the absence of firm data with which to establish a credible benchmark, the Department is offering States maximum flexibility in measuring the provision of employer-assisted benefits and determining an appropriate incentive policy emphasis.

Rationale for New Numerical Levels

The Secretary's national numerical standards for PY's 1994–1995 are set on the basis of the most recent JTPA performance data available (PY 1992). The numerical values of the standards are generally set so that if SDA's/SSA's continue to perform in the same manner as they did in the most recent program year, 75 percent of the system should exceed their standards. This means that the proposed numerical standards for five of the six core measures and the Title III Entered Employment Rate measure are set at the 25th percentile of PY 1992 performance. Revising the numerical standard for the youth entered employment rate (YEER) in the same way would lead to reduced standards for SDAs. However, 30 month results from the recent National JTPA Study suggest that outcomes experienced by out-of-school youth in JTPA fall short of acceptable levels. Therefore, to encourage improved services to out-of-school youth, the numerical standard for the YEER will remain at its current level of 41 percent. The Secretary's standards for the new older worker measures are derived from a combination of data obtained from Job Training Quarterly Survey data and the JTPA Annual Status Report.

Rationale for New Sanction Policy Provisions

The amended JTPA states in Section 106(j)(1) that the Department is to establish uniform criteria for determining whether an SDA fails to meet performance standards and the circumstances under which remedial action shall be taken. This provision shifts responsibility for defining "failure" to meet standards from the States to the Department.

In determining the new sanction policy provisions, the Department sought uniformity and, thus, comparability across the JTPA system. This is clearly in line with Congressional intent. Furthermore, the Department believes that, to minimize confusion, the meaning of "failure" in one year should be consistent with the meaning of "failure" for a second year, since failure for two consecutive years triggers reorganization. States and local areas should clearly understand the meaning of failure, and it should be consistent from one program year to the next. Use of the Secretary's standards for the purpose of imposing sanctions on SDA's is consistent with past practices.

Another issue related to imposing sanctions on SDA's concerns the definition of "failure", specifically, defining an appropriate "level of failure". Consistent with the intent of the amended legislation, the Department has specified the number of "standards not met" as constituting failure. It was noted that the lack of specificity in the past led to confusion and inconsistency across the JTPA system. In addition, to make the definition more explicit and to properly consider the goals of the youth program, the Department added a stipulation that an SDA which does not meet at least one of the two youth standards will be considered as failing.

"Meeting Performance Standards" is defined as meeting at least four of the six core standards, one of which must be a youth standard. Conversely, "Failure" is defined as: Failing to meet three (3) or more of the core standards or failing to meet both youth standards. For the first year, failure will require a State to provide technical assistance to an SDA and will preclude that SDA from receiving any incentive award. (This is explicitly stated, since an SDA which passes through the eligibility gate could conceivably qualify for an incentive award based on meeting other criteria.) For the second year, failure will trigger the reorganization of the SDA and preclude receipt of any incentives in that year.

Public Comment and Participation

The Department is committed to a participatory process in the development of performance standards through periodic meetings with State, SDA, and Private Industry Council (PIC) representatives to address performance standards issues. Such a meeting was held in July 1993 to provide the Department with field input critical to the development of these standards. This request for comment, which incorporates that input, is another important part of the participatory process.

The Secretary especially requests comments on the following issues:

General

Does the system proposed in this notice adequately deal with legislated requirements for promoting service to the hard-to-serve through performance standards and related incentive award criteria?

Retaining Current Adult and Youth Measures as the Secretary's Core Measures

Given currently available data, do the six adult and youth measures proposed as the Secretary's core measures adequately and appropriately reflect the program's overall goals of increased employment and earnings, reduced welfare dependency, long-term economic self-sufficiency, and increased educational attainment and occupational skills?

Hard-to-Serve "Gate" for Incentive Award Eligibility

The Department proposes to require for eligibility to receive incentive awards that SDA's ensure that 65 percent of their terminees receiving training or other services beyond objective assessment represent one of the statutorily defined hard-to-serve categories. Does establishing this requirement fully address the need to

emphasize this population in the performance standards system? Would additional outcome measures for hard-to-serve create confusion or undue complexity at the local level? In assessing compliance with the eligibility gate for incentive awards, should the 65 percent targeting provision be applied to those enrolled in JTPA or those completing the program? Also, should the eligibility gate be comprised of total individuals served (*i.e.*, adults and youth combined), or should appropriate separate adult and youth gates be identified?

Failure To Meet Performance Standards

Is the definition of failure to meet standards reasonable, fair, and consistent with the intent of the amended JTPA?

Older Worker (Sec. 204(d)) Performance Measures

Is it appropriate to limit performance assessment to outcomes at termination, or does the reintroduction of termination-based measures create a perverse effect? Once postprogram data on 204(d) programs become available from the SPIR beginning in PY 1994, should any postprogram measures be considered? Do the standards adequately address the needs of individuals who participate in older worker programs?

Signed at Washington, DC, this 18th day of February 1994.

Doug Ross,

Assistant Secretary of Labor.

Appendix—Revisions to the Performance Management System, and Performance Standards for Program Years (PY's) 1994 and 1995

Training and Employment Guidance Letter

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Training and Employment Guidance Letter No. _____

From: Barbara Ann Farmer, Administrator for Regional Management

Subject: Job Training Partnership Act (JTPA) Title II and Title III Performance Standards for PY's 1994–1995

1. *Purpose.* To transmit guidance on the Secretary's required performance measures and the Secretary's implementing instructions for performance standards provisions for Program Years (PY's) 1994 and 1995 (July 1, 1994–June 30, 1995; July 1, 1995–June 30, 1996).

2. *Background.* Sec. 106 of JTPA, as amended, directs the Secretary to establish performance standards for adult, youth, and dislocated worker programs. These standards are updated every two years based on the most JTPA program experience and on program emphases and goals established by the Department of Labor. The Secretary also issues instructions for implementing standards and parameter criteria for States to follow in adjusting the Secretary's standards for service delivery areas (SDA's) and substate areas (SSA's).

The Job Training Reform Amendments (JTRA) of 1992 mandated significant changes in the design and operation of local job training programs, as well as the criteria used to assess their performance. The revised Section 106 requires that performance standards reflect job placements that are a minimum of 20 hours per week, and that programs be rewarded based not only on high performance, but also on increased service to the "hard-to-serve," and on quality job placements that are both high paying and offer employer-assisted benefits. Incentive and sanction policies are to be structured around more explicit criteria and guidelines, and criteria for failure to achieve program objectives are to be clarified and made more uniform. Section 204(d) mandates performance measures for the older worker program.

To assist the Department in responding to the substantive changes required in the Section 106 amendments, a Technical Workgroup was convened in Washington, DC, in mid-July, 1993. The workgroup had representatives from State and local JTPA programs; public interest groups including the Partnership for Training and Employment Careers, the U.S. Conference of Mayors, the National Association of Counties, the National Governors' Association, and the National Council on the Aging; and staff from the Department of Labor (DOL) Office of the Inspector General. This Guidance Letter incorporates, to a large extent, the workgroup's findings.

3. *Performance Management Goals for PY's 1994–1995.* PY 1994 will begin the sixth two-year cycle of the performance management system under JTPA. Departmental goals, initially established for PY 1990 in anticipation of the amendments, remain unchanged:

- Targeting services to a more at-risk population;
- Improving the quality and intensity of services that lead to skills acquisition, long-term employability and increased earnings;
- Placing greater emphasis on basic skills acquisition to qualify for employment or advanced education or training; and
- Promoting comprehensive, coordinated human resource programs to address the multiple needs of at-risk populations.

In addition, with the passage of the Amendments in 1992, the performance management system has been tasked, through performance incentive award policies, to improve service to out-of-school youth and also foster employment in better quality jobs which offer high wages and employer-assisted benefits

These goals are reflected in the Secretary's six Title II–A and Title II–C (core) measures, national numerical standards for these measures, new incentive award criteria, and associated reporting requirements. Governors still retain authority to establish additional standards which reflect State policy and to develop the specific approach to determining incentive awards.

This issuance specifies the national standards for PY's 1994–1995 and introduces the new criteria which must be a part of State incentive grant policies. Data to support additional non-cost measures will continue to be reported and Governors may use those in incentive policies. Cost data are to be used for purposes of program oversight and fiscal management only. Numerical levels for the core standards are identified in Section 7 of this Guidance Letter.

Note: The Department has identified two additional goals for which Title II measures/standards have not yet been established:

- Establishing a strong customer focus and orientation and improving the responsiveness of services to the individual needs of participants; and
- Improving access to labor market information and obtaining feedback from customers and employers on the quality of program services.

Various options for collecting and analyzing customer feedback will be explored. In the meantime, States and SDA's are encouraged to begin on their own to focus on improving the quality of program services and using customer feedback as a management tool.

4. *Title II–A and Title II–C Core Performance Measures.* Four performance measures will be used for Title II–A for PY's 1994 and 1995. These are:

—the Adult Follow-Up Employment Rate;
—Adult Weekly Earnings at Follow-Up;
—the Welfare Follow-Up Employment Rate; and
—Welfare Weekly Earnings at Follow-Up.

Two performance measures will be used for Title II–C for PY's 1994 and 1995. These are:

—the Youth Entered Employment Rate; and
—the Youth Employability Enhancement Rate.

The adult and welfare measures are being retained because post-program outcomes are the most direct measure of long-term employability. The current measures send an explicit policy signal that JTPA, as a value-added program, promotes employment retention for its participants, as measured by an individual's employment status and earnings three months after leaving the program. Since earnings are also a critical factor in reducing welfare dependency, the welfare earnings measure is the best proxy currently available for identifying reduced dependency.

Note: The Amendments suggest that adult program measures should address longer periods of employment retention than the current 13 weeks. The Department has awarded grants to 16 States that will examine the merits of using Unemployment Insurance (UI) wage records for such longer-term measures. Preliminary data indicate that comparable performance measures can be developed from UI wage records. Applying the results of longer-term measures to ongoing program management and annual incentive award determinations raises technical and operational issues which will need to be examined by the pilot sites. The Department will use the results of these States studies and other available data to introduce, where feasible, longer-term measures in PY 1995.

Youth measures are unchanged because they fully reflect Departmental priorities and the required performance standards factors listed in section 106(b)(4) of JTPA (employment, attainment of employment competencies, dropout prevention and recovery, secondary and post-secondary school completion, and enrollment in other training programs). Acknowledging that employment may not be an appropriate outcome for all youth, those individuals who are enrolled in dropout prevention programs and successfully remain in school, and those who are enrolled in dropout recovery programs and successfully return to school will not be included in the Youth Entered Employment Rate.

5. *Performance Standards Provisions for Older Workers Programs.* Except for incentive award and sanctions provisions, section 204 (d)(6) of JTPA identifies requirements, including performance standards, for the operation of older worker programs. In response to this new provision, two performance measures have been established to take into account program goals for this segment of the population. Starting in PY 1994, there will be an Entered Employment Rate performance measure as well as an Average Wage at Placement performance measure for older worker programs. As postprogram information becomes available on the section 204(d) program, the Department will reconsider the possibility of follow-up employment and earnings measures.

Note: Programs operated under section 204(d) are State programs even though they may be operated by various local entities. Therefore, performance standards will be applied to the total older worker programs State-wide.

6. *Performance Standards Provisions for Title III.* Governors are required to set an entered employment rate standard for Title III programs and are encouraged to establish an average wage at placement goal. Performance standards for Title III will be applied to the following programs funded under section 302: all of section 302(c)(1) State activities, and sections 302(c)(2) and 302(d) substate area activities. Performance outcomes will be reported for programs operated under section 302(a)(2), Secretary's National Reserve, in lieu of applying performance standards, because these funds are typically used for one-time projects rather than ongoing programming.

While rewards and the imposition of sanctions are not required for title III programs, Governors may use a portion of the 40 percent funds reserved for State activities under section 302(c)(1) for rewarding substate area performance, particularly lengthier, substantive training that will better ensure the long-term employability of participants. Although no statutory requirement exists for *monetary* incentives, Congress requires State plans to include incentives to ensure that long-term training is provided to those who need it.

7. *Secretary's National Numerical Standards for PY's 1994–1995.* The title II–A and II–C numerical standards are derived from PY '92 performance data reported on the JTPA Annual Status Report (JASR) and are generally set at a level that approximately 75% of the SDA's are expected to exceed. Revising the numerical standard for the youth entered employment rate (YEER) in the same way would lead to reduced standards for SDAs. However, 30 month results from the recent National JTPA Study suggest that outcomes experienced by out-of-school youth in JTPA fall short of acceptable levels. Therefore, to encourage improved services to out-of-school youth, the numerical standard for the YEER will remain at its current level of 41 percent. Earnings have been adjusted to account for expected future inflation. Finally, an additional special adjustment has been made to the Adult and Welfare Follow-Up Employment Rates and the Youth Entered Employment Rate to account for the requirement in section 106(k) that for performance standards purposes ". . . 'employment' means employment for 20 or more hours per week."

The Secretary's standards for title II–A for PY's 1994–1995 are as follows:

Adult Follow-up Employment Rate: 59%
Adult Weekly Earnings at Follow-up: $245
Welfare Follow-up Employment Rate: 47%
Welfare Weekly Earnings at Follow-up: $223

The Secretary's standards for title II–C for PY's 1994–1995 are as follows:

Youth Entered Employment Rate: 41%
Youth Employability Enhancement Rate: 40%

No national data on older worker program performance are currently available to assist in setting national standards. However, the Job Training Quarterly Survey (JTQS) has detailed employment and wage data on older workers served by regular title II–A programs. Based on these data, and adjusting for the 20 hours per week employment requirement, the Secretary's standards for older worker programs are as follows:

Entered Employment Rate: 62%
Average Hourly Wage at Placement: $5.45

The title III standard is derived from PY '92 performance data reported on the Worker Adjustment Program Annual Program Report (WAPR). This standard is at a level that approximately 75 percent of the substate areas are expected to exceed. As with the employment measures for title II–A and II–C, an adjustment has been made to take into account the 20 hour per week employment requirement. The Secretary's standard for title III is:

Entered Employment Rate: 67%

8. *Implementing Provisions.* The following implementing requirements must be followed:

A. *Required Standards.* For titles II–A and II–C, Governors are required to set, for each SDA, a numerical performance standard for each of the six Secretary's measures; for the older worker program, Governors are required to set numerical Entered Employment Rate and Average Wage at Placement standards for programs operated under section 204(d); for title III, Governors are required to set for each substate area a numerical performance standard for the Entered Employment Rate and are encouraged to establish an average wage at placement goal.

B. *Setting the Standards.* Consistent with new legislative provisions, Governors are now required to adjust the Secretary's performance standards to reflect local area circumstances (section 106(d)). Such adjustments must conform to the Secretary's parameters described below:

1. Procedures must be:
- Responsive to the intent of the Act,
- Consistently applied among the SDA's/SSA's,
- Objective and equitable throughout the State,
- In conformance with widely accepted statistical criteria;

2. Source data must be:
- Of public use quality,
- Available upon request;

3. Results must be:
- Documented,
- Reproducible; and

4. Adjustment factors must be limited to:
- Economic factors,
- Labor market conditions,
- Geographic factors,
- Characteristics of the population to be served,
- Demonstrated difficulties in serving the population (this adjustment factor is new), and
- Type of services to be provided.

The Department offers an adjustment methodology that conforms to these parameter criteria for Governors to use in making required adjustments. Should the Governor choose to use an alternate methodology, or make adjustments not addressed by the Departmental model, it must conform to the parameter criteria and be documented in the Governor's Coordination and Special Services Plan (GCSSP) prior to the program year to which it applies.

The State Job Training Coordinating Council and, where appropriate, the State Human Resources Investment Council, must have an opportunity to consider adjustments to the Secretary's standards and to recommend variations. To determine whether an SDA has met/exceeded a performance standard, Governors must use actual, end-of-year program data to recalculate the performance standards.

C. *Performance Standards Definitions.* Governors must calculate the performance of their SDA's, SSA's, and Section 204(d) programs according to the definitions included in the attachments.

D. *Titles II–A and II–C Incentive and Sanction Policies.* Performance standards are to be established for programs funded under Titles II and III of the Act. In applying the Secretary's standards for Titles II–A and II–C, Governors *must use* the six core measures and also consider criteria relating to model programs successfully serving out-of-school youth and placement in jobs providing employer-assisted benefits. Governors may select additional non-cost measures to form the basis of incentive policies as long as the following criteria are met:

1. As the basis for making incentive awards, the Governors must use all (i.e., cannot "zero weight" *any*) of the six Secretary's core measures. Governors will also be required to reward model out-of-

school youth programs either identified by the Department of Labor or recognized by the State or SDA as having a demonstrated record of success. Considerable flexibility will be given to Governors in establishing a method for doing so. Likewise, in the absence of firm data with which to establish a credible benchmark, States have total flexibility in how to measure the provision of employer-assisted benefits. Decisions regarding the relative weight or emphasis of each core measure (e.g., the Youth Entered Employment Rate) and incentive criterion (e.g., placement in jobs with employer-assisted benefits) in a State's incentive award formula rest with the Governor. The core measures will be the basis for identifying SDA's that are candidates for technical assistance and for imposing sanctions. At least 75 percent of the funds set aside for performance incentives must be related to these measures and the out-of-school and employer-assisted benefits criteria, in accordance with Section 106(b)(7)(E).

2. Cost standards cannot be used for incentive award purposes.

3. Incentive policies may include adjustments to incentive award amounts based upon factors such as grant size, additional services to the hard-to-serve, intensity of service, and expenditure level.

4. A Secretary's standard for service to the hard-to-serve, as required by Section 106(b)(7)(B) of the amended JTPA, has been established in the form of a stand-alone eligibility criterion ("gate") for incentive awards. In order for an SDA to be eligible to receive *any* incentive award, at least 65 percent of *both* the SDA's (a) Title II–A and (b) title II–C (in-school and out-of-school combined) terminees receiving training and/or other services beyond objective assessment must be hard-to-serve. The definitions of hard-to-serve are to be consistent with the definitions in Sections 203(b), 263(b), and 263(d) of the Act.

5. For those SDA's that successfully "pass through" the gate, three criteria (in addition to any funds set aside for Governors' standards) will determine the amount of the incentive award: Exceeding the Secretary's standards; providing quality service to out-of-school youth and placing participants in employment that provides employer-assisted benefits.

—The definition of "employer-assisted benefits" is to be consistent with the SPIR definition (Item 35c). Thus, State incentive policies will be structured to include benefit information for those participants who entered employment at termination, and Governors will have considerable latitude in implementing this incentive policy requirement.

6. Consistent with present DOL policy, SDA's that exceed all six of the Secretary's Titles II–A and II–C standards *must* receive an incentive award (if the "gate" is successfully attained).

7. Determination of an SDA's failure to meet standards and consequent imposition of technical assistance and reorganization requirements, under Section 106(j), will be based only on the Secretary's title II–A and Title II–C core measures.

—"Meeting Performance Standards" is defined as meeting at least four of the six core standards, one of which must be a youth standard. Conversely, "Failure" is defined as failing to meet three (3) or more of the core standards *or* failing to meet both youth standards.

—Failure for the first year precludes an SDA from receiving *any* incentive awards and requires Governors to provide technical assistance to the underperforming SDA.

—Failure for the second year precludes an SDA from receiving *any* incentive award and requires Governors to impose a reorganization plan.

8. Section 106(j)(3) requires each State to report to the Secretary, not later than 90 days after the end of each program year, the actual performance and performance standards for each SDA within that State. Within the same timeframe, technical assistance plans for each SDA "failing" for the first year are required. A 90-day timeframe also applies to the imposition of a reorganization plan, which is mandatory when an SDA "fails" for a second consecutive year.

Specific procedures for the formal performance standards report and required State action will be provided under separate cover. However, in addition to the formal annual process, there should be ongoing oversight of SDA performance and continuous technical assistance and capacity-building aimed at addressing areas where program performance can be improved.

9. Governors must specify in the GCSSP their incentive award policy under Section 202(c)(1)(B) and 202(c)(3)(A) and imposition of sanctions policy under Section 106(j).

10. In PY 1994 and 1995, Governors will continue to have the discretion to exclude pilot projects serving "hard-to-serve" individuals, particularly out-of-school youth, funded from the 5 percent incentive fund set-aside in computing their standards and actual performance. States and SDA's are encouraged to use such funds to develop or replicate model programs serving out-of-school youth, particularly those based on contextual learning models.

Note. For those SDA's in which "incentive projects" are indistinguishable from those that provide general training, these programs would *not* be considered exempt from performance standards.

9. *State Action.* States are to distribute this Guidance Letter to all officials within the State who need such information to implement the new performance standards policies and requirements for PY 1994–1995. It is especially critical that States, State Councils, Private Industry Councils and SDA operational staff become thoroughly familiar with the new provisions concerning incentive and sanctions policies.

A copy of this Guidance Letter is also being sent to your State JTPA Liaison, the State Wagner-Peyser Administering Agency, and the State Worker Adjustment Liaison.

10. *Inquiries.* Questions concerning this issuance may be directed to Steven Aaronson at (202) 219–5487, extension 107.

11. *Attachments:*

1. Definitions for Performance Standards
2. Youth Employability Enhancement Definitions

Attachment 1—Definitions for Performance Standards

Those terminees who receive only objective assessment (or only objective assessment and entered employment) are to be excluded from the calculation of performance outcomes for Title II–A, Title II–C, and Section 204(d) older worker programs. Participants in special 5-percent-funded projects may, at the discretion of the Governor, also be excluded from the calculation of performance outcomes for Title II–A and Title II–C.

The following defines the Title II–A performance standards:

1. *Adult Follow-Up Employment Rate*—Total number of adult respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult respondents (i.e., terminees who completed follow-up interviews).

2. *Adult Follow-Up Weekly Earnings*—Total weekly earnings for all adult respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult respondents employed (for at least 20 hours per week) at the time of follow-up.

Welfare

3. *Welfare Follow-Up Employment Rate*—Total number of adult welfare respondents who were employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult welfare respondents (i.e., terminees who completed follow-up interviews).

4. *Welfare Follow-Up Weekly Earnings*—Total weekly earnings for all adult welfare respondents employed (for at least 20 hours per week) during the 13th full calendar week after termination, divided by the total number of adult welfare respondents employed (for at least 20 hours per week) at the time of follow-up.

Note: If the response rates for those employed at termination and those not employed at termination in an SDA differ by more than 5 percentage points in either the adult or welfare samples, then the calculations of the follow-up outcomes for that group must be modified to adjust for nonresponse bias.

The following defines the Title II–C performance standards:

5. *Youth Entered Employment Rate (YEER)*—Total number of youth who entered employment at termination (for at least 20 hours per week), divided by the total number of youth who terminated, excluding those potential dropouts who are reported (on the Standardized Program Information Report [SPIR]) as remained-in-school and dropouts who are reported (on the SPIR) as returned-to-school.

Note: As in past practice, youth terminees who remain-in-school or return-to-school and who also enter employment will *not* be excluded from the termination pool reflected in the denominator of the Youth Entered Employment Rate. In effect, SDA's would "receive credit" for these individuals twice—

in the YEER and in the YEEN. However, only employment of at least 20 hours per week satisfies the requirement for "employment."

6. *Youth Employability Enhancement Rate (YEEN)*—Total number of youth who attained one of the employability enhancements at termination, whether or not they also obtained a job, divided by the total number of youth who terminated.

• Youth Employability Enhancements include:

a. Attained (two or more) PIC-recognized Youth Employment Competencies.

b. Completed major level of education following participation of at least 90 calendar days or 200 hours in JTPA activity.

c. Entered and retained for at least 90 calendar days or 200 hours in non-Title II training or received a certification of occupational skill attainment.

Note: It is expected that the ultimate result of this outcome will be the attainment of a job-specific skill competency on the part of the terminee.

d. Returned to and retained in full-time school for one semester or at least 120 calendar days (dropouts only), attained a basic or job-specific skill, and made satisfactory progress.

Note: For the purposes of this outcome, and the remained in school outcome described below, "school" *includes alternative schools*, defined as a specialized, structured curriculum offered inside or outside of the public school system which may provide work/study and/or General Educational Development (GED) test preparation.

e. Remained in school for one semester or at least 120 calendar days (for youth at risk of dropping out of school), attained a basic or job-specific skill competency, and made satisfactory progress.

Note: For youth aged 14 and 15, the acceptable competencies will be basic skills or pre-employment/work maturity.

The following defines Section 204(d) Older Worker performance standards:

1. *Entered Employment Rate*—Total number of individuals who entered employment of at least 20 hours per week at termination, divided by the number of total terminations.

2. *Average Wage at Placement*—Total hourly wage rate of all terminees who entered employment of at least 20 hours per week at termination, divided by the number of terminees who entered employment of at least 20 hours per week at termination.

The following defines the Title III performance standard:

1. *Entered Employment Rate*—Total number of individuals who entered employment of at least 20 hours per week at termination, excluding those who were recalled or retained by the original employer after receipt of a layoff notice, divided by the total terminations, excluding those who were recalled or retained by the original employer after receipt of a layoff notice.

Attachment 2—Youth Employability Enhancement Definitions

"Youth Employability Enhancement" means an outcome for youth, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment. Outcomes which meet this requirement shall be restricted to the following:

(1) Attained PIC–Recognized Youth Employment Competencies (two or more);

(2) Returned to Full-Time School;

(3) Remained in School;

(4) Completed Major Level of Education; or

(5) Entered Non-Title II Training.

1. *Attained PIC-Recognized Youth Employment Competencies*—The total number of youth who demonstrated proficiency as defined by the PIC in *two or more* of the following three skill areas *in which the terminee was deficient at enrollment*: pre-employment/work maturity; basic education; or job-specific skills. Competency gains must be achieved through program participation and be tracked through sufficiently developed systems that must include: quantifiable learning objectives, related curricula/training modules, pre- and post-assessment, employability planning, documentation, and certification.

The completely detailed definition for Youth Employment Competency systems is located in the Standardized Program Information Reporting System (SPIR) instructions, transmitted in TEIN No. 5–93, dated July 30, 1993.

2. *Returned to Full-Time School*—The total number of youth who: (1) had returned to full-time secondary school (e.g., junior high school, middle school and high school)—including alternative school—if, at the time of intake, the participant was not attending school (exclusive of summer school) and had not obtained a high school diploma or equivalent; and (2) prior to termination had been retained in school for one semester or at least 120 calendar days.

Alternative School—A specialized, structured curriculum offered inside or outside of the public school system which may provide work/study and/or GED preparation.

Note: To obtain credit for Returned to Full-Time School and Remained in School (described below), SDA's must be prepared to demonstrate that retention results from continuing, active participation in JTPA activities and the youth must: (1) Be making satisfactory progress in school; and (2) (for youth aged 16–21) attain a PIC-approved Youth Employment Competency in Basic Skills or Job-Specific Skills; or (3) (for individuals aged 14–15) attain a PIC-approved Youth Employment Competency in Pre-employment/Work Maturity or Basic Skills.

Satisfactory Progress in School—An SDA, in cooperation with the local school system, must develop a written policy that defines an individual standard of progress that each participant is required to meet. Such a standard should, at a minimum, include both a qualitative element of a participant's progress (e.g., performance on a criterion-referenced test or a grade point average) and a quantitative element (e.g., a time limit for completion of the program or course of study). This policy may provide for exceptional situations in which students who do not meet the standard of progress are nonetheless making satisfactory progress during a probationary period because of mitigating circumstances.

3. *Remained in School*—The total number of youth who, prior to termination, had been retained in full-time secondary school, including alternative school, for one semester or at least 120 calendar days. A youth may be reported as Remained-in-School only if he/she was attending school at the time of intake, had not received a high school diploma or its equivalent, and was considered "at risk of dropping out of school," as defined by the Governor in consultation with the State Education Agency.

4. *Completed Major Level of Education*—The total number of adults/youth who, prior to termination, had completed, during enrollment in the program, a level of educational achievement which had not been reached at entry. Levels of educational achievement are secondary and post-secondary. Completion standards shall be governed by State standards and shall include a high school diploma, GED Certificate or equivalent at the secondary level, and shall require a diploma or other written certification of completion at the post-secondary level.

Note: To obtain credit, completion of a major level of education must result primarily from active JTPA program participation of at least 90 calendar days *or* 200 hours, usually prior to the completion of the major level of education.

5. *Entered Non-Title II Training*—The total number of adults/youth who, prior to termination, had entered an occupational skills employment/training program not funded under Title II of the JTPA, that builds upon and *does not duplicate* training received under Title II.

Note: To obtain credit, the participant must have been retained in that program for at least 90 calendar days OR 200 hours *or* must have received a certification of occupational skill attainment. During the period the participant is in non-Title II training, he/she may or may not have received JTPA services. It is expected that the *ultimate* result of this outcome will be the attainment of a job-specific skill competency on the part of the terminee.

[FR Doc. 94–4587 Filed 2–28–94; 8:45 am]

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Vol. 59, No. 40

Tuesday, March 1, 1994

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Federal Register

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Public inspection desk	523–5215
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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

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Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

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Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

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March 7	March 22	April 6	April 21	May 6	June 6
March 8	March 23	April 7	April 22	May 9	June 6
March 9	March 24	April 8	April 25	May 9	June 7
March 10	March 25	April 11	April 25	May 9	June 8
March 11	March 28	April 11	April 25	May 10	June 9
March 14	March 29	April 13	April 28	May 13	June 13
March 15	March 30	April 14	April 29	May 16	June 13
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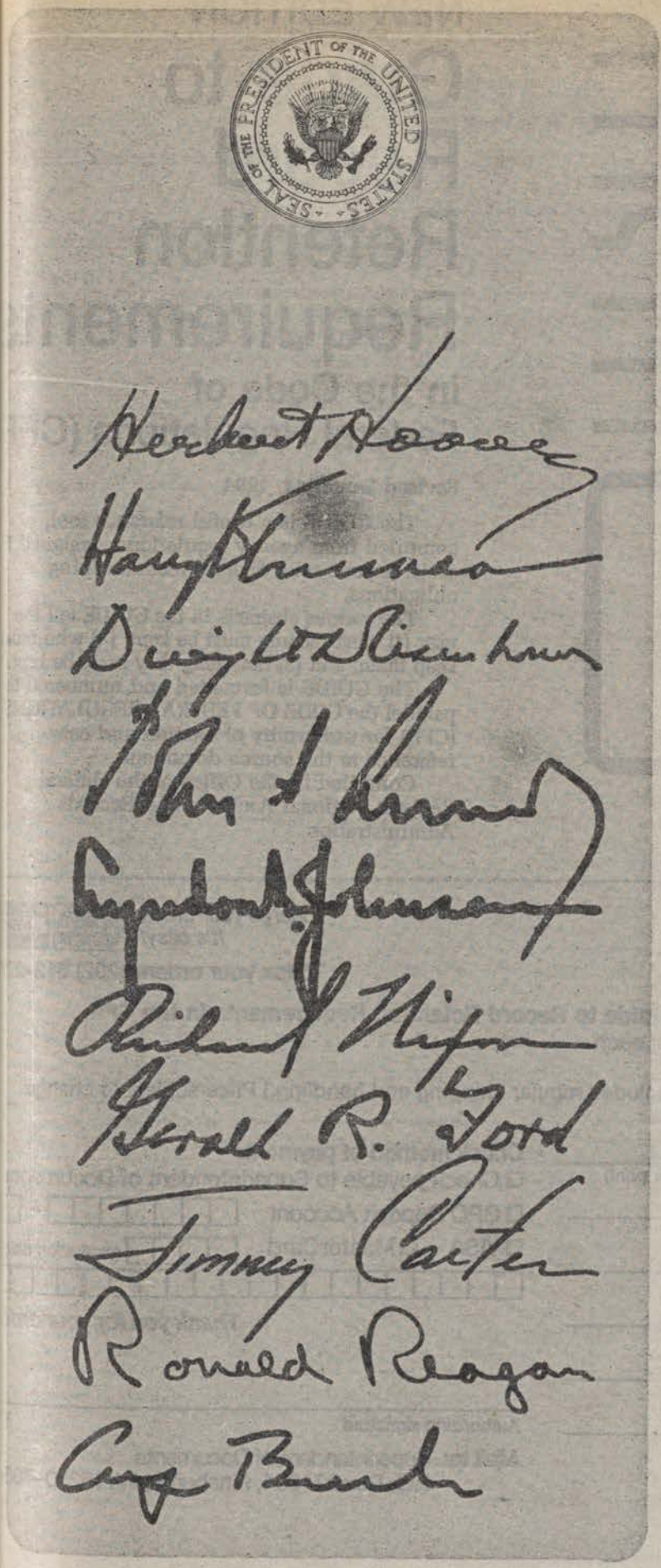

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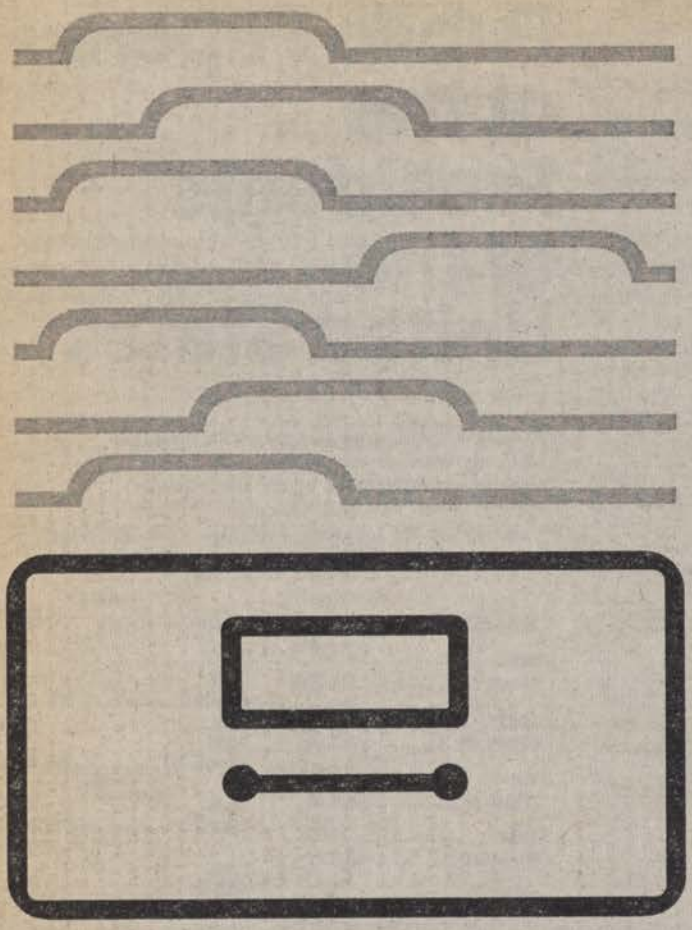

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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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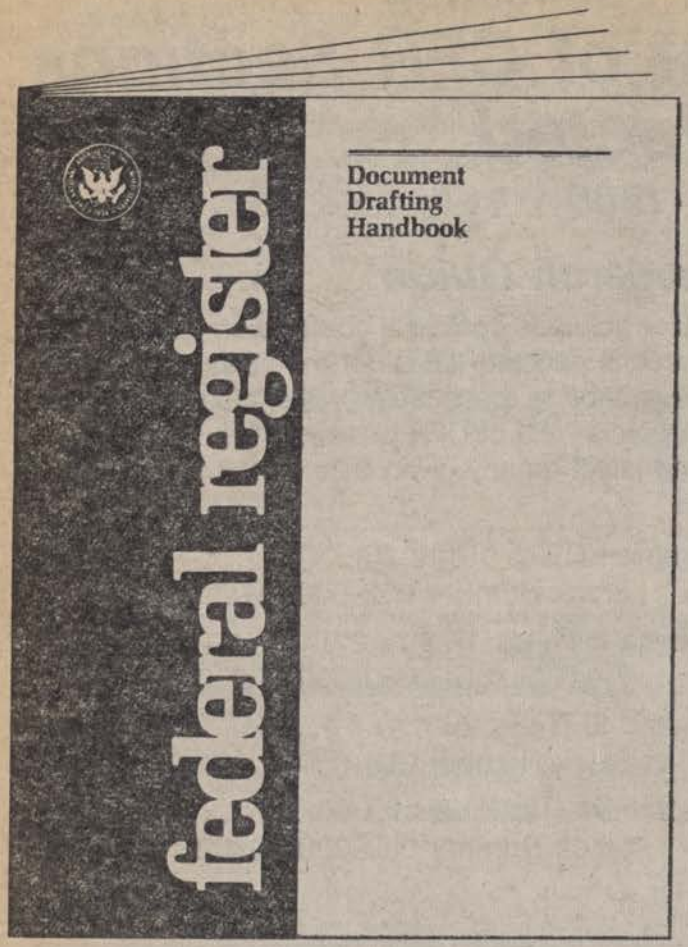

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