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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority to the Assistant Secretary for Natural Resources and Environment and to the Chief of the Forest Service to administer the Public Lands Corps Program.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Irving W. Thomas, Director Human Resource Programs, Forest Service, United States Department of Agriculture, room 1010 Rosslyn Plaza Building—East, P.O. Box 96090, Washington, DC 20090–6090, telephone (703) 235–8834.

SUPPLEMENTARY INFORMATION: The Pubic Lands Corps Act of 1993, Public Law 103–82, 107 Stat. 848, to be codified at 16 U.S.C. 1721 *et seq.*, established the Public Lands Corps in the United States Department of Agriculture as part of the overall national service program established in the National and Community Service Trust Act of 1993, Public Law 103–82, 107 Stat. 785.

This document authorizes the Assistant Secretary for Natural Resources and Environment and the Chief, Forest Service to carry out that program consistent with the Department's overall national service program.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register** Further, since this rule relates solely to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12788. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* and thus is exempt form the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.19 is amended by adding a new paragraph (b)(38) to read as follows:

§ 2.19 Assistant Secretary for Natural Resources and Environment.

* * * * *

(b) *Related to forestry.* * * *

(38) Administer the Public Lands Corps program (16 U.S.C. 1721 *et seq.*) for USDA consistent with the Department's overall national service program.

* * * * *

Subpart G—Delegations of Authority by the Assistant Secretary for Natural Resources and Environment

3. Section 2.60 is amended by adding a new paragraph (a)(45) to read as follows:

§ 2.60 Chief, Forest Service

(a) *Delegations.* * * *

(45) Administer the Public Lands Corps program (16 U.S.C. 1721 *et seq.*) for USDA consistent with the Department's overall national service program.

* * * * *

(Dated:) April 10, 1994.

For Subpart C:

Mike Espy,

Secretary of Agriculture.

(Dated:) April 10, 1994.

For Subpart G:

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 94–9437 Filed 4–19–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–49; Amendment 39–8861; AD 94–07–03]

Airworthiness Directives; AlliedSignal, Inc. TFE731–3 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to certain AlliedSignal, Inc. TFE731–3 series turbofan engines, that currently requires a revision to the Limitations Section of the Airplane Flight Manual (AFM) to provide procedures for monitoring engine performance in order to detect A5 seal cracking and opening before first stage low pressure (LP) turbine disk failure. Additionally, the revision to the AFM requires a procedure for verification of LP rotor (N1) rotation during engine start to detect rotor lockup due to first stage LP turbine rotor creep. This amendment maintains those requirements for engine and flight data monitoring, adds a more stringent procedure for verifying rotor lockup during engine start and for detection of rubbing noises, and requires replacement of A5 seals with a redesigned seal. Replacement of A5 seals with a redesigned seal constitutes terminating action to the monitoring requirements. This amendment is prompted by reports of an additional first stage LP turbine disk failure due to A5 seal cracking. The actions specified by this AD are intended to prevent uncontained failure of the first stage LP turbine disk.

DATES: Effective June 6, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal, Inc., Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, CA 90806–2425; telephone (310) 988–5246; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding priority letter airworthiness directive (AD) 92–12–09, issued June 8, 1992, which is applicable to certain Allied-Signal Aerospace Company, Garrett Engine Division, TFE731–3 series turbofan engines, was published in the **Federal Register** on October 4, 1993 (58 FR 51587). That action proposed to continue the engine and flight data monitoring requirements of priority letter AD 92–12–09 by revising the Limitations Section of the Airplane Flight Manual (AFM) to provide for procedures to trend monitor engine performance in order to detect A5 seal cracking and opening before first stage low pressure (LP) turbine disk failure. In addition, that action proposed to require a more stringent procedure for verifying N1 rotation during engine start to detect rotor lockup and for detecting rubbing noises due to first stage LP turbine rotor creep. Also, that action proposed to add the Allied-Signal Aerospace Company, Garrett Engine Division, Model TFE731–2A engine to the AD applicability. Finally, that action proposed to require replacement of current A5 seals with a redesigned A5 seal within 150 hours time in service after the effective date of the proposed AD. Installation of the redesigned A5 seal would constitute terminating action to the engine and flight data monitoring requirements.

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

One commenter states that paragraph (a)(1) in the proposed rule requires that the engine and flight data monitoring must be accomplished for any engine that has more than 500 hours time in service since new (TSN). The commenter further states that the greater than 500 hours TSN qualification should be added to the applicability paragraph, as this qualification is applicable to all succeeding paragraphs. The FAA concurs in part. The FAA has added for clarity a compliance table in paragraph (d) that instructs operators on the replacement schedule for the A5 seal installed on engines with less or more than 500 hours TSN.

One commenter states that paragraph (a)(4) of the proposed rule requires checking for rubbing noises and free rotation of the N1 spool following each engine shutdown. Paragraphs (a)(4) and (c) go on to state that if any rubbing noises are detected, the operator must discontinue further flight. The commenter suggests requiring discontinuation of further flight if the N1 spool locks up, or engine rubbing noises are detected during this check. The FAA concurs and the final rule has been changed accordingly.

The Type Certification Data Sheet for the Allied-Signal Aerospace Company, Garrett Engine Division, TFE731–3 series turbofan engines was officially changed by the FAA during November 1993 to show the current corporate name of the manufacturer, AlliedSignal, Inc. All references to the corporate name have been changed accordingly in this final rule.

In addition, AlliedSignal, Inc. has issued service bulletin (SB) No. TFE731–72–3509, dated January 4, 1994, that describes installation of a redesigned A5 seal and air cooled HP turbine blades and associated parts for TFE731–3B and –3BR models. Installation of a redesigned A5 seal and air cooled HP turbine blades and associated parts in accordance with this SB constitutes an additional method of compliance to paragraph (d) of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 3,300 engines of the affected design in the worldwide fleet. The FAA estimates that 2,000 engines installed on aircraft of U.S. registry are affected by this AD, that it will take approximately 55 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $7,500 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $21,050,000.

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

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–07–03: **AlliedSignal, Inc.** Amendment 39–8861. Docket 93–ANE–49.

Applicability: AlliedSignal, Inc. Model TFE731–2A, –3, –3A, –3R, –3AR, –3B, and –3BR turbofan engines that have first stage

low pressure (LP) turbine nozzles, Part Number (P/N) 3072842–1 or P/N's 3072319–1 through –8, installed. These engines are installed on but not limited to Avions Marcel Dassault Falcon 50, AiResearch Aviation Company 731 Jetstar, Lockheed 1329–25 (Jetstar II), Israel Aircraft Industries Ltd. 1124 series (Westwind) and 1125, Westwind Astra, British Aerospace DH/HS/BH 125 series, Learjet 55 series, Cessna 650 Citation III series, and Sabreliner NA265–65 (Sabreliner 65 and 65 series) aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncontained failure of the first stage LP turbine disk, accomplish the following:

(a) Prior to further flight revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following paragraphs (1) through (4) relating to engine and flight data monitoring. This may be accomplished by inserting a copy of this AD in the AFM.

"Engine and Flight Data Monitoring

(1) If any engine has more than 500 hours time in service since new (TSN), record the flight data set forth in paragraph (2) once every two flights while meeting the following conditions:

a. Matched low pressure rotor (N1) speed;

b. Turn engine anti-ice off (consistent with safe operation); and

c. Attain a stabilized cruise speed for five minutes or longer.

Note: If flight operations do not permit all of these conditions to be met, the engine to engine comparison data may be unreliable.

(2) When the conditions specified in paragraph (1) are met, record the following flight data and retain this data for six months:

a. Date of flight;

b. Aircraft altitude or flight level;

c. Outside static air temperature in degrees celsius (°C);

d. Mach number;

e. Engine N1 speed for each engine;

f. Engine high pressure rotor (N2) speed for each engine;

g. Fuel flow for each engine; and

h. Interstage turbine temperature (ITT) for each engine.

(3) Verify N1 rotation during engine start by allowing N2 to increase to approximately 12 to 15 percent and confirm N1 rotation prior to fuel initiation. If no N1 rotation is observed, discontinue further attempts at engine start.

(4) Check for rubbing noises and free rotation of the N1 spool following each engine shutdown. If any rubbing noises are detected, or if the N1 spool locks up, discontinue further flight."

(b) When engine and flight data monitoring is required by the AFM revision of paragraph (a) of this AD, accomplish the following:

(1) After each flight, calculate the difference (i.e., No. 1 minus No. 2, No. 1 minus No. 3, and No. 1 minus No. 4) between the engines' ITT, N2 speed, and fuel flow readings for each flight having recorded data. Compare these differences to the differences calculated from previous flights.

(2) Discontinue further flight if a change of 20°C or more occurs in the ITT difference between two engines, (on three and four engine airplanes compare No. 2, No. 3 and No. 4 engine parameters to the No. 1 engine) with the last ten flights having recorded data. Flight operation can be continued when the cause of the ITT temperature shift has been determined and appropriate corrective action has been accomplished. Engine and flight data monitoring must be continued upon return to flight operations.

Note: A suspect engine may indicate an increase in ITT temperature and an increase in N2 speed greater than 1% and an increase in fuel flow to a lesser degree with respect to the other normal engine(s).

Additional guidance and information regarding flight data collection, trend monitoring, and corrective actions, may be obtained from Allied-Signal Aerospace Company, Garrett Engine Division, Operating Information Letter No. OI 731–13, Revision C, dated November 20, 1992.

(c) Discontinue further flight if no N1 rotation is observed during engine start, or if engine rubbing noises are detected or the N1 spool locks up after engine shutdown. Flight operation can be continued when the cause of the N1 rotor lockup or engine rubbing noises has been determined and appropriate corrective action has been accomplished. Engine and flight data monitoring must be continued upon return to flight operations.

(d) Replace the A5 seal assembled in affected first stage LP turbine nozzles and install a redesigned A5 seal in accordance with the Accomplishment Instructions of Allied-Signal Aerospace Company, Garrett Engine Division, Service Bulletin (SB) No. TFE731–72–3502, Revision 2, dated March 15, 1993, SB No. TFE731–72–3502, Revision 1, dated December 21, 1992, or SB No. TFE731–72–3502, Original, dated November 25, 1992; or SB No. TFE731–72–3503, Revision 1, dated December 21, 1992; or AlliedSignal, Inc. SB No. TFE731–72–3509, dated January 4, 1994, as applicable, as follows:

Time in service since new (TSN) on the effective date of this AD	Replacement schedule
500 hours TSN or more.	Within 150 hours time in service (TIS) after the effective date of this AD.
Less than 500 hours TSN.	Prior to accumulating 650 hours TSN.

Installation of the redesigned A5 seal constitutes terminating action to the engine and flight data monitoring and AFM revision required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The replacement of the A5 seal shall be done in accordance with the following service bulletins:

Document No.	Pages	Revision	Date
Allied-Signal Aerospace Company, Garrett Engine Division SB No. TFE731–72–3502	1–18	2	Mar. 15, 1993.
Total pages: 18.			
Allied-Signal Aerospace Company, Garrett Engine Division SB No. TFE731–72–3502	1–16	1	Dec. 21, 1992.
Total pages: 16.			
Allied-Signal Aerospace Company, Garrett Engine Division SB No. TFE731–72–3502	1–14	Original	Nov. 25, 1992.
Total pages: 14.			
Allied-Signal Aerospace Company, Garrett Engine Division SB No. TFE731–72–3503	1	1	Dec. 21, 1992.
	2–3	Original	Dec. 9, 1992.
	4	1	Dec. 21, 1992.
	5	Original	Dec. 9, 1992.
	6	1	Dec. 21, 1992.
	7–9	Original	Dec. 9, 1992.
	10–16	1	Dec. 21, 1992.
Total pages: 16.			
AlliedSignal, Inc. SB No. TFE731–72–3509	1–10	Original	Jan. 4, 1994.
Total pages: 10.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Inc., Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment supersedes priority letter AD 92–12–09, issued June 8, 1992.

(i) This amendment becomes effective on June 6, 1994.

Issued in Burlington, Massachusetts, on April 11, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–9468 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–64–AD; Amendment 39–8887; AD 91–26–05 R1]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Boeing Model 747–400 series airplanes, that currently requires revising the FAA-approved Airplane Flight Manual (AFM) to impose an operational limitation that requires the right very high frequency (VHF) radio communication system to be operational for dispatch. That action was prompted by the discovery of a single point failure within the audio management unit (AMU) that will disable the transmission functions of both the left and center VHF radios. The actions specified by that AD are intended to prevent loss of all VHF radio voice communication transmission capability. This amendment limits the applicability of the rule, and provides an optional terminating action for the required AFM limitation.

EFFECTIVE DATE: May 20, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Matt Wade, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2751; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 91–26–05, amendment 39–8116 (56 FR 65181, December 16, 1991), which is applicable to all Boeing Model 747–400 series airplanes, was published in the **Federal Register** on July 26, 1993 (58 FR 39688). The action proposed to revise AD 91–26–05 to continue to require the addition of a limitation in the FAA-approved Airplane Flight Manual (AFM) requiring that the right very high frequency (VHF) radio communication system be operational for dispatch. Additionally, the action proposed to provide for replacement of the currently-installed audio management unit (AMU) with a modified AMU, as optional terminating action for the requirements of this AD for certain airplanes.

The action also proposed to limit the applicability of the rule to exclude airplanes having variable numbers RT681 and RT682. These airplanes were determined not to be subject to the addressed unsafe condition, since they were equipped with the modified AMU during production.

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

Both commenters support the proposed rule.

Subsequent to the issuance of the notice, the manufacturer advised the FAA that the proposed terminating action had been installed previously on certain additional airplanes. Airplanes having production line numbers 961 and higher were modified during production to include the modified AMU. In light of this, the FAA finds that these airplanes are not subject to the addressed unsafe condition and, therefore, has revised the applicability of the final rule to exclude these airplanes. Additionally, the applicability has been revised to call out the production line numbers (816 and 839), rather than the variable numbers (RT681 and RT682), of the two excluded airplanes that were specified in the notice.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 235 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD. The requirements of this revised rule will not add any new additional economic burden on affected operators. The AFM revision, currently required by AD 91–26–05, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the existing requirements of this AD on U.S. operators is estimated to be $1,540, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, based on the fact that the effective date of AD 91–26–05 was December 30, 1994, the FAA assumes that all affected U.S. operators already have complied with the requirements of that AD. Therefore, there will be no future cost impact of those requirements of this rule.

Should an operator elect to install the modified AMU as terminating action, it will take approximately 1 work hour per airplane to accomplish, at an average labor charge of $55 per work hour. The cost of required costs will be approximately $250 per airplane. Based on these figures, the total cost impact of the optional terminating action is expected to be $305 per airplane.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8116 (56 FR 65181, December 16, 1991), and by adding a new airworthiness directive (AD), amendment 39–8887, to read as follows:

91–26–05 R1 Boeing: Amendment 39–8887. Docket 93–NM–64–AD. Revises AD 91–26–05, Amendment 39–8116.

Applicability: Model 747–400 series airplanes, excluding airplanes having production line numbers 816, 839, and 961 and subsequent; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraph (a) of this AD restates the requirements of paragraph (a) of AD 91–26–05, amendment 39–8116. As allowed by the phrase, "unless accomplished previously," if the requirements of AD 91–26–05 have been accomplished previously, paragraph (a) of this revised AD does not require the insertion of the Airplane Flight Manual (AFM) limitation to be repeated.

To prevent loss of all very high frequency (VHF) radio voice communication transmission capability, accomplish the following:

(a) Within 14 days after December 30, 1991 (the effective date of AD 91–26–05, amendment 39–8116): Add the following statement to the Limitations Section of the FAA-approved AFM. This may be accomplished by placing a copy of this AD in the AFM.

"Electronic Systems

VHF Radio Voice Communications

Right VHF radio (VHF R) communication system must be operational for dispatch."

(b) Replacement of the currently-installed audio management unit (AMU) of the VHF radio communication system having Boeing part numbers S220U000-101, -102, or -104, (Hughes-Avicom part numbers 1167014-140, -141, or -142), with a modified AMU having Boeing part number S220U000-105 (Hughes part number 1167014-143), in accordance with Boeing Service Bulletin 747–23–2321, dated May 20, 1993, constitutes terminating action for the requirements of this AD. Following accomplishment of this replacement, the AFM limitation required by paragraph (a) of this AD may be removed.

(c) As of the effective date of this AD, no AMU having Boeing part numbers S220U000-101, -102, or -104, (Hughes-Avicom part numbers 1167014-140, -141, or -142), shall be installed on any airplane, unless the requirements of paragraph (a) of this AD have been accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on May 20, 1994.

Issued in Renton, Washington, on April 13, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–9337 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–92–AD; Amendment 39–8891; AD 94–09–03]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 series airplanes, that requires that the brake wear limits prescribed in this proposal be incorporated into the FAA-approved maintenance inspection program. This amendment is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes; and the subsequent review of allowable brake wear limits for all transport category airplanes. The actions specified by this AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

EFFECTIVE DATE: May 20, 1994.

ADDRESSES: Information concerning this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark I. Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 series airplanes equipped with Dunlop brakes was published in the Federal Register on October 21, 1993 (58 FR 54310). That action proposed to require the incorporation of the specified maximum wear limits for the specified brakes into the FAA-approved maintenance inspection program.

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

The commenter supports the proposed rule.

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

The FAA estimates that 45 airplanes of U.S. registry and 6 U.S. operators that will be affected by this AD. Although this amendment will require the incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, no other specific additional action, inspection, or part replacement costs are involved; such actions are currently a part of the normal maintenance program. However it is estimated that it will take approximately 20 work hours, at an average labor rate is $55 per work hour, for each operator to incorporate the requirement into its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of

the AD on U.S. operators is estimated to be $6,600, or $1,100 per operator.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94-09-03 British Aerospace: Amendment 39-8891. Docket 93-NM-92-AD.

Applicability: Model BAe 146 series airplanes equipped with Dunlop brakes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in the following table into the FAA-approved maintenance inspection program and comply with these measurements thereafter.

DUNLOP BRAKES

Brake type	Brake part No.	Maximum brake wear limit (inch)—lineal axial wear as measured by the brake wear pin (inch)
Carbon	AHA 1412/13	2.34" (1.5" original wear pin setting + 0.84" spacer).
Carbon	AHA 1558/59	2.34" (1.5" original wear pin setting + 0.84" spacer).
Steel	AHA 1455/56	0.866".

Note 1: The measuring instructions for carbon and steel brake thicknesses and instructions for setting the wear pin length specified in the BAe 146 airplane maintenance manual (AMM), section 32-42-24, or in the Dunlop component maintenance manual (CMM), Section 32-42-58, are based currently on the minimum brake thicknesses specified in the table.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on May 20, 1994.

Issued in Renton, Washington, on April 14, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-9469 Filed 4-19-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 93-NM-188-AD; Amendment 39-8888; AD 94-08-15]

Airworthiness Directives; Canadair Model CL-600-2A12 (CL-601) and CL-600-2B16 (CL-601-3A) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair Model CL-600-2A12 and CL-600-2B16 series airplanes, that requires a one-time visual inspection to verify proper installation of shoulder bolts and to detect damage of the adjacent flap actuator housings, and correction of discrepancies. This amendment is prompted by a report of failure of the flap actuator on the left wing inboard flap. The actions specified by this AD are intended to prevent asymmetric deployment or retraction (blow back) of the flaps, which could reduce controllability of the airplane.

DATES: Effective May 20, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6428; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Canadair Model CL-600-2A12 and CL-600-2B16 series

airplanes was published in the **Federal Register** on December 29, 1993 (58 FR 68789). That action proposed to require a one-time visual inspection to verify proper installation of shoulder bolts and to detect damage of adjacent flap actuator housings, and correction of discrepancies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 196 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required visual inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,780, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

If replacement of any hinge fitting lug, shoulder bolt, or flap actuator is necessary, accomplishment of such replacement will entail approximately 12 work hours, at an average labor rate of $55 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost of any necessary replacement is estimated to be $660 per replaced item.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–08–15 Canadair: Amendment 39–8888. Docket 93–NM–188–AD.

Applicability: Model CL–600–2A12 series airplanes, serial numbers 3002 through 3066, inclusive; and Model CL–600–2B16 series airplanes, serial numbers 5001 through 5131, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent asymmetric deployment or retraction (blow back) of the flaps, which could reduce the controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, conduct a visual inspection to verify the proper installation of shoulder bolts, and to detect damage of adjacent flap actuator housings, in accordance with Canadair Alert Service Bulletin A601–0415, dated June 25, 1993 (hereafter referred to as "the alert service bulletin").

Note 1: Inspections accomplished prior to the effective date in accordance with Canadair Alert Service Wire TA601–0415–036, dated May 3, 1993, are considered to be in compliance with this paragraph.

(b) If all shoulder bolts are found to be installed properly and no flap actuator housings are found to be damaged, no further action is required by this AD.

(c) If any shoulder bolt is found to be improperly installed, but no flap actuator housing is found to be damaged, prior to further flight, remove the improperly installed shoulder bolt and reinstall it in accordance with the alert service bulletin.

(d) If any flap actuator housing is found to be damaged (as defined in the alert service bulletin), prior to further flight, accomplish the requirements of paragraphs (d)(1) and (d)(2) of this AD:

(1) Perform either an eddy current inspection or a dye penetrant inspection to detect cracking of the hinge fitting lugs on the flap actuator in accordance with the alert service bulletin. If any cracking is detected, prior to further flight, replace the hinge fitting lug with new or serviceable parts in accordance with the alert service bulletin.

(2) Replace the shoulder bolt and damaged flap actuator with new or serviceable parts in accordance with the alert service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections, replacement, removal, and reinstallation shall be done in accordance with Canadair Alert Service Bulletin A601–0415, dated June 25, 1993, including Appendix 1. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 20, 1994.

Issued in Renton, Washington, on April 13, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–9338 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–69–AD; Amendment 39–8886; AD 94–08–14]

Airworthiness Directives; Corporate Jets Limited Model BAe 125–1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Corporate Jets Model BAe 125–1000A series airplanes, that requires replacement of the white 'EMERG CONTCTRS' annunciator screen on roof panel 'CG' of the flight deck with an amber screen. This amendment is prompted by a report that the annunciator screen currently installed on these airplanes is not a color that would alert the flight crew that corrective action may be necessary. The actions specified by this AD are intended to ensure that the flight crew is alerted to conditions when standby electrical power is not available.

DATES: Effective May 20, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Corporate Jets Model BAe 125–1000A series airplanes was published in the **Federal Register** on November 29, 1993 (58 FR 62557). That action proposed to require replacement of the white 'EMERG CONTCTRS' annunciator screen on roof panel 'CG' of the flight deck with an amber screen.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 13 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer to operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $715, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–08–14 Corporate Jets Limited (Formerly British Aerospace): Amendment 39–8886. Docket 93–NM–69–AD.

Applicability: All Model BAe 125–1000A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is aware that standby electrical power is not available, accomplish the following:

(a) Within 105 days after the effective date of this AD, replace the white 'EMERG CONTCTRS' annunciator screen on roof panel 'CG' of the flight deck with an amber screen in accordance with Corporate Jets Limited Service Bulletin SB.31–44–3645A, dated January 15, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Corporate Jets Limited Service Bulletin SB.31–44–3645A, dated January 15, 1993. (**Note:** The issue date of that service bulletin is indicated only on "page 1 of 5"; no other page of the document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 20, 1994.

Issued in Renton, Washington, on April 13, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–9339 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–165–AD; Amendment 39–8885; AD 94–08–13]

Airworthiness Directives; Fokker Model F–28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F–28 Mark 0100 series airplanes, that requires the installation of modified Flight Warning Computers and Flight Augmentation Computers. This amendment is prompted by reports of nuisance yaw-damper fault warnings and undetected horizontal trim motion, and the development of improved computers that eliminate these problems. The actions specified by this AD are intended to prevent nuisance warnings in the cockpit and undetected trim motion, both of which could compromise the safe takeoff of the airplane.

DATES: Effective May 20, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F–28 Mark 0100 series airplanes was published in the **Federal Register** on November 12, 1993 (58 FR 59968). That action proposed to require the installation of modified Flight Warning Computers (FWC) and Flight Augmentation Computers (FAC).

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

One commenter supports the proposed rule.

Another commenter requests that the proposed rule be revised to include an additional part-numbered FWC as an acceptable alternative part for compliance. This commenter states that it has installed FWC's having part number 80–0610–3–31, in accordance with Fokker Service Bulletin SBF100–31–033, dated June 23, 1993, on its fleet of affected airplanes. The FAA has reviewed this data and finds that FWC's having part number 80–0610–3–31 are acceptable alternatives to those called out in the proposal. The FAA has revised the final rule to indicate that this.

This same commenter requests that the proposed rule be revised to include the words "or subsequent" for all part numbers, so that future designs of the components would be permitted to be installed as alternatives to the specific part numbered components called out in the AD. The FAA does not concur, since there would be no way to establish that the inclusion of these words would prevent the installation of incompatible components. For example, the "Material Information" portion of the referenced Fokker Service Bulletin SBF100–22–037, concerning the replacement of FAC's, indicates that specific equipment combinations (those having similar part numbers in the component series) may not be compatible. For this reason, the FAA considers it inappropriate to permit the indiscriminate installation of any future component designs.

This same commenter requests that the proposed rule not require accomplishment of the actions specifically in accordance with the service bulletins; the service bulletins should be for reference only. Although the commenter does not specify a particular reason for this request, the FAA infers that (1) the commenter would like to install improved or modified equipment versions of the same basic part number series that may or may not be called out in a service bulletin; or (2) the commenter would prefer that the rule permit installation of the subject components in accordance with an operator's own methods. The FAA does not concur. As for the first inference, the FAA has addressed this in the previous paragraph. As for the second inference, the FAA points out that the referenced service bulletins contain specific wiring procedures necessary for installation of the components; the FAA has determined that these procedures must be followed in order to ensure proper installation.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 27 airplanes of U.S. registry will be affected by this AD.

Installation of the new FWC will require approximately 46 work hours to accomplish, at an average labor charge of $55 per work hour. Required parts will cost approximately $450 per airplane. Based on these figures, the total cost impact of the FWC installation on U.S. operators is estimated to be $2,980 per airplane.

The requirement to replace the FAC will vary, depending upon the configuration of the FAC installed. Additionally, operators have a choice of two different FAC's to use as replacement installations:

Should an operator elect to install an FAC having part number 622–7478–401MOD11, it will require approximately 1 work hour to accomplish, at an average labor charge of $55 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the total cost impact of this specific installation requirement on U.S. operators would be $55 per airplane.

Should an operator elect to install an FAC having part number 622–7478–411, it will require approximately 52 work hours to accomplish, at an average labor charge of $55 per work hour. Required parts will cost approximately $2,515 per airplane. Based on these figures, the total cost impact of this specific FAC installation requirement on U.S. operators is estimated to be $5,375 per airplane.

Based on the figures discussed above, the total cost impact of this proposed AD on U.S. operators would be between $3,005 and $8,355 per airplane, or between $81,135 and $225,585 for the entire U.S. fleet.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that at least one U.S. operator affected by the AD has previously accomplished the required installations on most of its

fleet of airplanes. In light of this, the total future cost impact of the rule is expected to be less than the figures indicated above.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–08–13 Fokker: Amendment 39–8885. Docket 93–NM–165–AD.

Applicability: Model F–28 Mark 0100 series airplanes; serial numbers 11244 through 11348, inclusive; equipped with Flight Warning Computer, P/N 80–0610–2–( ); or equipped with Flight Augmentation Computer, part number (P/N) 622–7478–321 or P/N 622–7478–401; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent nuisance yaw-damper fault warnings and undetected trim motion, accomplish the following:

(a) For airplanes having serial numbers 11244 through 11321 inclusive, 11323 through 11329 inclusive, 11331, and 11333; and equipped with Flight Warning Computer (FWC) P/N 80–0610–2–( ): Within one year after the effective date of this AD, remove the currently installed FWC, modify the airplane, and install FWC P/N 80–0610–3–30, in accordance with Fokker Service Bulletin SBF100–31–020, Revision 1, dated June 12, 1993.

Note 1: Installation accomplished prior to the effective date of this AD in accordance with Fokker Service Bulletin SBF100–31–020, dated May 24, 1991, is considered to be in compliance with this paragraph.

Note 2: Installation of FWC P/N 80–0610–3–31, in accordance with Fokker Service Bulletin SBF100–31–031, dated June 23, 1993, is considered an acceptable alternative method of compliance with this paragraph.

(b) For airplanes having serial numbers 11244 through 11339 inclusive, 11341, and 11342; and equipped with Flight Augmentation Computer (FAC) P/N 622–7478–321: At the same time as, or prior to further flight after, accomplishing the requirements of paragraph (a) of this AD, remove the currently installed FAC and replace it with either of the following:

(1) FAC P/N 622–7478–401MOD11, in accordance with Fokker Service Bulletin SBF100–22–032, dated September 2, 1991; or

(2) FAC P/N 622–7478–411, in accordance with Fokker Service Bulletin SBF100–22–037, dated May 31, 1993. Equipment combinations listed in that service bulletin must be adhered to.

(c) For airplanes having serial numbers 11244 through 11348 inclusive, and equipped with FAC P/N 622–7478–401: Within one year after the effective date of this AD, remove the currently installed FAC and replace it with either of the following:

(1) FAC P/N 622–7478–401MOD11, in accordance with Fokker Service Bulletin SBF100–22–032, dated September 2, 1991; or

(2) FAC P/N 622–7478–411, in accordance with Fokker Service Bulletin SBF100–22–037, dated May 31, 1993. Equipment combinations listed in that service bulletin must be adhered to.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The installations shall be done in accordance with Fokker Service Bulletin SBF100–22–032, dated September 2, 1991; Fokker Service Bulletin SBF100–22–037, dated May 31, 1993, and Fokker Service Bulletin SBF100–31–020, Revision 1, dated June 12, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2, 5–12, 17, 19A, 19B, 22–24, 32, 34, 36.	1	June 12, 1993.
3, 4, 13–16, 18, 19, 20, 21, 25–31, 33, 35.	Original	May 24, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 20, 1994.

Issued in Renton, Washington, on April 13, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–9340 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–147–AD; Amendment 39–8892; AD 94–09–04]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of the flight control computers (FCC) with new, improved FCC's; and removal of certain limitations from the Airplane Flight Manual (AFM), if necessary. This amendment is prompted by reports indicating that, during a level change descent with auto throttles engaged and

manual flight, airplanes inadvertently have approached near minimum speeds. The actions specified by this AD are intended to prevent inadvertent loss of airspeed during a level change descent.

DATES: Effective May 20, 1994.

The incorporation by reference of Fokker Service Bulletin SBF100–22–037, dated May 31, 1993, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 2, 1993 (58 FR 38283, July 16, 1993).

The incorporation by reference of Fokker Service Bulletin SBF100–22–029, dated January 6, 1992, as listed in the regulations, is approved by the Director of the Federal Register as of May 20, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–2145.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on November 12, 1993 (58 FR 59970). That action proposed to require replacement of the flight control computers (FCC) with new, improved FCC's; and removal of two related limitations from the Limitations Section of the FAA-approved Airplane Flight Manual (AFM), if those limitations are currently present in the AFM.

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

One commenter supports the proposed rule.

Another commenter requests that the proposed rule be revised to include an additional part-numbered FCC as an acceptable alternative component for compliance. This commenter states that it has installed an FCC having part number 622–7476–411, in accordance with Fokker Service Bulletin SBF100–22–037, dated May 31, 1993, on its affected airplanes. The commenter installed this particular FCC when complying with an optional terminating action provided in AD 93–14–02 (58 FR 38283, July 16, 1993). The FAA has reviewed this data and finds that an FCC having part number 622–7476–411 is an acceptable alternative to that called out in the proposal. The FAA has revised the final rule to indicate this.

This same commenter requests that the proposed rule be revised to include the words "or subsequent" for the part number, so that future designs of the FCC would be permitted to be installed as alternatives to the specific part numbered component called out in the AD. The FAA does not concur, since there would be no way to establish that the inclusion of these words would prevent the installation of incompatible components. For example, the "Material Information" portion of the Fokker service bulletins cited in the AD indicates that only specific equipment combinations are compatible (implying that similar part numbers in the component series that are not listed may not be compatible). For this reason, the FAA considers it inappropriate to permit the indiscriminate installation of any future FCC designs. A Note has been added to the final rule to make operators aware of the equipment combination limitations described in the service bulletins.

This same commenter requests that the proposed rule not require accomplishment of the actions specifically in accordance with the cited service bulletins; the service bulletins should be for reference only. Although the commenter does not specify a particular reason for this request, the FAA infers that (1) the commenter would like to install improved or modified equipment versions of the same basic part number series that may or may not be called out in the service bulletins; or (2) the commenter would prefer that the rule permit installation of the FCC in accordance with an operator's own methods. The FAA does not concur. As for the first inference, the FAA has addressed this in the previous paragraph. As for the second inference, the FAA points out that the referenced service bulletins contain specific wiring procedures necessary for installation of the FCC and contain equipment configuration limitations; the FAA has determined that these procedures must be followed in order to ensure proper installation and operation. Paragraph (d) of the final rule does provide for the use of alternative methods of compliance with this rule, provided that data is submitted to the FAA to justify the use of such a method.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 39 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $460 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $52,260, or $1,340 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–09–04 Fokker: Amendment 39–8892. Docket 93–NM–147–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11364, inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent loss of airspeed during a level change descent, accomplish the following:

(a) Within 60 days after the effective date of this AD, replace any flight control computer (FCC) having part number (P/N) 622–7476–321, P/N 622–7476–331, or P/N 622–7476–401, with either of the following improved FCC's:

(1) P/N 622–7476–402, in accordance with Fokker Service Bulletin SBF100–22–029, dated January 6, 1992; or

(2) P/N 622–7476–411, in accordance with Fokker Service Bulletin SBF100–22–037, dated May 31, 1993.

Note 1: Each service bulletin referenced in this paragraph lists equipment configurations under paragraph 1.C. ("Description") and paragraph 3. ("Material Information") that must be adhered to in order to ensure proper operation of the FCC's.

(b) Prior to further flight after accomplishment of paragraph (a) of this AD, the following limitations, if present, must be removed from the Limitations Section of the FAA-approved Airplane Flight Manual (AFM), section 2.08.01.

"Flight Director

Manual Flight With Flight Director ON

For accurate speed control and adequate speed protection the FD pitch commands must be followed when flying manually.

In case the FD commands are not followed, switch both FD's to FPV or OFF.

Non-precision Approach

Do not use LVLCH descent mode below 2000 ft. AGL.

With PROF engaged, do not lower the FMP altitude below the initial approach or missed approach altitude."

(c) As of the effective date of this AD, no person shall install any FCC having P/N 622–7476–321, P/N 622–7476–331, or P/N 622–7476–401 on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The installation shall be done in accordance with Fokker Service Bulletin SBF100–22–029, dated January 6, 1992; or Fokker Service Bulletin SBF100–22–037, dated May 31, 1993. The incorporation by reference of the first service bulletin listed was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of the latter service bulletin was approved previously by the Director of the Federal Register as of August 2, 1993 (58 FR 38283, July 16, 1993). Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 20, 1994.

Issued in Renton, Washington, on April 14, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–9470 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–110–AD; Amendment 39–8890; AD 94–09–02]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that currently requires an inspection to detect damage of the auxiliary power unit (APU) power feeder cable installation, repair of damaged cables, and modification of the cable installation. This amendment requires an inspection of previously modified airplanes to determine whether a spacer or "stand off" has been installed, and installation of those items, if necessary. This amendment is prompted by reports of generator power feeder cables electrically shorting to the airplane structure due to chafing. The actions specified by this AD are intended to prevent the APU power feeder cable from chafing against adjacent structures, which could result in electrical shorting and arcing, and a fire below the cabin floor.

DATES: Effective May 20, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–132L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5344; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88–20–05, amendment 39–6022 (53 FR 36436, September 20, 1988), which is applicable to McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, was published in the **Federal Register** on September 9, 1993 (58 FR 46917). The action proposed to continue to require a one-time visual inspection to detect damage of the APU power feeder cable support clamp installation, repair of damaged cables, and modification of the APU power feeder cable installation. The action proposed to add a general visual inspection of previously modified airplanes to determine whether a spacer or "stand off" has been installed between the clamp and the bracket, and

installation of a spacer or "stand off," if necessary.

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

One commenter supports the proposal.

One commenter requests that the proposed rule provide "credit" for operators who have previously accomplished the procedures specified in McDonnell Douglas Service Bulletin 24–105, dated August 15, 1989. Those procedures ensure the installation of a "stand off" between the clamp and the bracket in the APU power feeder cable support clamp installation. Paragraph (c) of the proposal would require operators to inspect for the installation of this item; if it is installed, no further action would be required by the proposed AD. The FAA concurs. Paragraph (c) has been revised to indicate that McDonnell Douglas Service Bulletin 24–105 is considered an acceptable alternative method of compliance with that paragraph, and that operators who have accomplished the procedures described in that service bulletin are not required to re-inspect the subject area.

This same commenter requests that proposed paragraph (c) be revised to clarify the airplanes to which the requirements are applicable. The commenter points out that the referenced McDonnell Douglas Service Bulletin 24–94, Revision 4, dated June 7, 1993, specifies that the applicable airplanes are those listed as "Groups IV through IX" in that service bulletin, which have not been inspected in accordance with that service bulletin, but have been inspected and modified in accordance with paragraphs (a) and (b) of the existing AD. The FAA concurs that this clarification is appropriate. Therefore, paragraph (c) of the final rule has been revised accordingly.

One commenter notes that paragraph (c)(2) of the proposed AD calls out a specific spacer, part number NAS43DD3–32, that must be installed under a clamp used to secure the APU generator feeders) in accordance with McDonnell Douglas Service Bulletin 24–94, Revision 4. The commenter points out that Table III (page 24) of that service bulletin refers to Service Rework Drawing SR09240004, sheet 7.7, for installation of the spacer; however, the revision of that drawing that the commenter has does not provide positive identification (i.e., no part number) of any spacer to be installed. The commenter requests that the FAA require that the service information correctly identify, on the installation drawing, the part number of the spacer that should be used. The FAA concurs. Since issuance of the notice, the FAA has reviewed and approved Revision G of the referenced drawing, which does call out the part number of the correct spacer that is to be used. No change to the final rule is necessary because of this, however.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 390 Model DC–9 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 241 airplanes of U.S. registry will be affected by this AD, that it will take approximately 34 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $450,670, or $1,870 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6022 (53 FR 36436, September 20, 1988), and by adding a new airworthiness directive (AD), amendment 39–8890, to read as follows:

94–09–02 McDonnell Douglas: Amendment 39–8890. Docket 93–NM–110–AD. Supersedes AD 88–20–05, Amendment 39–6022.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 1, dated May 28, 1987, and McDonnell Douglas Model MD–80 Service Bulletin 24–100, dated March 30, 1988; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the APU power feeder cable from chafing against adjacent structures, which could result in electrical shorting and arcing, and a fire below the cabin floor, accomplish the following:

Note 1: Paragraphs (a) and (b) of this AD merely restate the requirements of paragraphs (a) and (b) of AD 88–20–05, Amendment 39–6602. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 88–20–05 have already been accomplished, this AD does not require that those actions be repeated.

(a) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 1, dated May 28, 1987: Within 12 months after October 31, 1988 (the effective date of AD 88–20–05, Amendment 39–6022), perform a visual inspection to detect damage of the auxiliary power unit (APU) power feeder cable support clamp installation; and prior to further flight, repair the damaged cable, and modify the APU power feeder cable installation; in accordance with McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 1, dated May 28, 1987.

(b) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin 24–100,

dated March 30, 1988: Within 12 months after October 31, 1988 (the effective date of AD 88–20–05, Amendment 93–6022), modify the APU power feeder cable support clamp installation in accordance with McDonnell Douglas MD–80 Service Bulletin 24–100, dated March 30, 1988.

(c) For airplanes identified as Groups IV through IX in McDonnell Douglas Service Bulletin 24–94, Revision 4, dated June 7, 1993, on which the inspection and modification requirements of paragraphs (a) and (b) of this AD have been accomplished prior to the effective date of this AD, and which have not been inspected in accordance with McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 4, dated June 7, 1993: Within 12 months after the effective date of this AD, perform a general visual inspection of the APU power feeder cable support clamp installation to determine whether a spacer or "stand off" has been installed between the clamp and the bracket.

Note 2: Accomplishment of the procedures specified in McDonnell Douglas Service Bulletin 24–105, dated August 15, 1989, is considered an acceptable alternative method of compliance with this paragraph. Operators who have accomplished those procedures prior to the effective date of this AD are not required to re-inspect the subject area.

(1) If a spacer or "stand off" has been installed, no further action is required by this AD.

(2) If a spacer or "stand off" has not been installed, prior to further flight, install a new or serviceable spacer or "stand off," part number (P/N) NAS43DD3–32, in accordance with McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 4, dated June 7, 1993.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Note 4: Alternative methods of compliance approved for paragraphs (a) and (b) of AD 88–20–05, Amendment 39–6602, continue to be considered acceptable for this AD.

(e) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The installation shall be done in accordance with McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 4, dated June 7, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 20, 1994.

Issued in Renton, Washington, on April 14, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–9472 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–45–AD; Amendment 39–8889; AD 94–09–01]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires an eddy current inspection to detect defects in the upper and lower lock links on the nose landing gear (NLG), and rework or replacement of any defective link found. This amendment is prompted by reports of cracking and subsequent failure of certain lock links on these airplanes, which have been attributed to forging defects in the lock links. The actions specified in this AD are intended to prevent collapse of the NLG.

DATES: Effective May 5, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 1994.

Comments for inclusion in the Rules Docket must be received on or before June 20, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–45–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5324; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: The FAA has received a report of cracking and subsequent failure of an upper lock link on the center landing gear (CLG) of a McDonnell Douglas Model MD–11 series airplane. Results of a subsequent analysis attributed the failure to forging defects in the lock link. An investigation conducted by the manufacturer revealed two additional upper links on the CLG with similar forging defects. The lower lock link on the CLG and the upper and lower lock links on the nose landing gear (NLG) are similar in design and are manufactured by the same supplier as the upper lock link on the CLG; therefore, defective lock links could be installed at any of these locations. Failure of the lock links on the CLG would result in collapse of the CLG; collapse of the CLG would not present an unsafe condition. However, cracking and subsequent failure of the lock links on the NLG, if not corrected, could result in collapse of the NLG. This situation could result in reduced controllability of the airplane during takeoff or landing.

The FAA has reviewed and approved McDonnell Douglas MD–11 Alert Service Bulletin A32–44, dated March 22, 1994, that describes procedures for an eddy current inspection to detect defects in the lock links of the NLG and CLG on certain airplanes, and rework or replacement of any defective lock link found. Reworking or replacing the lock links will minimize the possibility of failure of the lock links on NLG and CLG and subsequent collapse of a landing gear.

Since an unsafe condition has been identified that is likely to exist or develop on other Model MD–11 series airplanes of the same type design, this AD is being issued to prevent collapse of the NLG. This AD requires an eddy

current inspection to detect defects in the upper and lower lock links on the NLG, and rework or replacement of any defective link found. The actions are required to be accomplished in accordance with the alert service bulletin described previously. This AD also requires that operators submit a report of inspection findings to the FAA.

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

The required compliance time of 120 days is usually sufficient to allow for a brief comment period before adoption of a final rule. In this AD, however, that compliance time was selected because of a short-term problem with availability of sufficient replacement parts if defects are found; a shorter compliance time might have resulted in the unnecessary removal of airplanes from service pending delivery of replacement parts. Nevertheless, the FAA has determined that immediate adoption is necessary in this case because of the importance of initiating the required inspections as soon as possible.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–45–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

94–09–01 McDonnell Douglas: Amendment 39–8889. Docket 94–NM–45–AD.

Applicability: Model MD–11 series airplanes; as listed in McDonnell Douglas MD–11 Alert Service Bulletin A32–44, dated March 22, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent collapse of the nose landing gear (NLG), accomplish the following: (a) Within 120 days after the effective date of this AD, perform an eddy current inspection to detect defects in the upper lock links, part number ACG7396–1, and lower lock links, part number ACG7237–1, on the NLG; in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A32–44, dated March 22, 1994.

(b) If no defect is found, prior to further flight, identify the inspected lock link in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A32–44, dated March 22, 1994.

(c) If any defect is found, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A32–44, dated March 22, 1994.

(1) Rework and identify the lock link. Or

(2) Replace the defective lock link with a serviceable lock link that has been inspected and identified in accordance with paragraphs (a) and (b) of this AD.

(d) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of inspection findings to the Manager, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach California 90806–2425; fax (310) 988–5210. The report must include the inspection results, a description of any discrepancy found, the part numbers of all links inspected, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) As of the effective date of this AD, no person shall install an upper lock link, part number ACG7396–1, or a lower lock link, part number ACG7237–1, on the NLG of any airplane unless that lock link has been inspected and identified in accordance with paragraphs (a) and (b) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A32–44, dated March 22, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 5, 1994.

Issued in Renton, Washington, on April 14, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–9471 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 93–AWP–21]

Modification of Class D Airspace: Mojave, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on March 16, 1994. This final rule modified the Class D airspace at Mojave, CA. The final rule was made effective 0901 u.t.c., July 21, 1994. This correction will make the final rule effective on June 23, 1994.

EFFECTIVE DATE: 0901 u.t.c., June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, (310) 297–0010.

SUPPLEMENTARY INFORMATION: On March 16, 1994, the Federal Aviation Administration (FAA) published a final rule that revised the Class D airspace at Mojave, California. (58 FR 12159). The effective date, July 21, 1994, was erroneous. This correction to the final rule amends the final rule effective date to June 23, 1994.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on March 16, 1994, 58 FR 12159, and the description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 12159, in the third column, the description for **EFFECTIVE DATE:** 0901 u.t.c., July 21, 1994. "is corrected to read **EFFECTIVE DATE:** 0901 u.t.c., June 23, 1994.".

Issued in Los Angeles, California, on April 1, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–9558 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASO–1]

Establishment of Class E Airspace; Palm Beach Gardens, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace at Palm Beach Gardens, Florida. A Standard Instrument Approach Procedure (SIAP) for Runway 8R at the proposed North County General Aviation Airport, which is under construction has been developed, and controlled airspace extending upward from 700 feet above the surface of the earth, is needed to contain instrument flight rules (IFR) operations when utilizing this SIAP. The intended effect of this amendment is to provide adequate Class E airspace for IFR operators executing the SIAP.

EFFECTIVE DATE: 0901 u.t.c. June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

On March 11, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Palm Beach Gardens, Florida (59 FR 11562). A Runway 8R SIAP to serve the North County General Aviation Airport based on the Pahokee VORTAC has been developed. Controlled airspace extending upward from 700 feet above the surface, is needed to contain IFR operations when utilizing this SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments relating to this Class E airspace proposal were received. The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 effective September 16, 1993. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Palm Beach Gardens, FL. This action lowers the base of controlled airspace from 1200 feet above the surface to 700 feet above the surface in the vicinity of the proposed North County General Aviation Airport.

The intended effect of this action is to provide adequate Class E airspace for IFR operators executing the VOR Runway 8R SIAP at the North County General Aviation Airport. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

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 14 CFR 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:

Para. 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO FL E5 Palm Beach Gardens, FL [New]

North County General Aviation Airport, FL
(lat. 26°50'45"N, long. 80°13'20" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the North County General Aviation Airport, excluding that airspace within the West Palm Beach, FL, and Jupiter, FL, Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on April 5, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–9560 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AWP–14]

Establishment of Class E Airspace; Payson, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Payson, AZ. A Nondirectional Beacon (NDB) standard instrument approach procedure (SIAP) has been developed for the Payson Municipal Airport at Payson City, AZ. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 u.t.c., June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 297–0697.

SUPPLEMENTARY INFORMATION:

History

On January 5, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E Airspace area at Payson, AZ. (59 FR 3802). A SIAP was being developed for the Payson Municipal Airport at Payson, AZ. The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL for Instrument Flight Rules (IFR) operations during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received concerning this proposal.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above ground level is now Class E airspace. Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated 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 E airspace designation listed in this document will be published subsequently in the Order.

The Rule

The amendment to part 71 of the Federal Aviation Regulation establishes Class E airspace at Payson, AZ, to provide controlled airspace from 700 to 1200 feet AGL for aircraft executing the NDB SIAP into the Payson Municipal Airport at Payson, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not "significant regulatory action" under Executive Order 12866, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

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 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP CA E5 Payson, AZ [New]

Payson Municipal Airport, AZ
(lat. 34°15'24" N, long. 111°20'21" W)
Payson NDB (lat. 34°15'18" N, long. 111°20'31" W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Payson Municipal Airport and within 6 miles each side of the Payson NDB 170° (T) bearing extending from the 6-mile radius to 16 miles south of the Payson NDB.

* * * * *

Issued in Los Angeles, California, on April 5, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–9561 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–AWP–25]

Establishment of Class E Airspace; Bullhead City, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Bullhead City, AZ. A Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) has been developed for the Bullhead Laughlin Municipal Airport at Bullhead City, AZ. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 u.t.c., June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 297–1658.

SUPPLEMENTARY INFORMATION:

History

On January 5, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a class E airspace area at Bullhead City, AZ. (59 FR 3801) A SIAP was being developed for the Bullhead Laughlin Municipal Airport at Bullhead, AZ. The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL for Instrument Flight Rules (IFR) operations during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received concerning this proposal.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above ground level is now Class E airspace. Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated 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 E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulation establishes Class E airspace at Bullhead, AZ, to provide controlled airspace from 700 to 1200 feet AGL for aircraft executing the VOR/DME SIAP into the Bullhead Laughlin Municipal Airport at Bullhead, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

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 Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follow:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP CA E5 Bullhead City, AZ [New]

Bullhead Laughlin Municipal Airport, AZ
(lat. 35°08'50" N, long. 114°33'32" W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Bullhead Laughlin Municipal Airport and within 3 miles each side of the Needles VOR/DME 350° (T) radial extending from 6-mile radius to 10 miles south of the Bullhead Laughlin Municipal Airport.

* * * * *

Issued in Los Angeles, California, on April 5, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–9559 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27685; Amdt. No. 1596]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commission of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800

Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPS, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through extensive testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be safely flown by aircraft equipped with Global Positioning System (GPS) avionics which are FAA approved. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be recharted to include "or GPS" in the title without otherwise reviewing, modifying, or amending the procedure. This will allow those SIAPs to be conducted without consideration of the status of the navigation aid or avionics that defines the underlying approach in the existing rule. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on April 8, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation of part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a) 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 23, 1994*

Anchorage, AK, Anchorage Intl, VOR or GPS RWY 6R, Amdt. 12

Barrow, AK, Wiley Post-Will Rogers Mem, NDB or GPS RWY 24, Amdt. 6

Barrow, AK, Wiley Post-Will Rogers Mem, NDB or GPS RWY 6, Amdt. 5A

Dillingham, AK, Dillingham, VOR or GPS RWY 1, Amdt. 7

Dillingham, AK, Dillingham, VOR/DME or GPS RWY 19, Amdt. 5

King Salmon, AK, King Salmon, VOR/DME or TACAN or GPS RWY 29, Amdt. 8

King Salmon, AK, King Salmon, VOR or TACAN or GPS RWY 11, Amdt. 11

Kodiak, AK, Kodiak, VOR or TACAN or GPS RWY 25, Amdt. 4

Nenana, AK, Nenana, Muni, NDB or GPS RWY 3L, Amdt. 1

Gadsden, AL, Gadsden Muni, VOR or GPS RWY 6, Amdt. 12

Mobile, AL, Mobile Downtown, VOR or GPS RWY 14, Amdt. 5

Mobile, AL, Mobile Downtown, RNAV or GPS RWY 36, Orig.

Mobile, AL, Mobile Downtown, VOR or GPS RWY 32, Amdt. 1

Flippin, AR, Marion County Regional, VOR or GPS–A, Amdt. 13

Flippin, AR, Marion County Regional, VOR/DME RNAV or GPS RWY 22, Orig.

Hot Springs, AR, Memorial Field, VOR or GPS 2 RWY 5, Amdt. 3

Walnut Ridge, AR, Walnut Ridge Regional, NDB or GPS RWY 17, Amdt. 3B

Walnut Ridge, AR, Walnut Ridge Regional, VOR or GPS–A, Amdt. 15A

Walnut Ridge, AR, Walnut Ridge Regional, VOR/DME or GPS RWY 22, Amdt. 12A

Kingman, AZ, Kingman, VOR/DME or GPS RWY 21, Amdt. 6

Tucson, AZ, Tucson Intl, VOR/DME or TACAN or GPS RWY 29R, Amdt. 2
Tuscon, AZ, Tucson Intl, VOR or TACAN or GPS RWY 11L, Orig.
Winslow, AZ, Winslow Muni, VOR or GPS RWY 11, Amdt. 4
Bakersfield, CA, Bakersfield Muni, VOR/DME or GPS RWY 34, Orig.
Burbank, CA, Burbank-Glendale-Pasadena, VOR or GPS RWY 8, Amdt. 10
Camarillo, CA, Camarillo, VOR or GPS RWY 26, Amdt. 3B
Crescent City, CA, Jack Mc Namara Field, VOR/DME or GPS RWY 11, Amdt. 10B
Crescent City, CA, Jack Mc Namara Field, VOR/DME or GPS RWY 35, Amdt. 9B
Hawthorne, CA, Hawthorne Muni, VOR or GPS RWY 25, Amdt. 15
Long Beach, CA, Long Beach (Daugherty Field), VOR or TACAN or GPS RWY 30, Amdt. 7
Merced, CA, Merced Muni-Macready Field, VOR or GPS RWY 12, Amdt. 6
Merced, CA, Merced Muni-Macready Field, VOR or GPS RWY 30, Amdt. 16
Ontario, CA, Ontario Intl, VOR/DME or GPS RWY 8L, Orig.
Ontario, CA, Ontario Intl, NDB or GPS RWY 26L, Amdt. 3
Ontario, CA, Ontario Intl, VOR or TACAN or GPS RWY 26R, Amdt. 10
Rialto, CA, Rialto Muni-Miro Field, NDB or GPS–A, Amdt. 4
Cortez, CO, Cortez-Montezuma County, VOR or GPS RWY 21, Amdt. 5
Fort Collins, CO, Downtown Fort Collins Airpark, VOR/DME or GPS–B, Amdt. 1
La Junta, CO, La Junta Muni, NDB or GPS RWY 8, Amdt. 5A
Sterling, CO, Crosson Field, NDB or GPS RWY 33, Amdt. 2
Windsor Locks, CT, Bradley Intl, NDB or GPS RWY 6, Amdt. 26
Windsor Locks, CT, Bradley Intl, VOR or TACAN or GPS RWY 33, Orig.
Windsor Locks, CT, Bradley Intl, VOR or TACAN or GPS RWY 24, Amdt. 1
Washington, DC, Washington National VOR/DME or GPS RWY 18, Amdt. 8
Bartow, FL, Bartow Muni, VOR/DME or GPS RWY 9L, Amdt. 1
Fort Pierce, FL, Saint Lucie County Intl, NDB or GPS RWY 9, Amdt. 1
Fort Pierce, FL, Saint Lucie County Intl, VOR/DME or GPS RWY 14, Amdt. 7
Jacksonville, FL, Craig Muni, VOR or GPS RWY 14, Amdt. 2
Jacksonville, FL, Craig Muni, VOR or GPS RWY 32, Amdt. 2
Melbourne, FL, Melbourne International, NDB or GPS RWY 9R, Amdt. 13
Melbourne, FL, Melbourne International, VOR or GPS RWY 27L, Amdt. 11
Naples, FL, Naples Muni, VOR or GPS RWY 4, Amdt. 4
Naples, FL, Naples Muni, VOR or GPS RWY 22, Amdt. 5
Sebring, FL, Sebring Regional, NDB or GPS RWY 36, Amdt. 4
Carrollton, GA, West Georgia Regional, NDB or GPS RWY 34, Amdt. 1
Cordele, GA, Crisp County-Cordele, NDB or GPS RWY 9, Amdt. 4
Cordele, GA, Crisp County-Cordele, VOR/DME or GPS RWY 22, Amdt. 10
Cornelia, GA, Habersham County, VOR/DME or GPS RWY 6, Amdt. 4
Fitzgerald, GA, Fitzgerald Muni, NDB or GPS RWY 1, Orig.
Gainesville, GA, Lee Gilmer Memorial, NDB or GPS RWY 4, Amdt. 4
Jesup, GA, Jesup-Wayne County, NDB or GPS RWY 28, Amdt. 2
Jesup, GA, Jesup-Wayne County, NDB or GPS RWY 10, Amdt. 1
Mc Rae, GA, Telfair-Wheeler, NDB or GPS RWY 20, Amdt. 8
Thomasville, GA, Thomasville Muni, NDB or GPS RWY 22, Amdt. 4
Kahului, HI, Kahului, VOR/DME or TACAN or GPS RWY 20, Amdt. 8
Kahului, HI, Kahului, NDB/DME or GPS RWY 2, Amdt. 1A
Algona, IA, Algona Muni, NDB or GPS RWY 12, Amdt. 4
Algona, IA, Algona Muni, VOR/DME or GPS–A, Amdt. 5
Knoxville, IA, Knoxville Muni, NDB or GPS RWY 33, Amdt. 4
Knoxville, IA, Knoxville Muni, NDB or GPS RWY 15, Amdt. 5
Le Mars, IA, Le Mars Muni, VOR/DME or GPS RWY 36, Amdt. 1
Le Mars, IA, Le Mars Muni, NDB or GPS RWY 18, Amdt. 9
Marshalltown, IA, Marshalltown Muni, VOR or GPS RWY 12, Amdt. 7
Marshalltown, IA, Marshalltown Muni, VOR or GPS RWY 30, Admt. 7
Perry, IA, Perry Muni, NDB or GPS RWY 13, Amdt. 1A
Perry, IA, Perry Muni, NDB or GPS RWY 31, Amdt. 4
Vinton, IA, Vinton Veterans Memorial Airpark, NDB or GPS RWY 27, Amdt. 3
Gooding, ID, Gooding Muni, NDB or GPS RWY 25, Orig.
Haily, ID, Friedman Memorial, NDB/DME or GPS–A, Orig.A
De Kalb, IL, De Kalb Taylor Muni, VOR/DME or GPS RWY 27, Amdt. 4
Fairfield, IL, Fairfield Muni, NDB or GPS RWY 9, Amdt. 2
Flora, IL, Flora Muni, NDB or GPS RWY 21, Amdt. 4
Harrisburg, IL, Harrisburg-Raleigh, NDB or GPS RWY 24, Amdt. 9
Jacksonville, IL, Jacksonville Muni, VOR or GPS RWY 13, Orig.
Lawrenceville, IL, Lawrenceville-Vincennes Intl, VOR or GPS RWY 36, Amdt. 10
Lawrenceville, IL, Lawrenceville-Vincennes Intl, VOR or GPS RWY 27, Amdt. 5
Lawrenceville, IL, Lawrenceville-Vincennes Intl, VOR or GPS RWY 18, Amdt. 10
Taylorville, IL, Taylorville Muni, NDB or GPS RWY 18, Amdt. 3
Bedford, IN, Virgil I. Grissom Muni, NDB or GPS RWY 31, Amdt. 7
Bedford, IN, Virgil I. Grissom Muni, VOR/DME or GPS RWY 31, Amdt. 9
Kokomo, IN, Kokomo Muni, VOR or GPS RWY 23, Amdt. 18
Kokomo, IN, Kokomo Muni, RNAV or GPS RWY 5, Amdt. 4
Kokomo, IN, Kokomo Muni, VOR or GPS RWY 32, Amdt. 18
New Castle, IN, New Castle-Henry County Muni, NDB or GPS RWY 9, Amdt. 4
New Castle, IN, New Castle-Henry County Muni, VOR or GPS RWY 27, Amdt. 8
North Vernon, IN, North Vernon, NDB or GPS RWY 5, Amdt. 4
Portland, IN, Portland Muni, NDB or GPS RWY 27, Amdt. 6
Portland, IN, Portland Muni, NDB or GPS RWY 9, Amdt. 1
Benton, KS, Benton, VOR or GPS–E, Orig.
Burlington, KS, Coffey County, NDB or GPS RWY 36, Orig.
Junction City, KS, Freeman Field, NDB or GPS–B, Amdt. 2
Lyons, KS, Lyons-Rice County Muni, NDB or GPS RWY 17R, Amdt. 5
Lyons, KS, Lyons-Rice County Muni, VOR/DME or GPS–A, Amdt. 2
Norton, KS, Norton Muni, NDB or GPS RWY 17, Amdt. 2
Norton, KS, Norton Muni, NDB or GPS RWY 35, Amdt. 2
Oakley, KS, Oakley Muni, NDB or GPS RWY 34, Amdt. 1
Wichita, KS, Beech Factory, VOR or GPS–B, Amdt. 1
Wichita, KS, Cessna Aircraft Field, VOR or GPS–C, Orig.A
Jackson, KY, Julian Carroll, VOR/DME or GPS RWY 1, Amdt. 1
Murray, KY, Kyle-Oakley Field, NDB or GPS RWY 23, Amdt. 6
Paducah, KY, Barkley Regional, NDB or GPS RWY 22, Amdt. 2
Paducah, KY, Barkley Regional, VOR or GPS RWY 4, Amdt. 16
Bunkie, LA, Bunkie Muni, VOR/DME or GPS–A, Amdt. 5
Houma, LA, Houma-Terrebonne, VOR or GPS RWY 12, Amdt. 4
Houma, LA, Houma-Terrebonne, NDB or GPS RWY 18, Amdt. 4
Houma, LA, Houma-Terrebonne, COPTER VOR/DME or GPS 117°, Amdt. 3
Houma, LA, Houma-Terrebonne, VOR/DME RNAV or GPS RWY 36, Amdt. 4
Houma, LA, Houma-Terrebonne, VOR/DME or GPS RWY 30, Amdt. 11
Vineyard Haven, MA, Marthas Vineyard, VOR or GPS RWY 24, Amdt. 12
Vineyard Haven, MA, Marthas Vineyard, VOR or GPS RWY 6, Amdt. 5
Worcester, MA, Worcester Muni, NDB or GPS RWY 11, Amdt. 18A
Worcester, MA, Worcester Muni, NDB or GPS RWY 29, Amdt. 10A
Cambridge, MD, Cambridge-Dorchester, NDB or GPS RWY 34, Amdt. 7
Frederick, MD, Frederick Muni, VOR or GPS–A, Orig.
Frenchville, ME, Northern Aroostook Regional, NDB or GPS RWY 32, Amdt. 4
Presque Isle, ME, Northern Maine Regional Airport at Presque Isle, VOR/DME or GPS RWY 1, Amdt. 11A
Presque Isle, ME, Northern Maine Regional Airport at Presque Isle, VOR or GPS RWY 19, Amdt. 8A
Drummond Island, MI, Drummond Island, NDB or GPS RWY 26, Amdt. 1
Gaylord, MI, Otsego County, VOR or GPS RWY 9, Amdt. 8
Gaylord, MI, Otsego County, VOR or GPS RWY 27, Amdt. 8
Howell, MI, Livingston County, VOR or GPS RWY 31, Amdt. 9
Howell, MI, Livingston County, NDB or GPS RWY 13, Orig.
Manistee, MI, Manistee County-Blacker, VOR or GPS RWY 9, Amdt. 10
Manistee, MI, Manistee County-Blacker, VOR or GPS RWY 27, Amdt. 10

Monroe, MI, Custer, VOR or GPS RWY 3, Amdt. 1
Monroe, MI, Custer, VOR or GPS RWY 21, Amdt. 1
Pellston, MI, Pellston Regional Airport of Emmet County, VOR/DME or GPS RWY 5, Amdt. 10
Pellston, MI, Pellston Regional Airport of Emmet County, VOR or GPS RWY 23, Amdt. 14
Alexandria, MN, Chandler Field, VOR or GPS RWY 22, Amdt. 4
Alexandria, MN, Chandler Field, NDB or GPS RWY 31, Amdt. 4
Cook, MN, Cook Muni, NDB or GPS RWY 31, Amdt. 1
Crookston, MN, Crookston Muni-Kirkwood Field, NDB or GPS RWY 13, Amdt. 6A
Crookston, MN, Crookston Muni-Kirkwood Field, VOR or GPS RWY 31, Amdt. 4A
Mankato, MN, Mankato Muni, VOR or GPS RWY 33, Amdt. 6
Mankato, MN, Mankato Muni, VOR or GPS RWY 15, Amdt. 5
New Ulm, MN, New Ulm Muni, NDB or GPS RWY 33, Orig.
New Ulm, MN, New Ulm Muni, NDB or GPS RWY 15, Orig.
Dexter, MO, Dexter Muni, VOR/DME or GPS RWY 36, Amdt. 4
Kaiser/Lake Ozark, MO, Lee C. Fine Memorial, NDB or GPS RWY 21, Amdt. 6
Kaiser/Lake Ozark, MO, Lee C. Fine Memorial, VOR or GPS RWY 3, Amdt. 5
Kansas City, MO, Kansas City Downtown, VOR or GPS RWY 21, Amdt. 12
Kansas City, MO, Kansas City Downtown, VOR or GPS RWY 19, Amdt. 18
Kansas City, MO, Kansas City Downtown, VOR or GPS RWY 3, Amdt. 16
West Plains, MO, West Plains Muni, NDB or GPS RWY 36, Orig.A
Corinth, MS, Roscoe Turner, NDB or GPS RWY 35, Amdt. 7
Corinth, MS, Roscoe Turner, NDB or GPS RWY 17, Amdt. 8
Natchez, MS, Hardy-Anders Field Natchez-Adams County, NDB or GPS RWY 17, Amdt. 4B
Natchez, MS, Hardy-Anders Field Natchez-Adams County, VOR/DME or GPS RWY 13, Amdt. 2A
Vicksburg, MS, Vicksburg Muni, NDB or GPS RWY 1, Amdt. 1
Great Falls, MT, Great Falls Intl, NDB or GPS RWY 34, Amdt. 16
Great Falls, MT, Great Falls Intl, VOR or GPS RWY 21, Amdt. 9
Great Falls, MT, Great Falls Intl, VOR or GPS RWY 3, Amdt. 16
Albemarle, NC, Stanley County, NDB or GPS RWY 22, Orig.
Albemarle, NC, Stanley County, NDB or GPS RWY 4, Amdt. 3
Kinston, NC, Kinston Regional Jetport At Stallings Field, VOR/DME or GPS RWY 5, Amdt. 12
Kinston, NC, Kinston Regional Jetport At Stallings Field, VOR or GPS RWY 23, Amdt. 12
Roxboro, NC, Person County, NDB or GPS RWY 6, Amdt. 2A
Smithfield, NC, Johnston County, NDB or GPS RWY 21, Amdt. 5
Washington, NC, Warren Field, NDB or GPS RWY 5, Orig.
Winston-Salem, NC, Smith Reynolds, VOR/DME or GPS RWY 15, Orig.
Winston-Salem, NC, Smith Reynolds, NDB or GPS RWY 33, Amdt. 24
Grand Forks, ND, Grand Forks Intl, VOR or GPS RWY 17R, Amdt. 4
Grand Forks, ND, Grand Forks Intl, VOR or GPS RWY 35L, Amdt. 5
Broken Bow, NE, Broken Bow Muni, VOR or GPS RWY 14, Amdt. 3
Cambridge, NE, Cambridge Muni, NDB or GPS RWY 14, Amdt. 2
Cambridge, NE, Cambridge Muni, NDB or GPS RWY 32, Amdt. 2
Grand Island, NE, Central Nebraska Regional, VOR/DME or GPS RWY 35, Amdt. 14
Grand Island, NE, Central Nebraska Regional, VOR or GPS RWY 13, Amdt. 18
Grand Island, NE, Central Nebraska Regional, VOR or GPS RWY 17, Amdt. 23
Grand Island, NE, Central Nebraska Regional, VOR/DME or GPS RWY 31, Amdt. 6
Keene, NH, Dillant-Hopkins, VOR or GPS RWY 2, Amdt. 11
Laconia, NH, Laconia Muni, NDB or GPS RWY 8, Amdt. 7A
Trenton, NJ, Mercer County, NDB or GPS RWY 6, Amdt. 6
Trenton, NJ, Mercer County, VOR or GPS RWY 24, Amdt. 4
Trenton, NJ, Mercer County, VOR/DME RNAV or GPS RWY 16, Amdt. 4
Trenton, NJ, Mercer County, VOR/DME RNAV or GPS RWY 34, Amdt. 5
Trenton, NJ, Mercer County, VOR or GPS–A, Amdt. 11
West Milford, NJ, Greenwood Lake, VOR or GPS–A, Amdt. 3
Deming, NM, Deming Muni, VOR or GPS RWY 26, Amdt. 8A
Tucumcari, NM, Tucumcari Muni, VOR or GPS RWY 26, Amdt. 5
Tucumcari, NM, Tucumcari Muni, VOR or GPS RWY 21, Amdt. 5
Las Vegas, NV, McCarran Intl, VOR/DME or GPS RWY 1R, Orig.
Binghamton, NY, Binghamton Regional/Edwin A. Link Field, VOR/DME or GPS RWY 28, Amdt. 9
Binghamton, NY, Binghamton Regional/Edwin A. Link Field, NDB or GPS RWY 34, Amdt. 17
Binghamton, NY, Binghamton Regional/Edwin A. Link Field, VOR or GPS RWY 10, Amdt. 6
Kingston, NY, Kingston-Ulster, VOR or GPS–A, Orig.
Massena, NY, Massena Intl-Richards Field, VOR/DME RNAV or GPS RWY 5, Amdt. 5
Massena, NY, Massena Intl-Richards Field, VOR or GPS RWY 27, Amdt. 4
Massena, NY, Massena Intl-Richards Field, VOR/DME RNAV or GPS RWY 23, Amdt. 7
Shirley, NY, Brookhaven, VOR or GPS RWY 6, Amdt. 2
Shirley, NY, Brookhaven, NDB or GPS–A, Amdt. 4
Akron, OH, Akron-Canton Regional, VOR or GPS RWY 23, Amdt. 8A
Akron, OH, Akron-Canton Regional, VOR or GPS RWY 5, Amdt. 1
Caldwell, OH, Noble County, VOR or GPS–A, Amdt. 1
Cincinnati, OH, Cincinnati Muni Airport-Lunken Field, NDB or GPS RWY 20L, Amdt. 11A
Cincinnati, OH, Cincinnati Muni Airport-Lunken Field, NDB or GPS RWY 24, Amdt. 6
Defiance, OH, Defiance Memorial, NDB or GPS RWY 12, Amdt. 9
East Liverpool, OH, Columbiana County, VOR or GPS RWY 25, Amdt. 3
Mansfield, OH, Mansfield Lahm Muni, VOR or GPS RWY 14, Amdt. 13
Mansfield, OH, Mansfield Lahm Muni, VOR or GPS RWY 32, Amdt. 6
Mansfield, OH, Mansfield Lahm Muni, VOR/DME RNAV or GPS RWY 23, Amdt. 6
Tiffin, OH, Seneca County, VOR or GPS RWY 6, Amdt. 8
Tiffin, OH, Seneca County, NDB or GPS RWY 24, Amdt. 7
Alva, OK, Alva Muni, NDB or GPS RWY 35, Amdt. 4
Bartlesville, OK, Bartlesville Muni, VOR/DME or GPS RWY 35, Amdt. 5
Bartlesville, OK, Bartlesville Muni, VOR or GPS RWY 17, Amdt. 10
Duncan, OK, Halliburton Field, VOR or GPS RWY 35, Amdt. 10
Goldsby, OK, David Jay Perry, VOR/DME or GPS RWY 31, Orig.
Oklahoma City, OK, Sundance Airpark, VOR or GPS RWY 17, Orig.A
Oklahoma City, OK, Sundance Airpark, RNAV or GPS RWY 35, Orig.A
Shawnee, OK, Shawnee Muni, NDB or GPS RWY 17, Orig.
Tulsa, OK, Richard Lloyd Jones Jr., VOR/DME or GPS–A, Amdt. 6
Tulsa, OK, Richard Lloyd Jones Jr., VOR or GPS RWY 1L, Amdt. 4
Burns, OR, Burns Muni, VOR or GPS RWY 30, Amdt. 2
Medford, OR, Medford-Jackson County, VOR/DME or GPS RWY 14, Amdt. 3
Medford, OR, Medford-Jackson County, VOR or GPS–A, Amdt. 2
Medford, OR, Medford-Jackson County, VOR/DME or GPS–C, Amdt. 2
Johnstown, PA, Johnstown-Cambria County, VOR or GPS RWY 5, Amdt. 5A
Johnstown, PA, Johnstown-Cambria County, VOR/DME or GPS RWY 15, Amdt. 4A
Johnstown, PA, Johnstown-Cambria County, VOR/DME or GPS RWY 23, Orig.A
Lancaster, PA, Lancaster, VOR/DME or TACAN or GPS RWY 8, Amdt. 3
Lancaster, PA, Lancaster, VOR/DME or GPS RWY 26, Amdt. 7
Lancaster, PA, Lancaster, VOR/DME or GPS RWY 31, Amdt. 3
Philadelphia, PA, Northeast Philadelphia, RNAV or GPS RWY 33, Amdt. 4
Philadelphia, PA, Northeast Philadelphia, VOR or GPS RWY 24, Amdt. 18
Philadelphia, PA, Northeast Philadelphia, RNAV or GPS RWY 15, Amdt. 2
Philadelphia, PA, Northeast Philadelphia, VOR or GPS RWY 6, Amdt. 10
Anderson, SC, Anderson County, NDB or GPS RWY 35, Amdt. 1A
Anderson, SC, Anderson County, VOR or GPS RWY 5, Amdt. 9A
Anderson, SC, Anderson County, RNAV or GPS RWY 23, Amdt. 5A
Georgetown, SC, Georgetown County, NDB or GPS RWY 5, Amdt. 5
Sumter SC, Sumter Muni, NDB or GPS RWY 23, Amdt. 2C
Walterboro, SC, Walterboro Muni, NDB or GPS RWY 23, Amdt. 11

Aberdeen, SD, Aberdeen Regional, VOR/DME or TACAN or GPS RWY 13, Amdt. 11
Aberdeen, SD, Aberdeen Regional, VOR or GPS RWY 31, Amdt. 19
Lewisburg, TN, Ellington, RNAV or GPS RWY 20, Orig.
Mc Minnville, TN, Warren County Memorial, NDB or GPS RWY 23, Orig. A
Paris, TN, Henry County, NDB or GPS RWY 2, Amdt. 2A
Sevierville, TN, Gatlinburg-Pigeon Forge, VOR/DME or GPS RWY 10, Amdt. 4A
Shelbyville, TN, Shelbyville Muni, VOR or GPS RWY 36, Amdt. 14
Shelbyville, TN, Shelbyville Muni, RNAV or GPS RWY 18, Amdt. 3
Austin, TX, Robert Mueller Muni, VOR/DME or TACAN or GPS RWY 13R, Amdt. 9
Austin, TX, Robert Mueller Muni, VOR/DME or TACAN or GPS RWY 17, Amdt. 8
Austin, TX, Robert Mueller Muni, VOR/DME or GPS RWY 31L, Orig.
Beaumont, TX, Beaumont Muni, VOR/DME or GPS RWY 13, Amdt. 1
Beaumont, TX, Beaumont Muni, VOR/DME or GPS RWY 31, Amdt. 3
Burnet, TX, Burnet Muni Kate Craddock Field, VOR/DME RNAV or GPS RWY 19, Amdt. 2
Burnet, TX, Burnet Muni Kate Craddock Field, NDB or GPS RWY 1, Amdt. 3
Caddo Mills, TX, Caddo Mills Muni, NDB or GPS RWY 35L, Amdt. 1
Gladewater, TX, Gladewater Muni, VOR/DME or GPS RWY 13, Amdt. 1
Henderson, TX, Rusk County, NDB or GPS RWY 16, Amdt. 2
Henderson, TX, Rusk County, VOR/DME or GPS–A, Amdt. 2
Hereford, TX, Hereford Muni, NDB or GPS RWY 21, Amdt. 1
Houston, TX, Houston Gulf, VOR or GPS RWY 13, Amdt. 2
Houston, TX, Houston Gulf, VOR or GPS RWY 31, Amdt. 1
Marfa, TX, Marfa Muni, VOR or GPS RWY 30, Amdt. 4
Marlin, TX, Marlin, VOR/DME or GPS–A, Amdt. 5
Mount Pleasant, TX, Mount Pleasant Muni, NDB or GPS RWY 35, Amdt. 3
Mount Pleasant, TX, Mount Pleasant Muni, VOR/DME or GPS–A, Amdt. 4
New Braunfels, TX, New Braunfels Muni, VOR/DME RNAV or GPS RWY 31, Amdt. 2
New Braunfels, TX, New Braunfels Muni, NDB or GPS RWY 22, Amdt. 1
New Braunfels, TX, New Braunfels Muni, VOR/DME RNAV or GPS RWY 13, Amdt. 2
New Braunfels, TX, New Braunfels Muni, VOR/DME or GPS–A, Amdt. 8
Tyler, TX, Tyler Pounds Field, VOR/DME or GPS RWY 4, Amdt. 1
Tyler, TX, Tyler Pounds Field, VOR/DME or GPS RWY 22, Amdt. 1
Tyler, TX, Tyler Pounds Field, NDB or GPS RWY 13, Amdt. 15
Uvalde, TX, Garner Field, NDB or GPS RWY 33, Orig.
Delta, UT, Delta Muni, VOR or GPS RWY 34, Amdt. 2
Delta, UT, Delta Muni, VOR/DME or GPS RWY 16, Amdt. 1
Fredericksburg, VA, Shannon, VOR or GPS RWY 24, Amdt. 7
Richmond, VA, Richmond Intl (Byrd Field), VOR or GPS RWY 2, Amdt. 5
Richmond, VA, Richmond Intl (Byrd Field), VOR/DME RNAV or GPS RWY 20, Amdt. 5
Richmond, VA, Richmond Intl (Byrd Field), VOR or GPS RWY 25, Amdt. 14
Richmond, VA, Richmond Intl (Byrd Field), VOR or GPS RWY 16, Amdt. 25
Richmond, VA, Richmond Intl (Byrd Field), VOR or GPS RWY 34, Amdt. 20
West Dover, VT, Mount Snow, NDB or GPS RWY 1, Orig.
Pasco, WA, Tri-Cities, VOR or GPS RWY 21R, Amdt. 4
Pasco, WA, Tri-Cities, VOR/DME or GPS RWY 30, Amdt. 1
Spokane, WA, Spokane Intl, VOR or GPS RWY 3, Amdt. 12
Spokane, WA, Spokane Intl, RNAV or GPS RWY 21, Orig.
Antigo, WI, Langlade County, NDB or GPS RWY 16, Amdt. 3
Hayward, WI, Hayward Muni, NDB or GPS RWY 20, Amdt. 11
Hayward, WI, Hayward Muni, VOR/DME or GPS RWY 2, Orig.
Mosinee, WI, Central Wisconsin, NDB or GPS RWY 17, Orig.
Mosinee, WI, Central Wisconsin, VOR or GPS–A, Amdt. 8
Mosinee, WI, Central Wisconsin, VOR/DME or GPS RWY 35, Amdt. 6
Rhinelander, WI, Rhinelander-Oneida County, VOR or GPS RWY 9, Amdt. 4
Rhinelander, WI, Rhinelander-Oneida County, VOR/DME or GPS RWY 23, Amdt. 10
Rhinelander, WI, Rhinelander-Oneida County, VOR/DME or GPS RWY 27, Orig.
Rhinelander, WI, Rhinelander-Oneida County, VOR/DME or GPS RWY 5, Orig.
Clarksburg, WV, Benedum, VOR or GPS RWY 3, Amdt. 14
Wheeling, WV, Wheeling Ohio County, VOR or GPS RWY 21, Amdt. 14
Laramie, WY, Laramie Regional, VOR or TACAN or GPS RWY 12, Amdt. 5
Laramie, WY, Laramie Regional, VOR/DME or TACAN or GPS RWY 30, Amdt. 6
Torrington, WY, Torrington Muni, NDB or GPS RWY 10, Orig.
Torrington, WY, Torrington Muni, NDB or GPS RWY 28, Orig.

The following are corrected procedure titles adding "or GPS" published in Transmittal Letter 94–07.

Americus, GA, Souther Field, NDB or GPS RWY 23, Amdt. 2B
Elizabeth City, NC, Elizabeth City Coast Guard Air Station/Muni, VOR/DME or GPS RWY 1, Amdt. 11
Portsmouth, NH, Pease International Tradeport, VOR or TACAN or GPS RWY 34, Orig.
Fayetteville, TN, Fayetteville Muni, VOR/DME or GPS RWY 1, Orig.A

[FR Doc. 94–9562 Filed 4–19–94; 8:45 am]
BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1209

Boards and Committees

AGENCY: National Aeronautics and Space Administration (NASA).
ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1209 by removing Subpart 1, "Board of Contract Appeals." The NASA Board of Contract Appeals no longer exists as a separate entity and its functions were assumed by the Armed Services Board of Contract Appeals.
EFFECTIVE DATE: July 12, 1993.
FOR FURTHER INFORMATION CONTACT: Margaret M. Herring, 202–358–2264.
SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 1209

Boards and committees, Organization and functions (Government agencies).

Under the authority, 42 U.S.C. 2473, 14 CFR part 1209 is amended as follows:

PART 1209—[AMENDED]

Subpart 1—[Removed and Reserved]

In 14 CFR part 1209, Subpart 1 (consisting of §§ 1209.100 through 1209.104) is removed and reserved.

Benita A. Cooper,
Associate Administrator for Management Systems and Facilities.

[FR Doc. 94–9465 Filed 4–19–94; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF STATE

[Public Notice 1985]

22 CFR Part 145

Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for grants and cooperative agreements with insitutions of higher education, hospitals, and other non-profit organizations.
DATES: This regulation is effective October 1, 1994.
FOR FURTHER INFORMATION CONTACT: Robert Lloyd, Office of the Procurement Executive, room 603, SA–6, U.S. Department of State, Washington, DC 20522–0602. Tel. (703) 516–1690.
SUPPLEMENTARY INFORMATION: The Department of State establishes this

final rule as part 145 of title 22 of the Code of Federal Regulations.

The regulation implements Office of Management and Budget Circular A–110, published in the **Federal Register** on November 29, 1993 (58 FR 62992). The regulation is essentially the same as Circular A–110, except for editorial changes, internal approval procedures, and exclusion of foreign and international organizations and agreements performed overseas. The Circular was published as a proposed rule in the **Federal Register**, and the final version of the Circular published on November 29, 1993 addressed the public comments received.

List of Subjects in 22 CFR Part 145

Administrative practices and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 22 of the Code of Federal Regulations, chapter I, is amended as set forth below.

Lloyd W. Pratsch,

Procurement Executive.

Part 145 is added to subchapter O to read as follows:

PART 145—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

Subpart A—General

Sec.
145.1 Purpose.
145.2 Definitions.
145.3 Effect on other issuances.
145.4 Deviations.
145.5 Subawards.

Subpart B—Pre-Award Requirements

145.10 Purpose.
145.11 Pre-award policies.
145.12 Forms for applying for Federal assistance.
145.13 Debarment and suspension.
145.14 Special award conditions.
145.15 Metric system of measurement.
145.16 Resource Conservation and Recovery Act.
145.17 Certifications and representations.

Subpart C—Post-Award Requirements

Financial and Program Management

145.20 Purpose of financial and program management.
145.21 Standards for financial management systems.
145.22 Payment.
145.23 Cost sharing or matching.
145.24 Program income.
145.25 Revision of budget and program plans.
145.26 Non-Federal audits.
145.27 Allowable costs.
145.28 Period of availability of funds.

Property Standards

145.30 Purpose of property standards.
145.31 Insurance coverage.
145.32 Real property.
145.33 Federally-owned and exempt property.
145.34 Equipment.
145.35 Supplies and other expendable property.
145.36 Intangible property.
145.37 Property trust relationship.

Procurement Standards

145.40 Purpose of procurement standards.
145.41 Recipient responsibilities.
145.42 Code of conduct.
145.43 Competition.
145.44 Procurement procedures.
145.45 Cost and price analysis.
145.46 Procurement records.
145.47 Contract administration.
145.48 Contract clauses.

Reports and Records

145.50 Purpose of reports and records.
145.51 Monitoring and reporting program performance.
145.52 Financial reporting.
145.53 Retention and access requirements for records.

Termination and Enforcement

145.60 Purpose of termination and enforcement.
145.61 Termination.
145.62 Enforcement.

Subpart D—After-the-Award Requirements

145.70 Purpose.
145.71 Closeout procedures.
145.72 Subsequent adjustments and continuing responsibilities.
145.73 Collection of amounts due.

Appendix A to Part 145—Clauses for Contracts and Small Purchases Awarded by Recipient

Authority: 22 U.S.C. 2658.1

Subpart A—General

§ 145.1 Purpose.

This regulation establishes uniform administrative requirements for Department of State grants and cooperative agreements awarded to institutions of higher education, hospitals, and other non-profit organizations pursuant to OMB Circular A–110. Non-profit organizations that implement Federal programs for the States are also subject to State requirements. Copies of the OMB circulars mentioned in this part may be ordered from the Office of Management and Budget Publications Office (202) 395–7000.

§ 145.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: Technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which an awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cooperative agreement*, as defined in 31 U.S.C. 6305, means a legal instrument reflecting a relationship

between the United States Government and a recipient when the principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by law, instead of acquiring property or services for the direct use of the United States Government, and substantial involvement is expected between the awarding agency and the recipient when carrying out the activity contemplated in the agreement.

(j) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(k) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(l) *Disallowed costs* means those charges to an award that the awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(m) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(n) *Excess property* means property under the control of any awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(o) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(p) *Federal awarding agency or awarding agency* means the Federal agency that provides an award to the recipient.

(q) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(r) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(s) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(t) *Grant*, as defined in 31 U.S.C. 6304, means a legal instrument reflecting a relationship between the United States Government and a recipient when the principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by law, instead of acquiring property or services for the direct use of the United States Government, and substantial involvement is not expected between the awarding agency and the recipient when carrying out the activity contemplated in the agreement.

(u) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(v) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(w) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(x) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(y) *Prior approval* means written approval by an authorized official evidencing prior consent.

(z) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 145.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(aa) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(bb) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(cc) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(dd) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(ee) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program.

(1) The term includes public and private institutions of higher education; public and private hospitals; other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers; and commercial organizations receiving grants or cooperative agreements from the Department.

(2) The term does not include any of the following which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients:

(i) Foreign organizations (governmental or non-governmental);

(ii) International organizations (such as agencies of the United Nations); or

(iii) Organizations whose assistance agreement is for work to be performed outside the United States.

(3) The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(ff) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(gg) *Small awards* means a grant or cooperative agreement not exceeding $100,000 or the small purchase limitation fixed at 41 U.S.C. 403(11), whichever is greater.

(hh) *Small purchase limitation*, for procurements transactions awarded by recipients, means $100,000 or the small purchase limitation fixed at 41 U.S.C. 403(11), whichever is greater.

(ii) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in § 145.2(e).

(jj) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the awarding agency.

(kk) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ll) *Suspension* means an action by a awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension."

(mm) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(nn) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(oo) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(pp) *Unobligated balance* means the portion of the funds authorized by the awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(qq) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(rr) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 145.3 Effect on other issuances.

For awards subject to this regulation, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this regulation are superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 145.4.

§ 145.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this regulation when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this regulation shall be permitted only in unusual circumstances. The Department may apply more restrictive requirements to a class of recipients when approved by OMB. The Department may apply less restrictive requirements when issuing small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the Department. Deviation requests shall be submitted to the Office of the Procurement Executive (A/OPE) for approval or transmittal to OMB.

§ 145.5 Subawards.

Unless sections of this regulation specifically exclude subrecipients from coverage, the provisions of this regulation shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of part 135 of this chapter implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Subpart B—Pre-Award Requirements

§ 145.10 Purpose.

Sections 145.11 through 145.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 145.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative

agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The Department may not award grants or cooperative agreements unless specific statutory authority exists for a program allowing the award of Federal assistance.

(b) *Public notice and priority setting.*

(1) The Department shall notify the public of its intended funding priorities for discretionary grant programs, except for:

(i) Awards for which funding priorities are established by Federal statute,

(ii) Small awards, and

(iii) Awards for which program purposes would not be served by public notice.

(2) In the case of the exception in paragraph (b)(1)(iii) of this section, the award file shall be documented with the rationale for not issuing a public notice.

§ 145.12 Forms for applying for Federal assistance.

(a) Department Grants Officers shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Grants Officer and approved by the Office of the Procurement Executive (A/OPE).

(c) For Federal programs covered by Executive Order 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Department Grants Officers who do not use the SF–424 form should indicate whether the application is subject to review by the State under Executive Order 12372.

§ 145.13 Debarment and suspension.

The Department and recipients shall comply with the nonprocurement debarment and suspension common rule implementing Executive Orders 12549 and 12689, "Debarment and Suspension," as implemented in 22 CFR part 137. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 145.14 Special award conditions.

If an applicant or recipient: has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this regulation, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, the Department may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: The nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 145.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§ 145.16 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 145.17 Certifications and representations.

Unless prohibited by statute or codified regulation, the Department is authorized to accept and encourages recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the Department. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 145.20 Purpose of financial and program management.

Sections 145.21 through 145.28 prescribe standards for financial management systems, methods for making payments and rules for: Satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 145.21 Standards for financial management systems.

(a) The Department shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or

program in accordance with the reporting requirements set forth in § 145.52. If the Department requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Department, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Department may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 145.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 145.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Department to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB (e.g., SF–1034). This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Department instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met. The Department may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Department shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Department has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Department may provide cash on a working capital advance basis. Under this procedure, the Department shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Department shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, the Department shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, "Managing Federal Credit Programs." Under such conditions, the Department may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are

corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2), the Department shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraphs (k)(1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to the Department for submission to Treasury. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Department, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this regulation, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. The Department shall not require more than an original and two copies of these forms except if OMB approval is obtained.

(1) *SF–270, Request for Advance or Reimbursement.* The Department shall use the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Grants Officers may use forms equivalent to the SF–270 if approved in writing by the Office of the Procurement Executive (A/OPE). The Department has the option of using the SF–270 for construction programs in lieu of the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) *SF–271, Outlay Report and Request for Reimbursement for Construction Programs.* The Department shall use the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, the Department may substitute the SF–270 when the Department determines that it provides adequate information to meet Federal needs.

§ 145.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other Federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Department.

(7) Conform to other provisions of this regulation, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Department Grants Officer.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If the Department authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraphs (c) (1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) *The current fair market value.* However, when there is sufficient justification, the Department may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g) (1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed,

provided that the Department has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 145.24 Program income.

(a) The Department shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by the Department and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the award authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2), program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3).

(d) In the event that the Department does not specify in the terms and conditions of the award how program income is to be used, paragraph (b)(3) shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 145.14.

(e) Unless the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 145.30 through 145.37).

(h) Unless the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 145.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Department requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section, unless, at the discretion of the Grants Officer, a small percentage variance is allowed by the terms of the grant or cooperative agreement.

(c) For nonconstruction awards, recipients shall request prior approvals from the Department for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Department.

(6) The inclusion, unless waived by the Department, of costs that require prior approval in accordance with OMB Circular A–21, "Cost Principles for Institutions of Higher Education," OMB Circular A–122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items described by this regulation may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Grants Officers are authorized, at their option, to waive cost-related and administrative prior written approvals required by this regulation and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Department. All pre-award costs are incurred at the recipient's risk (i.e., the Department is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Department in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Department provides otherwise in the award, the prior approval requirements described in paragraph (e) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Department may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Grants Officer. Grants Officers shall not permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from the Grants Officer for budget revisions whenever paragraphs (h) (1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 145.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When the Department makes an award that provides support for both construction and nonconstruction work, the Department may require the recipient to request prior approval from the Department before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, the Department shall require recipients to notify the Department in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Grants Officer indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, the Grants Officer shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Grants Officer shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 145.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and Department regulations at part 135 of this chapter implementing OMB Circular A–128, "Audits of State and Local Governments."

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 shall be subject to the audit requirements of the Department.

(d) Commercial organizations shall be subject to the audit requirements of the Department or the prime recipient as incorporated into the award document.

§ 145.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 145.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Department, unless otherwise provided in the grant or cooperative agreement.

Property Standards

§ 145.30 Purpose of property standards.

Sections 145.31 through 145.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. The Department shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 145.31 through 145.37.

§ 145.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property

need not be insured unless required by the terms and conditions of the award.

§ 145.32 Real property.

Each award shall prescribe any applicable requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Department.

(b) The recipient shall obtain written approval by the Department for the use of real property in other Federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under Federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Department.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b), the recipient shall request disposition instructions from the cognizant Grants Officer. The Department shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Department and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 145.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to Federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of Federally-owned property in their custody to the Department. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Department for further Federal agency utilization.

(2) If the Department has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Department has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by the Department.

(b) *Exempt property.* When statutory authority exists, the Department has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Department considers appropriate. Such property is "exempt property." Should the Department not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 145.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Department. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority: First, Activities sponsored by the Department which funded the original project, then activities sponsored by other the Department.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Department that financed the equipment; second preference shall be given to projects or programs sponsored by other the Department. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Department. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Department.

(f) The recipient's property management standards for equipment acquired with Federal funds and Federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Department for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Department.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Department. The Department shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Department to determine whether a requirement for the equipment exists in other Federal agencies. The Department shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Department an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Department for such costs incurred in its disposition.

(4) The Department may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Department shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Department fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Department exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 145.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 145.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Department reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) Unless waived by the Department, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Department. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 145.34(g).

§ 145.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property

Procurement Standards

§ 145.40 Purpose of procurement standards.

Sections 145.41 through 145.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Department upon recipients, unless specifically required by Federal statute or executive order or approved by OMB. The standards in §§ 145.1 through 145.48 do not apply to small awards, except where imposed by Federal statute or Executive Order.

§ 145.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 145.42 Code of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 145.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 145.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procurement instruments used (e.g., fixed price contracts, cost reimbursement contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be awarded only to responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration

shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by implementation of E.O.s 12549 and 12689, "Debarment and Suspension," implemented at 22 CFR 137.

(e) Recipients shall, on request, make available for the Department, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Department's implementation of this regulation.

(2) The procurement is expected to exceed the small purchase limitation and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase limitation, specifies a "brand name" product.

(4) The proposed award over the small purchase limitation is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase limitation.

§ 145.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 145.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase limitation shall include the following at a minimum:

(a) basis for contractor selection,

(b) justification for lack of competition when competitive bids or offers are not obtained, and

(c) basis for award cost or price.

§ 145.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 145.48 Contract clauses.

The recipient shall include, in addition to clauses to define a sound and complete agreement, the following clauses in all contracts. The following clauses shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase limitation shall contain contract clauses that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase limitation shall contain suitable clauses for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. The clauses shall describe conditions under which the contract may be terminated by the recipient for default of the contractor as well as conditions where the contract may be terminated for convenience because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Department may accept the bonding policy and requirements of the recipient, provided the Department has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price or other amount approved by the Grants Officer. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase limitation) awarded by recipients shall include a provision to the effect that the recipient, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the contract clauses in appendix A to this regulation, as applicable.

Reports and Records

§ 145.50 Purpose of reports and records.

Sections 145.51 through 145.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 145.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 145.26.

(b) The Department shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 145.51(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Department

may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Department of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) The Department may make site visits, as needed.

(h) The Department shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 145.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report

(i) The Department shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs, unless an equivalent form has been prescribed by the Grants Officer and approved by the OMB and the Office of the Procurement Executive (A/OPE), e.g., Form JF–61 for the Office of Overseas Schools (A/OPR/OS). The Department may also have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Grants Officer shall prescribe whether the report shall be on a cash or accrual basis. If the Department requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Department shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Department shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Department upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions

(i) When funds are advanced to recipients the Department shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Department shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) The Department may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, the Department may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Department may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) The Grants Officer may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Grants Officer's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Department needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, the Department shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When the Department determines that a recipient's accounting system does not meet the standards in § 145.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Department, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) The Grants Officer may "shade out" any line item on any report if not necessary.

(4) The Department may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) The Department may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 145.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. The Department shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Department. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Department, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in § 145.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Department.

(d) The Department shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, the Department may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Department, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Department shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Department can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Department.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) apply to the following types of documents, and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Department or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Department or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 145.60 Purpose of termination and enforcement.

Sections 145.61 and 145.62 set forth uniform suspension, termination and enforcement procedures.

§ 145.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a)(1), (2) or (3) of this section apply.

(1) By the Department, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Department, with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient, upon sending to the Department written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Department determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2).

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 145.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 145.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Department may, in addition to imposing any of the special conditions outlined in § 145.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Department.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under Executive Orders 12549 and 12689 and the implementing regulations at 22 CFR part 137.

Subpart D—After-the-Award Requirements

§ 145.70 Purpose.

Sections 145.71 through 145.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 145.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Grants Officer may approve extensions when requested by the recipient.

(b) Unless the Grants Officer authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award.

(c) The Department shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Department has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Department shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 145.31 through 145.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Department shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 145.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the Department to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 145.26.

(4) Property management requirements in §§ 145.31 through 145.37.

(5) Records retention as required in § 145.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Department and the recipient, provided the responsibilities of the recipient referred to in § 145.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 145.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Department may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Department shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, Federal Claims Collection Standards.

Appendix A to Part 145—Clauses for Contracts and Small Purchases Awarded by Recipient

All contracts and small purchases, awarded by a recipient who is subject to this regulation, shall contain the following clauses, as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a clause requiring compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a clause for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Department.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a clause for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Department.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a clause for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any

implementing regulations issued by the Department.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a clause that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Department and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (Executive Orders 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase limitation shall provide the required certification regarding its exclusion status and that of its principal employees.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8534]

RIN 1545–AS55

Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the qualification of an interest as a regular interest in a real estate mortgage investment conduit, or REMIC. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. The temporary regulations provide guidance to REMIC sponsors and investors. A portion of the text of these temporary regulations also serves as the partial text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register.**

DATES: These regulations are effective April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Carol A. Schwartz, (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document modifies income tax regulations (26 CFR part 1) under section 860G of the Internal Revenue Code (Code), published in the **Federal Register** on December 24, 1992, (57 FR 61293). Section 671 of the Tax Reform Act of 1986 (the 1986 Act), Public Law 99–514, 100 Stat. 2308, added sections 860A through 860G and amended other sections of the Code to provide rules relating to REMICs. Section 1006(t) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100–647, 102 Stat. 3419, amended section 671 of the 1986 Act. These provisions generally take effect, under section 675(a) of the 1986 Act, as amended by section 1006(w)(1) of TAMRA, on January 1, 1987.

Explanation of Provisions

For an entity to qualify as a REMIC, every interest in the entity must be a residual interest or a regular interest. The term "regular interest" is defined in section 860G(a)(1). Section 860G(a)(1)(B) requires that any interest payments on a regular interest be based on a fixed rate, or on a variable rate as provided in regulations. Interest payments on a regular interest may also consist of a specified portion of the interest payments on qualified mortgages held by a REMIC, provided the specified portion does not vary while the regular interest is outstanding.

Current § 1.860G–1(a)(3) identifies the variable rates that are permitted under section 860G(a)(1)(B). These include "a rate that is a qualifying variable rate for purposes of sections 1271 through 1275 and the related regulations." Section 1.860G–1(a)(3)(i).

Notice 93–11, 1993–1 C.B. 298, which interprets § 1.860G1(a)(3)(i), explains the meaning of "qualifying variable rate" by reference to proposed regulations under section 1275 that were published in the **Federal Register** on December 22, 1992 (57 FR 60750). Under the notice, a "qualifying variable rate" is a qualified floating rate (as defined in proposed § 1.1275–5(b)(1)) set at a current value (as defined in proposed § 1.1275–5(a)(4)). The regulations under section 1275 were revised and published in their final form in the **Federal Register** on February 2, 1994 (59 FR 4799). Those regulations became effective on April 14, 1994. Taxpayers could rely on Notice 93–11 until that date.

The temporary regulations contained in this document supersede current § 1.860G–1(a)(3)(i) to conform with the final regulations under section 1275. Under the temporary regulations, a variable rate includes a qualified floating rate as defined in § 1.1275–5(b)(1) (without the application of paragraphs (b) (2) and (3) of that section, concerning the use of caps, floors, governors, and certain multiples) set at a current value.

The temporary regulations are generally effective for obligations issued on or after April 4, 1994. The temporary regulations will not apply, however, to certain obligations priced before April 4, 1994, and transferred on or before June 1, 1994.

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 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. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Carol A. Schwartz and Marshall Feiring, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.860G–1T also issued under 26 U.S.C. 860G(a)(1)(B)(i) and (e).

Par. 2. Section 1.860G–1T is added to read as follows:

§ 1.860G–1T Regular interests bearing interest at a rate based on a current interest rate (temporary).

(a) *Rate based on a current interest rate.* A qualified floating rate as defined in § 1.1275–5(b)(1) (but without the application of paragraph (b)(2) or (3) of that section) set at a current value, as defined in § 1.1275–5(a)(4), is a variable rate. In addition, a rate equal to the highest, lowest, or average of two or more qualified floating rates is a variable rate. For example, a rate based on the average cost of funds of one or more financial institutions is a variable rate.

(b) *Effect on § 1.860G–1.* All references in § 1.860G–1 to paragraph (a)(3)(i) must be read as references to paragraph (a) of this section.

(c) *Effective date*—(1) *In general.* This section is effective April 4, 1994.

(2) *Rate based on current interest rate.* Paragraphs (a) and (b) of this section apply to obligations intended to qualify as regular interests that are issued on or after April 4, 1994, unless the obligations are described in paragraph (c)(4) of this section.

(3) *Rate based on index.* Section 1.860G–1(a)(3)(i) (as contained in 26 CFR part 1 revised as of April 1, 1994) does not apply to obligations intended to qualify as regular interests that are issued on or after April 4, 1994, unless the obligations are described in paragraph (c)(4) of this section.

(4) *Transition obligations.* Obligations are described in this paragraph (c)(4) if—

(i) The terms of the obligations and the prices at which the obligations will be offered are fixed before April 4, 1994; and

(ii) On or before June 1, 1994, a substantial portion of the obligations will be transferred, with the terms and at the prices that are fixed before April 4, 1994, to investors who are unrelated to the REMIC's sponsor at the time of the transfer.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: April 8, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–9548 Filed 4–15–94; 2:05 pm]

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26 CFR Parts 1 and 15a

[TD 8535]

RIN 1545–AQ48

Like-kind Exchanges of Property—Coordination With Section 453

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final income tax regulations under section 1031(a)(3) of the Internal Revenue Code of 1986 relating to the coordination of deferred like-kind exchanges described in section 1031(a)(3) with the installment sale rules of section 453. The final regulations affect taxpayers who engage in certain like-kind exchanges of property under section 1031.

DATES: These regulations are effective April 20, 1994.

For dates of applicability, see §§ 1.1031(b)–2(d) and 1.1031(k)–1(j)(2) of the regulations.

FOR FURTHER INFORMATION CONTACT: Christopher F. Kane at (202) 622–4950, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 1991, the IRS published in the **Federal Register** (56 FR 19933) final regulations under section 1031(a)(3) of the Internal Revenue Code relating to deferred like-kind exchanges. Section 1.1031(k)–1(j)(2) of the regulations, relating to the coordination of section 1031(a)(3) with the installment sale provisions of section 453, is reserved. On November 2, 1992, the IRS published a notice of proposed rulemaking in the **Federal Register** (57 FR 49432) coordinating section 1031(a)(3) with the installment sale provisions of section 453. After consideration of the written comments received regarding the proposed regulations, the regulations are adopted as amended by this Treasury decision. This Treasury decision amends § 1.1031(b)–2 of 26 CFR part 1, Income Tax Regulations, adds the text of § 1.1031(k)–1(j)(2), and amends § 15a.453–1(b)(3)(i) of 26 CFR part 15a.

Technical Background

In a typical deferred exchange, the taxpayer may require the transferee to secure its promise to acquire replacement property with a cash funded escrow account or trust. Alternatively, the taxpayer may retain an intermediary to arrange for the transfer of replacement property to the taxpayer. Section 1.1031(k)–1(g) provides certain safe harbors that, if followed, ensure that these arrangements do not cause the transaction to be treated as a taxable sale rather than a deferred exchange for purposes of section 1031. Section 453(a) generally provides that income from an installment sale is taken into account under the installment method as payments are made. Section 15a.453–1(b)(3)(i) of the regulations provides that the receipt of an evidence of indebtedness that is secured directly or indirectly by cash or a cash equivalent is treated as the receipt of a payment. That section also provides that a payment includes amounts actually or constructively received under an installment obligation.

These final regulations provide rules that coordinate the safe harbor provisions of § 1.1031(k)–1(g) with the installment sale rules that determine when a taxpayer is in receipt of a payment under section 453 and § 15a.453–1(b)(3)(i).

Description of Provisions

The final regulations under § 1.1031(k)–1(g) (3) and (4) provide certain safe harbors under which taxpayers are treated as not being in actual or constructive receipt of money or other property held in a qualified escrow account, qualified trust, or by a qualified intermediary. These final regulations generally adopt the same safe harbors for the purpose of determining whether a taxpayer is in receipt of payment under section 453 and § 15a.453–1(b)(3)(i) if, at the beginning of the exchange period, the taxpayer has a bona fide intent to enter into a deferred exchange. The qualified escrow account, qualified trust, or qualified intermediary is disregarded for purposes of section 453 and § 15a.453–1(b)(3)(i) until the earlier of (a) the time the safe harbor would otherwise cease to apply for purposes of section 1031 (e.g., when the taxpayer has the immediate right to receive the funds held in the qualified escrow account), or (b) the end of the exchange period. Thus, subject to the other requirements of sections 453 and 453A and the related regulations,

taxpayers who use the safe harbors of the existing 1031 regulations and meet the requirements of these final regulations will be entitled to report gain recognized on the deferred exchange under the installment method.

Several commentators requested that the bona fide intent requirement be clarified by providing either examples or presumptions. Whether a particular taxpayer has a bona fide intent to enter into a deferred exchange is determined on the basis of all relevant facts and circumstances. Because the presumptions suggested by commentators would emphasize certain factors that in many cases should not be determinative, the final regulations do not contain rules setting forth presumptions. However, the final regulations clarify that a taxpayer will be treated as having a bona fide intent only if it is reasonable to believe, based on all the facts and circumstances as of the beginning of the exchange period, that like-kind replacement property will be acquired before the end of the exchange period. In addition, two examples have been added to the final regulations in which the bona fide intent requirement is determined to have been satisfied. These examples are intended to be illustrative only, and do not represent either the minimum steps required to establish bona fide intent or safe harbors pursuant to which a bona fide intent will in other contexts be assumed to exist.

The regulations provide a special rule for deferred exchanges involving qualified intermediaries. Under this rule, a taxpayer in receipt of an evidence of indebtedness of the qualified intermediary's transferee is treated as receiving an evidence of indebtedness of the transferee of the relinquished property, even though these regulations generally treat the qualified intermediary as having acquired and transferred the relinquished property for other purposes. Therefore, for purposes of section 453 and § 15a.453–1(b)(3)(i), the receipt by the taxpayer of such an evidence of indebtedness is treated as the receipt of an evidence of indebtedness of the person acquiring the relinquished property from the taxpayer and is not considered a payment under section 453.

One commentator was concerned that the treatment provided by the special rule terminates at the end of the exchange period even if the note remains outstanding. The final regulations make clear that this rule applies beyond the end of the exchange period. Another commentator suggested that the special rule that treats indebtedness of the qualified intermediary's transferee as indebtedness of the person acquiring relinquished property from the taxpayer for purposes of section 453 and § 15a.453–1(b)(3)(i) should also apply to simultaneous exchanges under § 1.1031(b)–2. This comment has been adopted, as reflected in amendments to § 1.1031(b)–2.

Another commentator recommended that the regulations provide that the distribution of an installment note to the taxpayer at any time by a qualified intermediary would not terminate the applicability of the qualified intermediary safe harbor. The Internal Revenue Service and the Treasury do not believe a special exception to the limitations contained in § 1.1031(k)–1(g)(4) (ii) and (vi) (relating to the taxpayer's right to receive or otherwise obtain the benefits of money or other property held by a qualified intermediary) should be provided for installment notes. Rather, § 1.1031(k)–1(g)(4)(vii) provides sufficient flexibility by permitting the receipt of money or other property (including an installment note) by the taxpayer directly from a transferee without affecting the applicability of the qualified intermediary safe harbor. Therefore, this comment has not been adopted.

Another commentator suggested that certain interest payments made on the installment note during the exchange period be treated as fee income to the qualified intermediary and not as interest income to the taxpayer. Section 1.1031(k)–1(h)(2) specifies that interest payments received by the taxpayer, whether received in cash or property (including like-kind property), are to be treated as income to the taxpayer. The determination of whether interest payments retained by a qualified intermediary should be treated as received by the taxpayer, and thereby represent income to the taxpayer, is beyond the scope of this regulation and may be the subject of future guidance.

One commentator requested that the regulations address the timing of gain recognition in deferred exchanges involving assumptions of liabilities. The Internal Revenue Service and the Treasury are currently studying the circumstances under which, and the extent to which, gain attributable to assumptions of liabilities in like-kind exchanges (including simultaneous exchanges) should be eligible for deferral under the installment method. Among other things, this process will include an examination of the rules proposed under section 453(f)(6) in 1984. Accordingly, this final regulation does not address these issues.

Two commentators requested that the regulations consider issues relating to the timing of receipt of income after the end of the exchange period in cases where the delivery of money or other property is delayed due to events such as breach of contract or bankruptcy. Because section 1031(a)(3) requires deferred exchanges to be completed by the end of the exchange period, the safe harbors from the constructive receipt rules provided by § 1.1031(k)–1(g) (3) and (4) have no application after that period. Whether a taxpayer is in receipt of money or other property held in a qualified escrow account or qualified trust or by a qualified intermediary after the end of the exchange period is determined under general principles of federal income tax law. Therefore, the final regulations do not provide specific guidance regarding the timing of receipt of income where delivery of the money or other property held in a qualified escrow account or a qualified trust, or by a qualified intermediary is delayed beyond the end of the exchange period.

Several additional comments were received pertaining to issues that may arise when an installment note is used in a deferred like-kind exchange. Commentators suggested that guidance be provided on the tax consequences of making the installment note payable to a qualified intermediary. Commentators also wanted to know the consequences of a qualified intermediary's disposition of a note to a third party during the exchange period. Commentators requested guidance on the treatment of principal payments made on an installment note during the exchange period. One commentator requested guidance on the tax consequences of a reversion to the transferee of cash held in a qualified escrow account or qualified trust followed by the transferee's issuance of an installment note to the taxpayer at the end of the exchange period. Commentators also suggested that the final regulations address the treatment of issues arising from deferred exchanges of multiple assets.

The issues raised by these comments are broader than the scope of these regulations. Resolution of these issues would affect not only deferred like-kind exchanges spanning more than one tax year, but also such exchanges taking place within one tax year. In addition, these issues may also involve the character of income rather than the timing of the receipt of income. Therefore, the final regulations do not address these comments. However, the Internal Revenue Service will take these issues into consideration in issuing further guidance in this area.

Finally, under these regulations, taxpayers may choose to apply the safe harbors retroactively to transfers of property occurring on or after May 16, 1990. However, if taxpayers reported gain that qualifies for installment method reporting under these regulations in the year they transferred the relinquished property, they in effect elected out of the installment method. In the preamble to the proposed regulations, the Internal Revenue Service requested comments on whether the Service should publish a revenue procedure providing simplified procedures under which those taxpayers who elected out of the installment method could use the installment method in reporting gain on those transactions. Because commentators expressed only minimal interest in this revenue procedure, the Service will not issue such a revenue procedure or similar guidance.

Special Analyses

It has been determined that these regulations are 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 published in the **Federal Register** on November 2, 1992 (57 FR 49432) was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

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

List of Subjects in 26 CFR Parts 1 and 15a

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR parts 1 and 15a are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1031(b)–2 is amended as follows:

1. Paragraph (b) is revised.
2. Paragraphs (c) and (d) are added.
3. The added and revised provisions read as follows:

§ 1.1031(b)–(2) Safe harbor for qualified intermediaries.

* * * * *

(b) In the case of simultaneous exchanges of like-kind properties involving a qualified intermediary (as defined in § 1.1031(k)–1(g)(4)(iii)), the receipt by the taxpayer of an evidence of indebtedness of the transferee of the qualified intermediary is treated as the receipt of an evidence of indebtedness of the person acquiring property from the taxpayer for purposes of section 453 and § 15a.453–1(b)(3)(i) of this chapter.

(c) Paragraph (a) of this section applies to transfers of property made by taxpayers on or after June 10, 1991.

(d) Paragraph (b) of this section applies to transfers of property made by taxpayers on or after April 20, 1994. A taxpayer may choose to apply paragraph (b) of this section to transfers of property made on or after June 10, 1991.

Par. 3. In § 1.1031(k)–1, the text of paragraph (j)(2) is added to read as follows:

§ 1.1031(k)–1 Treatment of deferred exchanges.

* * * * *

(j) * * *

(2) *Coordination with section 453*—(i) *Qualified escrow accounts and qualified trusts.* Subject to the limitations of paragraphs (j)(2) (iv) and (v) of this section, in the case of a taxpayer's transfer of relinquished property in which the obligation of the taxpayer's transferee to transfer replacement property to the taxpayer is or may be secured by cash or a cash equivalent, the determination of whether the taxpayer has received a payment for purposes of section 453 and § 15a.453–1(b)(3)(i) of this chapter will be made without regard to the fact that the obligation is or may be so secured if the cash or cash equivalent is held in a qualified escrow account or a qualified trust. This paragraph (j)(2)(i) ceases to apply at the earlier of—

(A) The time described in paragraph (g)(3)(iv) of this section; or

(B) The end of the exchange period.

(ii) *Qualified intermediaries.* Subject to the limitations of paragraphs (j)(2) (iv) and (v) of this section, in the case of a taxpayer's transfer of relinquished property involving a qualified intermediary, the determination of whether the taxpayer has received a payment for purposes of section 453 and § 15a.453–1(b)(3)(i) of this chapter is made as if the qualified intermediary is not the agent of the taxpayer. For purposes of this paragraph (j)(2)(ii), a person who otherwise satisfies the definition of a qualified intermediary is treated as a qualified intermediary even though that person ultimately fails to acquire identified replacement property and transfer it to the taxpayer. This paragraph (j)(2)(ii) ceases to apply at the earlier of—

(A) The time described in paragraph (g)(4)(vi) of this section; or

(B) The end of the exchange period.

(iii) *Transferee indebtedness.* In the case of a transaction described in paragraph (j)(2)(ii) of this section, the receipt by the taxpayer of an evidence of indebtedness of the transferee of the qualified intermediary is treated as the receipt of an evidence of indebtedness of the person acquiring property from the taxpayer for purposes of section 453 and § 15a.453–1(b)(3)(i) of this chapter.

(iv) *Bona fide intent requirement.* The provisions of paragraphs (j)(2) (i) and (ii) of this section do not apply unless the taxpayer has a bona fide intent to enter into a deferred exchange at the beginning of the exchange period. A taxpayer will be treated as having a bona fide intent only if it is reasonable to believe, based on all the facts and circumstances as of the beginning of the exchange period, that like-kind replacement property will be acquired before the end of the exchange period.

(v) *Disqualified property.* The provisions of paragraphs (j)(2) (i) and (ii) of this section do not apply if the relinquished property is disqualified property. For purposes of this paragraph (j)(2), *disqualified property* means property that is not held for productive use in a trade or business or for investment or is property described in section 1031(a)(2).

(vi) *Examples.* This paragraph (j)(2) may be illustrated by the following examples. Unless otherwise provided in an example, the following facts are assumed: B is a calendar year taxpayer who agrees to enter into a deferred exchange. Pursuant to the agreement, B is to transfer real property X. Real property X, which has been held by B for investment, is unencumbered and has a fair market value of $100,000 at the time of transfer. B's adjusted basis in real property X at that time is $60,000. B identifies a single like-kind replacement property before the end of

the identification period, and B receives the replacement property before the end of the exchange period. The transaction qualifies as a like-kind exchange under section 1031.

Example 1. (i) On September 22, 1994, B transfers real property X to C and C agrees to acquire like-kind property and deliver it to B. On that date B has a bona fide intent to enter into a deferred exchange. C's obligation, which is not payable on demand or readily tradable, is secured by $100,000 in cash. The $100,000 is deposited by C in an escrow account that is a qualified escrow account under paragraph (g)(3) of this section. The escrow agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash deposited in the escrow account until the earlier of the date the replacement property is delivered to B or the end of the exchange period. On March 11, 1995, C acquires replacement property having a fair market value of $80,000 and delivers the replacement property to B. The $20,000 in cash remaining in the qualified escrow account is distributed to B at that time.

(ii) Under section 1031(b), B recognizes gain to the extent of the $20,000 in cash that B receives in the exchange. Under paragraph (j)(2)(i) of this section, the qualified escrow account is disregarded for purposes of section 453 and § 15a.453–1(b)(3)(i) of this chapter in determining whether B is in receipt of payment. Accordingly, B's receipt of C's obligation on September 22, 1994, does not constitute a payment. Instead, B is treated as receiving payment on March 11, 1995, on receipt of the $20,000 in cash from the qualified escrow account. Subject to the other requirements of sections 453 and 453A, B may report the $20,000 gain in 1995 under the installment method. See section 453(f)(6) for special rules for determining total contract price and gross profit in the case of an exchange described in section 1031(b).

Example 2. (i) D offers to purchase real property X but is unwilling to participate in a like-kind exchange. B thus enters into an exchange agreement with C whereby B retains C to facilitate an exchange with respect to real property X. On September 22, 1994, pursuant to the agreement, B transfers real property X to C who transfers it to D for $100,000 in cash. On that date B has a bona fide intent to enter into a deferred exchange. C is a qualified intermediary under paragraph (g)(4) of this section. The exchange agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the money held by C until the earlier of the date the replacement property is delivered to B or the end of the exchange period. On March 11, 1995, C acquires replacement property having a fair market value of $80,000 and delivers it, along with the remaining $20,000 from the transfer of real property X to B.

(ii) Under section 1031(b), B recognizes gain to the extent of the $20,000 cash B receives in the exchange. Under paragraph (j)(2)(ii) of this section, any agency relationship between B and C is disregarded for purposes of section 453 and § 15a.453–1(b)(3)(i) of this chapter in determining whether B is in receipt of payment. Accordingly, B is not treated as having received payment on September 22, 1994, on C's receipt of payment from D for the relinquished property. Instead, B is treated as receiving payment on March 11, 1995, on receipt of the $20,000 in cash from C. Subject to the other requirements of sections 453 and 453A, B may report the $20,000 gain in 1995 under the installment method.

Example 3. (i) D offers to purchase real property X but is unwilling to participate in a like-kind exchange. B enters into an exchange agreement with C whereby B retains C as a qualified intermediary to facilitate an exchange with respect to real property X. On December 1, 1994, pursuant to the agreement, B transfers real property X to C who transfers it to D for $100,000 in cash. On that date B has a bona fide intent to enter into a deferred exchange. The exchange agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash held by C until the earliest of the end of the identification period if B has not identified replacement property, the date the replacement property is delivered to B, or the end of the exchange period. Although B has a bona fide intent to enter into a deferred exchange at the beginning of the exchange period, B does not identify or acquire any replacement property. In 1995, at the end of the identification period, C delivers the entire $100,000 from the sale of real property X to B.

(ii) Under section 1001, B realizes gain to the extent of the amount realized ($100,000) over the adjusted basis in real property X ($60,000), or $40,000. Because B has a bona fide intent at the beginning of the exchange period to enter into a deferred exchange, paragraph (j)(2)(iv) of this section does not make paragraph (j)(2)(ii) of this section inapplicable even though B fails to acquire replacement property. Further, under paragraph (j)(2)(ii) of this section, C is a qualified intermediary even though C does not acquire and transfer replacement property to B. Thus, any agency relationship between B and C is disregarded for purposes of section 453 and § 15a.453–1(b)(3)(i) of this chapter in determining whether B is in receipt of payment. Accordingly, B is not treated as having received payment on December 1, 1994, on C's receipt of payment from D for the relinquished property. Instead, B is treated as receiving payment at the end of the identification period in 1995 on receipt of the $100,000 in cash from C. Subject to the other requirements of sections 453 and 453A, B may report the $40,000 gain in 1995 under the installment method.

Example 4. (i) D offers to purchase real property X but is unwilling to participate in a like-kind exchange. B thus enters into an exchange agreement with C whereby B retains C to facilitate an exchange with respect to real property X. C is a qualified intermediary under paragraph (g)(4) of this section. On September 22, 1994, pursuant to the agreement, B transfers real property X to C who then transfers it to D for $80,000 in cash and D's 10-year installment obligation for $20,000. On that date B has a bona fide intent to enter into a deferred exchange. The exchange agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the money or other property held by C until the earlier of the date the replacement property is delivered to B or the end of the exchange period. D's obligation bears adequate stated interest and is not payable on demand or readily tradable. On March 11, 1995, C acquires replacement property having a fair market value of $80,000 and delivers it, along with the $20,000 installment obligation, to B.

(ii) Under section 1031(b), $20,000 of B's gain (i.e., the amount of the installment obligation B receives in the exchange) does not qualify for nonrecognition under section 1031(a). Under paragraphs (j)(2) (ii) and (iii) of this section, B's receipt of D's obligation is treated as the receipt of an obligation of the person acquiring the property for purposes of section 453 and § 15a.453–1(b)(3)(i) of this chapter in determining whether B is in receipt of payment. Accordingly, B's receipt of the obligation is not treated as a payment. Subject to the other requirements of sections 453 and 453A, B may report the $20,000 gain under the installment method on receiving payments from D on the obligation.

Example 5. (i) B is a corporation that has held real property X to expand its manufacturing operations. However, at a meeting in November 1994, B's directors decide that real property X is not suitable for the planned expansion, and authorize a like-kind exchange of this property for property that would be suitable for the planned expansion. B enters into an exchange agreement with C whereby B retains C as a qualified intermediary to facilitate an exchange with respect to real property X. On November 28, 1994, pursuant to the agreement, B transfers real property X to C, who then transfers it to D for $100,000 in cash. The exchange agreement does not include any limitations or conditions that make it unreasonable to believe that like-kind replacement property will be acquired before the end of the exchange period. The exchange agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash held by C until the earliest of the end of the identification period, if B has not identified replacement property, the date the replacement property is delivered to B, or the end of the exchange period. In early January 1995, B's directors meet and decide that it is not feasible to proceed with the planned expansion due to a business downturn reflected in B's preliminary financial reports for the last quarter of 1994. Thus, B's directors instruct C to stop seeking replacement property. C delivers the $100,000 cash to B on January 12, 1995, at the end of the identification period. Both the decision to exchange real property X for other property and the decision to cease seeking replacement property because of B's business downturn are recorded in the minutes of the directors' meetings. There are no other facts or circumstances that would indicate whether, on November 28, 1994, B had a bona fide intent to enter into a deferred like-kind exchange.

(ii) Under section 1001, B realizes gain to the extent of the amount realized ($100,000)

over the adjusted basis of real property X ($60,000), or $40,000. The directors' authorization of a like-kind exchange, the terms of the exchange agreement with C, and the absence of other relevant facts, indicate that B had a bona fide intent at the beginning of the exchange period to enter into a deferred like-kind exchange. Thus, paragraph (j)(2)(iv) of this section does not make paragraph (j)(2)(ii) of this section inapplicable, even though B fails to acquire replacement property. Further, under paragraph (j)(2)(ii) of this section, C is a qualified intermediary, even though C does not transfer replacement property to B. Thus, any agency relationship between B and C is disregarded for purposes of section 453 and § 15a.453–1(b)(3)(i) of this chapter in determining whether B is in receipt of payment. Accordingly, B is not treated as having received payment until January 12, 1995, on receipt of the $100,000 cash from C. Subject to the other requirements of sections 453 and 453A, B may report the $40,000 gain in 1995 under the installment method.

Example 6. (i) B has held real property X for use in its trade or business, but decides to transfer that property because it is no longer suitable for B's planned expansion of its commercial enterprise. B and D agree to enter into a deferred exchange. Pursuant to their agreement, B transfers real property X to D on September 22, 1994, and D deposits $100,000 cash in a qualified escrow account as security for D's obligation under the agreement to transfer replacement property to B before the end of the exchange period. D's obligation is not payable on demand or readily tradable. The agreement provides that B is not required to accept any property that is not zoned for commercial use. Before the end of the identification period, B identifies real properties J, K, and L, all zoned for residential use, as replacement properties. Any one of these properties, rezoned for commercial use, would be suitable for B's planned expansion. In recent years, the zoning board with jurisdiction over properties J, K, and L has rezoned similar properties for commercial use. The escrow agreement provides that B has no rights to receive, pledge, borrow, or otherwise obtain the benefits of the money in the escrow account until the earlier of the time that the zoning board determines, after the end of the identification period, that it will not rezone the properties for commercial use or the end of the exchange period. On January 5, 1995, the zoning board decides that none of the properties will be rezoned for commercial use. Pursuant to the exchange agreement, B receives the $100,000 cash from the escrow on January 5, 1995. There are no other facts or circumstances that would indicate whether, on September 22, 1994, B had a bona fide intent to enter into a deferred like-kind exchange.

(ii) Under section 1001, B realizes gain to the extent of the amount realized ($100,000) over the adjusted basis of real property X ($60,000), or $40,000. The terms of the exchange agreement with D, the identification of properties J, K, and L, the efforts to have those properties rezoned for commercial purposes, and the absence of other relevant facts, indicate that B had a bona fide intent at the beginning of the exchange period to enter into a deferred exchange. Moreover, the limitations imposed in the exchange agreement on acceptable replacement property do not make it unreasonable to believe that like-kind replacement property would be acquired before the end of the exchange period. Therefore, paragraph (j)(2)(iv) of this section does not make paragraph (j)(2)(i) of this section inapplicable even though B fails to acquire replacement property. Thus, for purposes of section 453 and § 15a.453–1(b)(3)(i) of this chapter, the qualified escrow account is disregarded in determining whether B is in receipt of payment. Accordingly, B is not treated as having received payment on September 22, 1994, on D's deposit of the $100,000 cash into the qualified escrow account. Instead, B is treated as receiving payment on January 5, 1995. Subject to the other requirements of sections 453 and 453A, B may report the $40,000 gain in 1995 under the installment method.

(vii) *Effective date.* This paragraph (j)(2) is effective for transfers of property occurring on or after April 20, 1994. Taxpayers may apply this paragraph (j)(2) to transfers of property occurring before April 20, 1994, but on or after June 10, 1991, if those transfers otherwise meet the requirements of § 1.1031(k)–1. In addition, taxpayers may apply this paragraph (j)(2) to transfers of property occurring before June 10, 1991, but on or after May 16, 1990, if those transfers otherwise meet the requirements of § 1.1031(k)–1 or follow the guidance of IA–237–84 published in 1990–1, C.B. See § 601.601(d)(2)(ii)(*b*) of this chapter.

PART 15a—TEMPORARY INCOME TAX REGULATIONS UNDER THE INSTALLMENT SALES REVISION ACT

Par. 4. The authority citation for part 15a is revised to read as follows:

Authority: 26 U.S.C. 453(i) and 7805.

Par. 5. In § 15a.453–1, paragraph (b)(3)(i) is amended by adding a sentence, after the current first sentence, after the current third sentence, and after the current fourth sentence, respectively, to read as follows:

§ 15a.453–1 Installment method reporting for sales of real property and casual sales of personal property.

* * * * *

(b) * * *

(3) *Payment*—(i) *In general.* * * * For special rules regarding the receipt of an evidence of indebtedness of a transferee of a qualified intermediary, see §§ 1.1031(b)–2(b) and 1.1031(k)–1(j)(2)(iii) of this chapter. * * * For a special rule regarding a transfer of property to a qualified intermediary followed by the sale of such property by the qualified intermediary, see § 1.1031(k)–1(j)(2)(ii) of this chapter. * * * For a special rule regarding a transfer of property in exchange for an obligation that is secured by cash or a cash equivalent held in a qualified escrow account or a qualified trust, see § 1.1031(k)–1(j)(2)(i) of this chapter.

* * *

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Approved: March 16, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–9557 Filed 4–19–94; 8:45 am]

BILLING CODE 4830–01–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Prince William County (VA) Human Rights Commission

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges within their jurisdictions. Publication of this amendment effectuates the designation of the Prince William County (VA) Human Rights Commission as a 706 Agency.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Boyce Nolan, Equal Employment Opportunity Commission, Office of Program Operations, Charge Resolution Review Program, 1801 L Street NW., Washington, DC 20507, Telephone (202) 663–4856.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

Accordingly, title 29, chapter XIV, part 1601 of the Code of Federal Regulations is amended as follows:

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117.

2. Section 1601.74(a) is amended by adding in alphabetical order the following agency:

§ 1601.74 Designated and notice agencies.

(a) * * *

Prince William County (VA) Human Rights Commission

* * * * *

Signed at Washington, DC, this 15th day of April, 1994.

For the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 94-9481 Filed 4-19-94; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL89-1-6199; FRL-4875-4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 18, 1993, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency (USEPA) in response to USEPA's September 22, 1993 proposed sulfur dioxide (SO_2) nonattainment designation for Alton Township, Madison County. This revision request, which limits the SO_2 emissions from the Laclede Steel Co. facility, is being approved because it corrects modeled ambient air quality noncompliance and comports with USEPA's requirements regarding Federal enforceability. Because USEPA considers this finding to be noncontroversial, final action is being taken without prior proposal. Also, as a consequence of the approval of the SIP revision request submitted by the State, the proposed nonattainment designation for Alton Township becomes moot.

DATES: This final rule will be effective June 20, 1994 unless notice is received by May 20, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the revision request and USEPA's analysis are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Rosanne M. Lindsay at (312) 353-1151 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rosanne M. Lindsay at (312) 353-1151.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 18, 1993, the Illinois Environmental Protection Agency (IEPA) submitted a SIP revision request in response to USEPA's intention to designate Alton Township as nonattainment for sulfur dioxide (SO_2) (see 58 FR 67334, December 21, 1993). The submittal corrects modeled SIP deficiencies by limiting SO_2 emissions from the boilers and reheat furnaces at the Laclede Steel Co. facility (Laclede Steel), requiring them to use only natural gas and distillate oil. These restrictions on Laclede Steel, which include recordkeeping and reporting requirements, are incorporated into a federally enforceable State operating permit (FESOP) for Laclede Steel pursuant to the State FESOP program, approved by USEPA on December 17, 1992. The modeling and emission inventory included in the submittal demonstrate that the control measures at Laclede Steel address those SIP deficiencies, identified by USEPA, which led to USEPA's proposed nonattainment designation of Alton Township.

II. Analysis of State Submittal

The USEPA has undertaken its analysis of the revision request based on a review of the modeling, emission inventory, and the emission limitations for Laclede Steel.

A. Review of Modeling and Emission Inventory

Modeling consistent with USEPA guidance was performed with regard to Alton Township under a contract reviewed by USEPA. The current version of the Industrial Source Complex Short Term (ISCST) model was used with 5 years of representative meteorological data from St. Louis, Missouri. The attainment demonstration used a set of receptor arrays with resolution of 100 meters. The Alton area contains some portions of complex terrain. The ISCST model and the Complex-I model were evaluated for use with the local terrain. ISCST was determined to provide the most conservative estimations, and was therefore used throughout the attainment demonstration for receptors at all terrain evaluations.

The modeling study initially included only the SO_2 emissions from the 8 SO_2-emitting facilities in Alton Township and the Union Electric Power Plant in Portage des Sioux Township, Missouri. The boilers which were included in the modeling were screened to determine the load which gave the worst emissions. All boilers were found to cause the greatest ambient impacts at maximum capacity, and were modeled accordingly. Background SO_2 concentrations were determined using ambient data from local air quality monitors correlated with hourly wind direction measurements.

It was determined that attainment of the SO_2 NAAQS could be demonstrated if a set of emission reductions at the Laclede Steel facility in Alton Township were in place. These emission reductions have been incorporated into the Laclede Steel facility FESOP. Once the attainment strategy for the Alton Township sources had been developed, the effect of the SO_2 emissions from three facilities located in adjacent Wood River Township, Illinois, was taken into account. The final model runs predicted that the combined emissions from Laclede Steel, with the applicable emission reductions in place, the other Alton area sources, and the Wood River sources would not violate the NAAQS.

B. Review of the Emission Limitations

The IEPA has satisfied the requirements for the submittal of a revision request through the issuance of an operating permit with federally enforceable conditions (Application No. 93070030). The permit was given public notice and was made available for public comment. The conditions of the permit limit emissions of sulfur dioxide from existing boilers and reheat furnaces at Laclede Steel by restricting fuel usage to natural gas and distillate fuel, only. These restrictions will ensure compliance with the NAAQS for the area. The permit also contains recordkeeping and reporting requirements for the equipment identified, the fuel received and burned at the facility, and any exceedance or violation of the requirements. The entire submittal, including modeling and emission inventory, has been reviewed against Federal air pollution control regulations, including the Clean Air Act, and conforms to the requirements for Federal enforceability.

III. Final Rulemaking Action

Based on the consideration of materials submitted by the State of Illinois, which rectify modeled ambient air quality violations identified in a September 22, 1993 proposed rule, USEPA has determined that this SIP revision request for Laclede Steel is approvable. The proposed redesignation of Alton Township is rendered moot as a consequence of this approval.

Because USEPA considers this action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on June 20, 1994. However, if we receive notice by May 20, 1994 that someone wishes to submit adverse comments, then USEPA will publish: (1) A document that withdraws the action; and (2) a document that begins a new rulemaking by proposing the action and establishing a comment period.

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 Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future document will inform the general public of these tables. Under the revised tables this action remains classified as a 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 requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, 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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air 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, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 1994. Filing a petition for reconsideration by the Administrator of this final 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 rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Sulfur oxides.

Dated: April 6, 1994.

Valdas V. Adamkus,

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 O—Illinois

2. Section 52.724 is amended by adding paragraph (g) to read as follows:

§ 52.724 Control strategy: Sulfur dioxide.

* * * * *

(g) Part D—Approval—The State plan for Alton Township, Madison County, which consists of a federally Enforceable State Operating Permit controlling sulfur dioxide emissions from the boilers and reheat furnaces at Laclede Steel, which was submitted on November 18, 1993, is approved.

[FR Doc. 94–9441 Filed 4–19–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[IL 94–1–6356; FRL–4876–5]

State Implementation Plan Inadequacy, Call for SIP Revision; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Call for revision.

SUMMARY: The USEPA hereby gives notice that it has formally notified the Governor of the State of Illinois by letter dated March 22, 1994, that the Illinois State Implementation Plan (SIP) is substantially inadequate under the Clean Air Act (the Act) to attain and maintain the National Ambient Air Quality Standards (NAAQS) for lead in an area of Madison County, Illinois; and called for the State to submit to USEPA a SIP revision to correct this deficiency (i.e., SIP call).

DATES: USEPA has requested that the State of Illinois submit an action plan by May 28, 1994 (60 days from receipt of SIP call letter), for the development of the SIP revision to correct the SIP deficiencies in the area of Madison County, Illinois. The State must correct the plan deficiencies and submit its finally adopted Madison County area lead plan to the USEPA by September 28, 1995, (18 months from receipt of SIP call letter).

ADDRESSES: Copies of the documents associated with this informational notice are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Rosanne M. Lindsay at (312) 353–1151 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rosanne M. Lindsay at (312) 353–1151. (Reference file IL94–1–6356).

SUPPLEMENTARY INFORMATION: Section 110 of the Act, 42 U.S.C. 7410, requires each State to adopt plans which provide for the attainment and maintenance of the NAAQS. In response to these

requirements, Illinois submitted a SIP revision for lead to the USEPA. This lead SIP revision was approved by the USEPA in two separate rulemaking actions on March 22, 1982 (47 FR 12164) and July 24, 1984 (49 FR 29790). Section 110 also requires that the State revise the plan under certain conditions. A key element of section 110 of the Act requires the State to revise the SIP whenever USEPA finds that the SIP for an area is "substantially inadequate to attain or maintain the relevant NAAQS" (the Act, section 110(k)(5)). See also section 110(a)(2)(H) of the Act. More specifically, section 110(k)(5) provides that, whenever USEPA finds that a SIP for an area is substantially inadequate to attain or maintain the relevant NAAQS, USEPA shall require the State to revise the plan as necessary to correct such inadequacies.

Violations of the lead NAAQS were recorded eleven times, between the second quarter of 1991 and fourth quarter of 1993, by two lead monitors located near Chemetco Inc., a copper smelting facility in the City of Hartford, Madison County. The samples collected exceed the lead NAAQS value of 1.5 micrograms per cubic meter air ($\mu g/m^3$), which is based on maximum arithmetic values, for several quarters, were greater than four times the NAAQS for lead.

A letter dated March 22, 1994, was sent to Jim Edgar, Governor of Illinois, from Valdas V. Adamkus, USEPA Regional Administrator, notifying the State that USEPA finds the Illinois SIP to be substantially inadequate to attain and maintain the NAAQS for lead in an area of Madison County currently designated as unclassifiable for lead. USEPA made this finding pursuant to section 110(k)(5) of the Act, based on violations of the lead NAAQS in the above described County and, in doing so, calls for the State of Illinois to revise the SIP for this area as necessary to assure attainment and maintenance of the lead NAAQS.

USEPA has requested that within 60 days following the receipt of the March 22, 1994, Governor's letter, Illinois submit an action plan to USEPA for the development of the SIP revision. In order to be approved by USEPA, any control strategies adopted and implemented by Illinois for the purpose of responding to the findings made on March 22, 1994, must provide for attainment and maintenance of the lead NAAQS within 5-years of USEPA's notification to the Governor (See, e.g., section 110(n)(2) of the Act). The finding of inadequacy and call for a SIP revision set out in the letter represent a preliminary step in an ongoing administrative process. A SIP call is not a final agency action subject to judicial review under section 307(b)(1) of the Act. See *Greater Cincinnati Chamber of Commerce* v. *USEPA*, 879 F.2d 1379 (6th Cir. 1989). Any final USEPA judgment regarding the appropriateness of the State's response to USEPA's action will be reached when USEPA makes a binding determination regarding the State's response. This would occur, for example, if USEPA either in whole or in part approved and/or disapproved the SIP revision (after providing public notice and an opportunity for public comment) or promulgated a Federal Implementation Plan because a SIP revision is not submitted, is incomplete, or is disapproved in whole or in part. See sections 110(c),(k), and 307(b)(1) of the Act.

The staff of the USEPA Region 5 Air and Radiation Division are prepared to work with the Illinois Environmental Protection Agency to develop the required SIP revisions.

This informational notice has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Lead.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 8, 1994.

Michelle D. Jordan,

Acting Regional Administrator.

[FR Doc. 94–9568 Filed 4–19–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300327A; FRL–4769–6]

RIN 2070–AB78

Polyvinyl Alcohol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of polyvinyl alcohol (CAS Registry No. 9002-89-5) when used as an inert ingredient (surfactant) in pesticide formulations applied to food animals. Farnum Companies, Inc., requested this regulation.

EFFECTIVE DATE: This regulation becomes effective April 20, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300327A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 2, 1994 (59 FR 9947), EPA issued a proposed rule that gave notice that Farnum Companies, Inc., 301 West Osborn, Phoenix, AZ 85013-3928, had submitted pesticide petition (PP) 3E4176 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(e) by establishing an exemption from the reqirement of a tolerance for residues of polyvinyl alcohol (CAS Registry No. 9002-89-5) when used as an inert ingredient (surfactant) in pesticide formulations applied to food animals.

Inert ingredients are all ingredients that are not active ingredients as defined

in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising 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 the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 7, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001 is amended in paragraph (e) in the table therein by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * * * *		* *
Polyvinyl alcohol (CAS Registry No. 9002-89-5)	.....	Surfactant
* * * * *		* *

[FR Doc. 94–9156 Filed 4–19–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 940409–4109; I.D. 033194C]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS issues this interim final rule to amend the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP). This rule establishes the season dates and possession limit for the 1994 recreational fishery. The recreational season will take place from April 15 through October 15, with a possession limit of eight fish per person. The 1994 possession limit and season are specified to achieve the 1994 coastwide recreational harvest limit, which is 10.7 million lbs (4.8 million kg).

DATES: Effective on April 15, 1994. Written comments must be received by May 2, 1994.

ADDRESSES: Written comments should be mailed to Richard B. Roe, Regional Director, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Summer Flounder Recreational Measures." Copies of the Environmental Assessment prepared for the 1994 summer flounder specifications are also available from the same address.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, (508–281–9101).

SUPPLEMENTARY INFORMATION: Section 625.20 of the regulations implementing the FMP outlines the process for determining annual commercial and recreational catch quotas and other restrictions for the summer flounder fishery. The Summer Flounder Monitoring Committee (Committee), made up of representatives from the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council (Council), the New England Fishery Management Council and NMFS, is required to review, on an annual basis, scientific and other relevant information and to recommend a commercial catch quota and other restrictions necessary to achieve a fishing mortality rate of 0.53 in 1993 through 1995, and 0.23 in 1996, and thereafter. This schedule of fishing mortality rates is mandated by the FMP to prevent overfishing of the summer flounder resource and to rebuild its depleted stock.

The Committee reviews the following annually: (1) Commercial and recreational catch data; (2) current estimates of fishing mortality; (3) stock status; (4) recent estimates of recruitment; (5) virtual population analysis, a method for analyzing fish stock abundance; (6) levels of regulatory noncompliance by fishermen or individual states; (7) impact of fish size and net mesh regulations; (8) impact of gear other than otter trawls on the mortality of summer flounder; and (9) other relevant information. Pursuant to § 625.20, after this review, the Committee recommends management measures to ensure achievement of the appropriate fishing mortality rate. These measures include: (1) Commercial quota; (2) commercial minimum fish size; (3) minimum mesh size; (4) recreational possession limit within the range of zero to 15 fish per person per day; (5) recreational minimum fish size; (6) recreational season; and (7) restrictions on gear other than otter trawls.

Proposed management measures for 1994 were published in the **Federal Register** on December 7, 1993 (58 FR 64393), and after consideration of the comments received, the final specifications were published on March 7, 1994 (59 FR 10586). The management measures contained in the final specifications were: (1) A coastwide harvest limit of 26.7 million lbs (12.1 million kg); (2) a coastwide commercial quota of 16 million lbs (7.3 million kg); (3) a coastwide recreational harvest limit of 10.7 million lbs (4.8 million kg); (4) no change from the current minimum commercial fish size of 13 inches (33 cm); (5) no change in the current minimum-mesh size restriction of 5½ inch diamond (14.0 cm) or 6-inch square (15.2 cm); and (6) no change in the current minimum recreational fish size of 14 inches (35.6 cm).

The recreational possession limit and season were not established as part of the final specifications because recreational catch data for 1993 were not available for the Committee's use in evaluating the effectiveness of the 1993 season and possession limit in attaining the 1993 quota. The 1993 data became available to the Committee in March 1994, and showed that the 1993 coastwide recreational harvest limit, also referred to as a target quota in 1993, of 8.38 million lbs (3.80 million kg) was actually underharvested by approximately 2.2 million lbs (1 million kg) during the season, which was open from May 15 through September 30, 1993, with an individual possession limit of six fish per person. The Committee met March 8, 1994, to consider an extended recreational season and an increased individual possession limit in order to attain the 1994 coastwide recreational harvest limit of 10.7 million lbs (4.85 million kg). The Committee recommended a recreational season that will begin on April 15 and continue through October 15, and a possession limit of eight fish per person. These measures were adopted by the Council at its meeting held March 9–10, 1994, and are implemented by this interim final rule.

As specified in Amendment 2, individual states may implement a different, equivalent, open season provided such open season remains within the Marine Recreational Fisheries Statistics Survey bimonthly sampling period. For 1994, the equivalent open seasons would be either April 1 through October 1, or April 30 through October 30.

Classification

This interim final rule is exempt from Office of Management and Budget review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA). Prior notice is impracticable and contrary to the public interest because it would prevent the recreational season from commencing on April 15, as recommended by the Council. Further, the AA finds that the public meetings held by the Council to discuss the recreational season and possession limit provided opportunity for public comment to be considered. The AA finds that under section 553(d) of the APA the need to have this regulation in place at the beginning of the recreational season is good cause to waive the 30-day delay in effectiveness of the regulation.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: April 14, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 625.22 is revised to read as follows:

§ 625.22 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 625.4 and fishermen subject to the possession limit may fish for summer flounder only during the period April 15 through October 15. This period may be adjusted pursuant to the procedures in § 625.20.

3. Section 625.25(a) is revised to read as follows:

§ 625.25 Possession limit.

(a) No person shall possess more than eight summer flounder in or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a moratorium permit under § 625.4. Persons on board a commercial vessel that is not eligible for a moratorium permit under § 625.4 are subject to this possession limit. The owner, operator and crew of a charter or party boat issued a moratorium permit under § 625.4(b) are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

* * * * *

[FR Doc. 94–9493 Filed 4–15–94; 1:25 pm]

BILLING CODE 3510–22–P

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50 CFR Parts 672 and 675

[Docket No. 940102–4106; I.D. 122293D]

RIN 0648–AF17

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS announces the approval of Amendment 25 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and issues final regulations to implement the amendment that eliminates the primary Pacific halibut prohibited species catch (PSC) limit established for BSAI trawl fisheries. NMFS also issues final regulations that prohibit the discard of salmon taken as bycatch in the BSAI groundfish trawl fisheries until the number of salmon has been determined by a NMFS-certified observer, and authorizes the release of vessel-specific observer data on bycatch of prohibited species in the BSAI and Gulf of Alaska (GOA) groundfish fisheries. This action is necessary to manage effectively the halibut PSC limit established for BSAI trawl fisheries and to provide better information on salmon and other prohibited species bycatch. This action is intended to promote management and conservation of groundfish and other fish resources and to further the objectives contained in the FMP for the Groundfish Fishery of the BSAI and the FMP for Groundfish of the GOA.

EFFECTIVE DATE: May 20, 1994.

ADDRESSES: Copies of Amendment 25 and the environmental assessment/regulatory impact review (EA/RIR) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA and the BSAI is managed by the Secretary of Commerce (Secretary) according to the FMP for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

This action implements Amendment 25 to the FMP for the Groundfish Fishery of the BSAI, which eliminates the primary halibut PSC limit established for the BSAI groundfish trawl fisheries. This action also implements regulatory amendments that: (1) Prohibit the discard of salmon taken as bycatch in the BSAI groundfish trawl fisheries until a NMFS-certified observer has determined the number of salmon and completed the collection of any scientific data or biological samples from the salmon; and (2) authorize the release of vessel-specific observer data on bycatch of prohibited species in the BSAI and GOA groundfish fisheries.

A notice of availability of Amendment 25 was published in the **Federal Register** on December 29, 1993 (58 FR 68848), and invited comment on the amendment through February 22, 1994. No written comments were received. A proposed rule to implement Amendment 25 and the regulatory amendments referenced above was published in the **Federal Register** January 19, 1994 (59 FR 2817). Comments on the proposed rule were invited through February 28, 1994. Five letters providing 15 comments were received that are summarized in the Response to Comments section, below.

Amendment 25 was approved by the Secretary on March 25, 1994, under section 304(b) of the Magnuson Act. Upon reviewing the amendment, the comments on the proposed rule to implement it and the two proposed regulatory amendments, NMFS has determined that this final rule implementing the following measures is necessary for fishery conservation and management:

1. Elimination of the primary PSC limit established for the BSAI groundfish trawl fisheries that, when reached, required NMFS to close bycatch limitation zones 1 and 2H of the Bering Sea. This action does not affect the overall halibut bycatch mortality limit (3,775 metric tons) established for the BSAI trawl gear fisheries.

2. Prohibit the discard of salmon taken as bycatch in the BSAI groundfish trawl fisheries until a NMFS-certified observer has determined the number of salmon and completed the collection of any scientific data or biological samples from the salmon.

3. Establishment of regulatory authority to release to the public vessel-specific observer data on bycatch of prohibited species in the BSAI and GOA groundfish fisheries. On a weekly basis, the following observer data are authorized for release by NMFS for each vessel participating in a directed fishery for Alaska groundfish:

1. The name and Federal permit number of the vessel;

2. The observed number of chinook salmon and other salmon taken by the vessel;

3. The observed vessel bycatch rates of Pacific halibut, Pacific herring, king crab, and *Chionoecetes bairdi* Tanner crab;

4. The number of observed trawl hauls or fixed gear sets;

5. The number of trawl hauls that were basket sampled; and

6. The total weight of basket samples taken from sampled trawl hauls.

NMFS could also make available to the public the following observer data collected in the Alaska groundfish trawl fisheries other than for rockfish,

Greenland turbot, or Atka mackerel. These data would not be identified by vessel and would include the following for each observed haul:

1. Date;
2. Time of day gear is deployed;
3. Latitude and longitude at beginning of haul;
4. Bottom depth;
5. Fishing depth of trawl;
6. Rate chinook salmon (number of chinook salmon/mt groundfish);
7. Rate other salmon (number of other salmon/mt groundfish);
8. Rate Pacific halibut (kg halibut/mt groundfish;
9. Rate Pacific herring (kg herring/mt groundfish);
10. Rate king crab (number of crab/mt groundfish);
11. Rate *C. bairdi* Tanner crab (number of crab/mt groundfish);
12. Sea surface temperature (where available); and
13. Sea temperature at fishing depth of trawl (where available).

The intent of the measures implemented under this action is to eliminate the primary halibut bycatch mortality limit as a halibut bycatch management measure, provide better information to management agencies and the public on salmon and other prohibited species bycatch, and support independent industry initiatives to address the prohibited species bycatch problem. Further explanation of, and reasons for, these measures are contained in the preamble to the proposed rule (59 FR 2817, January 19, 1994).

Changes in the Final Rule From the Proposed Rule

This final rule includes the following changes from the proposed rule: These changes are described as follows.

1. Section 672.7(h) and § 675.7(o) are redesignated as § 672.7(o) and § 675.7(p), respectively, to accommodate other recently implemented regulations.

2. Regulatory language at § 675.20(c)(6) has been clarified to set out NMFS's intent to allow observers to use NMFS guidelines for an estimate of the number of retained salmon when time constraints or other duties prevent an observer from counting each fish. Specifically, the phrase "until all salmon have been counted by a NMFS-certified observer" has been revised to read "until the number of salmon has been determined by a NMFS-certified observer". Accordingly, regulatory text at § 672.7(n) and § 675.7(o) has been changed.

3. In § 675.20, paragraphs (c)(6)(ii) through (iv) are redesignated as paragraphs (c)(6)(i)(A) through (C), respectively, and paragraphs (c)(6)(v) through (vii) are redesignated as paragraphs (c)(6)(ii) through (iv), respectively. Redesignated paragraph (c)(6)(i)(A) is revised to require operators of vessels carrying observers onboard, and whose fishing operations allow for sorting of catch, to retain salmon from different hauls separately and in a manner that identifies the haul from which the salmon were taken. This action is taken in response to public comment that salmon from different hauls should be counted separately to determine possible correlations between haul characteristics and salmon bycatch rates. This revision to regulatory text will provide NMFS with data that could be used to assess observed salmon bycatch rates when other than whole-haul sampling is used by the observer.

4. Regulatory text at § 672.27(g)(1) and § 675.25(g)(1) is revised to include the authority to release to the public observer data on the number of trawl hauls or fixed gear sets observed onboard a vessel during a weekly reporting period, the number of trawl hauls that were basket sampled, and the total weight of basket samples taken from sampled hauls. This action is taken to respond to public comment received on the proposed rule that observed bycatch rates based on small sample sizes often can be misleading.

5. Regulatory text at § 672.27(g)(2) and § 675.27(g)(2) is revised to clarify NMFS intent that the observer data collected for individual hauls and authorized for release to the public will not be identified by vessel name or other information that identifies the vessel from which the data were collected.

Response to Comments

Five letters of comments were received within the comment period that ended February 28, 1994. All the letters supported regulations implementing Amendment 25 that eliminate the primary halibut PSC limit for the BSAI trawl gear fisheries. A summary of comments on the regulatory amendments and NMFS's response follows.

Comment 1. Any action is supported that contributes to the reduction of prohibited species bycatch rates and optimal management of prohibited species bycatch in all North Pacific fisheries. One means of achieving this goal is better collection and assessment of data generated by the NMFS Observer Program. Retention is an important first step to accurate assessment of salmon bycatch. In addition, NMFS is encouraged to investigate the accuracy of estimating prohibited species catch in groundfish catches using whole-haul versus basket sampling methods.

Response. NMFS concurs that additional information on salmon bycatch is desirable and necessary to develop future management actions to address the salmon bycatch problem in the Alaska groundfish trawl fisheries. Accordingly, NMFS has approved this final rule to meet this need. NMFS intends to use the additional data on salmon bycatch collected under this final rule to assess the quality of salmon bycatch rate estimates derived from existing observer sampling procedures and to provide additional information with which to assess the magnitude of salmon bycatch in the Alaska trawl fisheries.

Comment 2. Proposed regulations prohibiting the discard of salmon taken in BSAI groundfish trawl fisheries until the number of salmon is determined by a NMFS-certified observer also should apply to GOA trawl fisheries. Salmon bycatch rates in the GOA trawl fisheries often equal or exceed those in the Bering Sea, and vessels in the GOA typically operate with less observer coverage than their BSAI counterparts.

Response. NMFS acknowledges that the salmon bycatch problem extends to the GOA trawl fisheries. However, the Council did not consider extending salmon retention criteria to the GOA trawl fisheries, and the supporting analyses presented to the Council did not address this alternative. The Council's request to NMFS to prepare rulemaking to implement mandatory retention of salmon until counted by an observer was based on issues associated with chinook salmon bycatch in the BSAI trawl fisheries and independent industry initiatives to address the chinook salmon bycatch problem in these fisheries. Council support for the BSAI program was reinforced after its consideration of the high bycatch amounts of chum salmon estimated for the BSAI pollock fishery during the 1993 non-pollock roe or "B" season.

Relative to the BSAI trawl fleet, the GOA fleet typically comprises smaller vessels with less observer coverage. Therefore, monitoring compliance with mandatory salmon retention requirements would be more difficult. Fewer GOA processors are required to have 100-percent observer coverage relative to BSAI processing operations, because of the smaller volume of groundfish processed on a monthly basis. As a result, GOA processors would tend to incur greater relative costs associated with retaining and freezing salmon until an observer becomes available to count retained fish.

If the BSAI program is determined to be effective in collecting additional information on salmon bycatch, and the Council wishes to expand this program to the GOA trawl fisheries, NMFS could initiate separate rulemaking to extend the salmon retention program to the GOA.

Comment 3. The intent of the proposed regulatory language at § 675.20(c)(6)(vii) is unclear. This language states that all salmon must be returned to Federal waters immediately, with a minimum of injury, following notice by a NMFS-certified observer that salmon have been counted and the collection of any scientific data or biological samples has been completed. Why is the term "minimum of injury" used when all retained salmon likely are dead? What is a reasonable definition of the term "immediately" for salmon that have been in frozen storage at a shoreside facility awaiting the arrival of an observer? Can a vessel transport another vessel's salmon bycatch back out to Federal waters? After they have been counted by an observer, can salmon be disposed of by sending them to a meal plant?

Response. The FMPs currently state that all prohibited species must be returned to the sea with a minimum of injury except when their retention is authorized by other applicable law. NMFS recognizes that the rationale for existing standards that require prohibited species be returned to the sea with a "minimum of injury" becomes questionable for those prohibited species that obviously are dead, such as salmon delivered to shoreside processors for counting by a NMFS-certified observer. NMFS believes that this issue is not unique to salmon bycatch, and that other prohibited species often are landed shoreside by those vessel operators whose fishing operations do not allow for effective sorting of catch at sea. At this time, processors are not allowed to dispose of prohibited species by sending them to meal plants. Meal ultimately is produced for commercial sale, and existing regulations are intended to prevent the commercial sale of prohibited species. Federal regulations could be amended to allow the grinding of prohibited species so they could be more easily disposed of in a manner similar to other fish waste under discharge permits issued to processors under the Clean Water Act. NMFS believes that rulemaking authorizing this manner of disposal of salmon delivered to processors in State waters should be considered for all prohibited species, not just salmon. A comprehensive approach for assessing and revising guidelines for disposal of prohibited species is outside the scope of this regulatory action. Therefore, until rulemaking is initiated to revise disposal guidelines for all prohibited species, NMFS has determined to maintain the proposed regulatory guidelines for disposal of salmon after the number of salmon have been determined by a NMFS-certified observer.

Under this final rule, salmon retained and delivered to a processor by one vessel subsequently can be loaded on to another vessel for discard in Federal waters. For purposes of clarifying § 675.20(c)(iv), the term "immediately" has been changed to "as soon as is practicable" to better express NMFS's intent for the disposal of retained salmon.

Comment 4. Approved methods of disposing of salmon after the number of salmon have been determined by an observer should include distribution to foodbanks through authorized nonprofit organizations.

Response. The authority to retain salmon taken as bycatch in the Alaska groundfish trawl fisheries for delivery to an authorized distributor for nonprofit foodbank organizations is beyond the scope of this action. The Council has requested that NMFS prepare an analysis of alternatives for a program that would allow retention of salmon for delivery to nonprofit foodbank organizations. The Council is scheduled to consider this analysis at its April 1994 meeting.

Comment 5. The authority for public release of observer data on vessel name and prohibited species bycatch amounts or rates at § 672.27(g)(1) and § 675.25(g)(1) is supported, but should be expanded to include observer data on the number of tows sampled onboard a vessel during a weekly reporting period, the number of tows that were basket sampled or whole-haul sampled, and the total sample weight of basket samples. This is important, because bycatch rates based on small sample sizes often can be misleading.

Response. NMFS concurs. The requested observer data can be provided inseason and has been added to § 672.27(g)(1) and § 675.25(g)(1) as information that may be released to the public on a weekly basis under vessel name. NMFS has further revised the final rule to clarify that the authority to release these data applies to both trawl and fixed gear fisheries.

Comment 6. The authority for public release of haul-by-haul data authorized at § 672.27(g)(2) and § 675.25(g)(2) should be expanded to include the fixed gear fisheries in the GOA and BSAI.

Response. The intent of the regulatory amendment implemented under the referenced regulations is to address the salmon bycatch problem in the Alaska trawl fisheries, although the data authorized for release also will benefit an assessment of the bycatch problem for other prohibited species. The trawl industry petitioned NMFS for the release of these data outside of the Council process, and NMFS agreed to include in the proposed rule the authority to release these data to support independent initiatives by the trawl industry to better define the salmon bycatch problem and to take action to address it.

The release of observer data on haul position and depth posed some concern to members of the trawl industry, because of the potential for competitive harm. Ultimately, representatives of the trawl industry attempted to address this concern by requesting that NMFS not release these data for those fisheries that are geographically specific in nature, involve a small number of participants, and have relatively small quotas.

NMFS has approved the authority to release vessel names, bycatch amounts of salmon, and bycatch rates of other prohibited species on a weekly basis for all observed vessels, including those participating in the fixed gear fisheries. However, representatives for the fixed gear fisheries have not petitioned NMFS for the release of observer data for individual sets. Given the potential for competitive harm that could result from the release of observer data on the position and depth of individual sets in the hook-and-line, pot, or jig gear fisheries, NMFS believes that separate regulatory action to implement the authority to release these data should be developed in consultation with the Council and affected industry members.

Comment 7. The requirement that all salmon taken as bycatch in the BSAI groundfish trawl fisheries be retained until an observer has counted each fish and collected appropriate scientific or biological samples is supported. No data are available to suggest this requirement would increase salmon bycatch mortality, and it is an essential step in developing reliable data concerning the actual number of salmon taken as bycatch in the trawl fisheries and identifying the stocks of origin of salmon taken as incidental catch. The retention procedure should require observed vessels whose operations allow sorting to store salmon in separate bins on a haul-by-haul basis and to identify the haul(s) to which the bin(s) relate. This procedure is necessary to determine possible correlations between

haul characteristics and salmon bycatch rates.

Response. NMFS concurs and has revised the final rule to require operators of observed vessels whose operation allows sorting of catch to store salmon from different hauls separately and to identify for the observer those hauls associated with retained salmon. In addition to being necessary for assessing possible correlations between haul characteristics and salmon bycatch rates, this requirement will provide data that could be used by NMFS to assess observed salmon bycatch rates when other than whole-haul sampling is used by the observer.

Comment 8. Any exemption for processors not carrying observers from the requirement of retaining salmon until the number of salmon is determined by a NMFS-certified observer is opposed. If NMFS concludes that such exemptions may be necessary, they should be made available by the Director, Alaska Region, NMFS (Regional Director), on a case-by-case basis, upon a showing by the processor that the requirement would result in undue expense or difficulty, and that the fisheries served by the processor have a low salmon bycatch rate.

Response. In 1992 and 1993, the pollock fisheries accounted for 91 percent and 97 percent, respectively, of the total salmon bycatch in the BSAI trawl fisheries. Mothership and shoreside processors receiving pollock from vessels participating in this fishery typically are large operations that process a high volume of fish. In 1993, 13 mothership and shoreside processors participated in the pollock fishery during at least 1 week. Twelve of these processors received over 500 mt of groundfish during the months that they participated in the pollock fishery and were required to obtain either 30-percent or 100-percent observer coverage. One processor received less than 500 mt of groundfish during the single month it participated in the pollock fishery and was exempt from observer coverage. This processor accounted for less than .003 percent of the total pollock harvest.

Processors that receive less than 500 mt of groundfish during a month may never be required to obtain observer coverage during a year if they maintain monthly groundfish processing at this low level. Given that unobserved processors accounted for less than 1 percent of the 1993 pollock catch and that 97 percent of the 1993 salmon bycatch occurred in the pollock fishery, NMFS maintains that providing authority to the Regional Director to exempt these processors is not necessary because these processors are not now observed. If the Council determines in the future that small mothership and shoreside operations should be subject to observer requirements, then a separate regulatory amendment can be initiated to increase observer coverage requirements for these operations.

Pending approval of the proposed North Pacific Fisheries Research Plan adopted by the Council at its June 1992 meeting, observer coverage requirements will be determined annually under regulations implementing the second year of the Research Plan, currently scheduled for 1996. If necessary, an increase in observer coverage of small processing operations could be considered under this annual process to obtain additional data on salmon bycatch associated with these operations.

Comment 9. No circumstances likely exist under which release of haul-by-haul observer data listed in the proposed rule for the Alaska trawl fisheries other than for rockfish, Greenland turbot, and Atka mackerel could reasonably be expected to cause substantial competitive harm. Fisheries other than those identified generally take place on well-known fishing grounds, and at times of the year when a substantial portion of the trawl fleet is fishing. Because release of information concerning target species catch per unit of effort is not proposed for release, it is highly unlikely that knowledge of individual haul locations or bycatch rates would result in competitive harm to the party providing the information. In the rare circumstance where that may be possible, the proposed petition procedure should provide adequate protection.

Response. Consistent with procedures set out at 15 CFR 4.7(h) for the disclosure of commercial or financial information, NMFS has approved regulations for the release to the public of observer data collected onboard trawl vessels participating in a directed fishery for groundfish other than Greenland turbot, rockfish, or Atka mackerel. In taking this action, NMFS has acknowledged that the disclosure of observer data on prohibited species bycatch and associated haul location and depth information could possibly be expected to divulge information on specific fishing operations in a manner that would result in substantial competitive harm.

Comment 10. The authority for public release of haul-by-haul observer data listed at § 672.27(g)(2) and § 675.25(g)(2) of the proposed rule should be expanded to include the Greenland turbot trawl fishery, given the serious problem with halibut bycatch experienced in this fishery. The proposed regulation does not require the release of data from all fisheries to which it applies. If there is no consensus that data from a particular fishery should be released, the Regional Director can weigh objections and act accordingly. It is thus appropriate to structure the authority rather broadly at this time to avoid having to initiate new rulemaking on a fishery-by-fishery basis.

Response. NMFS has acknowledged that the release of observer data on a haul-by-haul basis could divulge information on specific fishing operations in a manner that would result in substantial competitive harm. Except as provided by pre-notification procedures set out at 15 CFR 4.7(h), commercial or financial information cannot be released under the Freedom of Information Act (5 U.S.C. 552(b)(4)). The regulations at § 672.27(g)(2) and § 675.25(g)(2) satisfy this pre-notification procedure, except for the Greenland turbot, Atka mackerel and rockfish fisheries. At the request of representatives for the Alaska groundfish trawl industry, these exceptions were included in the proposed rule because of the greater potential for substantial competitive harm that would result from the release of observer data on haul locations, given that these fisheries are conducted by a relatively small number of vessels, involve relatively small amounts of quota, and are geographically specific in nature. NMFS has determined to continue to exempt these fisheries from release of haul-by-haul observer data under this final rule, given general concerns about the release of these data and continued industry support for the release of haul-by-haul observer data collected for all other trawl fisheries, particularly those that experience the highest salmon bycatch rates. Observer data collected on board vessels participating in the Greenland turbot fishery still could be released under the Freedom of Information Act, provided that NMFS provides written notice to each vessel operator and owner of a request for disclosure and describes the nature of the information requested for public release.

Comment 11. The preamble to the proposed rule implies that NMFS may limit the release of haul-by-haul data to those collected from 1992 onward. This restriction is inappropriate. Data collected prior to 1992 may be a valuable source of bycatch pattern information and should be released.

Response. NMFS intent for the release of specified observer data on a haul-by-

haul basis is to facilitate research by industry on salmon and other prohibited species bycatch that would lead to more informed decisions by vessel operators on alternative fishing practices to minimize bycatch rates of these species. Pending the availability of staff resources, NMFS concurs in the release of observer data specified in regulations at § 672.27(g)(2) and § 675.25(g)(2) for all prior years where available. NMFS has taken this position after considering (1) assertions by members of the industry that historic data are necessary to better support independent industry initiatives, to identify bycatch patterns, and to better address the bycatch problem in the groundfish trawl fisheries, and (2) the potential competitive harm resulting from the release of observer data becomes increasingly diminished relative to historic data.

Comment 12. Regulations at § 672.27(g)(2) and § 675.25(g)(2) should be revised to clarify that the specified observer data are not released to the public under vessel name.

Response. NMFS has revised the final rule to clarify the intent of NMFS that haul-by-haul observer data will not identify the vessel from which the data were collected.

Comment 13. The intent of proposed regulatory language at § 672.7(n) is unclear.

Response. Section 672.7(n) prohibits vessel operators who deliver BSAI groundfish catch to GOA processors from discarding salmon until the salmon are counted by a NMFS-certified observer. Similarly, GOA processors are prohibited from discarding salmon taken as bycatch in a BSAI trawl fishery until an observer has counted each fish, unless the processor is exempt from observer coverage. The intent of this regulation is to ensure that salmon incidentally taken in the BSAI trawl fisheries are counted by a NMFS-certified observer if the associated groundfish catch is delivered to a GOA processor and to discourage vessel operators who harvest BSAI groundfish from delivering to GOA processors for the sole purpose of avoiding costs associated with retaining salmon under regulations at § 675.20(c) (3) and (6).

Comment 14. In the proposed rule at § 675.20(c)(6)(i), the phrase "until all salmon have been counted by a NMFS-certified observer" should be revised to read "until the number of salmon has been determined by a NMFS-certified observer". This revision would allow the NMFS Observer Program to develop guidelines for observers that provide alternative methods for estimating the number of salmon that have been retained for enumeration. These guidelines would be especially important if the number of salmon retained by a vessel or processor is large and salmon cannot be individually counted without jeopardizing other observer duties.

Response. NMFS is preparing written instructions to observers for purposes of complying to the extent practicable with this final rule. These instructions will include guidelines for observers for obtaining an estimate of the number of retained salmon when time constraints or other observer duties prevent an observer from counting each fish. NMFS agrees that the suggested revision to regulatory text clarifies NMFS intent and the final rule has been changed accordingly.

Comment 15. Based on information presented in the EA/RIR, the proposed rule requiring mandatory retention of salmon until counted by a NMFS-certified observer is unnecessary for proper scientific management of salmon stocks, but instead is intended to meet a political demand that activity of the groundfish fleet be curtailed. If NMFS is adequately accounting for the take of salmon bycatch in the North Pacific fisheries, it is unwise to burden observers with additional duties for political reasons when observers could spend that time ensuring the accuracy of their samples for all species for which they are charged with gathering data.

Response. No information exists to indicate that the current level of salmon bycatch in the Alaska trawl fisheries presents critical conservation issues; however, low salmon returns for Western Alaska stocks indicate that the potential exists for conservation concerns.

NMFS estimates salmon bycatch numbers in the Alaska groundfish fisheries using observed bycatch rates, although NMFS has expressed the opinion that observed bycatch rates could be improved if larger sample sizes were possible. The final rule would provide data to compare observed salmon bycatch rates with those derived through the mandatory salmon retention requirements for purposes of improving the overall estimate of salmon bycatch in the Alaska trawl fisheries.

NMFS shares the concern about observers being burdened with additional obligations, especially if new obligations jeopardize the collection-of-data on which the management of fishery resources is based. Nonetheless, NMFS has approved regulations requiring mandatory retention of salmon until a NMFS-certified observer has determined the number of salmon retained and completed the collection of any scientific data or biological samples from the retained fish. This action is necessary to provide additional information to management agencies and the industry on which to base the development of practical management measures to address the salmon bycatch problem. NMFS has determined that this information is sufficiently important to include its collection among the duties of NMFS-certified observers to the extent possible. NMFS is preparing written guidelines for observers to facilitate the collection of salmon data without serious jeopardy to other observer duties.

Classification

NMFS prepared an RIR that concludes that this rule will not have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from the Council (see **ADDRESSES**).

This final rule has been determined to be not significant under E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: April 14, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.7, paragraph (o) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(o) Discard any salmon taken incidental to a directed fishery for Bering Sea and Aleutian Islands management area groundfish by vessels using trawl gear until notified by a NMFS-certified observer that the number of salmon has been determined and the collection of any scientific data or biological samples has been completed as provided at 50 CFR 675.20(c)(6).

3. In § 672.27, paragraph (g) is added to read as follows:

§ 672.27 Observers.

* * * * *

(g) *Release of observer data to the public.* (1) The following information collected by observers for each catcher

processor and catcher vessel during any weekly reporting period may be made available to the public:

(i) Vessel name and Federal permit number;

(ii) Number of chinook salmon and "other salmon" observed;

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch;

(iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls;

(v) The number of observed trawl hauls or fixed gear sets;

(vi) The number of trawl hauls that were basket sampled; and

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2)(i) The information listed in paragraphs (g)(2)(i) (A) through (M) of this section and collected by observers from observed hauls onboard vessels using trawl gear to participate in a directed fishery for groundfish other than for rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(A) Date;

(B) Time of day gear is deployed;

(C) Latitude and longitude at beginning of haul;

(D) Bottom depth;

(E) Fishing depth of trawl;

(F) The ratio of the number of chinook salmon to the total round weight of groundfish;

(G) The ratio of the number of other salmon to the total round weight of groundfish;

(H) The ratio of total round weight of halibut to the total round weight of groundfish;

(I) The ratio of total round weight of herring to the total round weight of groundfish;

(J) The ratio of the number of king crab to the total round weight of groundfish;

(K) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish;

(L) Sea surface temperature (where available); and

(M) Sea temperature at fishing depth of trawl (where available).

(ii) The identity of the vessels from which the data in paragraph (g)(2)(i) of this section are collected will not be released.

(3) In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted or within a reasonable time thereafter, that disclosure of the information listed in paragraph (g)(1) or (g)(2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 675.2 [Amended]

5. In § 675.2, the definition of "Bycatch Limitation Zone 2H" is removed.

6. In § 675.7, paragraph (p) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(p) Discard any salmon taken incidental to a directed fishery for groundfish by vessels using trawl gear until notified by a NMFS-certified observer that the number of salmon has been determined and the collection of any scientific data or biological samples has been completed as provided at § 675.20(c)(6).

7. In § 675.20, paragraphs (c)(3) and (4) are revised and paragraph (c)(6) is added to read as follows:

§ 675.20 General limitations.

* * * * *

(c) * * *

(3) The operator of each vessel regulated under this part must sort its catch as soon as possible after retrieval of the gear and, except as provided under paragraph (c)(6) of this section, must return all prohibited species or parts thereof to the sea immediately, with a minimum of injury, regardless of its condition, after allowing for sampling by an observer if an observer is onboard.

(4) Except as provided under paragraph (c)(6) of this section, it will be a rebuttable presumption that any prohibited species retained onboard a fishing vessel regulated under this part was caught and retained in violation of this section.

* * * * *

(6) *Retention of salmon.* (i) Except as provided in paragraph (c)(6)(ii) of this section, the operator of a vessel and the manager of a shoreside processing operation must not discard any salmon taken incidental to a directed fishery for groundfish by vessels using trawl gear until the number of salmon has been determined by a NMFS-certified observer and the collection of any scientific data or biological samples from the salmon has been completed.

(A) Operators of vessels carrying observers onboard and whose fishing operations allow for sorting of groundfish catch for salmon must retain all salmon bycatch from each haul in a separate bin or other location that allows an observer free and unobstructed physical access to the salmon to count each fish and collect any scientific data or biological samples. Salmon from different hauls must be retained separately in a manner that identifies the haul from which the salmon were taken.

(B) Operators of vessels not carrying observers onboard or whose fishing operations do not allow for sorting of groundfish catch for salmon must ice, freeze, or store in a refrigerated saltwater tank all salmon taken as bycatch in trawl operations for delivery to the processor receiving the vessel's groundfish catch.

(C) Processors receiving groundfish harvested in a directed fishery for groundfish using trawl gear must retain all salmon delivered by each trawl vessel during a weekly reporting period in separate bins marked with the vessel's name and ADF&G fish ticket number(s) for each delivery until a NMFS-certified observer has counted each salmon and collected any scientific data or biological samples from the salmon delivered to the processor by that vessel. Processors without an observer present must store whole salmon in an iced or frozen state until an observer is available to count each fish. Salmon must be stored at a location that allows an observer free and unobstructed physical access to each salmon.

(ii) Mothership processor vessels and shoreside processing facilities that are exempt from obtaining observer coverage during a month under § 675.25 or § 672.27 of this chapter are exempt from mandatory retention of salmon under this paragraph (c)(6).

(iii) Operators of vessels and managers of shoreside processing operations that are required to retain salmon under paragraph (c)(6)(i) of this section must designate and identify to the NMFS-certified observer onboard the vessel or at the shoreside operation a crew person or employee to be responsible for sorting, retention, and storage of salmon consistent with this paragraph (c)(6). Upon the request of the NMFS-certified observer, the designated crew person or employee also is responsible for counting salmon and taking biological samples from retained salmon under the direction of the observer.

(iv) Salmon must be returned to Federal waters as soon as is practicable, with a minimum of injury, regardless of condition, following notice by a NMFS-certified observer that the number of salmon has been determined and the collection of any scientific data or biological samples has been completed.

8. In § 675.21, paragraphs (a)(4) and (c)(1)(iii) are removed; paragraphs (a)(5) through (a)(7) are redesignated as paragraphs (a)(4) through (a)(6), respectively; paragraph (c)(1)(iv) is redesignated as paragraph (c)(1)(iii); and paragraphs (b)(1) introductory text, (b)(2)(i) and newly redesignated paragraphs (a)(4) and (c)(1)(iii) are revised to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) * * *

(4) The PSC limit of Pacific halibut caught while conducting any trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 3,775 mt of halibut mortality.

* * * * *

(b) * * * (1) *Apportionment to trawl fishery categories.* NMFS, after consultation with the Council, will apportion each PSC limit set forth in paragraphs (a) (1) through (5) of this section into bycatch allowances for fishery categories specified in paragraph (b)(1)(iii) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

* * * * *

(2) * * * (i) NMFS, after consultation with the Council, may apportion the halibut PSC limit for non-trawl gear set forth in paragraph (a)(6) of this section into bycatch allowances for fishery categories specified in paragraph (b)(2)(ii) of this section, based on each category's proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the non-trawl halibut PSC limit. The sum of all halibut bycatch allowances will equal the halibut PSC limit specified in paragraph (a)(6) of this section.

* * * * *

(c) * * *

(1) * * *

(iii) *Halibut bycatch allowance.* If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b)(1)(iii) (B) through (F) of this section in the Bering Sea and Aleutian Islands Management Area will catch the halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the **Federal Register** the closure of the entire Bering Sea and Aleutian Islands management area to directed fishing for the species and/or species group that comprises that fishery category (which together constitute a species or species group for purposes of the directed fishing standards) for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/"other species" fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

* * * * *

9. In § 675.25, paragraph (g) is added to read as follows:

§ 675.25 Observers.

* * * * *

(g) *Release of observer data to the public.* (1) The following information collected by observers for each catcher processor and catcher vessel during any weekly reporting period may be made available to the public:

(i) Vessel name and Federal permit number;

(ii) Number of chinook salmon and "other salmon" observed;

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch;

(iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls;

(v) The number of observed trawl hauls or fixed gear sets;

(vi) The number of trawl hauls that were basket sampled; and

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2)(i) The information listed in paragraphs (g)(2)(i) (A) through (M) of this section and collected by observers from observed hauls onboard vessels using trawl gear to participate in a directed fishery for groundfish other than for rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(A) Date;

(B) Time of day gear is deployed;

(C) Latitude and longitude at beginning of haul;

(D) Bottom depth;

(E) Fishing depth of trawl;

(F) The ratio of the number of chinook salmon to the total round weight of groundfish;

(G) The ratio of the number of other salmon to the total round weight of groundfish;

(H) The ratio of total round weight of halibut to the total round weight of groundfish;

(I) The ratio of total round weight of herring to the total round weight of groundfish;

(J) The ratio of the number of king crab to the total round weight of groundfish;

(K) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish;

(L) Sea surface temperature (where available); and

(M) Sea temperature at fishing depth of trawl (where available).

(ii) The identity of the vessels from which the data in paragraph (g)(2)(i) of this section are collected will not be released.

(3) In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted or within a reasonable time thereafter, that disclosure of the information listed in paragraph (g)(1) or (g)(2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

[FR Doc. 94-9482 Filed 4-19-94; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register
Vol. 59, No. 76
Wednesday, April 20, 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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Notice of proposed rule.

SUMMARY: The Board proposes to amend its practices and procedures by extending the regulatory time limits for filing initial appeals, class action appeals, motions for attorney fees, initial appeals raising issues of prohibited discrimination, and requests to review final decisions under negotiated grievance procedures. The time limit for filing appeals with the Federal courts, as well as the Equal Employment Opportunity Commission, is currently greater than that of the Board. This proposed change brings the Board's practices and procedures more in line with those entities and will also have the effect of making the Board's appellate processes more accessible to Federal employees.

DATES: Comments must be received on or before May 20, 1994.

ADDRESSES: Submit comments to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419–0002.

FOR FURTHER INFORMATION CONTACT: Llewellyn M. Fischer, General Counsel, (202) 653–7171.

SUPPLEMENTARY INFORMATION: The proposed change in the Board's practices and procedures came about as a result of Executive Order 12866 of September 30, 1993, requiring agencies to insure that regulations are effective, consistent, sensible, and understandable. The Board's review found that changing the time limit for filing initial appeals to its regional offices would be consistent with the legal and regulatory time limits for filing with the Federal Courts and the Equal Employment Opportunity Commission both of which can potentially review final decisions of the Board. The consistency created by this proposed change will help to eliminate possible confusion by Federal employees who file appeals with the Board.

The Board has determined that this proposed regulatory action is not "significant" as defined by Executive Order 12866, and therefore, is not subject to review by the Office of Management and Budget.

The Board has also determined that this proposed regulatory action does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96354, 95 Stat. 1164, 5 U.S.C. 601–612).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil Rights, Government employees.

Accordingly, the Board proposes to amend 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701 unless otherwise noted.

§ 1201.22 [Amended]

2. Section 1201.22 is amended by removing the number "20" in the first sentence of paragraph (b) and by adding in its place the number "30"; and by removing the number "25" from the second sentence of paragraph (b) and by adding in its place the number "35".

3. Section 1201.23 is amended by revising the "EXAMPLE" to read as follows:

§ 1201.23 Computation of time.

* * * * *

Example: If an employee receives a decision notice that is effective on July 1, the 30-day period for filing an appeal starts to run on July 2. The filing ordinarily would be timely only if it is made by July 31. If July 31 is a Saturday, however, the last day for filing would be Monday, August 2.

§ 1201.27 [Amended]

4. Section 1201.27 is amended by removing the number "25" from the second sentence in paragraph (b) and adding in its place the number "35"; and by removing the number "25" from the last sentence is paragraph (b) and adding in its place the number "35".

§ 1201.37 [Amended]

5. Section 1201.37 is amended by removing the numbers "20" and "25" from the second sentence in paragraph (a)(3) and adding in their place the numbers "30" and "35", respectively.

§ 1201.154 [Amended]

6. Section 1201.154 is amended by removing the number "20" in paragraph (a) and adding in its place the number "30"; by removing the number "20" from paragraph (b)(1) and by adding in its place the number "30"; and by removing the number "25" from paragraph (d) introductory text and adding in its place the number "35".

Dated: April 13, 1994.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 94–9322 Filed 4–19–94; 8:45 am]

BILLING CODE 7400–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064–AB30

Management Official Interlocks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) proposes to amend the regulations that implement the Depository Institution Management Interlocks Act (Interlocks Act or Act) as part of a joint initiative by the federal depository institutions regulatory agencies. The Interlocks Act generally prohibits certain management official interlocks between unaffiliated depository institutions, depository holding companies, and their affiliates. This proposed amendment would create limited exemptions to the prohibition on management official interlocks between certain depository organizations located in the same community or relevant metropolitan statistical area (RMSA). These exemptions would permit management official interlocks between depository organizations that together control only a small percentage of the total deposits in the community or RMSA.

DATES: Written comments must be received on or before June 20, 1994.

ADDRESSES: All comments should be addressed to Robert E. Feldman, Acting Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, or delivered to room F–400, 1776 F Street, NW., Washington, DC, between the hours of 8:30 a.m. and 5 p.m. on business days [FAX number (202) 898–3838]. Comments will be available for inspection and photocopying in the FDIC's reading room, room 7118, 550 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist, Division of Supervision, (202) 898–6759; or Mark Mellon, Senior Attorney, Regulation and Legislation Section, Legal Division, (202) 898–3854, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The general purpose of the Interlocks Act (12 U.S.C. 3201 *et seq.*) is to foster competition among depository institutions, depository holding companies and their affiliates by prohibiting certain management interlocks that contribute to anticompetitive practices. The primary concern is that interlocking management may enable certain depository institutions to control the flow and availability of credit in the markets in which they operate.

The Act prohibits, among other things, a management official of a depository institution or a depository holding company (a depository organization [1]) from serving as a management official of an unaffiliated depository organization if an office of one of the depository institutions (or any depository institution affiliate thereof) is located in the same city, town, or village or a contiguous or adjacent city, town or village (community) [2] or RMSA [3] as an office of the other institution (or any depository institution affiliate thereof). The prohibitions apply if both organizations are depository institutions and each has an office in the same RMSA; if offices of depository institution affiliates of both organizations are located in the same RMSA; or if one organization is a depository institution that has an office in the same RMSA as a depository institution affiliate of the other organization. The RMSA restriction, however, does not apply to depository institutions with less than $20 million in assets. Section 203 of the Interlocks Act (12 U.S.C. 3202). Congress included RMSAs as appropriate regions within which to restrict management interlocks because RMSAs are "economic trade areas and reflect the area in which financial institutions compete". S. Rep. No. 323, 95th Cong., 1st Sess. 14 (1977).

In the Interlocks Act, Congress authorized the Federal depository institution regulatory agencies (the Board of Governors of the Federal Reserve System, the FDIC, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, hereinafter the "Agencies") to implement rules and regulations to carry out the Act, including rules or regulations that permit service by a management official that would otherwise be prohibited by the Act. Section 209 of the Interlocks Act (12 U.S.C. 3207). The legislative history of the Act indicates that the Agencies may exercise this rulemaking authority to exempt management official interlocks that might be otherwise prohibited by the statute if the Agencies establish that the exception has a pro-competitive effect. H.R. Rep. No. 1383, 95th Cong., 2d Sess. 15 (1978).

Pursuant to this rulemaking authority, the Agencies have previously established exemptions for institutions located in low- and moderate-income areas, minority and women's organizations, newly-chartered institutions, and institutions facing conditions endangering their safety and soundness. See, e.g., 12 CFR 348.4(b). These exemptions are available on a temporary basis upon a demonstration that the exempted management official interlock is necessary to provide management or operating expertise to the requesting institution.

The FDIC now seeks comment on a proposal to establish additional exemptions from the prohibitions of the Act. These exemptions would be available to depository organizations that between them control a small percentage of deposits in a community or RMSA. The exemptions would be available without the prior approval of the FDIC. Each of the Agencies is proposing identical deposit share exemptions although each agency is publishing its proposal separately.

II. The Proposal

The Interlocks Act prevents two or more competing institutions from having an adverse impact on competition in the products and services they offer through common management officials. Where depository institutions dominate a large portion of the market, these risks are real. But when a particular market is served by many institutions, the risks diminish that depository institutions with interlocking management can adversely affect the products and services available in their markets.

The FDIC believes that the combined share of the deposits of two institutions provides a meaningful assessment of the capacity of the two institutions to control credit and related services in their market. This proposal represents the opinion of the FDIC that two depository institutions with a small proportion of the market they serve are not capable of exerting sufficient market influence to materially restrict the terms and availability of credit in their market. For institutions located in a RMSA, the RMSA constitutes the relevant market.

The Interlocks Act and regulations provide that the relevant market for organizations which are not located in a RMSA and organizations with total assets of less than $20 million that are located within a RMSA, is the city, town, or village and contiguous and adjacent areas in which the organizations are located. The FDIC believes that providing a similar small market share exemption for these community-based organizations also is appropriate.

This exemption for community-based organizations is available on the same basis as the exemption for organizations whose relevant market is the RMSA. A community-based organization which is interested in the small market share exemption may obtain the information on deposit share data for its community from the appropriate regional office of the FDIC. If the small market share deposit share test is met, the institution may engage in the interlock without prior FDIC approval.

III. The Small Market Share Exemption

The proposal would amend the management interlocks regulations to permit two depository organizations that serve the same RMSA to share management officials in circumstances where neither organization controls a significant portion of the deposits in that market. Specifically, the amended rule would permit two competing

[1] "Depository organization" is defined to mean a depository institution or a depository holding company. See 12 CFR 348.2(g).

[2] "Community" is defined to mean a city, town, or village, or contiguous or adjacent cities, towns, or villages. 12 CFR 348.2(c).

[3] An RMSA includes a primary metropolitan statistical area, a metropolitan statistical area, or a consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget. 12 CFR 348.2(n).

depository organizations, each with assets in excess of $20 million, to share management officials if the organizations together control no more than 20 percent of the deposits in the RMSA. The exemption also requires that the organizations control no more than 20 percent of the deposits in other RMSAs where they may compete directly through offices or through affiliated depository institutions.

The proposal treats management interlocks between institutions with assets of less than $20 million that are located within an RMSA and all depository institutions located outside of an RMSA in a similar manner. Specifically, the amendment exempts any management interlock between two depository organizations located in a community, as defined by the regulation, if their combined share of the total deposits in the community is no more than 20 percent.

Similarly, the organizations must not together control more than 20 percent of the deposits in any community in which they or their depository institution affiliates are both located.

To illustrate by example, if an RMSA has an assumed total deposit base of $1 billion, a depository institution which is located within that RMSA may engage in a management interlock with another institution if the organizations control no more than $200 million of deposits between them in that RMSA. If a community has an assumed total deposit base of $100 million, a depository institution which is located in that community may engage in a management interlock with another institution if the organizations control no more than $20 million of deposits between them in that community. When an interlock is sought for institutions that have offices in more than one RMSA or community, the same calculation must be made for each area in which both institutions have offices.

These exemptions would only be available if management interlocks between the two organizations are not otherwise prohibited by the Act. For example, the exemption would not be available if the interlock would be prohibited by the major assets provision of the Act (12 U.S.C. 3203).[4]

Under the proposal, depository organizations would only have to request appropriate deposit share data from the FDIC and then determine whether they are entitled to the exemption in reliance upon this information.[5] The process would involve neither an application nor an approval from the FDIC but the burden of determining the applicability of the exemption falls upon the depository organizations that seek it. The exemption is intended to be self-implementing. Management is responsible for compliance with the terms of the exemption and maintaining sufficient supporting documentation.

The availability of the exemption for depository institutions will be determined in reliance upon the data which is provided by depository organizations to their primary federal depository institutions regulatory agency in the Summary of Deposits (the summary). The summary is filed as an addendum to the Report of Condition and Income due on June 30 of each year which every insured depository institution must file with the federal regulatory agency which is its primary supervisor. As the summary breaks total deposits out by branch, the FDIC has the necessary information to determine deposit share by RMSA and community.[6]

The most recently available deposit share data will be used by the FDIC to allow organizations to determine whether they are entitled to the small market share interlock. Thus, in any one year, the FDIC will use the deposit share data which has been compiled for the previous year until such point as the new deposit share data from the June 30 summary for that year has been collected and analyzed. The FDIC will then use the new data until the process of collection and analysis is repeated for the following year.

While deposit share data can be pre-sorted and made readily available by RMSA, the deposit share data cannot be pre-sorted by community. For example, two depository organizations seeking to rely on the small market share exemption must first determine the total deposits in their community. To do this, the depository institutions must request deposit share data from the FDIC with sufficient specificity to delineate the community defined by the Interlocks Act that both the interlocking institutions will serve. Only then can they determine the portion of deposits that the institutions would be deemed to control in their relevant market if they engage in the interlock.

Institutions which determine that they are entitled to the small market share interlock in reliance on the summary filed on June 30 of a particular year will continue to enjoy that status until such time as the deposit share data from the June 30 summary for the following year is collected and analyzed by the FDIC. The institutions must then determine whether the required level of deposits has been exceeded. If at that point the level of deposits controlled exceeds 20 percent of deposits in the community or RMSA as measured in the new summary, the depository organizations have up to 15 months to correct the prohibited interlock. Institutions will be required to retain records supporting the applicability of the exemption.

The FDIC is interested in receiving comment on the effect of this proposal on the geographic markets covered by the Interlocks Act. The FDIC has attempted to determine the potential consequences of the proposal for RMSA markets by examining summary data for two very large RMSAs, two RMSAs of moderate size, and two smaller RMSAs. The FDIC has not attempted to assess the effect of the rule on communities because of the unique delineation of each community.

Depository organizations in each of the 6 RMSAs were ranked by their proportional shares of total deposits in the market. The institutions in the 6 RMSAs may also compete with each other through offices in other markets. The data was not analyzed, however, for proportional shares of total deposits in other RMSAs or communities where depository organizations which operate in the 6 RMSAs may also compete against one another. Moreover, since the data was taken from the summary for June 30, 1992, the data does not reflect recent consolidations in the markets.

Our preliminary analysis indicates that the exception would be available to the great majority of depository organizations operating in markets where the majority have a limited share of the market. In particular, this exemption would allow smaller institutions in RMSAs to interlock with each other. Smaller depository organizations would not be able to interlock with larger depository

[4] Section 204 of the Act provides that a depository institution or a depository holding company with assets in excess of $1 billion (or any affiliate thereof) may not enter into a management interlock with a depository institution or a depository holding company with assets in excess of $500 million (or any affiliate thereof).

[5] For the purpose of ascertaining whether depository organizations qualify for the exception, deposit information regarding specific communities and RMSAs will be available at the appropriate regional office of the Division of Supervision of the FDIC.

[6] The summary does not include the deposits held by federally-chartered credit unions, which are insured by the National Credit Union Share Insurance Fund, and state-chartered credit unions. Typically, these credit union deposits comprise only a small part of the total deposits in a relevant market. If included, the deposit figures for a particular market would be slightly increased. As such, the data will not include the credit union deposits, but will still serve as a reliable approximation of the total deposits in the relevant market.

organizations, however, when the latter dominate the market. It is unlikely that the larger institutions in the 6 markets would be able to interlock with each other because of their large share of deposits within their market or because of Interlocks Act provisions such as the major assets test (see footnote 4).

The purpose of the proposed small market share exemption is to provide an opportunity to a number of smaller institutions to share management talent and improve their ability to compete with larger institutions in their markets. The FDIC's ability to measure the actual effect of the proposed exemption in the RMSAs is limited (a prompt determination of the effect of the exemption in communities is not possible because of the difficulty in delineating communities). For these reasons, the FDIC seeks comment on whether the availability of the exemption would have a detrimental effect on competition in the affected markets.

The Board of Directors of the FDIC believes that this proposal will have a pro-competitive effect. Since the deposit base of the exempted interlocking institutions is small, the risk of anticompetitive control over the market is remote. To provide to these particular institutions this limited relief from the management interlocks restrictions enlarges the pool of experienced management talent upon which they may draw and enhances their operational effectiveness. The result will be better managed, more competitive, and healthier depository institutions.

IV. Request for Comment

In addition to the foregoing, the Board of Directors of the FDIC specifically requests comment on the following:

1. Whether 20 percent or less of the deposits of a community or RMSA is an appropriate threshold for the exemption or whether a different level is more appropriate.

2. Should the community and RMSA exemptions rely on the same or a different threshold level.

3. Whether and how the proposed procedure to employ the deposit data collected by the FDIC in connection with the summary will easily and effectively permit depository organizations to determine whether they qualify for the small market share exemption.

4. Whether the exemption for community-based institutions will be easy to use, or whether these institutions might be better served by another approach to the exemption.

5. Whether the exemption would enable depository organizations to subvert the purposes of the Interlocks Act by establishing multiple interlocks involving several individuals. For example, the FDIC is concerned that each of several directors of one depository organization could serve as a director of a different unaffiliated depository organization, facilitating diminished competition among the several depository organizations. The FDIC seeks comment on whether this concern is justified, and, if so, whether it is exacerbated by the fact that the threshold limit for the exemption is set at 20 percent of the deposits in the RMSA or community, rather than a smaller percentage.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FDIC hereby certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

The FDIC has reached this conclusion because the effect of the rule, if it is ultimately promulgated in its current form, will be to reduce the compliance requirements that are imposed upon small entities rather than to increase them. The proposed rule imposes no reporting requirements upon small entities since it will not be necessary to apply for the exemption and the necessary data to determine eligibility for the exemption will be available from the FDIC. The proposed rule will therefore have no economic impact on small entities. Moreover, small entities which would be entitled under the exemption to engage in an otherwise prohibited activity would have greater freedom of action as a result of the proposed rule rather than less. This is because the proposed rule seeks to create a regulatory exemption to a statutory prohibition on management interlocks between organizations.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review and approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Comments regarding the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064–XXXX), Washington, DC 20503, with copies of such comments sent to Steven F. Hanft, Assistant Executive Secretary (Administration), room F–400, FDIC, 550 17th St. NW., Washington, DC 20429.

The collection of information in this proposed rule is found in section 348.4(d), and takes the form of records maintained by depository organizations which are sufficient to support their determination that the interlocking relationships which they have established are exempt under this section. Such depository organizations must also maintain records which demonstrate that they have subsequently reconfirmed such determinations on an annual basis. The information will be used to provide state and federal examiners of depository institutions with documentation which will allow them to ascertain whether depository organizations are eligible for the exemption.

The estimated annual recordkeeping burden for the collection of information requirement in this proposed rule is summarized as follows:

Number of Recordkeepers	70
Annual Hours per Recordkeeper	3
Total Recordkeeping Hours	210

List of Subjects in 12 CFR Part 348

Antitrust, Banks, Banking, Holding companies.

For the reasons set forth in the preamble, pursuant to its authority under section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207), the Board of Directors of the FDIC proposes to amend part 348 of title 12, chapter III, subchapter B of the Code of Federal Regulations as follows:

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 348 continues to read as follows:

Authority: 12 U.S.C. 3207, 12 U.S.C. 1823(k).

2. In § 348.2, paragraphs (e) through (o) are redesignated as paragraphs (f) through (p) and new paragraph (e) is added to read as follows:

§ 348.2 Definitions.

* * * * *

(e) *Deposit* has the same meaning as provided under section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)).

* * * * *

3. Section 348.4 is amended by adding new paragraph (d) to read as follows:

§ 348.4 Permitted interlocking relationships.

* * * * *

(d) *Small market share exemption.* (1) Depository organizations controlling no more than 20 percent of the deposits in a community or relevant metropolitan statistical area. A management official may serve two unaffiliated depository organizations in a capacity which would otherwise be prohibited by § 348.3 (a) or (b) provided that the following conditions are met:

(i) The interlock is not prohibited by § 348.3(c); and

(ii) The two depository organizations hold in the aggregate no more than 20 percent of the deposits, as reported annually in the Summary of Deposits, in each relevant metropolitan statistical area or community in which the depository organizations have offices or in which depository affiliates of both depository organizations are located.

(2) *Confirmation and records.* Depository organizations must maintain records sufficient to support their determination that the interlocking relationship is exempt under this section and must reconfirm that determination on an annual basis.

(3) *Termination.* An interlock permitted by this exemption may continue as long as the conditions of this section are satisfied. Any increase in the aggregated deposit holdings of the depository organizations, as reported annually in the Summary of Deposits, that causes the interlock to become prohibited will be treated as a change in circumstances under § 348.6.

By order of the Board of Directors.

Dated at Washington, DC, this 22nd day of February, 1994.

Federal Deposit Insurance Corporation

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–9440 Filed 4–19–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–83–AD]

Airworthiness Directives: Cessna Aircraft Company Models 421C and 425 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise AD 91–25–08, which currently requires repetitively inspecting both wing front spar upper caps for cracks on certain Cessna Aircraft Company (Cessna) Models 421C and 425 airplanes, and repairing cracks that exceed certain limits. The proposed action would provide the option of incorporating a certain wing spar upper cap service kit as either terminating action or as an extension to the repetitive inspections currently required. Wing front spar upper cap cracks at the main landing gear actuating cylinder attachment fitting on three of the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent wing failure caused by excessive wing spar cracking.

DATES: Comments must be received on or before June 30, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–83–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Abbott, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4123; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–83–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–83–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 91–25–08, Amendment 39–8109 (56 FR 60056, November 27, 1991), currently requires repetitively inspecting both wing front spar upper caps for cracks on certain Cessna Models 421C and 425 airplanes, and repairing any crack found that exceeds certain limits. The action is accomplished in accordance with the instructions in Cessna Service Bulletin (SB) MEB91–7 or SB CQB91–8, both dated October 18, 1991, as applicable.

Since issuance of AD 91–25–08, Cessna has developed certain wing front spar upper cap service kits. The FAA has determined that these service kits, if incorporated, would either eliminate the need or extend the time necessary for the currently required repetitive inspections.

Cessna has revised both SB MEB91–7 and SB CQB91–8 to include reference of the service kits mentioned above. Cessna has also issued attachments to these service bulletins that specify procedures for incorporating the service kits.

After examining the circumstances and reviewing all available information related to the proposed action, the FAA has determined that: (1) The repetitive inspections can be either eliminated or extended (depending on whether cracks are found) if the service kits referenced above are incorporated; and (2) AD action should be taken to prevent wing failure because of excessive wing spar cracking.

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Models 421C and 425 airplanes of the same type design, the proposed AD would revise AD 91–25–08 by maintaining the repetitive inspection and possible crack

repair requirement, and adding the option of incorporating the applicable Cessna service kits to either eliminate or extend the inspection time interval (depending on whether cracks are found) of the repetitive inspections. The proposed inspections would be accomplished in accordance with the Accomplishment Instructions section of Attachment to Service Bulletin (SB) to Cessna SB CQB91–8R1, or the Accomplishment Instructions attachment to Cessna SB MEB91–7R1, as applicable. The proposed inspection-extending or inspection-terminating modifications (optional) would be accomplished in accordance with the instructions to the applicable service kit that are included as an attachment to the above-referenced service bulletins.

The FAA estimates that 551 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 3 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $90,915. This figure does not take into account the cost of repetitive inspections nor the cost of the optional inspection-extending or inspection-terminating service kit installations. The FAA has no way of determining how many repetitive inspections each operator would incur over the lifetime of the airplane.

In addition, the FAA estimates 52 workhours to install service kits on the spar caps at an average labor rate of approximately $55 an hour, and $1,050 cost per airplane for service kit parts. Based on these figures, the cost for the optional service kit installations on U.S. operators would be $2,154,410 or $3,910 per airplane. After incorporation of these kits, the repetitive inspections would be terminated or the number of repetitive inspections would be reduced depending on whether the spar was cracked.

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

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–25–08, Amendment 39–8109 (56 FR 60056, November 27, 1991), and by adding a new airworthiness directive to read as follows:

Cessna Aircraft Company: Docket No. 91–CE–83–AD; Revises AD 91–25–08, Amendment 39–8109.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
421C	421C0801 through 421C1807.
425	425–0002 through 425–0236.

Compliance: Required initially upon the accumulation of 3,000 hours time-in-service (TIS) or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished within the last 300 hours TIS, and thereafter as indicated in the body of this AD.

Note 1: The compliance times specified in this AD take precedence over those referenced in the applicable service information.

To prevent wing failure caused by excessive wing spar cracking, accomplish the following:

(a) Fluorescent penetrant inspect both the left and right wing front spar upper caps for cracks between the main landing gear actuating cylinder attachment and the front spar wing attach fittings in accordance with the Accomplishment Instructions section of Attachment to Service Bulletin (SB) to Cessna SB CQB91–8R1, or the Accomplishment Instructions attachment to Cessna SB MEB91–7R1, as applicable.

(b) If any crack is found that is parallel (inboard-outboard) to the top of the spar cap, install the applicable SK421–142 or SK425–44 service kit (−1 for left spar cap and −2 for right spar cap) in accordance with instructions to the applicable service kit (included with the service bulletins referenced in paragraph (a) of this AD) at the times that correspond with the following crack lengths, and reinspect (as applicable) as specified in paragraph (d) of this AD:

(1) If equal to or less than 2.0 inches in length, within the next 200 hours TIS;

(2) If more than 2.0 inches and less than 2.5 inches in length, within the next 50 hours TIS; or

(3) If 2.5 or more inches in length, prior to further flight.

(c) If any crack (regardless of length) is found that is not parallel (inboard-outboard) to the top of the spar cap, prior to further flight, obtain a repair scheme from the manufacturer through the Wichita Aircraft Certification Office (ACO), incorporate this repair scheme, and reinspect as specified in paragraph (d) of this AD.

(d) Reinspect (fluorescent penetrant) the left and right wing front spar upper caps for cracks in accordance with those procedures specified in paragraph (a) of this AD at intervals presented within the applicable criteria below:

(1) With cracks less than or equal to 2.0 inches in length that are parallel (inboard-outboard) to the top of the spar cap, at 50-hour TIS intervals until the applicable service kit is installed in accordance with paragraph (b) of this AD, and then reinspect thereafter at intervals not to exceed 600 hours TIS.

(2) With cracks found and the applicable SK421–142 or SK425–44 service kit (−1 for left spar cap and −2 for right spar cap) incorporated, at 600-hour TIS intervals.

(3) With no cracks found and the applicable SK421–142 or SK425–44 service kit (−1 for left spar cap and −2 for right spar cap) not incorporated, at 300-hour TIS intervals; or

(4) With no cracks found and the applicable SK421–142 or SK425–44 service kit (−1 for left spar cap and −2 for right spar cap) incorporated, no repetitive inspections required.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita ACO, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment revises AD 91-25-08, Amendment 39-8109.

Issued in Kansas City, Missouri, on April 14, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-9473 Filed 4-19-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 94-AGL-10]

Proposed Modification of Class E Airspace; Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Minneapolis, MN, to accommodate a Standard Instrument Approach Procedures (SIAP) at Airlake Airport, Lakeville, MN. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before June 5, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 94-AGL-10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-AGL-10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Minneapolis, MN, to accommodate a Standard Instrument Approach Procedure (SIAP) at Airlake Airport, Lakeville, MN. Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area, which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated 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 E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR 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 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Minneapolis, MN (Revised)

Minneapolis-St. Paul International (Wold-Chamberlain) Airport, MN
(lat. 44°53'03" N., long. 93°12'55" W.)
Minneapolis, Anoka County-Blaine Airport (Janes Field), MN
(lat. 45°08'42" N., long. 93°12'40" W.)
St. Paul, Lake Elmo Airport, MN
(lat. 44°59'51" N., long. 92°51'21" W.)
Lakeville, Airlake Airport, MN
(lat. 44°37'40" N., long. 93°13'41" W.)
Minneapolis-St. Paul International (Wold Chamberlain) Airport DME Antenna
(lat. 44°52'29" N., long. 93°12'24" W).
St. Paul Downtown Holman Field, MN
(lat. 44°56'04" N., long. 93°03'36" W.)
Farmington, MN VORTAC
(lat. 44°37'34" N., long. 93°10'55" W.

That airspace extending upward from 700 feet above the surface within a 20-mile radius of the Minneapolis-St. Paul International (Wold Chamberlain Airport DME antenna including that airspace extending beyond the 20-mile radius of the Minneapolis-St. Paul International (Wold Chamberlain) Airport DME antenna within a 6.4-mile radius of the Anoka County-Blaine Airport (Janes Field) and within a 6.3-mile radius of the Lake Elmo Airport and within a 6.4-mile radius of the Airlake Airport and within 3.3 miles each side of the 084° bearing from the Farmington VORTAC extending from the 6.4-mile radius to 14.8 miles east of the Airlake Airport.

* * * * *

Issued in Des Plaines, Illinois, on April 7, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94-9564 Filed 4-19-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Tariff Classification of Headbands and Similar Articles

AGENCY: Customs Service, Treasury.

ACTION: Proposed interpretive rule; solicitation of comments.

SUMMARY: At its Tenth Session the Harmonized System Committee of the Customs Cooperation Council approved certain amendments to the Explanatory Notes concerning the classification of textile headbands. One of these amendments states that textile headbands are excluded from Heading 9615 of the Harmonized Commodity Description and Coding System. In past rulings, Customs has classified certain textile headbands in Heading 9615 of the Harmonized Tariff Schedule of the United States (HTSUS). In application of these amendments to the Explanatory Notes, we believe that textile headbands are excluded from Heading 9615, HTSUS, and are classifiable in Section XI, HTSUS. This document invites comments on the classification of textile headbands.

In addition, in the past we have classified ponytail holders and similar articles in Heading 9615, HTSUS. In view of the decision by the Harmonized System Committee and our reexamination of the issue, we are of the opinion that only hair care accessory items of rigid or semi-rigid construction should be classified in Heading 9615, HTSUS. Ponytail holders and similar hair care accessories, not of rigid or semi-rigid construction, comprised of textile materials, should be excluded from Heading 9615, HTSUS, and classified as clothing accessories of section XI, HTSUS. Therefore, we are also inviting comments on the classification of ponytail holders and similar hair care accessories.

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Office of Regulations and Rulings, Regulations Branch, Franklin Court, 1301 Constitution Avenue NW., Washington, DC 20229. Comments may be viewed at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Craig Clark, Commercial Rulings Division, U.S. Customs Service, (202) 482-7050.

SUPPLEMENTARY INFORMATION:

Background

Section XI of the Harmonized Tariff Schedule of the United States (HTSUS) provides for textiles and textile articles. Heading 6117, HTSUS, provides for other made up clothing accessories, knitted or crocheted. Heading 6217, HTSUS, provides for other made up clothing accessories, not knitted or crocheted. Heading 9615, HTSUS, provides for combs, hair-slides and the like, hairpins, curling pins, curling grips, hair-curlers, and the like, other than those of Heading 8516, and parts thereof.

At its Tenth Session the Harmonized System Committee of the Customs Cooperation Council examined the classification of knitted headbands and approved the following three amendments to the text of the Explanatory Notes:

1. *Explanatory Note to Heading 61.17 (page 845, new item (12)):* "*Headbands*, used as protection against the cold, to hold the hair in place, etc."
2. *Explanatory Note for exclusions to Heading 63.07 (page 868, last paragraph, new item (e):* "Knitted headbands (heading 61.17)."
3. *Explanatory Note to Heading 96.15 (page 1611, new last paragraph):* "This heading excludes textile headbands (Section XI)."

According to the decision of the Harmonized System Committee, knitted headbands are classified as clothing accessories of Heading 6117, HTSUS. In addition, textile headbands are excluded from classification in Heading 9615, HTSUS, and instead, are to be classified as textile articles of Section XI, HTSUS.

The Explanatory Notes to the Harmonized Commodity Description and Coding System (Harmonized System) constitute the official interpretation of the scope and content of the tariff at the international level. They represent the considered views of classification experts of the Harmonized System Committee. While not treated as dispositive, the Explanatory Notes are to be given considerable weight in Customs interpretation of the HTSUS. It has therefore been the practice of the Customs Service to consult the terms of the Explanatory Notes when interpreting the HTSUS.

In the past, Customs has classified many headbands wholly of textile materials in Heading 9615, HTSUS, with the exception being headbands made of terry knit fabric, which were classified in Heading 6117, HTSUS. The rationale for these decisions was that textile headbands met the definition of the term hair-slides and the like. We now believe that in application of the recent amendments to the Explanatory Notes, textile headbands do not fall within the scope of Heading 9615, HTSUS, and are excluded from that heading. We are inviting comments regarding this proposed classification change.

The type of article considered by the Harmonized System Committee and classified in Heading 6117, HTSUS, was

a soft knitted textile headband, without any underlying foundation of plastic, metal, etc. Some headbands have a mixed construction, e.g., a plastic base and a textile covering. Based on the amendments to the Explanatory Notes and the views expressed by other customs administrations, we believe that headbands of mixed construction, having a rigid or semi-rigid foundation, would meet the definition of the term hair-slides and the like and remain classified in Heading 9615, HTSUS. Those headbands of soft construction and made primarily of textile materials would be considered textile headbands and thus would be excluded from Heading 9615, HTSUS.

Accordingly, while we have previously classified many ponytail holders and similar articles in Heading 9615, HTSUS, the evidence of record supports a finding that the term hair-slides and the like of Heading 9615, HTSUS, refers to articles of rigid or semi-rigid construction. This view is consistent with the Explanatory Notes to Heading 9615, HTSUS, which state that hair-slides and the like are usually made of plastics, ivory, bone, horn, tortoise-shell, metal, etc. Soft ponytail holders and similar hair care accessories made of textile materials should therefore be excluded from Heading 9615, HTSUS, and be classified as clothing accessories of section XI, HTSUS. Consequently, we are also inviting comments on the classification of ponytail holders and similar hair care accessories.

Comments

Before making a determination on this matter, Customs invites written comments from interested parties on this issue. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, Office of Regulations and Rulings, Franklin Court, 1099 14th Street NW., suite 4000, Washington, DC.

Approved: March 31, 1994

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–9439 Filed 4–19–94; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 200]

Educational, Scientific and Cultural Material; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

AGENCY: United States Information Agency.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: This is to withdraw the Proposed Rulemaking notice (FR 94–8047) published at page 17057 of the **Federal Register** (59 FR 17057) on April 11, 1994. A final rulemaking will be forthcoming.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street SW., Washington, D.C. 20547, (202) 619–6829.

Dated: April 13, 1994.

Les Jin,

General Counsel.

[FR Doc. 94–9436 Filed 4–19–94; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–10–94]

RIN 1545–AS54

Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to permitted variable interest rates for regular interests in real estate mortgage investment conduits, or REMICs. A portion of the text of those temporary regulations also serves as the partial text of these proposed regulations. The remaining text of these proposed regulations concerns permitted specified portion interest rates for regular interests and effective dates. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by June 20, 1994. Outlines of topics to be discussed at the public hearing scheduled for July 22, 1994, at 10 a.m. must be received by July 1, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (FI–10–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (FI–10–94), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Carol A. Schwartz, (202) 622–3920; concerning submissions and the hearing, Carol Savage, (202) 622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) contained in § 1.860G–1(a)(3)(i) concerning permitted variable interest rates for REMIC regular interests. A portion of the text of those temporary regulations also serves as a partial text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

This notice of proposed rulemaking also contains rules under § 1.860G–1(a)(2)(i) that are not in the temporary regulations. These rules concern interest rates, applicable to a REMIC regular interest, that consist of a "specified portion."

For an entity to qualify as a REMIC, every interest in the entity must be a residual interest or a regular interest. The term "regular interest" is defined in section 860G(a)(1) of the Internal Revenue Code. Section 860G(a)(1)(B) requires that any interest payments on a regular interest be based on a fixed rate or on a variable rate. Interest payments on a regular interest may also consist of a specified portion of the interest payments on qualified mortgages held by a REMIC, provided the specified portion does not vary while the regular interest is outstanding.

Current § 1.860G–1(a)(2)(i) (A), (B), and (C) identifies the specified portions that are permitted under section 860G(a)(1)(B). Paragraph (a)(2)(i)(A)

describes a portion that can be expressed as a percentage of the interest payable on some or all of the qualified mortgages held by the REMIC. The qualified mortgages, however, must bear interest at a fixed rate or at a permitted variable rate. This limitation prevents the REMIC from passing through as interest certain contingent payments that may be associated with the qualified mortgages.

Taxpayers have requested that the IRS clarify that a REMIC may issue a specified portion regular interest (sometimes called an "Interest Only" interest or "IO") expressed as a percentage of the interest payable on an IO acquired from another REMIC. The proposed regulations, which are proposed to be effective for entities whose startup day is on or after November 12, 1991, clarify that issue. The IRS and Treasury Department specifically invite comments regarding whether further guidance under 1.860G–1(a)(2)(i) is necessary.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. 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. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Friday, July 22, 1994, at 10 a.m. in the IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by June 20, 1994, and submit an outline of the topics to be discussed and the time to be devoted to each topic by July 1, 1994.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Carol A. Schwartz and Marshall Feiring, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.860A–0 is amended by:

1. Adding an entry for § 1.860A–1(b)(4).
2. Revising the entry for § 1.860G–1(a)(3)(i).
3. The addition and revision read as follows:

§ 1.860A–0 Outline of REMIC provisions.

* * * * *

§ 1.860A–1 Effective dates and transition rules.

* * * * *

(b) * * *

(4) Rate based on current interest rate.

(i) In general.

(ii) Rate based on index.

(iii) Transition obligations.

* * * * *

§ 1.860G–1 Definition of regular and residual interests.

(a) * * *

(3) * * *

(i) Rate based on current interest rate.

* * * * *

Par. 3. Section 1.860A–1 is amended by adding paragraph (b)(4) to read as follows:

§ 1.860A–1 Effective dates and transition rules.

* * * * *

(b) * * *

(4) *Rate based on current interest rate*—(i) *In general.* Section 1.860G–1(a)(3)(i) applies to obligations (other than transition obligations described in paragraph (b)(4)(iii) of this section) intended to qualify as regular interests that are issued on or after April 4, 1994.

(ii) *Rate based on index.* Section 1.860G–1(a)(3)(i) (as contained in 26 CFR part 1 revised as of April 1, 1994) applies to obligations intended to qualify as regular interests that—

(A) Are issued by a qualified entity (as defined in § 1.860D–1(c)(3)) whose startup date (as defined in section 860G(a)(9) and § 1.860G–2(k)) is on or after November 12, 1991; and

(B) Are either—

(*1*) Issued before April 4, 1994; or

(*2*) Transition obligations described in paragraph (b)(4)(iii) of this section.

(iii) *Transition obligations.* Obligations are described in this paragraph (b)(4)(iii) if—

(A) The terms of the obligations and the prices at which the obligations are offered are fixed before April 4, 1994; and

(B) On or before June 1, 1994, a substantial portion of the obligations are transferred, with the terms and at the prices that are fixed before April 4, 1994, to investors who are unrelated to the REMIC's sponsor at the time of the transfer.

Par. 4. Section 1.860G–1 is amended by adding paragraph (a)(2)(i)(D) to read as follows:

§ 1.860G–1 Definition of regular and residual interests.

(a) * * *

(2) * * *

(i) * * *

(D) A fixed percentage of the interest that is payable on some or all of the qualified mortgages if—

(*1*) Each qualified mortgage is a regular interest issued by another REMIC; and

(*2*) With respect to that other REMIC, the regular interest bears interest that can be expressed as a specified portion as described in § 1.860G–1(a)(2)(i)(A), (B), or (C). See § 1.860A–1(a) for the effective date of paragraph (a)(2)(i)(D) of this section.

§ 1.860G–1 [Amended]

Par. 5. Section 1.860G–1, paragraph (a)(3)(i) is revised as follows:

[The text of this proposed paragraph is the same as the text of § 1.860G–1T(a) published elsewhere in this issue of the **Federal Register**].

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 94–9549 Filed 4–15–94; 2:05 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 401, 403, and 404

[CGD 92-072]

Great Lakes Pilotage Rate Methodology

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Coast Guard will conduct two public meetings to discuss proposed amendments to the Great Lakes Pilotage Rate Methodology. These meetings are intended to help members of the public understand and prepare comments on the proposed amendments.

DATES: (1) The first meeting will be held on Tuesday, May 3, 1994, from 9 a.m. to 4 p.m.

(2) The second meeting will be held on Thursday, May 5, 1994, from 9 a.m. to 4 p.m.

ADDRESSES: (1) The first meeting will be held at the Ralph H. Metcalf Federal Building, room 327, 77 West Jackson Blvd, Chicago, IL 60604.

(2) The second meeting will be held at the Flanders Inn, Corner of Main and Orvis St., Massena, NY 13662.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Poyer, Project Manager, G-MVP-7, (202)267-6249, Merchant Vessel Personnel Division of the Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

SUPPLEMENTARY INFORMATION: On April 12, 1994 the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (59 FR 17303), proposing to amend the Great Lakes Pilotage Regulations by establishing new procedures for determining Great Lakes pilotage rates, and revising the financial reporting requirements mandated for Great Lakes pilot associations. The NPRM also announced a public hearing to be held on May 20, 1994 in Cleveland, Ohio.

The proposed methodology would adopt methods which have proven effective in ratemaking methodologies used by regulators of other public service industries. The Coast Guard is not proposing to change the existing Great Lakes pilotage rates and charges, but proposes to standardize the methodology by which those rates would be determined in the future.

The NPRM is technical in nature. This has prompted several requests for the Coast Guard to explain the technical details of the proposed methodology prior to the public hearing. In order to be responsive to these requests, the Coast Guard will hold public meetings on May 3, 1994 in Chicago, Illinois, and May 5, 1994 in Massena, New York. The purpose of these meetings is to explain the methodology and to assist members of the public in their preparation for the public hearing.

Dated: April 14, 1994.

J. F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-9553 Filed 4-19-94; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-29, RM-8416]

Radio Broadcasting Services; Willows and Dunnigan, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of KIQS, Inc., licensee of Station KIQS-FM, Channel 288A, Willows, California, requesting the substitution of Channel 288B1 for Channel 288A at Willows, California, and the reallotment of Channel 288B1 from Willows to Dunnigan, California, and modification of the license for Station KIQS-FM to specify Dunnigan as its community of license, pursuant to the provisions of § 1.420(i) of the Commission's Rules. Coordinates for Channel 288B1 at Dunnigan are 38-55-34 and 121-54-10.

DATES: Comments must be filed on or before June 6, 1994, and reply comments on or before June 21, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Arthur B. Goodkind, Esq., Koteen & Naftalin, 1150 Connecticut Avenue, NW., Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of Proposed Rule Making, MM Docket No. 94-29, adopted April 4, 1994 and released April 15, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 94-9484 Filed 4-19-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC47

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Plants and Threatened Status for One Plant From the Central Sierran Foothills of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for four plants: *Calystegia stebbinsii* (Stebbins' morning-glory), *Ceanothus roderickii* (Pine Hill ceanothus), *Fremontodendron californicum* ssp. *decumbens* (Pine Hill flannelbush), and *Galium californicum* ssp. *sierrae* (El Dorado bedstraw). The Service also proposes threatened status for *Senecio layneae* (Layne's butterweed). These

species all occur on gabbro or serpentine soils in the central Sierran foothills of California within chaparral or oak woodland communities. Urbanization and its ensuing habitat fragmentation, inadequate regulatory mechanisms, road construction and maintenance, grading, herbicide spraying, change in fire frequency, off-road vehicle use, unauthorized dumping, excessive grazing practices, competition from invasive alien vegetation, and mining imperil these five species. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants.

DATES: Comments from all interested parties must be received by July 19, 1994. Public hearing requests must be received by June 6, 1994

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, Sacramento Field Office (see **ADDRESSES** section) at 916/978-4866.

SUPPLEMENTARY INFORMATION:

Background

Calystegia stebbinsii (Stebbins' morning-glory), *Ceanothus roderickii* (Pine Hill ceanothus), *Fremontodendron californicum* ssp. *decumbens* (Pine Hill flannelbush), *Galium californicum* ssp. *sierrae* (El Dorado bedstraw), and *Senecio layneae* (Layne's butterweed) occur primarily on the Pine Hill intrusion, an area of approximately 10,400 hectares (25,700 acres), in western El Dorado County, California, ranging in elevation from 138 to 628 meters (453 to 2,060 feet). In addition, *C. stebbinsii* and *S. layneae* have a few known isolated occurrences in either El Dorado, Nevada, or Tuolumne Counties, California. All of the species included in this proposal exhibit substrate preferences. *C. roderickii*, *F. californicum* ssp. *decumbens*, and *G. californicum* ssp. *sierrae* are endemic to gabbro-derived soils on the Pine Hill intrusion, and *C. stebbinsii* and *S. layneae* occur on gabbro and serpentine-derived soils. One known occurrence of *S. layneae* was found on metamorphic-derived soils.

Gabbroic soils are derived from mafic rocks (gabbrodiorite) that are mildly acidic, are rich in iron and magnesium, and often contain other heavy metals such as chromium (Wilson 1986). Gabbro, a dark large-crystalled rock, is formed when liquid magma cools slowly underground. A red soil is formed when the rock is exposed and weathers at the earth's surface (EIP Associates 1991). These soils are well-drained and are underlain by gabbrodiorite rocks at a depth of more than 1 meter (3.28 feet) (U.S. Department of Agriculture, Soil Conservation Service 1974).

Serpentine-derived soils are formed through a process similar to the formation of gabbroic soils. Serpentine soils are derived from ultramafic rocks (e.g., serpentinite, dunite, and peridotite). They tend to have high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus (Kruckeberg 1984). "Gabbro soils are considered to be edaphically similar to serpentine because of their mineral composition and because they appear to influence plant distributions in much the same way" (Wilson 1986).

The three plant communities occurring on the Pine Hill intrusion are chaparral, oak woodland, and savanna. The vegetation type of this area is distinctive enough that Robert Holland, based upon Wilson's research (1986), designated a community known as gabbroic northern mixed chaparral. This community is characterized by being "edaphically restricted to ultramafic [sic] gabbro in a mixed chaparral which is dominated by *Adenostoma fasiculatum* (chamise), and usually occurring on rather xeric exposures" (Holland 1986). *Calystegia stebbinsii*, *Ceanothus roderickii*, *Fremontodendron californicum* ssp. *decumbens*, and *Senecio layneae* occur in fire-dependent chaparral habitat; *Fremontodendron californicum* ssp. *decumbens* and *Senecio layneae* also occur in the ecotone between chaparral and oak woodland; *Galium californicum* ssp. *sierrae* and *Senecio layneae* occur in oak woodland (Wilson 1986). None of the plants in this proposal occur within savanna, which comprises approximately 27 percent of the vegetation on the Pine Hill intrusion.

Loss of habitat, fragmentation, and alteration of natural ecosystem processes have resulted from residential and commercial development. Housing and commercial development, inadequate regulatory mechanisms, road maintenance, grading, change in fire frequency, unauthorized dumping, excessive grazing practices, herbicide spraying, mining, and other human-caused conditions threaten the remaining occurrences of these plants.

Discussion of the Five Species Proposed for Listing

G. Ledyard Stebbins collected the type specimen of *Calystegia stebbinsii* in 1970, 17 kilometers (10 miles) west of Placerville in El Dorado County, California. Richard K. Brummitt (1974) described the species using specimens collected by Stebbins as the type.

Calystegia stebbinsii is a leafy perennial herb in the morning-glory family (Convolvulaceae). Its stems, which range up to 1 meter (3.28 feet) in length, generally lie flat on the ground. The leaves are palmately lobed with the two outermost lobes being divided again. The leaf lobes are narrow and lance-shaped. White flowers, which appear in May through June, are on stalks 3 to 13 centimeters (1 to 5 inches) long and bear two leaf-like bracts. The fruit is a slender capsule. Its distinctively shaped leaves, each having 7 to 9 narrow lance-shaped lobes, distinguish *C. stebbinsii* from other California morning-glories.

Calystegia stebbinsii occurs in two localized areas. Most occurrences of *C. stebbinsii* are discontinuously scattered within two population centers in the northern and southern portions of the Pine Hill intrusion. *C. stebbinsii* does not occur at the center of the intrusion on Pine Hill. It was recently discovered in Nevada County near the County landfill, where it was sparsely scattered over distances of 6.5 kilometers (3.5 miles) (California Natural Diversity Database (CNDDB) 1992). In El Dorado County it is associated with chaparral on gabbro soils. In Nevada County it occurs on serpentine. It was possibly transplanted from El Dorado County by the transport of soil to the Nevada County Sanitary Landfill (Carla DeCrona, California Department of Fish and Game (CDFG), pers. comm., 1992; *The Union* 1991). *C. stebbinsii* occurs primarily on privately owned land. The Bureau of Land Management (BLM) manages land for some occurrences. Development has extirpated at least one-third of the known occurrences (CDFG 1990a). Other threats to these populations include inadequate regulatory mechanisms, off-road vehicle use, grading, dumping, road maintenance, change in fire frequency, and competition with invasive alien vegetation.

Beecher Crampton first collected *Ceanothus roderickii* in 1956 from Pine Hill in El Dorado County. Walter Knight described *C. roderickii* in 1968, naming it after Wayne Roderick, who first suspected the horticultural value of this

endemic shrub (Knight 1968). Walter Knight (1968) considered *C. roderickii* to be most closely related to *C. cuneatus*, which also grows throughout the area. *C. roderickii* can be differentiated from its congeners by its blue-tinged flowers, prostrate habit, and inconspicuously horned fruit.

Ceanothus roderickii is a prostrate evergreen shrub of the buckthorn family (Rhamnaceae) that generally grows to 3 meters (9.84 feet) in diameter. The smooth gray-brown branches radiate from a central axis and root when they come into contact with the ground. Its leaves are semi-erect with entire margins. Small whitish flowers tinged with blue appear from May through June. Its fruit is an inconspicuously horned globe-shaped capsule.

Ceanothus roderickii is restricted to gabbro soil in openings in chaparral or more infrequently on previously disturbed sites within chaparral (Wilson 1986). It is restricted to one localized area of approximately 10 known extant occurrences discontinuously scattered in the Pine Hill intrusion (CNDDB 1992). Residential and commercial development, inadequate regulatory mechanisms, off-road vehicle use, road-widening, change in fire frequency, and other human-caused conditions are responsible for the decline of *C. roderickii*. Commercial development has extirpated two known occurrences. *C. roderickii* occurs primarily on private land. BLM owns part of one site and the California Department of Forestry (CDF) owns another site.

Beecher Crampton made the first collection of *Fremontodendron californicum* ssp. *decumbens* in 1956. Robert M. Lloyd (1965) described *F. californicum* ssp. *decumbens* as *F. decumbens* based on the type Lloyd collected in May 1964 from "California, El Dorado Co., Pine Hill, ca. 3 kilometers north of Rescue." Philip Munz (1968) reduced *F. decumbens* to a subspecies of *F. californicum*. Walter M. Kelman (1991), in his revision of *Fremontodendron*, recognized *F. californicum* ssp. *decumbens* as a full species based upon morphological variation. This taxon is currently known as *Fremontodendron californicum* ssp. *decumbens* (Whetstone and Atkinson 1993).

Fremontodendron californicum ssp. *decumbens* is a branched spreading shrub of the cacao family (Sterculiaceae) growing to 1.3 meters (4 feet) tall. Dense star-shaped hairs cover the leaves and the younger twigs and branchlets. Its leaves are elliptic-ovate to ovate, shallowly or deeply palmately lobed with 5 to 7 lobes. Showy light-orange to reddish-brown flowers appear from late April to early July. Its fruit is a capsule. *F. californicum* ssp. *decumbens* can be distinguished from *F. californicum* ssp. *californicum* and *F. mexicanum* by its decumbent growth habit, its relatively long peduncles, and its copper-orange flowers.

Fremontodendron californicum ssp. *decumbens* occurs on scattered rocky outcrops either in chaparral or in the ecotone between woodland and chaparral. It depends on fire to promote seed germination. It is only known from one localized area near Pine Hill in western El Dorado County scattered within an area of approximately 2,000 hectares (5,000 acres). Although there are some reports of *F. californicum* ssp. *decumbens* occurring in some small scattered populations in Yuba or Nevada County, other reports describe these individuals as aberrant *F. californicum* ssp. *californicum*. *F. californicum* ssp. *decumbens* occurs primarily on private land, but one site is on BLM land. CDF and CDFG also own another site.

The largest population of *Fremontodendron californicum* ssp. *decumbens* is on the Pine Hill Ecological Reserve managed by CDFG. The proximity of this plant to human population centers and intensive development activities renders *F. californicum* ssp. *decumbens* vulnerable to the long-term effects of fire suppression. Its restricted distribution increases its susceptibility to catastrophic events such as disease or pest outbreak, severe drought, or other natural or human-caused disasters. In addition, residential and commercial development (including unregulated grading for homes or barns on existing large parcels), inadequate regulatory mechanisms, and trash dumping threaten *F. californicum* ssp. *decumbens*.

The type specimen for *Galium californicum* ssp. *sierrae* was collected 1.7 kilometers (1 mile) north of Pine Hill Lookout in western El Dorado County, California. Lauramay Dempster and G. Ledyard Stebbins (1968) described *G. californicum* ssp. *sierrae*.

Galium californicum ssp. *sierrae* is a softly hairy perennial herb in the coffee family (Rubiaceae). Four narrow leaves are arranged at each node. The pale yellow flowers, which are clustered at the tips of stems, appear in May and June. Minute hairs cover the fleshy fruit. It can be distinguished from other subspecies of *G. californicum* by its very narrow leaves.

Galium californicum ssp. *sierrae* is restricted to one localized area; the Pine Hill and surrounding ridges to the west within a distance of approximately 4 kilometers (2.5 miles) (Baad and Hanna 1987). It inhabits oak woodland areas, including sites with ponderosa pine and digger pine (Wilson 1986). *G. californicum* ssp. *sierrae* occurs primarily on private land. BLM manages at least one population, and it is not clear whether another existing population occurs on BLM or on private land. CDF and CDFG manage one site as well. Residential development, inadequate regulatory mechanisms, road construction, grazing, and irrigation threaten *G. californicum* ssp. *sierrae*. Its restricted distribution and limited numbers of individuals make it susceptible to catastrophic events such as disease or pest outbreak, severe drought, or other natural or human-caused disasters.

Kate Layne-Curran collected the type for *Senecio layneae* in May 1883 from El Dorado County, California, on Sweetwater Creek, not far from Folsom. Edward L. Greene first described *S. layneae* in 1883 (Greene 1883). Although Asa Gray reduced *S. layneae* to a variety of *S. fastigiatus* (1884), it currently is known as *S. layneae* (Barkley 1993). The type population is now thought to be extirpated due to inundation by Folsom Lake.

Senecio layneae is a perennial herb of the aster family (Asteraceae) that sprouts from a rootstock. Its mostly basal lance-shaped leaves are 8 to 24 centimeters (3 to 10 inches) long. The several flower heads are 4 to 6 centimeters (2 to 3 inches) wide each having 5 to 8 orange-yellow ray flowers and numerous yellow disk flowers. *S. layneae* flowers between April and June.

Senecio layneae grows in open rocky areas within chaparral plant communities, primarily on gabbro soil formations and occasionally on serpentine soils. Most known sites are scattered within a 16,200 hectare (40,000-acre) area in western El Dorado County. A few other colonies occur in the Eldorado National Forest in El Dorado County and in the BLM Red Hills Management Area in Tuolumne County (BioSystems Analysis, Inc. 1984). *S. layneae* primarily occurs on privately owned land. Some populations of *S. layneae* also occur on Federal land managed either by the Forest Service or BLM. One site is on land managed by CDF and CDFG. Residential and commercial development, inadequate regulatory mechanisms, road maintenance, change in fire frequency, off-road vehicle use, competition with invasive alien vegetation, excessive grazing practices, mining and other human-caused conditions threaten and are responsible

for the declining trend for *S. layneae* (CDFG 1990b, CNDDB 1992).

Previous Federal Action

Federal government actions on the five plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Fremontodendron decumbens* (now known as *Fremontodendron californicum* ssp. *decumbens*), *Galium californicum* ssp. *sierrae*, and *Senecio layneae* as endangered and *Ceanothus roderickii* as threatened species. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above four taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *C. stebbinsii*, *F. decumbens*, *G. californicum* ssp. *sierrae*, and *S. layneae*, to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Calystegia stebbinsii*, *Fremontodendron decumbens*, *Galium californicum* ssp. *sierrae*, and *Senecio layneae* as category 1 candidates for Federal listing, and *Ceanothus roderickii* as a category 2 candidate. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Category 2 taxa are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640). This supplement changed *C. stebbinsii*, *F. decumbens*, *G. californicum* ssp. *sierrae*, and *S. layneae* from category 1 to category 2 candidates.

The September 27, 1985 (50 FR 39526), plant notice of review included *Calystegia stebbinsii*, *Ceanothus roderickii*, *Fremontodendron californicum* ssp. *decumbens* (as *Fremontodendron decumbens*), *Galium californicum* ssp. *sierrae*, and *Senecio layneae* as category 2 candidates. The February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), plant notices of review included *C. roderickii* and *F. californicum* ssp. *decumbens* (as *F. decumbens*) as category 1 candidates and *C. stebbinsii*, *G. californicum* ssp. *sierrae*, and *S. layneae* as category 2 candidates. On December 9, 1993, the Service issued petition findings for 990 candidate species that had been under "warranted but precluded" findings, including *C. stebbinsii*, *G. californicum* ssp. *sierrae*, and *S. layneae* (58 FR 64828). The Service detailed in the notice of findings the reasons the data were insufficient, at that time, to either propose or assign these plants to category 3. For *C. stebbinsii*, the Service indicated that current information on this species was based on reports from only a small portion of its known range, and population trends for the remaining range were unknown. For *G. californicum* ssp. *sierrae* and *S. layneae*, the Service noted that population trends for the remaining range were unknown and ecological or other biological requirements were uncertain. Since the preparation of that notice, additional information was received on the status of *C. stebbinsii*, *G. californicum* ssp. *sierrae*, and *S. layneae*, which resulted in the elevation of these species to category 1.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Ceanothus roderickii*, *Fremontodendron californicum* ssp. *decumbens*, *Galium californicum* ssp. *sierrae*, and *Senecio layneae* because the 1975 Smithsonian report was accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of these species was warranted but precluded by other pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reaffirmed annually in October of 1983 through 1993. Publication of this proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Calystegia stebbinsii* Brummitt (Stebbins' morning-glory), *Ceanothus roderickii* Knight (Pine Hill ceanothus), *Fremontodendron californicum* ssp. *decumbens* (Lloyd) Munz (Pine Hill flannelbush), *Galium californicum* H. & A. ssp. *sierrae* Dempster & Stebbins (El Dorado bedstraw), and *Senecio layneae* Greene (Layne's butterweed) are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.* At least 80 percent of the occurrences for these five plant species are on private land. They primarily occur on the Pine Hill intrusion, an area of approximately 10,400 hectares (25,700 acres) in western El Dorado County. A few isolated occurrences of *Calystegia stebbinsii* or *Senecio layneae* are known in either El Dorado, Nevada, or Tuolumne Counties (EIP Associates 1991, CNDDB 1992). The primary threat facing these five species and their associated habitat is the ongoing and threatened destruction and modification of habitat by one or more of the following: urbanization and its ensuing habitat fragmentation, road construction and maintenance, off-road vehicle use, grading, and mining.

Nearly all the remaining occurrences of all five species are threatened by destruction of habitat through residential or commercial development. The human population of the four counties just east of the Sacramento metropolitan area (Nevada, Placer, El Dorado, and Amador) increased 375 percent between 1960 and 1992 (Engellenner 1993). El Dorado County, which has a projected population growth of 54 percent between 1990 and 2005, is one of the most rapidly growing counties in California (California Department of Finance 1991, Jones and Stokes Associates 1992). In 1991, the population grew by 4.2 percent; faster than the projected growth rate of 3.6 percent (California Department of Finance 1992). Western El Dorado County is becoming a bedroom community as it is easily accessible by freeway from several nearby cities including Sacramento. Most of the new residential growth in El Dorado County is expected to occur within western El Dorado County near Highway 50 (Jones and Stokes Associates 1992), which crosses the southern portion of the Pine Hill intrusion.

Within the gabbro soil and adjacent serpentine formations in western El Dorado County, 39 proposed development projects, which variously threaten to fragment the habitat of all five species, are currently on file with El Dorado County. A 730-hectare (1,800-acre) development is only 1 of 16 large projects proposed in El Dorado County (Wiegand 1991). Development currently is planned for approximately 5 percent of this 16,200-hectare (40,000-acre) area. In addition, the El Dorado County General Plan update proposes the conversion of vacant and agricultural land to various residential uses within the 38,400-hectare (95,000-acre) western service area of the El Dorado County Irrigation District (EID) (Jones and Stokes Associates 1992), which encompasses the entire Pine Hill intrusion.

The proposed land uses within the western service area of the EID include a 1,000 percent increase in single family residences (from a current level of 1,857 hectares (4,589 acres) to 20,254 hectares (50,047 acres)) and a doubling of the rural residential uses (from 7,630 hectares (18,860 acres) to 15,780 hectares (39,000 acres)) (Jones and Stokes Associates 1992). The El Dorado County Water Agency proposed the construction of either additional dams, water storage facilities, or water conveyance lines on the South Fork of the American River (Jones and Stokes Associates 1992, El Dorado County Water Agency 1993). The subsequent induced growth would affect all five species in both the northern and southern portions of the Pine Hill intrusion and adjacent serpentine, either by further fragmenting the habitat (as discussed below) or by directly destroying habitat. The increasing number of people and changes in land uses will continue to place an ever-greater strain on undeveloped areas through activities such as off-road vehicle traffic, unauthorized garbage dumping, and changes in the pattern of wildfires.

Historical gold rush activities and clearing for agriculture reduced and fragmented habitat of the five plants. Currently, these plants face threats from habitat fragmentation associated with commercial and residential development and road construction. Fragmentation splits habitat into smaller, more isolated units and has two primary effects. First, habitat fragmentation may alter the physical environment, changing the amount of incoming solar radiation, water, wind, or nutrients for the remnant vegetation (Saunders *et al.* 1991). Second, a higher proportion of these fragmented natural areas is subject to influences from external factors (e.g., additional development, lawn and garden watering, herbicide drift, and off-road vehicular use) that disrupt natural ecosystem processes.

The vegetation structure on the Pine Hill intrusion has changed significantly due to commercial and residential development, road construction, and historical fragmentation. Hunter and Horenstein (1991) characterized vegetation structure on the Pine Hill intrusion and estimated the median patch size to be only 11 hectares (27 acres). This degree of fragmentation is significant within chaparral because plant species will disappear from fragments between 10 and 100 hectares (25 to 250 acres) in size due to persistent disturbance and potentially due to change in fire frequency (Soulé *et al.* 1992). These and other effects of fragmentation are discussed further under Factor E.

Twelve potential preserve sites were identified as the best remaining habitat for the five plants on the Pine Hill intrusion and adjacent serpentine (EIP Associates 1991). Within these 12 sites, at least 11 residential or commercial projects (Bass Lake Estates, Cameron Ridge, Fremont's Peak, Kanaka Valley, Pinnacles, Ponderosa 50, Sunset Heights, Woodleigh Ridge, and 3 approved parcel splits) are proposed (El Dorado County Planning Staff 1992). These projects threaten all five plants to varying degrees by directly destroying individual plants or further fragmenting and destroying their habitat.

Activities often associated with rural residential areas, such as clearing chaparral for fire protection around houses, bulldozing land (grading for houses or barns), planting fruit trees, and irrigation, also have modified the habitat within western El Dorado County (James Jokerst, Jones and Stokes Associates, pers. comm., 1993; Jo Van Ess, California State University, Sacramento, pers. comm., 1993). The ongoing repetitive clearing of chaparral destroys the habitat. Irrigation involved with lawn maintenance also adversely affects these species (Jo Van Ess, pers. comm., 1993; James Jokerst, pers. comm., 1993).

Commercial and residential development extirpated at least one-third of the known occurrences of *Calystegia stebbinsii* (CDFG 1990a, CNDDB 1992). Most of the remaining occurrences for *C. stebbinsii* are on the Pine Hill intrusion. All of these sites, except for those in the northern part, are in areas undergoing rapid development and are threatened by commercial and private development as discussed above. Habitat for *C. stebbinsii* in Nevada County is threatened by a proposed County works project (CDFG 1990a).

Other human activities also destroy or damage habitat of *Calystegia stebbinsii*. One occurrence was adversely impacted by grading. Off-road vehicle use has adversely impacted the habitat of *C. stebbinsii* at one site (CNDDB 1992). In the northern part of the Pine Hill intrusion, several hills are scarred with off-road vehicle tracks. Erosion promoted by scarring adversely modifies the habitat. Road maintenance and herbicide spraying potentially threaten another site of *C. stebbinsii* that occurs along a road cut (CNDDB 1992).

Shopping center construction and other commercial development extirpated two occurrences of *Ceanothus roderickii* (CNDDB 1992). Road-widening also threatens the habitat of *C. roderickii* at one site (CNDDB 1992). Off-road vehicle use degrades the habitat at three sites in the northern part of the gabbro area (CNDDB 1992).

Construction of houses on and near Pine Hill resulted in the loss of many individuals of *Fremontodendron californicum* ssp. *decumbens* (George Clark, *in litt.*, 1993). Land clearing activities that occur with road construction also threaten *F. californicum* ssp. *decumbens*. In 1968, all the vegetation along the Pine Hill approach road was cut. In 1969, the west slope of Pine Hill was cleared by

the CDF, demolishing 80 percent of the *F. californicum* ssp. *decumbens* within the boundaries of the current Pine Hill Ecological Reserve (Baad and Hanna 1987). Most of these shrubs have resprouted. Presently, the Pine Hill Ecological Reserve, managed by CDFG, has the largest occurrence of *F. californicum* ssp. *decumbens*.

No known extirpations of *Galium californicum* ssp. *sierrae* due to residential or commercial development have occurred. However, as discussed above, residential or commercial development and activities associated with rural residential areas threaten *G. californicum* ssp. *sierrae* within the potential reserve area identified as the best remaining habitat. *G. californicum* ssp. *sierrae* has a very small population size and a restricted distribution almost entirely on private land. As discussed above and under Factor E below, small population size and fragmentation increases the plants' vulnerability to these threats.

Commercial and residential development extirpated two occurrences of *Senecio layneae* (CNDDB 1992). Many of the remaining occurrences of S. layneae are in areas undergoing rapid commercial and residential development. *S. layneae* is also potentially threatened by a variety of disturbances including road maintenance, vegetation removal, and off-road vehicle use (CNDDB 1992). Road widening occurs in the vicinity of development within El Dorado County, and this activity has already extirpated one occurrence and threatens an additional five sites (CNDDB 1992). Intensive off-road vehicle use threatens two additional occurrences of this species (CNDDB 1992). Off-road vehicle use occurred historically in Tuolumne County on BLM land, but no longer occurs there. Currently, off-road vehicle use occurs on two sites within the Pine Hill intrusion on privately owned land. One site of *S. layneae* in the northern part of the intrusion is impacted by heavy off-road vehicle use and has been fragmented by the numerous roads that traverse the entire area. A southern site of *S. layneae* that occurs across 89 hectares (221 acres) was graded and grubbed in preparation for development and is subject to off-road vehicle use over part of the site (CNDDB 1992).

Habitat for *Senecio layneae* within the Traverse Creek Botanical Area in Eldorado National Forest historically was fragmented by serpentine quarrying. In addition, mining claims for semi-precious stones and gold exist on *S. layneae* habitat in the Eldorado National Forest. Although the Eldorado National Forest is trying to withdraw these claims, this withdrawal action may not be achieved (Mike Foster, Eldorado National Forest, pers. comm., 1993).

Destruction and fragmentation of habitat by commercial and residential development is the most significant and imminent threat facing *Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum* ssp. *decumbens, Galium californicum* ssp. *sierrae,* and *Senecio layneae*. Proposed residential or commercial development within the Pine Hill intrusion, combined with growth induced by proposed dams on the South Fork of the American River, threaten the majority of sites within the Pine Hill intrusion and adjacent serpentine in western El Dorado County and will adversely impact most of the range of all five taxa. Road widening, off-road vehicle use, garbage dumping, and other human-caused conditions associated with increased development threaten individual occurrences of these five species throughout their respective ranges.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.* Overutilization is not currently known to be a factor for the five plants, but unrestricted collecting for scientific or horticultural purposes, vandalism, or excessive visits by individuals interested in seeing rare plants could result from increased publicity as a result of this proposal. Two of the species included in this proposal, *Ceanothus roderickii* and *Fremontodendron californicum* ssp. *decumbens*, have been used horticulturally (Schmidt 1993, Whetstone 1993), but they do not appear to be threatened by collection in the wild.

C. *Disease or predation.* Disease is a potential factor for *Fremontodendron californicum* ssp. *decumbens*. In cultivation *F. californicum* ssp. *decumbens* is highly susceptible to a wilt disease that can kill the plant almost overnight (Knight 1972). It is not known if this mortality has been observed in the field. Plants proximate to residences may be vulnerable to supplemental moisture from irrigation of lawns or gardens. Disease is not known to be a factor for any of the other taxa.

Intense insect and rodent predation occurs on *Fremontodendron californicum* ssp. *decumbens*. Boyd and Serafini (1992) studied reproductive attrition in *F. californicum* ssp. *decumbens*. They found that less than 2 percent of flower buds produced fruit because of predation by insects. In addition, rodents destroyed 90 percent of seeds under shrubs within 8 to 10 months (Boyd and Serafini 1992). Since *F. californicum* ssp. *decumbens* is very restricted in range and few individuals exist, this predation increases the chance for extinction as discussed under Factor E.

Overgrazing by horses in rural residential areas within the Pine Hill intrusion threaten *Calystegia stebbinsii, Galium californicum* ssp. *sierrae,* and *Senecio layneae*. The horses, when confined, severely graze virtually all available vegetation. The herbaceous gabbro plants are especially likely to be grazed (Jo Van Ess, pers. comm., 1993).

Documentation of population extirpations as a result of disease and predation does not exist. However, as discussed under Factors A and E, small population size and fragmentation increases the plants' vulnerability to predation.

D. *The Inadequacy of Existing Regulatory Mechanisms. Calystegia stebbinsii* is listed as an endangered species under the California Endangered Species Act (chapter 1.5 sec. 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). *Ceanothus roderickii, Fremontodendron californicum* ssp. *decumbens, Galium californicum* ssp. *sierrae,* and *Senecio layneae* are listed by the State as rare. Individuals are required to obtain a memorandum of understanding with the CDFG to possess or "take" a species listed under the California Endangered Species Act. Although the "take" of State-listed plants is prohibited (California Native Plant Protection Act, chapter 10 sec. 1908 and California Endangered Species Act, chapter 1.5 sec. 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. This State law does not necessarily prohibit activities that could extirpate these species. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law requires that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (Native Plant Protection Act, chapter 10 sec. 1913). Ten days may not allow adequate time for agencies to coordinate the salvage of the plants.

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies

concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered are given the same protection as species officially listed under the State or Federal Endangered Species Acts. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species and their habitats. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agency.

Section 21080(b) of CEQA allows certain projects to be exempted from the CEQA process. Ministerial projects, those projects that the public agency must approve after the applicant shows compliance with certain legal requirements, may be approved or carried out without undertaking CEQA review.

When development occurs and individual project effects are mitigated in accordance with the provisions in CEQA, the developer often will set aside small natural areas within the development. These small "set asides" are vulnerable to the problems of habitat fragmentation as discussed further under Factors A and E. These small set asides are impractical to manage for fire (discussed further under Factor E). Land development and multiple ownership makes difficult the planning and implementation of controlled burns at the appropriate fire frequency necessary for the maintenance of chaparral.

Within El Dorado County over the past several years, attempts have been made to establish a preserve system to protect gabbro chaparral habitat. An initial report on preserve sites and rare plant strategies was completed in November 1991. The report identified 12 potential preserve sites. In 1992, El Dorado County held public workshops concerning this report. A rare plant advisory committee, consisting of members from the development community, various agencies (CDFG, BLM, Service), El Dorado County planning staff, CNPS and others, was established to identify feasible preserve sites, funding mechanisms, and management strategies for these preserves. The County Board of Supervisors evaluated the preserve sites identified by the rare plant advisory committee and eliminated the large southern preserve site. It approved in principle two other large preserve sites; however, the majority of the Board did not consider any local funding to establish or maintain the preserves (George Clark, *in litt.*, 1993; Kirsten Tarp, U.S. Fish and Wildlife Service, pers. obs., 1993). It is unlikely that the establishment and maintenance of a sufficient reserve system will occur without adequate funding.

E. *Other Natural or Manmade Factors Affecting Its Continued Existence.* Altered periodicity of fire threatens *Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum* ssp. *decumbens*, and *Senecio layneae*. These plants occur within a fire-adapted plant community, either within chaparral or on the ecotone between chaparral and woodland. Fire suppression policies have altered natural processes within several plant communities in California. Historically, fire occurred in chaparral on the average of 3 to 5 times every 100 years (Boyd 1985). As described below, fire is important for seed germination and for seedling reestablishment by eliminating competition and shading, as well as replenishing nutrients to the soil. Without periodic fires, the previously mentioned four plants either do not reproduce by seed or may become shaded by other plants. In a study of the effects of controlled burning on 3 rare plants occurring on Pine Hill within western El Dorado County, Boyd (1985, 1987) found that fire killed *C. roderickii* shrubs, but caused a 22-fold increase in seed germination. He also found that the growth rate of seedlings was greater in the burned area than in the unburned area.

Fremontodendron californicum ssp. *decumbens* seeds require heat from fire to germinate. *F. californicum* ssp. *decumbens* also resprouts vegetatively after a burn. In studying reproductive attrition in *F. californicum* ssp. *decumbens*, Boyd and Serafini (1992) found that *F. californicum* ssp. *decumbens* cannot reproduce sexually without fire. They concluded that to maintain genetic diversity and establish plants at new localities within the boundaries of the current populations, sexual reproduction may be necessary over long time periods.

Initial studies also show *C. stebbinsii* needs disturbance by either heat or scarification for germination to occur (Tim Nosal, CDFG, pers. comm., 1993; Paul Boch, Nevada County Agricultural Commissioner, *in litt*, 1993). *C. stebbinsii* also is associated with fire. At the Nevada County landfill site, this species is more prevalent in the burned areas than in the unburned areas (Paul Boch, *in litt.*, 1993). *C. stebbinsii* is eliminated as soon as the surrounding chaparral grows tall enough to shade it.

Excessive fire frequency also potentially threatens *Ceanothus roderickii* and *Fremontodendron californicum* ssp. *decumbens*. These plants need sufficient time between burns to set enough seed to replenish the soil seedbank. Mature plants of *F. californicum* ssp. *decumbens* also need to build up carbohydrate reserves to be able to resprout after a fire (Boyd 1985).

The total suppression of fire or the total suppression of disturbance threatens *Senecio layneae* and *Calystegia stebbinsii*. Limited surface disturbance has been beneficial to these species in certain circumstances by promoting initial establishment (James Jokerst, pers. comm., 1993). *S. layneae* appears to be an early successional species that occupies temporary openings on gabbro or serpentine and is eliminated as vegetation grows up around it (Baad and Hanna 1987).

Competition with invasive alien vegetation, herbicide spraying, and unauthorized dumping threaten individual occurrences of *Calystegia stebbinsii*. An introduced species of field bind weed, *Convolvulus* sp. competes with one colony of *Calystegia stebbinsii* within Nevada County (CNDDB 1992). Trash dumping also threatens three occurrences of *C. stebbinsii* (CNDDB 1992). Herbicide spraying potentially threatens a significant portion of one occurrence of *C. stebbinsii* near Shingle Springs and several local occurrences adjacent to roads (Tim Nosal, pers. comm., 1993).

Herbicide spraying and trash dumping threaten one occurrence of *Ceanothus roderickii* (CNDDB 1992). Habitat degradation from garbage dumping on ridge-tops around Pine Hill degrades the habitat and is a minor threat to *Fremontodendron californicum* ssp. *decumbens* (James Wilson, Sierra College, pers. comm., 1993).

As discussed under Factor A, habitat fragmentation may alter the physical environment. Plant species will disappear from fragments that are from 10 to 100 hectares in size due to persistent disturbance and potentially due to change in fire frequency (Soulé *et al.* 1992). In addition, habitat fragmentation increases the risks of extinction due to environmental, demographic, or genetic stochasticity. The small, isolated nature of the remaining populations and the restricted distribution of *Fremontodendron californicum* ssp.

decumbens and *Galium californicum* ssp. *sierrae* make stochastic extinction more likely. Chance events, such as local catastrophes, floods, disease outbreaks, reproductive failure, extended droughts, landslides, or a combination of several such events, could destroy part of a single population or entire populations. A local catastrophe also could decrease a population to so few individuals that the risk of extirpation due to genetic and demographic problems associated with small populations would increase.

Competition with invasive alien vegetation and shading from native tree and shrub species potentially threaten *Senecio layneae*. Several alien plant species, including *Cytisus scoparius* (Scotch broom), have become established within the Traverse Creek Botanical Area in Eldorado National Forest due to a variety of disturbances and potentially threaten this occurrence of *S. layneae* (Duron 1990, Pollak 1990).

One occurrence of *Senecio layneae* is thought to have been extirpated by roadside herbicide application (Oren Pollak, The Nature Conservancy, pers. comm., 1993). This activity potentially threatens several other occurrences of this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Proposed residential and commercial development within the Pine Hill intrusion, urbanization in western El Dorado County, which will be induced by proposed dams on the South Fork of the American River, and inadequate regulatory mechanisms threaten all five taxa throughout all or a significant portion of their respective ranges. Road construction and maintenance, grading, unauthorized dumping, excessive grazing practices, herbicide spraying, off-road vehicle use, competition from invasive alien vegetation, shading by native vegetation, irrigation, and mining affect individual occurrences of the five taxa.

Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum ssp. *decumbens*, and *Galium californicum* ssp. *sierrae* are in danger of extinction throughout all or a significant portion of their ranges, and the preferred action is therefore to list them as endangered. Because of its wider distribution, *Senecio layneae* is not now in immediate danger of extinction throughout all or a significant portion of its range; however, it is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. Therefore, the preferred action is to list *Senecio layneae* as threatened.

Critical Habitat

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) requires that, to the maximum extent prudent and determinable, the Secretary determine critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Because the five plants face numerous human-caused threats (see Factors A and E in "Summary of Factors Affecting the Species") and the five occur predominantly on private land, the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of these species and increase enforcement problems. The listing of these species as endangered and/or threatened also publicizes the rarity of these plants and, thus, can make these plants attractive to researchers, horticulturalists, or collectors of rare plants, as discussed under Factor B.

Protection of the habitat of these species will be addressed through the recovery process and the section 7 consultation process. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At least 80 percent of the occurrences for these five species are privately owned. However, BLM manages land supporting populations of all five plants, and *Senecio layneae* occurs on Federal land managed by Forest Service. Both agencies would become involved with any or all of these species as they are responsible for managing land use of areas supporting these species.

The Veterans Administration and the U.S. Department of Housing and Urban Development (Federal Home Administration loans) may become involved with these species through their administration of Federal mortgage programs. The construction and maintenance of roads and highways by the Federal Highway Administration, the relicensing of hydroelectric projects by the Federal Energy Regulatory Commission, and the contracting of surface waters for irrigation, industrial, or municipal uses by the Bureau of Reclamation would necessitate involvement with these species under the Act. Also, the Army Corps of Engineers would become involved with these species through its permitting authority under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by a proposed project without first completing formal consultation pursuant to section 7 of the Act. The presence of a listed species would highlight the national importance of these resources. Therefore, the Army Corps of Engineers would be required to consult with the Service on any proposed dam construction or any proposed permits for fill operations that

would adversely affect any of these plants.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species and 17.71 and 17.72 for threatened plant species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the five gabbro plants from El Dorado, Nevada, or Tuolumne Counties, California, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 or 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export; deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale these species in interstate or foreign commerce; or remove and reduce to possession federally listed plant species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Seeds from cultivated specimens of threatened plant taxa are exempt from these prohibitions provided that a statement "of cultivated origin" appears on the containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few trade permits would ever be sought or issued for the five species because the plants are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241, facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum* ssp. *decumbens, Galium californicum* ssp. *sierrae,* or *Senecio layneae;*

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Kirsten Tarp, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 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.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the families indicated, and by adding a new family "Sterculiaceae—Cacao family," in alphabetical order, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• •	•	•	•	•	•	•
Asteraceae—Aster family:						
• •	•	•	•	•	•	•
Senecio layneae	Layne's butterweed	U.S.A (CA)	T	NA	NA	NA
• •	•	•	•	•	•	•
Convolvulaceae—Morning-glory family:						

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• • •	•	•	•	•	•	•
Calystegia stebbinsii	Stebbins' morning-glory	U.S.A. (CA)	E	NA	NA	NA
• • •	•	•	•	•	•	•
Rhamnaceae—Buckthorn family:						
• • •	•	•	•	•	•	•
Ceanothus roderickii	Pine Hill ceanothus	U.S.A. (CA)	E	NA	NA	NA
• • •	•	•	•	•	•	•
Ruhiaceae—Coffee family:						
• • •	•	•	•	•	•	•
Galium californicum ssp. *sierrae.*	El Dorado bedstraw	U.S.A. (CA)	E	NA	NA	NA
• • •	•	•	•	•	•	•
Sterculiaceae—Cacao family:						
Fremontodendron californicum. ssp. *decumbens.*	Pine Hill flannelbush	U.S.A. (CA)	E	NA	NA	NA
• • •	•	•	•	•	•	•

Dated: April 4, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–9495 Filed 4–19–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 76
Wednesday, April 20, 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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Second Quarterly Estimate

The Meat Import Act of 1979, as amended (19 U.S.C. 2253 note) (the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep (except lamb), and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), other than products of Canada and Mexico, which may be imported into the United States in any calendar year. Such limitations, are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada and Mexico, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1994 by section 2(c) as adjusted under section 2(d) of the Art.

As announced in the Notice published in the **Federal Register** on January 6, 1994 (59 FR 727), the estimated aggregate quantity of meat articles other than products of Canada and Mexico prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1994 is 1,108.1 million pounds.

In accordance with the requirements of the Act, I have determined that the second quarterly estimate of the aggregate of meat articles other than products of Canada and Mexico which would, in the absence of limitations under the Act, be imported during calendar year 1994 is 1,218.8 million pounds.

Done at Washington, DC, this 8th day of April, 1994.

Mike Espy,

Secretary.

[FR Doc. 94–9446 Filed 4–19–94; 8:45 am]

BILLING CODE 3410–10–M

Food and Nutrition Service

Food Stamp Program; Public Hearing To Discuss a Test To Measure the Impact of Regulation E on Electronic Benefit Transfer

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of public hearing.

DATE AND TIME: Tuesday, May 10, 1994, 9 a.m.–5 p.m.

LOCATION: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Jeff Cohen, Supervisor, Demonstration Projects Section, room 718, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2517. To confirm attendance, please contact Lillian Clemena at (703) 305–1119. Confirmation of attendance is encouraged, but is not mandatory for participation in the public hearing.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

PURPOSE OF HEARING: The Federal Reserve Board published a final rule (59 FR 10678, March 7, 1994) which applies the provisions of Regulation E and the Electronic Funds Transfer Act (15 U.S.C. 1693) to Electronic Benefit Transfer (EBT) systems. Regulation E provides a basic framework establishing the rights, liabilities and responsibilities of participants such as financial institutions and their customers in electronic funds transfer systems. EBT systems are benefit delivery systems that utilize plastic access cards and electronic funds transfer technologies to deliver food stamp and various cash benefits to eligible participants. The final rule gives States and Federal agencies until March 1, 1997 to comply with the provisions of Regulation E. During the three years until mandatory compliance, the Department is planning a test of the impact of this regulation on EBT. The test will be coordinated by the Department, the Administration for Children and Families of the Department of Health and Human Services, and the Financial Management Service of the Department of the Treasury.

The purpose of the public hearing is to offer State agencies, advocacy groups, financial institutions, and other interested parties an opportunity for public dialogue on issues concerning the design and subsequent assessment of the test.

Dated: April 14, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–9491 Filed 4–19–94; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Jacobs/Swale Vegetation Management Project, Dixie National Forest, Garfield County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for a Forest Service proposal to implement a vegetation management and associated road construction project on the Escalante Ranger District, Dixie National Forest. The area is located approximately 25 miles north of Escalante, Utah. The project would be implemented in accordance with direction in the Land and Resource Management Plan for the Dixie National Forest (LRMP).

The agency gives notice that the environmental analysis process is underway. Interested and potentially affected persons, along with local, state, and other federal agencies, are invited to participate and contribute to the environmental analysis. The Dixie National Forest invites written input regarding issues specific to the proposed action.

DATES: Written comments to be considered in the preparation of the Draft Environmental Impact Statement (DEIS) should be submitted by May 20, 1994.

ADDRESSES: Submit written comments to: District Ranger, Escalante Ranger District, 755 West Main, P.O. Box 246, Escalante, Utah 84726.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Kevin R. Schulkoski, District Ranger, 801–826–5400.

SUPPLEMENTARY INFORMATION: The proposed project covers an analysis area of 15,563 acres of National Forest System Lands. Approximately 1,012 acres of the 6,251 acre McGath Lake-Auger Hole Roadless Area is within the project boundary. Treatments are proposed on 669 acres within the roadless area. Timber stands in the project area cover 11,739 acres. Vegetatative treatments are proposed on 6,668 of the timbered acres. Unevenaged stands of Engelmann spruce and subalpine fir are the dominant timber type. A few stands of even-aged aspen are also present. Aspen remnants are scattered throughout the Engelmann spruce/subalpine fir stands. Vegetation management treatments would occur in stands located within sections 31 and 32, Township 31, Range 3 East; sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, and 21, Township 32 South, Range 3 East; sections 34, 35, and 36, Township 31 South 31, Range 2 East; and sections 1, 2, 3, 10, 11, 12, 13, 15, and 24, Township 32 South, Range 2 East, Salt Lake Base Meridian.

The proposed action would implement management direction and projects identified in the LRMP. This project EIS will be tiered to the LRMP EIS, provides goals, objectives, standards and guidelines for the various activities and land allocations on the Forest.

The purpose of the proposed action is to improve forest health by harvesting diseased trees, to improve individual tree and stand vigor conditions through stocking control, to improve wildlife habitat for game and non-game species by creating a greater variety of size classes and habitats, to enhance visual quality by increasing species diversity, and to reduce damage in meadow areas by closing and rehabilitating primitive roads. These treatments would be designed to move the project area towards the desired future habitat conditions as described in the "Management Recommendations for the Northern Goshawk in the Southwestern United States" (Reynolds, 1992). The proposed action would be located in Management Areas 7A (Wood Products and Utilization), 6A (Livestock Grazing), and 2B (Rural and Roaded Recreation Opportunities).

The proposed action consists of commercial timber harvest within Management Areas 7A, 6A, and 2B using uneven-aged and even-aged management and yielding approximately 21.1 MMBF of Engelmann spruce, subalpine fir, and aspen sawtimber. Post sale cultural activities would include brush disposal, precommercial thinning and reforestation.

Approximately 1,530 acres (9.8% of the project area) would be managed to enhance its' old growth attributes.

Prescribed fire would be used on approximately 55 acres to improve wildlife habitat and regenerate decadent aspen stands being replaced by the conifers. Snag recruitment by burning individual trees would occur on 256 acres.

Road management would include development of a transportation system requiring approximately 33 miles of road construction and 4 miles of road reconstruction. Two trailheads would be established providing access for both motorized and non-motorized users. Upon the completion of management activities the area would be closed to motorized vehicles except over the snow machines. Designated routes would remain open to provide access to recreation facilities.

Six timber sales are proposed ranging in size from 118 MBF to 7,331 MBF.

Preliminary issues that have been identified through scoping to date include project effects on wildlife habitat particularly the critical elk calving and deer fawning areas and the effects of the proposal on the roadless area characteristics.

Tentative alternatives to the proposed action include: No action (the project will not take place but current management will continue); elimination of management activities within the critical elk calving and deer fawning areas; and restriction of management activities in the roadless area to closing and rehabilitating the primitive roads.

As lead agency, the Forest Service will analyze and document direct, indirect, and cumulative environmental effects of a range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest, is the responsible official.

The Forest Service is seeking comments from individuals, organizations, and local, state, and Federal agencies who may be interested in or affected by the proposed action.

Scoping notices have been sent to the Dixie National Forest NEPA mailing list. Other interested individuals, organizations, or agencies may have their names added to the mailing list for this project at any time by submitting a request to: Kevin R. Schulkoski, District Ranger, Escalante Ranger District, 755 West Main, P.O. Box 246, Escalante, Utah 84726.

A public field review of the proposed project was held on October 21, 1993. Eight people representing different organizational, business, governmental and individual interests participated in the meeting.

The entire analysis area lies within National Forest System lands. No federal or local permits, licenses or entitlements would be needed. There are no potential conflicts with the plans and policies of other jurisdictions.

The comment on the DEIS will be 45 days from the date the EPA's notice of availability appears 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 the DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could have been raised at the DEIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* versus *Hodel,* (9th Circuit,

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 the time it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS 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 statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The DEIS is expected to be available for review by June 30, 1994. The Record of Decision and Final Environmental Impact Statement are expected to be available by September, 1994.

Dated: April 14, 1994.

Daniel H. Deiss,

Timber/Planning Staff, Dixie National Forest.

[FR Doc. 94-9506 Filed 4-19-94; 8:45 am]

BILLING CODE 3410-11-M

Nez Perce and Bitterroot National Forests, ID; Intent To Prepare Legislative Environmental Impact Statement

AGENCY: Forest Service.

ACTION: Notice of intent to prepare a legislative environmental impact statement.

In the matter of Suitability Study for 15 streams in the Upper Selway River drainage including Running Creek, the Bear Creek complex, the Moose Creek complex, the Three Links Creek complex and the Gedney Creek complex being considered for National Wild & Scenic River Status; Nez Perce and Bitterroot National Forests; Idaho County, Idaho.

SUMMARY: The Forest Service, USDA, will prepare a draft and final legislative environmental impact statement (LEIS) associated with a study of the suitability of Running Creek, Bear Creek Complex (Bear, Cub, Paradise, Brushy Fork, and Wahoo Creeks), Moose Creek Complex (East Moose, North Moose, West Fork of Moose, and Moose, and Rhoda Creeks), Three Links Creek Complex (Three Links, West Fork of Three Links Creeks), and Gedney Creek Complex (West Fork of Gedney, Gedney Creeks) in the Nez Perce and Bitterroot National Forests in Idaho for inclusion in the National Wild and Scenic River System. The 15 streams being studied are all tributaries to the Selway River, an existing component of the Middle Fork of the Clearwater River Wild & Scenic River System.

The streams were found eligible for consideration as Wild and Scenic Rivers in the 1987 Nez Perce National Forest and Bitterroot National Forest Land and Resource Management Plans (Forest Plans). With the exception of a portion of Running Creek, all study rivers are within the boundaries of the Nez Perce National Forest. A 3-mile segment of Running Creek, from the Nez Perce/Bitterroot National Forest boundary downstream to the existing Wild & Scenic River corridor of the Selway River, is located within the Bitterroot National Forest. The Agency invites written comments and suggestions on the suitability of these rivers. In addition, the Agency gives notice of the environmental analysis and decision-making process associated with the study so that interested and affected people are aware of how they may participate and contribute to the decision.

DATES: Comments on the scope of the study should be received on or before May 20, 1994.

ADDRESSES: Send written comments to Mike King, Forest Supervisor, Nez Perce National Forest, Rt. 2, Box 475, Grangeville, Idaho 83530.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed study and EIS to Jerry Bird, Upper Selway River Study Team Leader, Selway Ranger District, Nez Perce National Forest, HCR 75, Box 91, Kooskia, Idaho 83539, phone (208) 926-4258.

SUPPLEMENTARY INFORMATION: The Nez Perce and Bitterroot National Forest Land and Resource Management Plans were approved in 1987. The above described streams were identified as eligible for inclusion in the National Wild & Scenic Rivers System as part of the planning process, but were not studied for their suitability at that time. The decision to be made, based upon the environmental impact statement, is whether or not to recommend any or all of the above mentioned rivers for designation and inclusion in the National Wild & Scenic Rivers System. The Forest Plans for each National Forest will be amended accordingly.

The area of consideration for each of the rivers is a corridor ¼ mile in width from each stream bank for the length of the eligible river segments.

The Running Creek study area includes the 15-mile segment that flows from its source at Running Lake (section 26, Township 30N., range 11E.; Boise Meridian [B.M] to the Wild & Scenic Selway River boundary (section 28, T30N, R13E.; B.M).

The Bear Creek complex consists of 65 miles of stream including Bear, Cub, Paradise, Brushy Fork, and Wahoo Creeks individually described as follows:

(1) Bear Creek, from Lower Bear Lake (section 17, T32N., R16E., B.M) to its confluence with the Selway River (section 16, T31N., R13E., B.M);

(2) Cub Creek, from Cub Lake (section 20, T31N., R16E., B.M) to its confluence with Bear Creek (section 8, T31N., R14E., B.M);

(3) Paradise Creek from Bell Lake (section 7, T31N., R16E., B.M) to its confluence with Cub Creek (section 17, T31N., R14E., B.M);

(4) Brushy Fork Creek from Brushy Fork Lake (section 34, T31N., R15 E., B.M) to its confluence with Cub Creek (section 27, T31N., R14E., B.M); and

(5) Wahoo Creek from the west side of Wahoo Pass (section 36, T33N., R15E., B.M) to its confluence with Bear Creek (section 19, T32N., R.15E., B.M)

The Moose Creek complex contains about 75 miles of streams including Moose, East Fork of Moose, North Fork of Moose, West Fork of Moose, and Rhoda Creeks individually described as follows:

(1) The main stem of Moose Creek from the confluence of East and North Forks of Moose Creek (section 25, T33N., R12E., B.M) to its confluence with the Selway river (section 10, T32N., R12E., B.M);

(2) The East Fork of Moose Creek which originates near Lost Horse Pass (section 28, T33N., R16E., B.M) to its confluence with the North Fork of Moose Creek (section 25, T33N., R12E., B.M);

(3) The North Fork of Moose Creek originating in Section 12, T34N., R13E., B.M and flowing to its confluence with the East Fork of Moose Creek (section 25, T33N., R12E., B.M.;

(4) The West Fork of Moose Creek which flows from its source near Wounded Doe Ridge (section 1, T34N., R11E., B.M) and flows to its confluence with the North Fork of Moose Creek (section 13, T34N., R12E., B.M); and

(5) Rhoda Creek which flows from its source at Shasta Lake (section 34, T34N., R10E., B.M) to its confluence

with the North Fork of Moose Creek (section 4, T33N., R12E., B.M).

The Three Links Creek complex consists of 18 miles of stream and includes Three Links Creek which flows from its source at South Three Links Lakes (section 27, T33N., R10E., B.M) to its confluence with the Selway River (section 22, T32N., R11E., B.M) and the West Fork of Three Links Creek which flows from its source at Legend Lake (section 34, T.33N., R10E., B.M) to its confluence with Three Links Creek (section 4, T32N., R11E., B.M).

The Gedney Creek complex consists of 11 miles of stream and includes the West Fork of Gedney Creek which originates in section 32, T33N., R10E., B.M, and flows to its confluence with Gedney Creek (section 32, T32N., R9E., B.M) and the 3 mile segment of lower Gedney Creek from its confluence with the West Fork of Gedney Creek (section 23, T32N., R9E., B.M) to its confluence with the Selway River (section 3, T31N, R9E., B.M).

Scoping for the study began in April 1993 with a series of six regional public meetings to explain the study process and to identify issues relating to the study. A study newsletter was also circulated at that time. Another series of six public meetings were held in December 1993 to validate: Study issues, preliminary outstandingly remarkable values (ORV's), and preliminary alternatives. A second issue of the study newsletter was mailed to interested publics prior to this set of meetings.

The following preliminary issues are being considered in the environmental analysis:

(1) Effects of potential increases in recreation use along the study streams;

(2) Concern over potential increase of restrictions on outfitters operating in the area of the study streams;

(3) Potential effects on maintaining the ecological integrity of the Selway River drainage and allowing natural ecological processes to continue operating along those streams in the Selway-Bitterroot Wilderness;

(4) The potential effects on the ability of the private landowner along Moose Creek River to retain his property and use his land as he chooses;

(5) Potential effects on Moose Creek's outstandingly remarkable values by future development of the private land;

(6) The potential effects on commercial timber harvest activities in the study areas and the adjacent "seen" areas on those portions of Running Creek and the Gedney Creek complexes located outside of the Selway-Bitterroot Wilderness;

(7) Concern over the potential effects of future timber harvest and other management activities on the outstandingly remarkable values of those portions of Running Creek and the Gedney Creek complexes outside of the Selway-Bitterroot Wilderness if designation does not occur; and

(8) Concern over impacts of designation on the ability of the Forest Service to carry out fish and wildlife habitat improvement projects such as prescribed fire and fish habitat improvement structures on the non-wilderness portions of Running Creek and the Gedney Creek complex.

A range of alternatives is being considered. They will include as a minimum, one alternative that does not recommend designation (no action), and one that recommends designation for all the eligible river segments. Additional alternatives will be developed from public comments received during the scoping process. The environmental impact statement will disclose the direct, indirect, and cumulative effects of implementing each of the alternatives.

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposal. This input will be utilized in preparation of the draft environmental impact statement.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) by August 1994. At that time EPA will publish a notice of availability on the draft environmental impact statement in the **Federal Register**. It is very important that those interested in the management of these rivers participate at that time. To be most helpful, comments on the draft environmental impact statement should be as site-specific as possible.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *(Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)).* Also, environmental objections that could be raised at the draft environmental impact stage, but are not raised until after completion of the final statement, may be waived or dismissed by the courts. *(City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir., 1986) and Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the scoping 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 identifying issues and alternatives.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. 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 EIS, the comments will be analyzed and considered by the Forest Service in preparing the final study report and environmental impact statement. The final report is scheduled to be completed by December 1994. The comments, responses, and environmental consequences discussed in the final environmental impact statement and applicable laws, regulations, and policies will be considered in preparing the agency's recommendations for Wild and Scenic River designation.

The responsible official for making recommendations to the Congress is Mike Espy, Secretary of Agriculture, Administration Building, 12th Street, SW., Washington, DC 20250.

The decision on inclusion of a river in the National Wild & Scenic Rivers System rests with the United States Congress.

Dated: April 8, 1994.

Mark A. Reimers,

Deputy Chief, Programs and Legislation.

[FR Doc. 94–9512 Filed 4–19–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

[PB3430D01]

DEPARTMENT OF INTERIOR

Bureau of Land Management

Management for Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl; National Forests in Washington, Oregon, and California

AGENCY: Forest Service, USDA; and Bureau of Land Management, USDI.

ACTION: Notice; record of decision.

SUMMARY: The Forest Service and Bureau of Land Management (BLM) give notice that on April 13, 1994, Secretary of Interior and the Deputy Secretary of Agriculture, signed the Record of Decision for the Final Supplemental Environmental Impact Statement on Management for the Northern Spotted Owl on Lands administered by the Forest Service and the Bureau of Land Management within the Range of the northern spotted owl in the States of Washington, Oregon, and California. The decision adopts Alternative 9 of the Final Supplementary Environmental Impact Statement, as modified by the Record of Decision and amplified by Attachment A to the Record of Decision. Alternative 9 consists of extensive standards and guidelines, including land allocations, that comprise a comprehensive ecosystem management strategy.

EFFECTIVE DATE: The amendments for Forest Service and BLM planning documents within the range of the northern spotted owl will be effective on May 20, 1994. Because this decision amends Forest Service Regional Guides and Forest Plans, no implementing decisions will be made before May 20, 1994, as stipulated in 16 U.S.C. 1604(j). Until May 20, 1994, there will be no Forest Service or BLM Records of Decision, Decision Notices, or Decision Memos signed for timber sales, salvage sales, road construction, or other development activities that implement this decision.

ADDRESSES: Copies of the Record of Decision; Attachment A to the Record of Decision which contains the standards and guidelines; and the Final Environmental Impact Statement are available from the Office of Forestry and Economic Development, P.O. Box 3623, Portland, Oregon 97208; or the Deputy Chief, National Forest System (2000), Forest Service USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Lauri Hennessey, Office of Forestry and Economic Development, (503) 326–7688, or Susan Yonts-Shepard, Staff Assistant for National Forest System Operations, (202) 205–1519.

SUPPLEMENTARY INFORMATION: The Final Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl was filed with the Environmental Protection Agency (EPA) on February 22, 1994. Notice of its availability was published in the **Federal Register** by EPA on February 25, 1994 (59 FR 38). The Record of Decision presents a comparison of the alternatives considered in the Final Environmental Impact Statement and describes the rationale for the alternative selected. This decision is not appealable under Forest Service or Bureau of Land Management administrative appeal procedures.

Copies of the Record of Decision are being mailed to persons who received a copy of the complete Final Supplemental Environmental Impact Statement.

Dated: April 15, 1994.

For the Department of Agriculture.

Mark A. Reimers,

Deputy Chief, Forest Service.

Dated: April 15, 1994.

For the Department of Interior.

Denise Meridith,

Deputy Director, BLM.

[FR Doc. 94–9511 Filed 4–19–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Burlington Primary School Critical Area Treatment and Flood Reduction RC&D Measure Plan; West Virginia

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Burlington Primary School Critical Area Treatment and Flood Reduction RC&D Measure Plan, Mineral County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is critical area treatment for erosion control and surface water control to limit nuisance flooding. The measure is designed to stabilize by regrading, shaping, and revegetating approximately 1 acre of land that has an average erosion rate of 84 tons per acre per year. Conservation practices include rock lined and vegetated waterways, diversions, land smoothing, closed conduit, seeding and mulching.

Burlington Primary School Critical Area Treatment and Flood Reduction RC&D Measure Plan, Mineral County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: March 31, 1994.

Rollin N. Swank,

State Conservationist.

[FR Doc. 94–9516 Filed 4–19–94; 8:45 am]

BILLING CODE 3410–16–M

Cameron Park Improvement RC&D Measure Plan; West Virginia

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cameron Park Improvement RC&D Measure Plan. Marshall County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank. State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is conservation of the Natural Resource Base through erosion control and stormwater management. The site is to be improved as a service of baseball fields. Conservation Measures include land grading and shaping, water control structures, stream stabilization and revegetation.

Cameron Park Improvement RC&D Measure Plan, Marshall County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: April 1, 1994.

Rollin N. Swank,

State Conservationist.

[FR Doc. 94–9513 Filed 4–19–94; 8:45 am]

BILLING CODE 3410–16–M

Fort Randolph RC&D Measure Plan; West Virginia

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Fort Randolph RC&D Measure Plan Mason County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is conservation, natural resource education and rural community development. The measure will develop the Fort Randolph facility to show pioneer dependence on natural resources. An interpretive conservation and environmental education trail will be developed which highlights wetland conservation and plant species important to pioneers. The fort will be improved to allow period craftsmen to demonstrate the dependence of pioneers on natural resources of the area, including plants, animals, soil and water.

Fort Randolph RC&D Measure Plan, Mason County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: March 31, 1994.

Rollin N. Swank,

State Conservationist.

[FR Doc. 94–9515 Filed 4–19–94; 8:45 am]

BILLING CODE 3410–16–M

Ohio County Board of Education, Middle Wheeling Creek Elementary School Outdoor Laboratory, RC&D Measure Plan; West Virginia

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ohio County Board of Education Middle Wheeling Creek Elementary School Outdoor Laboratory, RC&D Measure Plan, Ohio County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation, Service, 75 High Street, room 301, Morgantown, West Virginia 26505, telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on

the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is conservation and environmental education. The measure is designed to create an outdoor open seating, amphitheater, shaping, and revegetating approximately 0.25 acre of land that is in a flat area adjacent to Wheeling Creek. Conservation practices include land grading and smoothing, seeding and mulching.

Ohio County Board of Education, Middle Wheeling Creek Elementary School Outdoor Laboratory, RC&D Measure Plan, Ohio County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: March 31, 1994.

Rollin N. Swank,

State Conservationist.

[FR Doc. 94–9517 Filed 4–19–94; 8:45 am]

BILLING CODE 3510–16–M

Wiley Ford Elementary School Critical Area Treatment Improvement RC&D Measure Plan; West Virginia

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wiley Ford Elementary School Critical Area Treatment Improvement RC&D Measure Plan, Mineral County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the measure is conservation of the Natural Resource Base through erosion control and stormwater management. The site is to be improved as a service of baseball fields. Conservation Measures include land grading and shaping, water control structures, stream stabilization and revegetation.

Wiley Ford Elementary School Critical Area Treatment Improvement RC&D Measure Plan, Mineral County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: April 1, 1994.

Rollin N. Swank,

State Conservationist.

[FR Doc. 94–9514 Filed 4–19–94; 8:45 am]

BILLING CODE 3510–16–M

Boston Canal/Vermilion Bay Shore Stabilization Project; Vermilion Parish, LA

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Boston Canal/Vermilion Bay Shore Stabilization Project, Vermilion Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns the protection from erosion of part of the Vermilion Bay Shoreline and the banks of the Boston Canal near its mouth. The planned works of improvement include the planting of vegetation along 14.3 miles of the Vermilion Bay Shoreline and the installation of bulkheads and sediment fences at the mouth of Boston Canal.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

This activity is being conducted under the provisions of Public Law 101–646—Coastal Wetlands Planning, Protection, and Restoration Act.

April 7, 1994.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 94–9504 Filed 4–19–94; 8:45 am]

BILLING CODE 3410–16–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: Current Retail Sales and Inventory Surveys.

Form Number(s): B–101(92), B–102(92), B–103(92), B–111(92), B–112(92), B–113(92), B–111(92)L.

Agency Approval Number: 0607–0717.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 31,561 hours.

Number of Respondents: 23,436.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Current Retail Sales Survey requests information on monthly sales for retail stores in the United States and the Current Retail Inventory Survey requests information on value of end–of–month merchandise inventories. Data collected in these surveys provide monthly sales estimates and dollar volume end–of–month inventory for retail stores. Monthly estimates of changes in sales and the value and levels of inventory are used by government and non–government analysts in gauging economic trends. These surveys were previously conducted separately, but are now combined onto one form because respondents selected for the Current Retail Inventory Survey are a sub–sample of the Current Retail Sales Survey. Tabulations for the two surveys are independent of each other with both inventory and sales data published in the Monthly Retail Trade Report, Sales and Inventories Report and the Manufacturing and Trade, Inventories and Sales Report.

Affected Public: Businesses or other for–profit organizations, 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: April 14, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

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International Trade Administration

[A–122–824]

Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Michelle A. Frederick, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4136 or 482–0186, respectively.

FINAL DETERMINATION: We determine that imports of certain carbon and alloy steel wire rod ("steel wire rod") from Canada are being, or are likely to be, sold in the United States at less than fair value (Less Than Fair Value), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our November 19, 1993, preliminary determination (58 FR 62639, November 29, 1993), the following events have occurred: We received requests for a public hearing on December 8, 1993, from respondent Stelco Inc. and interested party Michelin Tire Corporation, and on December 9, 1993, from the petitioners.

Sales and cost verifications took place in Canada and the United States from November 1993 through February 1994. During this period, respondents Stelco and Ivaco Inc. submitted revisions and corrections to their questionnaire responses, including revised computer media sales and cost listings.

On December 29, 1993, we advised interested parties that all scope issues would be addressed in conjunction with the briefs and hearing for the final determinations in the companion investigations of steel wire rod from Brazil and Japan. Accordingly, petitioners, Stelco, and interested parties Michelin, the Barnes Group, and Amercord Inc., filed case briefs on January 5, and rebuttal briefs on January 10, 1994. A public hearing on scope issues for all three steel wire rod investigations took place on January 12, 1994.

On March 7, 1994, petitioners, Ivaco, Stelco, and interested party Sidbec-Dosco Inc. filed case briefs on issues related solely to this investigation. These parties filed rebuttal briefs on March 14, 1994. The request for a public hearing was withdrawn on March 16, 1994.

Scope of Investigation

The products covered by this investigation are hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. The following products are excluded from the scope of this investigation:

- Steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and the following chemical content, by weight: carbon greater than or equal to 0.79%, aluminum less than or equal to 0.005%, phosphorous plus sulfur less than or equal to 0.040%, and nitrogen less than or equal to 0.006%;
- Free-machining steel containing 0.03% or more of lead, 0.05% or more of bismuth, 0.08% or more of sulfur, more than 0.4% of phosphorus, more than 0.05% of selenium, and/or more than 0.01% of tellurium;
- Stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods; and
- Wire rod 7.9 to 18 mm in diameter, containing 0.48 to 0.73% carbon by weight, and having partial decarburization and seams no more than 0.075 mm in depth.

The decision regarding the scope of this investigation was based on the great weight afforded petitioners in determining the products from which they require relief, and because Michelin failed to adequately support its claim that the Department should divide wire rod into more than one class or kind. Our decision regarding the scope in this case is more fully explained in the final determinations

with respect to steel wire rod from Brazil and Japan published on February 9, 1994 (59 FR 5984 and 5987, respectively).

The products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.20.0000, and 7227.90.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is October 1, 1992, through March 31, 1993.

Such or Similar Comparisons

We have determined that the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of certain criteria including chemical composition and quality, heat treatment, and dimensions. For a full definition of the criteria see appendix V to the antidumping duty questionnaire, and the appendix V amendment of August 12, 1993, both of which are on file in Room B–099 of the main building of the Department of Commerce.

Fair Value Comparisons

To determine whether Ivaco's and Stelco's sales to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

We have not considered in our analysis Ivaco's purchase price transactions which underwent further manufacturing after importation for the reasons explained in comment 5 below.

United States Price

Generally, we calculated USP for both Ivaco and Stelco according to the methodology described in our notice of preliminary determinations. Except as noted below, all findings at verifications were incorporated in revised computer sales, constructed value (CV), and further manufacturing tapes submitted subsequent to verifications.

In comparing USP to FMV on a price-to-price basis, we made adjustments to Ivaco's and Stelco's USP for the Goods and Services Tax (GST) paid on the comparison sale in Canada. In *Federal-Mogul Corporation and The Torrington Company* v. *the United States (Federal-Mogul)*, Slip Op. 93–194 (CIT October 7, 1993), the Court of International Trade (CIT) prohibited us from applying a purely tax neutral margin calculation methodology. As discussed in recent determinations, such as *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rod from France* (58 FR 68865, 68867, 68870 (December 29, 1993)) (*French Rods*), we have made our tax methodology conform to the instructions of the CIT, and adjusted USP for tax by multiplying the Canadian GST rate of seven percent by the U.S. price at the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the Canadian chain of commerce at which Canada applies the GST. We also calculated the amount of the tax adjustment that was due solely to the inclusion in the original tax base of expenses that are later deducted from the price to calculate USP (*i.e.*, seven percent of the sum of any adjustments, expenses and charges that were deducted from the price of the U.S. merchandise). We deducted this amount from the net USP after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero. See Comment 2.

In addition, we made the following company-specific revisions and adjustments:

A. Ivaco

To calculate USP, we added freight when freight charges were not included in the gross price but billed separately to the customer on the invoice, and deducted the corresponding expenses incurred by Ivaco on these transactions. (See Comment 12).

To determine the general and administrative (G&A) expenses attributable to further manufactured sales made by its related subsidiary, Sivaco New York, Ivaco allocated G&A over its cost of sales. It then applied the G&A rate only to the further manufacturing costs of Sivaco New York. We reallocated the expenses by multiplying the reported G&A rate by the sum of Sivaco New York's cost of manufacturing (COM) and the COM of the steel coming from Ivaco. The Department's adjustment was made because while the denominator in Ivaco's calculation (cost of sales) includes materials, labor, and factory overhead, it had been applied only to labor and factory overhead.

B. Stelco

To calculate USP, we added freight brokerage, and/or duty charges, when these charges were not included in the gross price but billed separately to the customer on the invoice, and deducted the corresponding freight expense incurred by Stelco on these transactions. (See Comment 12).

Foreign Market Value

Generally, we calculated FMV for both Ivaco and Stelco according to the methodology described in our notice of preliminary determination except where specifically noted below. We included in FMV the amount of the GST collected in the Canadian market. We also calculated the amount of the tax that was due solely to the inclusion in the original tax base of expenses that are later deducted from home market price to calculate FMV (i.e., seven percent of the sum of any adjustments, expenses, charges, and offsets that were deducted from the home market price). We deducted this amount after all other additions and deductions were made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero. In addition, we calculated a re-adjustment of the amount of tax to take into account the amount of packing expenses added to FMV (*i.e.*, seven percent of the packing expenses). All findings at verifications were incorporated in revised computer sales and cost of production (COP) tapes submitted subsequent to verifications.

Cost of Production

We calculated the COP for each company according to the methodology described in our preliminary determination, except for the following company-specific revisions:

A. Ivaco

No new adjustments were made.

B. Stelco

We reclassified gains on the sale of production equipment from COM to G&A expenses (see Comment 17).

After calculating COP, we tested whether home market sales of steel wire rod were at prices below COP according to the methodology discussed in our preliminary determination.

For both Ivaco and Stelco, as explained in our preliminary determination, we found that for certain models more than 90 percent of home market sales were at below-COP prices

over an extended period of time. No information has been provided to show that the below cost sales were at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade. For U.S. sales left without a match as a result of disregarding these below COP sales, we based FMV on CV, in accordance with section 773(b) of the Act. (see Comment 1).

Constructed Value

We calculated CV according to the methodology described in our preliminary determination, except for Stelco as noted above under Cost of Production.

Price-to-Price Comparisons

For both Ivaco and Stelco, for those products for which there were an adequate number of sales at prices above the COP, we based FMV on home market prices. Except as noted below, we calculated FMV according to the methodology described in our preliminary determination. In accordance with the decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States (Cement)*, Slip Op. 93–1239 (Fed. Cir., January 5, 1994), we made circumstance-of-sale adjustments for post-sale movement expenses for both companies.

A. Ivaco

We compared U.S. sales to home market sales without regard to level of trade since we determined that Ivaco was unable to support its claim that it made its sales at different levels of trade. (See Comments 3 and 4.) We added freight charges when these expenses were not included in the gross price, but billed separately to the customer on the invoice, and deducted the corresponding freight expense incurred by Ivaco on these transactions. We also revised the circumstance-of-sale adjustments for credit expenses to include freight charges in the price base used to impute credit (See Comment 12).

For home market to exporter's sales price (ESP) comparisons that involved further manufacturing in the United States, we adjusted the cap on the deduction for home market indirect selling expenses to properly account for the portion of U.S. indirect selling expenses and the portion of commissions (if any) attributable to the foreign-produced input product.

B. Stelco

We added freight charges when these expenses were not included in the gross price, but billed separately to the customer on the invoice, and deducted the corresponding freight expense incurred by Stelco on these transactions.

In making circumstance-of-sale adjustments, we used Stelco's reported credit expenses, which were calculated to include movement revenue in the price base (see Comment 12). We also recalculated warranty expenses to reflect Stelco's five-year warranty history, as discussed below under Comment 11.

For home market to ESP comparisons that involved further manufacturing in the United States, we corrected the cap on the deduction for home market indirect selling expenses to properly account for the portion of U.S. indirect selling expenses and the portion of commissions (if any) attributable to the foreign-produced input product.

Currency Conversion

We made currency conversions based on official exchange rates as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by Ivaco and Stelco by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1: Ivaco and Stelco claim that the statute and judicial precedent require that, in determining FMV, if the Department finds that sales of the identical or most similar product are below the COP, the Department should use the next most similar product sold above cost to determine FMV, rather than immediately resort to CV. They contend that section 773(b) of the Act requires that the Department use CV only when there is no home market product sold above cost with a difference in merchandise adjustment of less than 20 percent available for comparison to the U.S. sale. Further, respondents argue that the Policy Bulletin dated December 15, 1992, concerning this policy contravenes the law.

Petitioners contend that the respondents' proposal violates the statutory prohibition against using similar merchandise to calculate FMV when identical merchandise is available. Petitioners contend that were we to conduct the cost test prior to model matching, FMV would be based on the most similar of the above-cost home market products, rather than on the identical or most similar product, thereby making the cost test a factor in the model matching process. They further state that the statute clearly distinguishes between selecting the appropriate model match and calculating FMV. Accordingly, petitioners contend that this separation clearly establishes that model matching shall be based only on the criteria included in the statutory definition of "such or similar merchandise," and that FMV shall be calculated on the basis of the appropriate match so selected unless there are insufficient above-cost sales of that product, in which case CV shall be used.

DOC Position: We disagree with respondents that the statute prohibits our use of CV when there are sales of similar merchandise at above cost prices. As articulated in such determinations as *Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela* (58 FR 27522, 27534, May 10, 1993), section 771(16) of the Act defines such or similar merchandise and provides a hierarchy of preferences for determining which merchandise sold in the foreign market is most similar to the merchandise sold in the United States. Whether a model is sold in the home market or third countries at prices below cost is not a criterion for determining what is most similar merchandise under the statute.

Furthermore, the Department conducts the cost test on a model-by-model basis. Thus, we treat the "remaining sales" referred to in section 773(b) as the above-cost sales of the best-match model. These above cost sales of the most similar model are all used in calculating the weighted average which serves as the FMV for any sales of the U.S. model to which that home market model is matched.

Finally, the judicial cases and administrative decisions cited by respondents are not contrary to our position. In *Koyo Seiko Co., Ltd.* v. *United States*, 810 F.Supp. 1287 (March 1993), for example, we requested remand in order to apply the 20 percent difmer test referred to above. This approach can be distinguished from the approach suggested by the respondents because the 20 percent difference in merchandise (difmer) test is the Department's way of implementing the mandate in subsection (B)(iii) of section 771(16) of the Act, which requires that similar merchandise be merchandise "which the administering authority determine[s] may reasonably be compared with" the merchandise exported to the United States. Thus, the difmer test is part of the statutory

criteria for selecting the single best match.

Comment 2: Petitioners contend that the treatment of the Canadian Goods and Services Tax in the preliminary determination is inconsistent with the *Federal-Mogul* decision at the CIT, which held that Commerce must increase USP by the amount of tax that the exporting country would have assessed on the merchandise if it had been sold in the home market. Accordingly, petitioners state that the Department should apply the methodology adopted in such recent cases as *French Rods* for the final determination.

Ivaco, Stelco, and Sidbec-Dosco argue that the Department adjusted properly for the GST in the preliminary determination, by adding to the U.S. price the absolute amount of GST assessed on the home market merchandise. Stelco claims that the Department's *French Rods* methodology exceeded the court's ruling in *Federal-Mogul*, which Stelco states simply rejected the Department's previous methodology, and created a distortive methodology that exaggerates any dumping margin. Sidbec-Dosco adds that the *Federal-Mogul* decision is not binding on this case. Ivaco contends that the *Federal-Mogul* decision is inconsistent with higher court decisions, such as *Zenith Electronics Corp.* v. *United States*, 988 F.2d 1573 (Fed. Cir. 1993) (*Zenith*).

DOC Position: We are continuing to use the methodology articulated in *French Rods* and described in the "United States Price" and "Foreign Market Value" sections of this notice. This methodology is consistent with both the *Federal-Mogul* decision to allow the "multiplier effect" and the decisions in *Zenith* and *Federal-Mogul*, which allow the Department to avoid the "margin creation" effect. (See *French Rods*, Comment 4, 58 FR 68870.)

Regarding Stelco's comment that the methodology exaggerates dumping margins, we note that the CIT opinion in *Federal-Mogul* interpreted the observation in *Zenith* that "[t]he multiplier effect occurs only when a dumping margin already exists" as a clear indication that "tax neutrality is irrelevant to the proper application of 19 U.S.C. 1677a(d)(1)(C)." In response to Sidbec-Dosco's comment, we note that, since the Department has decided not to appeal the holding in *Federal-Mogul*, we have acted reasonably in adopting the methodology set forth in that holding. This decision, while not necessarily the only methodology consistent with the *Zenith* case, has been found by the CIT to be consistent with that higher court holding.

Comment 3: Petitioners contend that Ivaco has failed to demonstrate that its alleged level of trade classifications (integrated processors (level 1), distributors (level 2), and end-users (level 3)) represent discrete customer functions. They cite several examples from the verification reports of inconsistencies in Ivaco's customer classifications.

Ivaco contends that the Department correctly recognized Ivaco's levels of trade in the preliminary determination and that verification supported its position.

DOC Position: We agree with petitioners. Comparisons are made at distinct, discernable levels of trade based on the function each level of trade performs, such as end-user, distributor, and retailer. At verification, we found that most level 1 customers differed from level 3 customers in the quantities and types of products purchased from Ivaco, but not in terms of function. That is, both levels represent end-users. Level 1 integrated processors purchase rod from Ivaco and manufacture a finished good in the same manner as level 3 customers. For our preliminary determination, we accepted Ivaco's representations of the level of trade functions. However, we found at verification that the primary basis for classifying Ivaco's customers was not the function of the purchasing entity, but which Ivaco entity made the sale. That is, if Ivaco Rolling Mills made the sale, it was classified as a level 1 sale, and if a related processor such as Sivaco Ontario made the sale, it was usually classified as a level 3 sale. Further, Ivaco did not demonstrate that any differences in sales process or expenses were directly related to differences in selling at the claimed levels of trade.

Comment 4: Ivaco claims that the Department should make its product comparisons first by level of trade and then by the physical characteristics of the product. Accordingly, if no product identical to the U.S. sale was sold in the home market at the same level of trade, Ivaco contends that the Department should match the U.S. sale to the most similar product at the same level of trade, rather than to an identical product at a different level of trade.

Petitioners argue that Ivaco's approach puts level of trade above physical similarity of the merchandise, which is clearly at odds with the Department's model matching methodology which is based solely on the physical characteristics of the merchandise. Further, as noted above, petitioners claim that Ivaco failed to support it's characterization of its levels of trade. Thus there is no basis to follow such a methodology.

DOC Position: We agree with petitioners. As discussed above, Ivaco failed to support its level of trade claim. Therefore, there is no basis to consider level of trade at all, much less to give it precedence over the physical characteristic in our matching criteria.

Comment 5: Ivaco claims that the statute directs the Department to consider its purchase price sales that underwent further manufacturing subsequent to importation on an "as imported" basis because the statute directs the Department to add to USP the amount necessary to place the merchandise in a condition for shipment to the U.S., and to make deductions from USP for items incident to bringing the merchandise to the place of delivery in the United States.

Petitioners contend that consideration of these products on an "as sold" basis is proper and insures that the U.S. product that is actually sold to an unrelated party is matched to the identical or most similar product in the home market.

DOC Position: The statute envisions the calculation of FMV based on home market sales of a product comparable to the imported product and the assessment of the duty on the merchandise as imported. However, the statute makes no provisions in a purchase price situation for deducting from the USP the value added by further manufacturing which takes place in the United States. Thus, were we to utilize these further manufactured purchase price sales in calculating a margin, we would have two options: (a) Compare an FMV and a USP based on the merchandise as sold, which would conflict with the statutory intent that the FMV calculation be based on home market sales comparable to the imported merchandise; or (b) deduct the further manufacturing expenses on the U.S. sales as we would do if these were an ESP type of transaction, which is inconsistent with section 772 of the Act. Because of this dilemma, and because only a very small quantity of Ivaco's U.S. sales are further manufactured purchase price sales, we have excluded these sales from consideration in our analysis.

Comment 6: Petitioners claim that Ivaco erroneously allocated the fabrication costs incurred in the melt shop and continuous caster based on special productivity factors rather than tonnage. Petitioners argue that the "days of production" statistic that Ivaco used to allocate these fabrication costs does not reconcile to the total days of actual

production. Because Ivaco could not reconcile the discrepancy caused by its submission methodology, petitioners claim that the Department should revise the calculated cost based on tonnage.

Ivaco contends that its allocation of these fabrication costs is more accurate than an allocation based on tonnage. Ivaco's methodology allocated a relatively lower per ton cost to product grades that were produced more quickly, and a higher cost to products that required more time to produce. The "missing" days were intentionally excluded because more than one grade of steel were produced on these days, which renders them useless for calculating production efficiencies between grades of steel.

DOC Position: We agree with Ivaco. It is not relevant whether the sum of the estimated days of production used by Ivaco to allocate fabrication costs between grades of steel reconciled to the total days of actual production, because the statistics for the days used in the calculation are merely a representative sample. The use of tonnage to allocate melt shop costs, as petitioner suggests, would result in the same cost per ton regardless of the grade of steel. Ivaco's methodology provides a reasonable estimate of the efficiencies incurred by the melt shop and caster when producing different grades of steel.

Comment 7: Petitioners argue that the Department should reject Ivaco's allocation of corporate overhead expenses. They urge the Department to allocate the portion of corporate overhead not normally allocated to divisions or affiliates using the same ratio Ivaco generally uses in allocating the corporate overhead. In its own accounting system, Ivaco allocates only a portion of corporate overhead to its divisions and affiliates. Of this allocated portion, the vast majority is charged to the divisions. Petitioners argue that the same ratio between the divisional allocation and the affiliate allocation should be used to achieve the complete allocation of corporate overhead required by the Department for purposes of this investigation.

Ivaco argues that the methodology it used in its response, allocating the corporate overhead expenses based on the proportional cost of goods sold of each division and affiliate, is consistent with the Department's request contained in the questionnaire. Ivaco argues that its normal methodology allocates a lower percentage of total corporate overhead than the methodology it used to respond to the Department.

DOC Position: We agree with Ivaco. A company's management may allocate overhead charges in many different ways and for many different reasons, frequently for tax and income reporting requirements. In addition, there is nothing on the record to support the assertion that the total corporate head office charges, most of which are not normally allocated at all, should be allocated in the same proportion as those which are normally allocated between divisions and affiliates. Upon further review, the Department has accepted Ivaco's allocation based on cost of goods sold because an allocation of G&A based on cost of goods sold applies G&A proportionately to each product regardless of management's subjective allocations.

Comment 8: Ivaco argues that the Department's analysis in the verification report, questioning the cost of goods sold figure used to allocate interest, incorrectly commingled divisional data with consolidated data. Ivaco contends that only consolidated data should be used because intercompany revenue and expenses are eliminated upon consolidation. The use of divisional data overstates the non-manufacturing expense that the Department subtracted from the total production costs as reported in the consolidated financial statements.

DOC Position: We agree with Ivaco. Intercompany transactions are eliminated upon consolidation. The commingling of consolidated and company level data as well as the uses of different accounting principles used at the corporate and divisional levels, account for the differences.

Comment 9: Petitioners state that Ivaco excluded from the COP certain restructuring charges reported in its consolidated financial statements. They argue that the Department should increase the G&A expense percentage to compensate for this oversight.

Ivaco argues that it properly excluded these restructuring costs from the reported G&A expense because they relate to non-subject merchandise. The restructuring costs in question are solely related to the operations of a subsidiary not involved in the production of the subject merchandise.

DOC Position: We agree with Ivaco. Non-operating expenses, such as restructuring costs, have been excluded by the Department when they relate solely to entities outside of facilities producing the subject merchandise. These restructuring costs relate solely to the operations of a company which produces plastic and not the subject merchandise, thus Ivaco properly excluded these costs from the G&A expense computation.

Comment 10: Petitioners contend that Ivaco should not be allowed to offset interest expense with its dividend income because dividend income is considered investment income and Department policy dictates that it may not be used to reduce actual production expenses.

Ivaco states that the dividend income in question relates to exchangeable debentures that bear interest equal to the cash dividend Ivaco earns on shares in another company, plus a premium. Thus, Ivaco is legally obligated to pay to the debenture holder all of the dividends that Ivaco earns on these shares, plus a premium. Ivaco further notes that it excluded all other dividend income from its interest expense calculation.

DOC Position: We agree with Ivaco. Ivaco demonstrated at verification that the dividend income is merely passed through Ivaco from Dofasco to the debenture holder. Because the interest expense and these specific dividends are directly linked, Ivaco properly treated these dividends as a direct offset to Ivaco's debenture interest. All other dividend income was excluded.

Comment 11: Petitioners claim that Stelco's home market warranty expenses for the POI are unusually high when compared to the historical five-year average that Stelco reported. Petitioners further state that Stelco offers no explanation for this apparent discrepancy, therefore they contend that the Department should substitute the five-year average for the reported expenses.

Stelco responds that its home market warranty expenses were simply higher during the period of investigation and that these expenses were verified.

DOC Position: Because respondents usually cannot tie POI sales to their associated warranty expenses, the Department often relies on historical data. Obviously, historical data would not be a more accurate reflection of the warranty expenses where a respondent is able to demonstrate a relationship between POI sales and its warranty expense claim. This relationship could be shown by tying actual warranty expenses to POI sales, or by demonstrating why warranty expenses during the POI would be a more representative proxy of eventual warranty expenses on POI sales than the historical average, such as by showing that the POI sales reflected a new technology or demonstrate quality control improvements. Although the POI warranty expense amount claimed by Stelco was verified, Stelco's methodology was not based on a relationship between the reported POI warranty expenses and anticipated warranty expenses on POI sales.

Accordingly, we have recalculated both U.S. and home market warranty expenses to reflect the historical five-year average.

Comment 12: In some cases in both markets, Stelco sold the merchandise to the customer at a price exclusive of movement charges, and recorded a separate charge for freight and, on U.S. sales, duty and brokerage. For such sales, Stelco claims that the Department should calculate the imputed credit expense on a price base that includes these movement expenses not included in the selling price as listed on the invoice, but listed separately on the invoice. Stelco reasons that it effectively extends credit to its customers on this basis, rather than on the basis of price of the merchandise alone, and thus the full value of its opportunity cost should be reflected in the imputed credit calculation.

Petitioners state that the Department was correct in the preliminary determination in excluding these expenses from the credit calculation. They note that the record contains no information supporting Stelco's claim that it incurred a true opportunity cost for these expenses since Stelco did not demonstrate that it must pay its shippers prior to receipt of payment from its customers.

DOC Position: Where freight and movement charges are not included in the price, but are invoiced to the customer at the same time as the charge for the merchandise, the Department considers the transaction to be similar to a delivered price transaction since the seller may consider its return on both transactions in setting price. Thus we have revised the methodology used in our preliminary determination for Ivaco and Stelco to add to both USP and FMV the freight and other movement charges to the customer, and deducted the corresponding freight expense incurred by the respondents on these transactions. This methodology is consistent with our treatment of these expenses where they are included in the gross price. Since we now have, in effect, a gross price that includes the movement charge, it is appropriate to include the movement charge in calculating imputed credit. Accordingly, we have recalculated imputed credit for both respondents to reflect this addition to price, where appropriate.

With respect to the opportunity cost arguments raised by Stelco and petitioners, the Department is not required to determine the true economic cost of each adjustment when such a level of precision poses such an unreasonable burden (see *Federal-Mogul Corporation and The Torrington Company* v. *the United States* 839 F. Supp. 881 (1993)). Whether Stelco has demonstrated an opportunity cost or not is immaterial, since we are making the imputed credit adjustment for the reason described above, rather than based on Stelco's opportunity cost theory.

Comment 13: Stelco claims that it is entitled to a circumstance-of-sale adjustment for post-sale warehousing expenses in both markets. It contends that it has provided sufficient evidence to show that, as a commercial reality, this expense is a condition of sale and that the Department does not need to require a formal contract between the parties specifying these warehousing services in order to allow this adjustment.

Petitioners respond that Stelco was unable to produce "hard evidence" that post-sale warehousing was a condition of sale. Its use of this service was instead a discretionary business decision that would not qualify for this adjustment. Petitioners cite *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Japan* (51 FR 46892, 46894 (December 29, 1986)) to show that the Department requires contractual agreement to warehousing expenses in order to grant the adjustment.

DOC Position: We agree with petitioners that, in order for the Department to allow adjustment, the respondent must provide some evidence that it is obligated to perform this service as a condition of sale, as in *Final Determination of Sales at Less Than Fair Value: Carbon Steel Wire Rod from Trinidad and Tobago* (46 FR 43206 (September 22, 1983)). The information Stelco submitted and presented at verification described Stelco's perception of the expectations of the customer regarding the condition of the product, but does not specifically indicate that the post-sale warehousing was a necessary condition of the sale, particularly as Stelco failed to demonstrate that it provided this service on each sale to the customer. Accordingly, we have not treated post-sale warehousing expenses as a direct expense in making circumstance of sale adjustments. We have, however, included the expense as an indirect expense.

Comment 14: Petitioners assert that purchases of scrap by Stelco McMaster Ltee, a wholly owned Stelco subsidiary which produces billets used in the production of wire rod, from a 50 percent owned related party, were incorrectly valued at intercompany transfer prices. Petitioners further state that the transfer prices were below the COP of the scrap.

Stelco argues that it followed the Department's instructions in the COP questionnaire, in which the Department instructed Stelco to provide the transfer price for purchases from subsidiaries in which the respondent's ownership interest is 50 percent or less. Moreover, Stelco argues that for COP purposes, in determining the cost of inputs from related suppliers, the Department correctly applied the rule of using transfer price when subsidiaries in which the respondent's interest is 50 percent or less are involved (*see, Final Determination of Sales at Less Than Fair Value: Antifriction Bearings from West Germany*, 54 FR 18992 (May 3, 1989)).

DOC Position: We agree with Stelco. In the COP questionnaire issued to Stelco, the Department clearly requested, for COP purposes, that the company submit transfer prices for purchases of inputs from companies that have direct or indirect common ownership of 50 percent or less. This request is in accord with long-standing Department practice, and was followed by Stelco in reporting these scrap purchases. The Department's treatment of related party transactions for COP tracks the requirements for consolidation contained in Canadian and U.S. Generally Accepted Accounting Principles (GAAP). The consolidation principle states that economic activities are consolidated for all companies that have direct or indirect common ownership of greater than 50 percent (ARB Number 51). Therefore no adjustment was made for the final determination.

Comment 15: Petitioners claim that Stelco incorrectly valued at cost iron ore received from a related supplier in which Stelco held a minority interest. Because Stelco only holds a minority interest in the supplier, petitioner maintains that Stelco should have used the transfer price in valuing the iron ore received from the related supplier.

Stelco argues that the transfer price of iron ore obtained from Wabush (an unincorporated joint venture which transfers pellets to its members at cost) was the same as actual cost. Stelco further states that the figure the petitioner interpreted to be the transfer price is a budgeted value assigned by Stelco's interim cost accounting system.

DOC Position: We agree with Stelco. The Department verified that Stelco's purchases of iron ore (*i.e.* transfer price) from its minority owned related supplier occurred at the supplier's actual COP, *i.e.*, the transfer price and the actual price were the same.

Additionally, the Department verified that transfer price was the same as the price paid by an unrelated purchaser to the related supplier for the same grade of iron ore. Therefore, no adjustment was made.

Comment 16: Petitioners claim that Stelco should adjust the cost of coal received from Ontario Coal for a portion of the overall corporate losses incurred by Ontario Coal, a related supplier. Petitioners argue that if overall operations experience a loss, it is part of the cost of doing business for all the products made for all customers. Therefore part of the loss should be attributable to coal sold to Stelco. Petitioners further argue that this situation is especially true in a high fixed cost sector like mining, in which producers may sell incremental tonnage at a price higher than variable cost, but below total cost, to realize economies of scale and spread fixed costs over a larger tonnage. Ontario's unprofitable sales to external customers would reduce the total cost of the coal sold to Stelco.

Stelco argues that the loss on Ontario Coal's December 31, 1992 financial statements was not a result of Stelco's purchases from Ontario, but rather a result of Ontario's selling coal to unrelated parties at prices below its fully absorbed cost of producing the coal. Stelco further states that its average cost of acquiring coal from Ontario was within one penny of covering Ontario's fully absorbed cost of producing the coal.

DOC Position: We agree with Stelco. The Department verified that Ontario Coal's sales to Stelco occurred at Ontario Coal's actual COP. Therefore, no adjustment was made for the final determination.

Comment 17: Petitioners contend that Stelco incorrectly reduced its reported COM by the amount of gains on the sale of production equipment. Petitioners argue that the gain on the sale of the production equipment should be reclassified as a credit to the reported G&A expenses as opposed to a credit to the COM.

Stelco contends that in its normal accounting system, gains and losses arising from the sale of production equipment are included in its reported depreciation expenses. For the purpose of consistency, Stelco also included the gain on the sale of production equipment with its depreciation expense for submission purposes.

DOC Position: We agree with petitioners. Stelco provided no evidence that the production equipment which generated the gains on the sale was solely related to the production of subject merchandise. Therefore, the Department considers these gains to be related to the general production activities of Stelco as a whole, and they were, therefore, reclassified to the G&A expense calculation.

Comment 18: Petitioners claim that Stelco incorrectly reduced the depreciable basis of its capital assets by an investment tax credit ("ITC") recognized during the POI. Petitioners further state that the Department should recalculate Stelco's depreciation expense excluding the offset of the ITC against the depreciable basis of the capital assets.

Stelco contends that its inclusion of the ITC in reporting depreciation expenses is consistent with Canadian GAAP. Stelco further states that the Department instructed Stelco to quantify and value its reported COM in accordance with GAAP.

DOC Position: Stelco's submitted depreciation expense was calculated utilizing a historical cost fixed asset basis reduced by any investment tax credits realized as a result of purchasing the depreciated equipment. This methodology was in accordance with Canadian GAAP. The Department found that this Canadian approach to defining basis for depreciation purposes is not distortive for antidumping purposes in this case because the impact of the ITC is so small as to have essentially no effect on the overall cost of production of the subject merchandise. Therefore, we have continued to calculate cost of production using the depreciation expense as submitted by Stelco.

Comment 19: Petitioners allege that Stelco's classification of secondary merchandise as a co-product for purposes of the investigation is inconsistent with its own accounting system and understates the cost of prime merchandise. Petitioners further state that the Department must correct Stelco's accounting for secondary merchandise by treating all secondary rod as a by-product. In doing so, the petitioners recommend allocating the cost less the recovery value of secondary rod to production of prime merchandise.

Stelco cites *IPSCO Inc. v. United States (IPSCO)* [965 F.2d 1057 (Fed. Cir. 1990)] in which the Court upheld the Department's treatment of secondary pipe (pipe that did not meet the specifications for prime pipe, also known as "off-specification" pipe) as a co-product, not a by-product. Stelco contends that the Department must follow the *IPSCO* precedent in its treatment of off-specification wire rod.

DOC Position: We agree with Stelco. Stelco's steel wire rod comes in two grades: Prime and non-prime. After production of a manufacturing lot, the wire rod is examined and classified as either prime or non-prime by inspection teams. Non-prime wire rod is then sold to companies that transform it into such things as shopping carts, sofa springs and nails. The same manufacturing factors go into the production of both prime and non-prime wire rod. Other than quality and market value, there are no differences between prime and non-prime wire rod. Stelco's reporting methodology was consistent with *IPSCO*.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rod from Canada that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Ivaco Inc	10.25
Stelco Inc	13.20
All Others	11.36

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist with respect to the subject merchandise, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise from Canada entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notice to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of

their responsibility, pursuant to 19 CFR 353.34(d), concerning the return or destruction of proprietary information disclosed under APO. Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: April 13, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–9551 Filed 4–19–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–801]

Antifriction Bearings from Italy; United States Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On December 10, 1993, the United States Court of International Trade (CIT) rejected the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy (56 FR 31751, July 11, 1991). *Torrington Company* v. *United States* (Slip Op. 93–234, December 10, 1993) (*Torrington*). Specifically, the CIT rejected the Department's methodology in the redetermination for calculating the amount of the tax adjustment that was added to United States price (USP). The CIT entered final judgment on the value added tax issue. The results covered the period November 9, 1988, through April 30, 1990.

EFFECTIVE DATE: December 20, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background:

On July 8, 1993, the CIT in *Torrington Company* v. *United States* (Slip Op. 93–125), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy (56 FR 31751, July 11, 1991) to the Department for the reconsideration of a number of issues. For one of these issues, the Court ordered the Department to determine the exact monetary amount of the value added tax (VAT) paid on each sale in the home market, to make certain that the amount of the VAT adjustment added to the comparable U.S. sale is less than or equal to this amount, and to add the full amount of the VAT in the home market to foreign market value (FMV) without adjustment. On September 22, 1993, the Department submitted to the CIT its redetermination on remand on the VAT and other issues. On December 10, 1993, the CIT ruled upon Commerce's redetermination in *Torrington*. In this decision, the CIT rendered final judgment on the VAT issue, rejecting the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP. The CIT also ordered remand on other issues. SKF Ltd. filed notice of appeal of the partial final judgment on the VAT issue on February 8, 1994.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Torrington* on December 10, 1993, which rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP, constitutes a decision not in harmony with the Department's final results.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of the subject merchandise pending the conclusion of the appeal. Further, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from Italy to reflect the change in the VAT adjustment calculation methodology which was ordered by the CIT and direct liquidation in accordance with the amended determination.

Dated: April 10, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–9432 Filed 4–19–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–506]

Oil Country Tubular Goods From Canada Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the respondent, IPSCO Inc. (IPSCO), the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Canada. The review covers one manufacturer/ exporter, IPSCO, and exports of the subject merchandise to the United States during the period June 1, 1992, through May 31, 1993.

We preliminarily determine the dumping margins for IPSCO to be zero during this period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: David Genovese or Michael Heaney, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202)482–5254.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1993, the Department published a notice of "Opportunity to Request an Administrative Review" (58 FR 31941) of the antidumping duty order on OCTG from Canada (51 FR 21782; June 16, 1986). On June 25, 1993, IPSCO requested an administrative review. The Department initiated the review on July 21, 1993 (58 FR 39007), covering the period June 1, 1992, through May 31, 1993. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review include shipments of OCTG from Canada. This includes American Petroleum Institute (API) specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes

published in the API or proprietary specifications for OCTG with tolerances of plus ⅛ inch for diameters less than or equal to 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests.

This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

United States Price

In calculating United States Price (USP), the Department used purchase price, as defined in section 772(b) of the Act, because the merchandise was sold to an unrelated purchaser in the United States prior to its importation. The Department based USP on the packed, delivered price to those unrelated purchasers.

The Department made deductions, where appropriate, for foreign inland freight, U.S. duties, and U.S. brokerage fees.

On October 7, 1993, the United States Court of International Trade (CIT), in *Federal-Mogul Corporation and The Torrington Company* v. *United States*, Slip Op. 93–194 (CIT, October 7, 1993), rejected the Department's methodology for calculating an addition to USP under section 772(d)(1)(C) of the Act to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(C) of the Act should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to the foreign market sales. *Federal-Mogul*, Slip Op. 93–194 at 12.

The Department has changed its methodology in accordance with the *Federal-Mogul* decision. The Department has added to USP the result of multiplying the foreign market tax rate by the price of the merchandise sold in the United States at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department has also adjusted the USP tax adjustments and the amount of tax included in FMV. These adjustments deduct the portions of the foreign market tax and the USP tax adjustment that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and are included in the United States merchandise price used to calculate the USP tax adjustment and that are later deducted to calculate FMV and USP. These adjustments to the amount of the foreign market tax and the USP tax adjustment are necessary to prevent our new methodology for calculating the USP tax adjustment from creating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

This margin creation effect is due to the fact that the bases for calculating both the amount of tax included in the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses that are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus, a margin may be created that is not dependent upon a difference between USP and FMV, but is the result of the price of the United States merchandise containing more expenses than the price of the foreign market merchandise. The Department's policy to avoid the margin creation effect is in accordance with the United States Court of Appeals' holding that the application of the USP tax adjustment under section 772(d)(1)(C) of the Act should not create an antidumping duty margin if pre-tax FMV does not exceed USP. *Zenith Electronics Corp.* v. *United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993). In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV. *Daewoo Electronics Co., Ltd.* v. *United States*, 760 F. Supp. 200, 208 (CIT, 1991). However, the mechanics of the Department's adjustments to the USP tax adjustment and the foreign market tax amount as described above are not identical to those suggested in *Daewoo*.

There were no other adjustments claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), we used home market price, as defined in section 773(a) of the Act, since sufficient quantities of merchandise were sold in the home market to provide a reasonable basis for comparison. Home market price was based on the FOB stockyard or FOB mill price to unrelated purchasers in the home market.

Due to the existence of sales below the cost of production (COP) in the original investigation, which is the last segment of the proceeding on OCTG with which IPSCO has been involved, the Department had reasonable grounds to believe or suspect that sales below the COP may have occurred during this review. Accordingly, the Department initiated a COP investigation for this review in accordance with section 773(b) of the act. Because IPSCO had home market sales of models which were identical to models it sold in the United States, we conducted our cost test only on those identical models. We calculated COP based on IPSCO's cost of materials, fabrications, and general expenses. The results of our cost test showed that no sales of merchandise were made below the COP during the period of review. Therefore, we have based FMV on sales of merchandise in the home market.

The Department made adjustments, where applicable, for discounts, rebates, warranty and servicing expenses, royalty fees, fees for outside inspectors, and for differences in packing material and credit. In addition, in accordance with the United States Court of Appeals for the Federal Circuit's ruling in *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, Slip Op. 93–1239 (CAFC, January 5, 1994), the Department did not deduct pre-sale transportation costs. The Department also made an adjustment to FMV for imputed consumption taxes in accordance with the aforementioned *Federal-Mogul* decision.

There were no other adjustments claimed or allowed.

Preliminary Results of Review

As a result of our comparison of USP to FMV, the Department preliminarily determines that a margin of zero percent exists for IPSCO for the period June 1, 1992, through May 31, 1993.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of

publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of any such written comments or hearing.

The Department shall determine, and U.S. Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the "all others" rate will be 16.65 percent, as explained below.

On May 25, 1993, the CIT, in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Accordingly, the cash deposit rate for any future entries from all other manufacturers or exporters, who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firm or any previously reviewed firm, will be the "all others" rate established in the original LTFV investigation which is 16.65 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 14, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–9552 Filed 4–19–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–801]

Antifriction Bearings From the United Kingdom; United States Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On October 14, 1993, the United States Court of International Trade (CIT) rejected the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (56 FR 31769, July 11, 1991). *Torrington Company* v. *United States*, (Slip Op. 93–199, October 14, 1993) (*Torrington*). Specifically, the CIT rejected the Department's methodology in the redetermination for calculating the amount of the tax adjustment that was added to United States price (USP). The CIT entered final judgment on the value added tax issue, and dismissed the case. The results covered the period November 9, 1988, through April 30, 1990.

EFFECTIVE DATE: October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background:

On June 9, 1993, the CIT in *Torrington Company* v. *United States* (Slip Op. 93–103), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (56 FR 31769, July 11, 1991) to the Department. The Court ordered the Department to determine the exact monetary amount of the value added tax (VAT) paid on each sale in the home market, to make certain that the amount of the VAT adjustment added to the comparable U.S. sale is less than or equal to this amount, and to add the full amount of the VAT in the home market to foreign market value (FMV) without adjustment. On July 23, 1993, the Department submitted to the CIT its redetermination on remand on the VAT. On October 14, 1993, the CIT ruled upon Commerce's redetermination in *Torrington*. In this decision, the CIT rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP. On December 13, 1993, The Torrington Company filed a notice of appeal of the CIT's decision.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Torrington* on October 14, 1993, which rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP, constitutes a decision not in harmony with the Department's final results.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of the subject merchandise pending the conclusion of any appeal. Further, upon a "conclusive" court decision affirming the CIT's opinion, the Department will

amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom to reflect the change in the VAT adjustment calculation methodology which was ordered by the CIT and direct liquidation in accordance with the amended determination.

Dated: April 10, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration

[FR Doc. 94–9433 Filed 4–19–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–801]

Antifriction Bearings From the United Kingdom; United States Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On November 30, 1993, the United States Court of International Trade (CIT) rejected the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (56 FR 31769, July 11, 1991). *Federal-Mogul Corp.* v. *United States,* (Slip Op. 93–222, November 30, 1993) (*Federal-Mogul*). Specifically, the CIT rejected the Department's methodology in the redetermination for calculating the amount of the tax adjustment that was added to United States Price (USP). The CIT entered final judgment on the value added tax issue, affirmed the results on other issues, and dismissed the case. The results covered the period November 9, 1988, through April 30, 1990.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1993, the CIT in *Federal-Mogul Corp.* v. *United States,* (Slip Op. 93–88), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (56 FR 31769, July 11, 1991) to the Department for the reconsideration of a number of issues. For one of these issues, the Court ordered the Department to determine the exact monetary amount of the value added tax (VAT) paid on each sale in the home market, to make certain that the amount of the VAT adjustment added to the comparable U.S. sale is less than or equal to this amount, and to add the full amount of the VAT in the home market to foreign market value (FMV) without adjustment. On October 7, 1993, the Department submitted to the CIT its redetermination on remand on the VAT and other issues. On November 30, 1993, the CIT ruled upon Commerce's redetermination in *Federal-Mogul.* In this decision, the CIT rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP. On January 31, 1994, SKF Ltd. filed notice of appeal of the CIT's ruling on the VAT issue.

In its decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Federal-Mogul* on November 30, 1993, which rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP, constitutes a decision not in harmony with the Department's final results.

Pursuant to the decision in *Timken,* the Department must continue the suspension of liquidation of the subject merchandise pending the conclusion of the appeal. Further, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom to reflect the change in the VAT adjustment calculation methodology which was ordered by the CIT and direct liquidation in accordance with the amended determination.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Dated: April 10, 1994.

[FR Doc. 94–9434 Filed 4–19–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 041294C]

Small Takes of Marine Mammals Incidental to Shock Testing the U.S.S. John Paul Jones

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: On April 12, 1994, NMFS issued a Letter of Authorization to the U.S. Department of the Navy (Navy), that allows a take of a small number of marine mammals incidental to shock testing of the DDG–53, U.S.S. *John Paul Jones,* in the offshore waters of the Outer Sea Test Range (OSTR) of the Naval Air Warfare Center, Pt. Mugu, Ventura County, CA.

ADDRESSES: A copy of the authorization is available from the Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, or by calling the contact listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, (301) 713–2055.

SUPPLEMENTARY INFORMATION: Regulations governing the taking of marine mammals incidental to the detonation of conventional explosives within the OSTR were published on February 3, 1994 (59 FR 5111). These regulations are based on section 101(a)(5) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) and NMFS' determination that the taking of marine mammals incidental to this activity will have a negligible impact on the species and stocks and will not have an unmitigable adverse impact on their availability for subsistence uses. The regulations and the Letter of Authorization include permissible methods for taking, including measures to mitigate incidental takes to the lowest level practicable, and require the Navy to both monitor the effects of their activities on marine mammals and to report on all takings. It should be noted that these regulations and the Letter of Authorization do not authorize the Navy's activities, as such authorization is provided by the National Defense Authorization Act (10 U.S.C. 2366) and is not within the jurisdiction of the Secretary of Commerce. Rather, the Letter of Authorization and implementing regulations authorize the unintentional incidental take of marine

mammals in connection with such activities, prescribe methods of taking, other means of effecting the least practicable adverse impact on the species and its habitat and the availability of the species for subsistence uses.

Dated: April 14, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–9500 Filed 4–19–94; 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.

NTIA has received comments from 30 parties in this proceeding. Those comments can be reviewed in NTIA's Openness Room, U.S. Department of Commerce, room 4092, 14th St. and Pennsylvania Ave., NW., Washington, DC 20230, between the hours of 9 a.m.–5 p.m. For further information about NTIA's Openness Room, contact Norbert Schroeder at (202)482–6207.

Since the comment deadline date, NTIA has received several requests for extension of time to file comments. In the interest of fairness to all potentially interested parties, and to provide additional opportunity to develop the record in this proceeding, NTIA will allow additional time in which to file comments.

DATES: Additional comments should be filed on or before May 23, 1994, to receive full consideration.

ADDRESSES: Please submit seven copies to the Office of Policy Analysis and Development, NTIA, U.S. Department of Commerce, room 4725, 14th St. and Pennsylvania Ave., Washington, DC 20230. Comments also may be submitted electronically via Internet to cmattey@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: Carol Mattey or Lisa Leidig, Office of Policy Analysis and Development, NTIA, at (202) 482–1880.

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: April 15, 1994.

Larry Irving,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 94–9556 Filed 4–19–94; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force; Meeting

The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting on Tuesday, 10 May 1994 at 8 a.m., in the CCAF Commander's Conference Room (Bldg 836), 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama. the meeting will be open to the public.

Purpose of the meeting is to review and discuss academic policies and issues relative to the operation of the CCAF. Agenda items include a CCAF mission briefing, faculty credentials, and reaffirmation of CCAF.

For further information contact Captain Dallas Brooks, (205) 953–2703, Community College of the Air Force, Maxwell Air Force Base, Montgomery, Alabama 36112–6653.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–9509 Filed 4–19–94; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Military Personal Property and Claims Symposium

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

Announcement is made of meeting of the Military Personal Property and Claims Symposium. This meeting will be held on Thursday 26 May 1994 at the Best Western Old Colony Inn, Alexandria, Virginia and will convene at 0830 and adjourn at approximately 1600 hours.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and the free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTOP–QSS, (703) 756–0754, between 0800–1630 hours. Topics to be discussed should be received on or before 22 April 1994.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–9656 Filed 4–19–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Chicago Operations Office Non-Competitive Financial Assistance Award to the Environmental Action Foundation

AGENCY: Energy.

ACTION: Notice of Noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through the Denver Support Office, announces, pursuant to the DOE Financial Assistance Rules 600.7(b)(2)(i)(B) it intends to award a Cooperative Agreement to the Environmental Action Foundation-Energy Conservation Coalition to assist that organization and its environmental and consumer constituencies to promote energy efficiency and renewable energy technologies and practices at the state, regional, and national levels.

The funding will assist the applicant's activities targeted to the following states: Massachusetts, Vermont, Maine, New Hampshire, Connecticut and Rhode Island, and states in one other region to be determined.

SUPPLEMENTARY INFORMATION: The proposed project meets the criterion for noncompetitive financial assistance specified in 10 CFR 600.7(b)(2)(i)(B) in that the activities are being or would be conducted by the applicant using its own resources or those donated or provided by third parties. However, the Department of Energy's support of these activities would enhance the public benefits to be derived by assisting the Environmental Action Foundation reach an environmental audience at a State/local levels. The Department of Energy knows of no other entity which is

conducting or is planning to conduct such an activity.

The activities and goals of the Energy Conservation Coalition-Environmental Action Foundation are designed to promote energy efficiency and renewable energy technologies and practices at the state, regional, and national levels. The applicant represents a coalition of approximately twenty national environmental, consumer, regulatory and scientific organizations concerned with environmental issues.

PROJECT PERIOD: The project period for the grant award is one year and expected to begin in April 1994. DOE plans to provide funding in the amount of approximately $95,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Chicago Operations Office, Denver Support Office, Margaret Learmouth, 2801 Youngfield Street, suite 380, Golden, Colorado 80401, (303) 231–5750, Extension 138.

Issued in Chicago, Illinois, on April 1, 1994.

Timothy S. Crawford,

Assistant, Manager for Human Resources and Administration.

[FR Doc. 94–9541 Filed 4–19–94; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Advisory Board

AGENCY: Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting.

Name: Environmental Management Advisory Board.

Dates and Times: Tuesday, May 17, 1994 from 8:30 a.m. to 5 p.m.; Wednesday, May 18, 1994 from 3 p.m. to 4 p.m.

Place: Radisson Suite Hotel—Arlington, 700 Avenue H East, Arlington, Texas 76011.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Secretary, Environmental Management Advisory Board, EM–1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4400.

SUPPLEMENTARY INFORMATION: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on both the substance and process of the EM Programmatic Environmental Impact Statement and other EM projects, from the perspectives of affected groups and State and local Governments. The Board will help to improve the environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Tuesday, May 17, 1994

8:30 a.m. Co-Chairs Opens the Meeting. Environmental Management Programmatic Environmental Impact Statement comments and discussion.
12:30 p.m. Lunch.
1:45 p.m. Meeting resumes, continuation of morning discussions.
4:30 p.m. Public Comment Session.
5 p.m. Meeting Adjourns.

Wednesday, May 17, 1994

3 p.m. Wrap-up Discussion of the implication of comments to the Environmental Management Programmatic Environmental Impact Statement.
4 p.m. Meeting Ends.

A final agenda will be available at the meeting.

PUBLIC PARTICIPATION: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Board during the public comment session should call (800) 862–8860 and leave a message. Individuals may also register on May 16, 1994 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Board Co-chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

TRANSCRIPTS AND MINUTES: A transcript and minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 15, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–9543 Filed 4–19–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Submission of Applications To Support Project Definition Studies of Specific Future On-Site Uses of the Superconducting Super Collider Assets and Facilities

AGENCY: Office of Energy Research, Energy (DOE).

ACTION: Notice of availability of grant solicitation.

SUMMARY: The U.S. Department of Energy (DOE) expects to issue a solicitation for the submittal of grant applications for project definition studies of specific future on-site uses of the Superconducting Super Collider (SSC) assets and facilities located in Ellis County, Texas.

SUPPLEMENTARY INFORMATION: Existing assets and facilities include:

(1) The N15 site which houses extensive cryogenic facilities and superconducting magnet tooling and test equipment in the Magnet Development Laboratory, the Magnet Test Laboratory, and the Accelerator System String Test;

(2) The Central Facility, a 550,000 sq. ft. building including 200,000 sq. ft. of office/training space; 160,000 sq. ft. of shop/lab space, serviced with low conductivity water and compressed air systems, and some crane coverage; a well-equipped machine shop, a 550 watt liquid helium refrigerator (in partially assembled condition); and warehouse space;

(3) Buildings for the linear accelerator (linac) as well as its negative hydrogen ion source and 2.5–MeV radiofrequency quadruple (the higher energy sections are not complete);

(4) Nearly 15 miles of unfinished tunnel, 14 feet in diameter, at a depth of typically 150 feet, connected to the surface by several vertical shafts; and

(5) An integrated network of distributed computer workstations. The specific uses to be addressed by these studies are presently being determined by the Department based on the submission and evaluation of Expressions of Interest and other considerations. The uses will be described in detail in the solicitation. Total funding up to the amount of $5,000,000 is anticipated for these studies. Multiple awards are expected to be made in July 1994, with reports from these studies due October 31, 1994. The solicitation will be issued on or about May 6, 1994. Eligibility for this solicitation is unrestricted. Those who submitted an Expression of Interest (EOI) in response to the Department's March 1994 request for EOIs will

automatically receive a copy of the solicitation. Written requests for copies of the solicitation should be sent to Ms. Angela Sistrunk, Contract Specialist, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8758 by April 29, 1994. Telephonic requests will not be accepted.

Issue in Oak Ridge, Tennessee, on April 11, 1994.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Field Office.

[FR Doc. 94–9542 Filed 4–19–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 11313 New Hampshire]

White Mountain Hydroelectric Co.; Availability of Final Environmental Assessment

April 14, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Apthorp Dam Project located on the Ammonoosuc River in Grafton County, New Hampshire, and has prepared a Final Environmental Assessment (FEA) for the proposed project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9459 Filed 4–19–94; 8:45 am]

BILLING CODE 6717–01–M

Intent To Authorize Third Party Contractors To Prepare Environmental Assessments and Environmental Impact Statements

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is implementing its authority to undertake environmental review of pipeline certificate and hydroelectric license applications through the use of third party contracting. Third party contracting is a voluntary arrangement between an applicant and an environmental contractor in which the applicant pays the contractor to develop, under the Commission's control, environmental analyses, including Environmental Assessments and Environmental Impact Statements, necessary for compliance with the National Environmental Policy Act of 1969

DATES: This notice is effective April 14, 1994.

FOR FURTHER INFORMATION CONTACT:
Randolph E. Mathura, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2100.
Thomas E. DeWitt, Office of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 219–2821.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 209–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS also can be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format also may be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Issued April 14, 1994.

The Federal Energy Regulatory Commission (Commission) is implementing its authority to undertake environmental review of pipeline certificate and hydroelectric license applications through the use of third party contracting. Third party contracting is a voluntary arrangement between an applicant and an environmental contractor in which the applicant pays the contractor to develop, under the Commission's control, environmental analyses, including Environmental Assessments and Environmental Impact Statements, necessary for compliance with the National Environmental Policy Act of 1969.

The Council on Environmental Quality's (CEQ's) regulations impose three requirements for third party contracting procedures:

(1) The lead Federal agency must make the ultimate selection of the contractor;

(2) Federal officials must furnish guidance and participate in the preparation of the environmental report and must independently evaluate the report prior to approval as well as take responsibility for the report's scope and contents; and

(3) The environmental contractor may not have a financial or other interest in the outcome of the proposed project. 40 CFR 1506.5(a) and 1506.5(c).

On March 25, 1994, the Commission advertised in the Commerce Business Daily (CBD) for qualified environmental contractors to prepare environmental assessments and environmental impact statements. The third party contracts will be issued by the owners of hydropower or pipeline facilities (as applicants to the Commission) to independent contractors. The third party contracting process, including the third party contractor's work product, will be produced under the Commission's control and subject to the Commission's oversight.

For third party contracting opportunities related to applications filed by interstate pipelines, potential third party environmental contractors should contact interstate pipeline owners directly. The Commission will not maintain a central bidders' list for pipelines. The Commission notices applications for the construction of pipeline projects in the **Federal Register**. The notices also are available through the Commission Issuance Posting System.

For third party contracting opportunities related to hydropower licensing, the Commission maintains a third party contractor bidders' list resulting from the CBD notice published May 4, 1993.

Both the Office of Pipeline Regulation and the Office of Hydropower Licensing will produce handbooks in the near

future to answer third party contracting questions.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9458 Filed 4–19–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–329–000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

April 12, 1994.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Co.

[Docket No. CP94–329–000]

Take notice that on April 1, 1994, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed an application at Docket No. CP94–329–000, pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing El Paso to construct and operate its North/South Transfer Project. El Paso also requests a determination that the costs for the North/South Transfer Project would be rolled into El Paso's cost-of-service as a part of the first system-wide general rate proceeding following the in-service date of the proposed facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests expeditious authorization of the North/South Transfer Project since it has been designed to enhance El Paso's system operating flexibility and to contribute directly to maximum system utilization, by providing enhanced multi-directional flow operations. El Paso states that construction of the North/South Transfer Project would therefore facilitate El Paso's ability to react quickly to changing market requirements on both the demand and supply sides on its system.

El Paso states that while its system has always had to respond to changing markets prior to open-access, El Paso could optimize the sequencing of supplies to maximize system efficiency. El Paso states that it controls neither the market nor the supply and must stand ready to handle a wide variety of combinations of supply and demand. El Paso further states that during the last five years, the California market has been evolving in a new direction which has resulted in fundamental changes in the demand patterns on El Paso's transmission system. El Paso states that the day-to-day changes in system loading has created a need for additional system flexibility.

El Paso also states that the market changes are caused, in part, by several events. First, the demand for gas deliveries at the Topock Delivery Point by El Paso's California customers has decreased as a result of the expansion of Pacific Gas Transmission Company's system to move Canadian gas supplies into northern California, the capacity available through the Kern River Gas Transmission Company system, and the capacity available from the Transwestern Pipeline Company (Transwestern) system at Topock (referred to as Needles by Transwestern). El Paso states that if prices for gas in the southwest are high, the California market shifts to the Canadian supplies. This decrease in demand at Topock imposes an external constraint on El Paso's North System which results in capacity allocations in the San Juan Basin supply area. Second, El Paso states that the continuing buildup of supply in the San Juan Basin has made that area's gas production a more economically attractive supply source for El Paso's customers served by the South System. Third, El Paso states that producers in the Permian and Anadarko Basins have found markets within Texas and to the east, unloading El Paso's system. Of El Paso's supply sources, the supplies in the Permian and Anadarko Basins are closest to the eastern markets and can easily swing off El Paso's system in very short notice. El Paso states that the California market changes, the ability for producers in all supply basins to swing off El Paso's system on a day-to-day basis, and El Paso's need for system flexibility to quickly respond to the day-to-day market and supply changes support the need to transfer gas between the two systems and collectively constitutes the driving forces behind the North/South Transfer Project.

El Paso further states that given these developments in the market and their direct impact on El Paso's system, El Paso has recognized that its existing system can better serve the market if modified to facilitate operation in a multi-directional manner. El Paso proposes to construct and operate approximately 98.4 miles of 30-inch pipeline ("North/South Transfer Line"), with appurtenances, to parallel the existing 30-inch Havasu Crossover Line and proposes to modify the operation of the existing Dutch Flat Compressor Station, all located near the western end of El Paso's North and South Systems. El Paso states that the approximate cost of construction of the North/South Transfer Project is $62,364,000, with a resultant third year cost of service of only approximately $10.4 million.

El Paso states that its proposal would provide El Paso with the capability to transfer an additional 468.6 Mmcf per day of natural gas from El Paso's North System to its South System. El Paso further states that the construction of these facilities, together with the operation of the existing system in a multi-directional manner would permit El Paso to enhance system flexibility, maximize system utilization, and thereby more quickly respond to ever-changing market and supply conditions. El Paso also states that firm delivery capacity would not be increased by the facilities.

El Paso also requests a determination from the Commission granting El Paso approval to roll-in the costs associated with the North/South Transfer Project into its total cost of service. El Paso states that when the facilities are placed in-service, El Paso would charge its then current and effective Part 284 rates. El Paso further states that it would roll-in the cost associated with the North/South Transfer Project in the first system-wide general rate proceeding initiated following the in-service date of the North/South Transfer Project.

El Paso asserts that the proposed North/South Transfer Project benefits producers, end-users, and shippers utilizing El Paso's system. El Paso further asserts that producers in any basin would be able to get their gas more reliably to markets served by El Paso's system and would be less likely to be subject to capacity allocations and shut-ins. Shippers will also have more flexibility in moving gas to their new markets and greater certainty of supply sources. El Paso states that as a result of these circumstances, end-users would benefit from a further increase in reliability of gas supplies and deliveries.

Comment date: May 3, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP94–332–000]

Take notice that on April 4, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP94–332–000 a petition for declaratory order requesting that the Commission clarify whether certain construction falls within the provisions of § 2.55(b) of the Commission's General Policy and Interpretations for replacement of facilities, all as more fully set forth in the petition which is on file with the

Commission and open to public inspection.

Columbia states that the past practice of "telescoping" pipelines in storage fields, the sizing of pipelines in proportion to the gas flow, now impairs Columbia's ability to effectively clean and inspect these facilities. Columbia further asserts that it has experienced failures in its storage pipeline system due to external and internal corrosion of the facilities.

Columbia states that, in order to correct the corrosion problem, it has initiated a program to install permanent launching and receiving facilities in parts of its existing storage field pipeline system. Columbia further states that in certain storage fields it would be necessary to replace short segments of the telescoped pipeline to provide for a uniform pipe size between launcher and receiver locations. Columbia asserts that uniform pipe size would eliminate the need for multiple launcher and receiver locations thereby enabling the pigging system to be more effective.

Columbia states that it believes that this replacement construction constitutes the replacement of facilities as envisioned by § 2.55(b) of the Commission's General Policy and Interpretations. Columbia asserts that the "a substantially equivalent designed delivery capacity as the facilities being replaced" criteria in § 2.55(b) is not accompanied by further definition that would indicate how the Commission would interpret the phrase. Columbia further asserts that its review of relevant Commission decisions did not clarify the phrase with sufficient precision to eliminate the need to seek NGA section 7(c) certificate authorization. Columbia states that it has filed for authorization to construct these type of facilities at the Medina Storage Field in Docket No. CP94–252–000 and at the Weaver Storage Field in Docket No. CP94–320–000.

Columbia requests that the Commission issue a declaratory order clarifying that § 2.55(b) of the Commission's General Policy and Interpretations may be interpreted to include the replacement of facilities of the type described above and described in more detail in the referenced applications filed by Columbia in regard to the Medina and Weaver Storage Fields.

Comment date: May 3, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corp.

[Docket No. CP94–348–000]

Take notice that on April 11, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP94–348–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate an existing delivery tap to Piedmont Natural Gas Company, Inc. (Piedmont) on TGPL's Maiden Lateral in Lincoln County, North Carolina under the blanket certificate issued in Docket No. CP82–426–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

TGPL proposes to operate an existing 4-inch delivery tap, located at milepost 0.18 on TGPL's Maiden Lateral in Lincoln County, North Carolina, which will be used by Piedmont to receive up to 750 Mcf of gas per day into its distribution system on a firm and interruptible basis. TGPL asserts it will not alter the authorized firm transportation service entitlement for Piedmont. TGPL states it has sufficient system delivery flexibility to accomplish these deliveries without any detriment to its other customers. TGPL indicates that the operation of this delivery point is not prohibited by its FERC Gas Tariff.

TGPL states that the facilities necessary to make this tap operational will consist of tie-in piping between the existing tap and Piedmont's facilities. TGPL further states that this tie-in piping will be constructed pursuant to § 2.55(a) of the Commission's regulations and will cost an estimated $10,000.

Comment date: May 27, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or 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 applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9474 Filed 4–19–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–890–000]

AES Power Inc.; Issuance of Order

April 14, 1994.

On January 5, 1994 and March 4, 1994, AES Power Inc. (AESPI) submitted for filing a rate schedule under which AESPI will engage in wholesale electric power and energy transactions as a marketer. AESPI also

requested waiver of various Commission regulations. In particular, AESPI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by AESPI.

On April 8, 1994, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under 18 CFR part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by AESPI 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).

Absent a request for hearing within this period, AESPI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of AESPI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 9, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–9460 Filed 4–19–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–309–000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

April 1, 1994.

Take notice that on March 28, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP94–309–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon 5 delivery points to Columbia Gas of Ohio, Inc. (COH), under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to abandon 5 delivery points located in Hocking County, Ohio, used for deliveries to mainline tap customers served from Columbia's non-jurisdictional production Line FH–282 in Hocking County. It is stated that Columbia plans to retire Line FH–282 because of its deteriorated condition. It is explained that the line is no longer used for its original function and has been kept in service only to serve the 5 customers. It is asserted that the customers have consented to the abandonment and have agreed to convert to propane or another alternate fuel source.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9476 Filed 4–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–317–000]

Northwest Pipeline Corp.; Notice of Request Under Blanket Authorization

April 1, 1944.

Take notice that on March 30, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP94–317–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon its existing facilities at a meter station in Nez Perce County, Idaho, and to construct and operate replacement facilities to accommodate delivery obligations to The Washington Water Power Company under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that capacity would be increased from 4,670 Dth per day to 9,150 Dth at 150 psig through such replacement, and the cost would be $10,005.

Any person of the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9477 Filed 4–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–203–000 and RP92–132–000 (Phase 1)]

Tennessee Gas Pipeline Company; Informal Settlement Conference

April 14, 1994.

Take notice that an informal settlement conference will be convened in these proceedings on April 20, 1994, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the cost allocation and rate design phase of this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams at (202) 208–0743 or Dennis H. Melvin at (202) 208–0042.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9461 Filed 4–19–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–541–002]

Young Gas Storage Company, Ltd., Compliance Filing

April 14, 1994.

Take notice that on April 4, 1994, Young Gas Storage Company, Ltd. (Young), Post Office Box 1087, Colorado Springs, Colorado 80944, tendered for filing, pursuant to Ordering Paragraph (D) of the Commission's March 3, 1994, Order Granting Preliminary Determination in Docket No. CP93–541–000, the following pro forma tariff sheets:

Substitute Original Sheet No. 6,
Substitute Original Sheet No. 12,
Substitute Original Sheet No. 17,
Substitute Original Sheet No. 18,
Substitute Original Sheet No. 25,
Substitute Original Sheet No. 30,
Substitute Original Sheet No. 31,
Substitute Original Sheet No. 36,
Substitute Original Sheet No. 49,
Substitute Original Sheet No. 53,
Substitute Original Sheet No. 55,
Substitute Original Sheet No. 58,
Substitute Original Sheet No. 66,
Original Sheet No. 66A,
Substitute Original Sheet No. 67,
Substitute Original Sheet No. 68,
Substitute Original Sheet No. 69,
Substitute Original Sheet No. 82,
Substitute Original Sheet No. 83.

Young states that copies of the filing were served upon all persons listed on the Commission's Service List for Docket No. CP93–541–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before May 5, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–9462 Filed 4–19–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearing and Appeals

Cases Filed; Week of March 11 Through March 18, 1994

During the Week of March 11 through March 18, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: April 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 11 through March 18, 1994]

Date	Name and location of applicant	Case No.	Type of submission
3/7/94	McDowell County School District, Welch, WV.	RR272–127	Request for modification/rescission in the crude oil refund proceeding. If granted: The March 3, 1994 Dismissal Letter (Case No. RF272–82095) issued to McDowell County School District would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
3/14/94	May-Slade Oil Company, Klamath Falls, OR.	LEE–0097	Exception to the reporting requirements. If granted: May-Slade Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
3/16/94	Coalition on West Valley Nuclear Wastes, Buffalo, NY.	LFA–0361	Appeal of an information request denial. If granted: The February 14, 1994 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded, and the Coalition on West Valley Nuclear Wastes would receive access to a complete report of the West Valley Demonstration Project cited in the Environmental Information Document Volume VI, Site Radiological Surveys.
3/16/94	Noltgas Propane Fuel & Supply, New Holland, PA.	LEE–0098	Exception to the reporting requirements. If granted: Noltgas Propane Fuel & Supply would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case number
3/11/94 thru 3/18/94	Texaco Refund Application Received	RF321–20954 thru RF321–20962
3/11/94 thru 3/18/94	Crude Oil Refund Application Received	RF272–95164 thru RF272–95188

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case number
3/14/94	Griffin Arco Service	RF304–15449
3/15/94	Fisherman's Ice, Inc	RF300–21776
3/15/94	Fisherman's Ice, Inc	RF300–21777
3/15/94	Fisherman's Ice, Inc	RF300–21778
3/15/94	Fisherman's Ice, Inc	RF300–21779
3/15/94	Fisherman's Ice, Inc	RF300–21780
3/17/94	Borough of Haledon	RA272–58
3/17/94	Pal's Truck Stop	RF304–15450
3/18/94	Chao's Arco	RF304–15452
3/21/94	Rice Brothers Service	RF304–15451
3/21/94	Donco Carriers	RC272–234

[FR Doc. 94–9547 Filed 4–19–94; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed; Week of March 4 Through March 11, 1994

During the Week of March 4 through March 11, 1994, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: April 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 4 through March 11, 1994]

Date	Name and Location of Applicant	Case No.	Type of submission
Mar. 4, 1994	Charter/California, Sacramento, CA	RM23–266, RM3–267	Request for Modification/Rescission in the Charter and National Helium Second Stage Refund Proceeding. If granted: The February 4, 1986, September 29, 1989, December 26, 1989 and March 12, 1990 decisions issued to California (Case Nos. RQ23–252, RQ3–253, RQ3–529, RQ23–543 and RQ23–576) would be modified regarding the state's applications for refund submitted in the Charter and National Helium second stage refund proceedings.
Mar. 10, 1994	Helen Gaidine Oglesbee, Richland, WA	LWA–0006	Request for Hearing under DOE Contractor Employee Protection Program. If granted: A hearing under 10 CFR part 708 would be held on the complaint of Helen Gaidine Oglesbee that reprisals were taken against her by management officials of Westinghouse Hanford Company as a consequence of her having disclosed health and safety concerns to Westinghouse Hanford Company.

Date received	Name of refund proceeding/name of refund application	Case No.
03/07/94	Roberto's ARCO	RF304–15448
03/08/94	Eastern Express, Inc	RF300–21775
03/08/94	St. Benedict's Hearth Corp	RF272–232
03/08/94	Dan Branch Mining Co., Inc	RF272–233
03/14/94	Griffin ARCO Service	RF304–15449
03/07/94	Tube City Taxi Cab Co	RF272–95154
03/07/94	Barker Timber Co	RF272–95155
03/07/94	Columbus Consolidated Govt	RF272–95156
03/07/94	Quality Seafoods, Inc	RF272–95157
03/07/94	Apple Tree Chevrolet, Inc	RF272–95158
03/08/94	Columbia Paving, Inc	RF272–95159
03/09/94	Iron City Uniform & Towel Serv	RF272–95160
03/10/94	Farmers Co-op Elevator	RF272–95161
03/11/94	Union Camp Corporation	RF272–95162
03/11/94	Ben Hill Griffin, Inc	RF272–95163

Date received	Name of refund proceeding/name of refund application	Case No.
03/04/94 thru 03/11/94	Texaco refund applications received	RF321–20940 thru RF321–20953
03/04/94 thru 03/11/94	Crude oil refund applications received	RF272–95143 thru RF272–95163

[FR Doc. 94–9544 Filed 4–19–94; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Proposed Decisions and Orders During the Week of March 28 Through April 1, 1994

During the week of March 28 through April 1, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: April 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Ed F. Hodges, Inc.; Fairmont, NC; Reporting Requirements; LEE–0056

Ed F. Hodges, Inc. (Hodges) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that Hodges was not suffering gross inequity or serious hardship. Accordingly, on March 30, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

Myers Chevron; Liberty, KY; Reporting Requirements; LEE–0089

Myers Chevron (Myers) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Myers to be exempted from filing Form EIA–782B. On March 29, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request should be denied.

R.V. Ratts, Inc.; Hurst, TX; Reporting Requirements; LEE–0082

R.V. Ratts, Inc. filed an Application for Exception from the Energy Information Administration requirement that it file Form EIA–23, the "Annual Survey of Domestic Oil and Gas Reserves." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Accordingly, on March 30, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

Swan Oil Company; Benton Harbor, MI; Reporting Requirements; LEE–0076

Swan Oil Company (Swan Oil) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Swan Oil to be exempted from filing Form EIA–782B. On March 29, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request should be denied.

[FR Doc. 94–9546 Filed 4–19–94; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of February 28 Through March 4, 1994

During the week of February 28 through March 4, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Jon Berg, 3/1/94; LFA–0351

Mr. Jon Berg filed an Appeal from a partial denial by the Energy Information Administration (EIA) of the DOE of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the EIA had properly withheld from documents released to Mr. Berg the name of an employee who was the subject of allegations of conflict of interest (which were later dismissed) and a confidential business plan prepared by the employee. The DOE remanded this matter to the EIA for an explanation of the privacy interest in withholding names and office locations from an internal agency note. The Appeal was therefore denied in part and remanded in part.

Seehuus Associates, 3/2/94; LFA–0353

Seehuus Associates (Seehuus) filed an Appeal from a denial by the Oak Ridge Field Office of a request for a retroactive fee waiver with respect to a document request that Seehuus had filed under the Freedom of Information Act (FOIA). The DOE noted that while neither the FOIA nor the DOE regulations specifically contemplate retroactive fee waivers, they will be considered under appropriate circumstances. Retroactive fee waiver requests will be evaluated in view of the actual contents of the documents that were provided to the requester and the actual use that the requester made of the documents. The DOE upheld the Field Office's determination that the Seehuus fee-waiver request was not in the public interest because Seehuus did not disseminate the information to the public and because Seehuus admitted

that the information was of little value. Accordingly, the Appeal was denied.

Request for Exception

Mico Oil Company, Inc., 3/4/94 LEE–0075

On January 21, 1994, the Mico Oil Company, Inc. (Mico), filed an Application for Exception from the requirement that it file Form EIA–782B (the "Resellers'/Retailers' Monthly Petroleum Product Sales Report") with the DOE Energy Information Administration. In considering this request, the DOE found that (1) Mico was suffering serious financial difficulties, (2) the firm's burden in complying with the reporting requirement differed significantly from that of similar reporting firms, and (3) that burden was not outweighed by the benefits to the nation in obtaining the reported information. Therefore, the DOE issued a Decision and Order granting Mico's Application for Exception.

Implementation of Special Refund Procedures

Warwick Oil Corporation, 3/1/94; LEF–0117

The DOE issued a Decision and Order implementing special refund procedures to distribute $17,816.72, plus accrued interest, in crude oil price violation monies paid to the DOE by the Warwick Oil Corporation pursuant to an April 3, 1980 Remedial Order. The OHA determined that the remedial order funds would be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. Therefore, 40 percent of the funds were ordered to the federal government, another 40 percent to the states, and 20 percent were initially reserved for the payments of claims by injured parties.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Elmo L. Sorrels	RC272–227	03/01/94
Enron Corp./Mallory's LP Products, Inc	RF340–41	03/01/94
Brazos Butane, Inc	RF340–77	
Macmillan Oil Company, Inc	RF340–165	
Ethan Allen, Inc	RF272–16157	02/28/94
Ethan Allen, Inc	RD272–16157	
Grand Garage et al	RF272–90228	02/28/94
Gulf Oil Corp./Greater Orange Pk. Comm Hospital et al	RF300–19524	03/02/94
Gulf Oil Corp./Hawkeye Oil Co	RF300–15836	03/04/94
Gulf Oil Corp./James River Hydrate et al	RF300–16544	03/01/94
Gulf Oil Corp./Lilly's Gulf	RF300–20262	03/01/94
Gulf Oil Corp./S&U Coal & Oil Co	RF300–15699	03/04/94
LaFarge Corporation	RF272–56211	03/02/94
LaFarge Corporation	RD272–56211	
LaFarge Corp	RF272–92687	
Polaroid Corporation	RF272–21085	03/04/94
Polaroid Corporation	RD272–21085	
Statler Tissue Company	RF272–13913	03/04/94
Statler Tissue Company	RD272–13913	
Sysco Frosted Foods, Inc	RC272–211	03/04/94
Texaco Inc/Bob's Texaco et al	RF321–19116	03/04/94
Texaco Inc/Risser Oil Company	RF321–15691	02/28/94
Warner-Lambert Company	RF272–57572	03/01/94
Warner-Lambert Company	RD272–57572	

Dismissals

The following submissions were dismissed:

Name	Case No.
AT&T—Denver District	RF272–92578
AT&T Nassau Metals Corp	RF272–94941
AT&T Network Systems	RF272–92129
Balboa Texaco	RF321–14434
Ben Ewing Texaco Service	RF321–808
Bob Swartz Texaco #1	RF321–19422
Country Club Texaco	RF321–10717
Dick & George	RF321–8402
Foshee's Texaco	RF321–10775
Hardage Service Station	RF321–9940
Killingworth, CT	RF272–84611
McDowell County School District.	RF272–82095
NY Public Interest Research Group.	RF272–73703
River Bend Corporation	RF272–63096
River Bend Corporation	RD272–63096
Southgate Texaco	RF321–10716
Standard Vending and Music Co.	RF272–74687
Tissue Texaco Service	RF321–14435
Western Petro-Chemical	RF272–63205
	RD272–3929
Western Stone Products, Inc	RF272–3929

Copies of the full text of these decisions and orders are available in the Public Reference room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: April 13, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–9545 Filed 4–19–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00154; FRL–4773–9]

Training Grants for Lead-Based Paint Abatement Workers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for preproposals.

SUMMARY: The safety issues surrounding the activities of lead-based paint abatement workers are a major concern of EPA. Appropriate worker safety training is essential if lead-based paint abatement activities are to be done in a manner that assures the safety of building occupants, the public, the environment, and abatement workers. To ensure that the number of well-trained lead-based paint abatement workers increases at an acceptable rate, EPA has received 1994 congressional add-on funds to provide training grants to nonprofit organizations engaged in lead-based paint abatement worker training and education activities. This year, the Agency is particularly interested in funding nonprofit environmental equity-based organizations that offer worker lead abatement training opportunities for minorities and low income community residents. This grass roots initiative will provide opportunities for communities to develop local-based lead abatement businesses that will employ area residents. Only nonprofit organizations with demonstrated experience in the implementation and operation of health and safety training for lead-based paint abatement workers will be considered for funding. This notice describes the eligibility requirements and the selection criteria for the grants.

DATES: All preproposals must be submitted to EPA no later than May 20, 1994.

ADDRESSES: Preproposals should be sent to the following address: Paul Matthai, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Betty Weiner or Karen Hoffman at (202) 260–1869 or write to the EPA Lead Abatement Program at the address listed under the ADDRESSES unit.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce the availability of funds to form cooperative agreements for the purpose of providing support to organizations demonstrating experience in lead-based paint training activities with particular interest in funding nonprofit environmental equity-based organizations. Any nonprofit organization with such experience is eligible to apply. For the purposes of this notice, lead-based paint abatement activities mean activities engaged in by workers that include the removal, disposal, handling, and transportation of lead-based paint and materials containing lead-based paint from public and private dwellings, public and commercial buildings, and bridges and other structures or superstructures where lead-based paint presents or may present an unreasonable risk to health or the environment.

I. Administrative Requirements

This program is subject to matching share requirements. Awards shall be given only to applicants who can fund at least 5 percent of their programs from non-Federal sources, excluding in-kind contributions. (In-kind contributions are defined as the value of a non-cash contribution to meet a recipient's cost-sharing requirements. An in-kind contribution may consist of charges for real property and equipment, or the value of goods and services directly benefiting the EPA-funded project.) The recipient's matching share may exceed 5 percent.

II. Evaluation Criteria

Preproposals submitted in response to this notice will be evaluated on a competitive basis by an EPA review panel. The following factors, which are weighted by percentage as to their relative importance, will be considered in evaluating the preproposals:

1. *Program Experience (25 percent)*

a. Experience in the development of adult education courses, with emphasis on training individuals with limited education.

b. Experience in the delivery of health and safety course materials to individuals with limited or no English language skills.

c. Demonstrated ability to target the worker population.

2. *Lead-Based Paint Abatement Worker Course Experience (30 percent)*

a. Experience in the delivery of courses, including hands-on training, to lead-based paint abatement workers.

b. Experience in providing community-based training to lead-based paint abatement workers.

c. Demonstrated experience in the implementation and operation of health and safety training for lead-based paint abatement workers.

d. Qualifications of key personnel.

e. The number of students expected to be trained during the project period.

3. *Project Management (25 percent)*

a. Applicant's ability to provide appropriate program staff to the project.

b. Applicant's ability to provide space, equipment, staff time, and other resources required to carry out project responsibilities.

c. Extent to which the applicant has considered a management plan for the project, including the designation of a qualified program administrator.

4. *Budget (20 percent)*

Preproposals should include a detailed budget that specifies the amount of money to be used in all aspects of the proposed worker training, as well as the amount that is to be the non-Federal share (at least 5 percent of the total budget, excluding in-kind contributions). All budgets must include funding for a trip to EPA in Washington, DC to attend an information-sharing meeting for all award recipients. The ability of the applicant to derive a budget estimate that is appropriate to the scope of the project will be considered in the evaluation process. The proposed budget should be clearly justified and consistent with the intended use of the funds set forth in this notice.

III. Application Procedures

The following materials must be provided by all applicants:

1. Documentation that proves the nonprofit status of the applicant.

2. Copies of any lead-related course material already being used by the applicant to teach the course. In addition, any applicants who have received EPA funds for lead worker training in any previous year's program must include in their preproposal a description of how those funds were used.

IV. Acceptable Expenditures

Funds awarded must be spent on activities that directly result in increased numbers of well-trained lead-based paint abatement workers. Since EPA has funded the development of a model course curriculum for workers, the Agency does not wish to fund the development of new courses through this program.

The following lists provide examples of activities that will and will not be considered for funding. The list of acceptable activities is for guidance only; projects may be funded for acceptable activities other than those on the list.

Award recipients may use the monies for the following:

a. Delivery of lead-based paint abatement worker courses.

b. Delivery of train-the-trainer courses.

c. Enhancement of hands-on training programs.

d. Monitoring and evaluating courses.

e. Limited purchasing of supplies.

f. Speakers' fees (expenses and travel).

g. Slide duplication.

h. Rental of facilities.

i. Limited purchase of audio/visual equipment.

j. Workers' tuition.
k. Limited printing and reproduction of materials and manuals.
l. Transporting workers to training sites.
m. Innovative training systems (i.e., community-based training).

Monies may *not* be used for the following:

a. Development of new training course curricula for workers.
b. Stipends to students for room, board, and salaries.

V. Notification of Selection

Preproposals are due no later than May 20, 1994. Preproposals shall be no more than five pages in length. Each applicant is requested to provide seven copies of the preproposal to EPA. EPA plans to award a total of $2.8 million through cooperative agreements to eligible nonprofit organizations. EPA will not allot all of the available award money to any one group or necessarily fund all of the groups.

Dated: April 13, 1994.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94-9573 Filed 4-19-94; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4876-1]

Extension of the Policy on Enforcement of RCRA Section 3004(J) Storage Prohibition at Facilities Generating Mixed Radioactive/ Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy statement.

SUMMARY: EPA is announcing an extension of its policy (56 FR 42730, August 29, 1991) on the civil enforcement of the storage prohibition in section 3004(j) of the Resource Conservation and Recovery Act (RCRA) at facilities which generate "mixed waste" regulated under both the RCRA subtitle C hazardous waste program and the Atomic Energy Act (AEA). The policy affects certain mixed wastes that are prohibited from land disposal under the RCRA Land Disposal Restrictions (LDR), and for which there are no available options for treatment or disposal. This action generally renews the August 1991 policy for an additional two-year period, based on EPA's determination that the availability of treatment and disposal capacity for certain mixed wastes has not changed materially in the interim.

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Richard LaShier, State and Regional Programs Branch, Office of Solid Waste; Telephone (703) 308-8760.

SUPPLEMENTARY INFORMATION:

I. Background

A. Mixed Waste and the LDR Storage Prohibition

"Mixed wastes" are wastes that contain both a hazardous waste component regulated under Subtitle C of RCRA and a radioactive component consisting of source, special nuclear, or byproduct material regulated under the AEA. EPA clarified that RCRA applies to wastes which contain both types of components on July 3, 1986 (51 FR 24,504). The definition of mixed waste was recently added to the RCRA statute by the Federal Facility Compliance Act (FFCA) of 1992. Mixed wastes are a subset of hazardous wastes, and as such, are subject to the land disposal restrictions in 40 CFR Part 268. Currently, most mixed wastes are subject to the LDRs, except for newly listed hazardous wastes that are mixed with AEA radioactive materials and do not yet have EPA treatment standards. Certain additional newly listed wastes that are mixed with radioactive materials, and debris contaminated with certain hazardous wastes (which also may be radioactive) are currently subject to variances from the LDR treatment standards (See 40 CFR 268.36).

The aspect of the LDRs affected by the policy extension set forth in this notice is the "storage prohibition" enacted in HSWA section 3004(j). This provision prohibits any storage of a land disposal prohibited waste (including mixed waste) except "for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal." The provision has relevance to mixed waste management, since there currently is only one facility that EPA is aware of, Envirocare of Utah, Inc., that provides disposal capacity for certain types (i.e., mainly low activity and high volume mixed wastes) of commercially generated mixed waste. Also, there are limited treatment options for much of the mixed waste generated by commercial generators (e.g. nuclear power reactors, fuel cycle, and materials licensees) and by the Department of Energy (DOE). EPA has previously concluded that storage of a waste pending development of treatment capacity does not constitute storage to accumulate sufficient quantities to facilitate proper treatment or disposal. This interpretation was recently upheld by the U.S. Court of Appeals for the District of Columbia Circuit in the case of *Edison Electric Institute* v. *EPA*, 996 F. 2d 326 (D.C. Cir. 1993). EPA, however, believes that because of the relatively small quantities of mixed waste that are generated by commercial facilities (typically two 55 gallon drums or less per year per facility), there has not, as yet, been sufficient economic incentive to develop and operate mixed waste treatment facilities to address many types of mixed waste. Therefore, commercial generators may have little option but to store their wastes until adequate capacity is available through the efforts of both small commercial generators and large generators (e.g., the Department of Energy) to secure adequate capacity.

B. Mixed Waste Treatment Capacity Shortage

Prior to issuing the 1991 policy (56 FR 42,730, August 29, 1991) on the civil enforcement of the storage prohibition, EPA determined that inadequate capacity existed to treat or dispose of most types of mixed waste streams. This determination was supported by data from several surveys conducted by States and Regional Low Level Waste Compacts, by information available in the Office of Technology Assessment's October, 1990 report on low-level waste issues ("Partnerships Under Pressure—Managing Commercial Low-Level Radioactive Waste"), and by commenters on EPA LDR rulemakings.

Since the 1991 enforcement policy, EPA and NRC conducted a joint survey on commercial generators, published under the title, "National Profile on Commercially Generated Low-Level Radioactive Mixed Waste" (NUREG/CR-5938, December, 1992). This survey further supports the view that a treatment capacity shortfall exists for commercial low-level mixed waste streams. The Profile provides a snapshot of the commercial low-level mixed waste universe in 1990, and it estimates a treatment capacity shortfall of at least 12,000 cubic feet based on the treatment demand in 1990. The reported shortfall particularly affects chlorinated fluorocarbons, solid lead, and mercury mixed waste streams.

The capacity information for the Profile was provided from four known companies that treat mixed waste (i.e., Diversified Scientific Services, Inc. (DSSI), NSSI Recovery Services, Inc. (NSSI), Quadrex Corporation, and RAMP Industries). Scientific Ecology Group (SEG) which currently provides radioactive waste management services, and Envirocare of Utah Inc. which operates a low-activity radioactive and mixed waste disposal facility plan to

provide mixed waste treatment services in the future. Most of the available capacity reported in the Profile is found at DSSI and NSSI. EPA has contacted the mixed waste treatment vendors since the survey to ascertain if the treatment estimates have changed. Based on discussions with the operators of facilities that have existing or planned treatment capacity, it appears that there has been little change in the availability of treatment capacity since the Policy was issued in 1991.

DSSI's boiler unit was shutdown from mid-1992 to December 1993. This shutdown has created a backlog of mixed waste to be burned from on-site and off-site locations. DSSI estimates that it will take two to two and one-half years to burn off this backlog. NSSI also has a backlog of pretreated mixed waste waiting to be sent to DSSI for thermal treatment. It does not appear that there is, at this time, significant actual treatment of mixed wastes underway at NSSI. Quadrex and RAMP still appear to have excess treatment capacity for liquid scintillation cocktail fluids and ignitable wastes, but these facilities are limited by their RCRA permits as to the types of mixed waste streams they can accept. SEG intends to provide mixed waste treatment, including incineration, but does not yet have the RCRA permit to operate. It appears that SEG may have some treatment capacity on-line by the end of the policy extension period. Envirocare of Utah Inc. has a RCRA permit to treat, store and dispose of certain types of mixed waste. Envirocare's treatment system is scheduled to begin operation in 1994.

EPA is concerned that there has been limited improvement in the mixed waste treatment capacity situation in the past two years. The Agency also recognizes that clean up wastes and DOE wastes that were not specifically addressed in the Profile may place demands on the planned and available treatment capacity. EPA understands the factors that make development of additional capacity problematic, but generators should understand that EPA does not intend to extend this Policy on a routine or indefinite basis. EPA's willingness to extend this Policy is predicated on indications that there may be positive developments in the treatment capacity area during the period of the two-year extension.

These indications include improvements in treatment capability which are being pursued by a few facilities. For example, NSSI has plans to add the capability to treat mercury in a retorting unit, and to add a hydrolysis unit for reactive metals. SEG has submitted a RCRA Part B permit application to add solidification, stabilization, compaction and thermal desorption processes to its facility. It also appears that the backlog of mixed wastes that can be burned for energy recovery at DSSI will be eliminated by the end of this extension.

Another indication is that the prospects for new mixed waste treatment capacity are driven largely by the treatment needs identified by the DOE, since DOE's waste volumes dwarf those of the commercial sector. Thus, EPA cannot ignore the important linkage of overall mixed waste treatment capacity development to the planning process underway under the FFCA. The FFCA established a timeframe for DOE, the States, and EPA to develop and approve site-specific treatment plans for the DOE sites' mixed wastes, and these plans must be completed by October, 1995. The next two years will be a critical period in identifying the facilities, the processes, and capacities that must be brought on-line to deal with DOE's significant mixed waste inventories. EPA expects that the commercial generators affected by this Policy extension will also be beneficiaries of the statutory and market forces that are currently addressing the treatment capacity issues within the DOE complex. Therefore, a two-year extension of this Policy should foster greater coordination of the solutions to the treatment capacity shortfall that affects both commercial and DOE site generators.

EPA encourages generators to continue exploring all viable treatment alternatives during the next two years. Generators should be prepared to demonstrate their good faith efforts at locating available capacity for their mixed wastes. In addition, generators should also explore the potential benefits of consolidating their wastes with like wastes from other generators, and developing or procuring treatment capacity to address more efficiently the waste streams that are pooled in this fashion. Likewise, commercial generators should provide input on their current inventories and treatment needs during the FFCA treatment capacity planning process. The option of consolidating the management of DOE and commercially generated wastes has been a topic of much discussion between DOE and those interests responsible for developing and regulating new commercial low-level radioactive waste facilities. The States have indicated that they wish to include this issue as part of the FFCA planning agenda. EPA urges the continuation of these discussions, and the participation of the commercial generator interests in the debate.

II. Summary of Policy

A. Storage Prohibition Policy Extension

In this notice, EPA is announcing a two-year extension of its policy (56 *FR* 42,730, August 29, 1991) on civil enforcement of the storage prohibition in section 3004(j) of RCRA at facilities which generate limited quantities of mixed wastes. This policy is not final agency action, but is intended solely as guidance. It is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the policy provided in this extension or to act at variance with the policy, based on an analysis of specific site circumstances. The Agency also reserves the right to change this policy at any time without public notice. EPA reserves the right to enforce all RCRA provisions at hazardous waste facilities and against persons who handle hazardous waste. The intent of the policy published on August 29, 1991 was to explain how section 3004(j) storage violations involving mixed wastes fit within the Agency's civil enforcement priorities. At that time, there was no available treatment or disposal capacity for most of the mixed wastes prohibited from land disposal. Treatment or disposal capacity is still generally unavailable for these mixed wastes as well as for additional mixed waste that became subject to the land disposal prohibitions during the initial term of the mixed waste policy. Generators and storers of these wastes continue to find it impossible to comply with the section 3004(j) storage prohibition, if there are no available options for treatment or disposal of the wastes. At the same time, however, generators of the affected mixed waste should, through prudent waste management practices, be capable of storing their mixed wastes for the limited duration of this policy extension in a manner that poses minimal risk to public health or the environment. Responsible management practices should minimize the environmental risks from these section 3004(j) storage violations.

For mixed waste generators who are storing mixed wastes in an environmentally responsible manner as described in this policy, EPA considers the violations of section 3004(j) involving relatively small volumes of waste to be reduced priorities among EPA's potential civil enforcement actions. Any enforcement activity arising from violations of section 3004(j)

at these facilities will generally focus on determining whether these generators are managing their mixed wastes in an environmentally responsible manner. EPA's primary concern is with the more significant violations of section 3004(j) committed by larger (>1,000 cubic ft/yr) mixed waste generators, especially if they are not pursuing environmentally responsible management of their stored mixed wastes.

This policy extension is limited in duration, and terminates on April 20, 1996. During the period that this policy is in effect, EPA will again evaluate data that become available on generation, treatability, and treatment capacity for the mixed wastes affected by this policy. EPA will terminate or limit this policy before April 20, 1996 should lawful treatment capacity become available.

The policy applies only to mixed waste facilities which generate less than 1,000 cubic feet/year of land disposal prohibited wastes. That is, the policy does not apply to any facility that generated more than 1,000 cubic feet of prohibited mixed wastes during the calendar year 1994, or that does so during any succeeding calendar year that this policy is in effect. This amount relates only to the annual generation rate, and not to the mixed waste inventory in storage. The amount includes any newly listed mixed wastes for which treatment standards are promulgated during the term of this extension, and mixed wastes whose LDR variance expires during the term of this extension.

Liquid Scintillation Cocktail (LSC) fluids are generally not to be included in the calculation of the generation rate, except for those volumes that are not eligible for the NRC's medical waste exemption (i.e., they contain C–14 or H–3 in excess of the 0.05 uCi/g limits spelled out at 10 CFR 20.306). The LSC fluids that are exempted from NRC disposal requirements by 10 CFR 20.306 are typically burned for energy recovery in RCRA boilers or industrial furnaces, so they are not affected by this policy.

Stored-for-decay wastes are another class of mixed waste that should not be included in the calculation of the generation rate for eligible generators. For purposes of this policy, the term "stored-for-decay" wastes is to be interpreted consistently with the NRC's definition of "decay-in-storage" at 10 CFR 35.92. That is, it refers to mixed wastes which contain radioisotopes (byproduct material) with physical half lives of less than 65 days, so that storage for the period measured by at least 10 half-lives will cause their radioactivity to diminish to background levels. At the conclusion of the decay period, they may be managed solely as hazardous waste, and not as mixed wastes. Therefore, these wastes are not at that time subject to the constraints on treatment and disposal that apply to other mixed wastes.

As EPA explained in the August 1991 policy, the Agency recognizes a variety of indicators of environmentally responsible operation in determining the civil enforcement priority of section 3004(j) storage violations at particular mixed waste generator facilities.

EPA believes that all of the factors described in the 1991 policy remain relevant to mixed waste generators during the period of this extension, except for the participation in the EPA/NRC profile which has already been completed. These factors are described in Section IV of this document.

B. Limitations on Scope

This policy affects only the civil judicial and administrative enforcement priorities that would arise solely from the act of storing LDR mixed wastes in contravention of RCRA section 3004(j). The policy is also limited in scope to those mixed waste streams for which authorized treatment or disposal capacity is not available. The mixed wastes covered by this policy must be mixed wastes when generated: e.g., a generator may not commingle distinct hazardous and radioactive waste streams in order to come within the scope of this policy.

EPA intends that this policy apply both to the mixed wastes generated during the term of the policy, and to existing inventories of mixed wastes already in storage. The policy does not cover other violations of RCRA storage requirements, such as the storage facility standards of Subparts I through L and DD of 40 CFR parts 264 (permitted facility standards) or 265 (interim status facility standards), or their State equivalents. EPA emphasizes that this policy does not affect any requirement under RCRA to obtain a storage permit, which is generally required if mixed wastes are stored for greater than 90 days. The policy does not extend to potential criminal violations of RCRA, for which prosecutorial discretion rests solely with the United States Attorney General.

This policy does not extend to executive branch federal facilities, including the DOE, which generate and store mixed wastes. For all executive branch federal facilities, section 102(c) of the Federal Facility Compliance Act (FFCA), Public Law 102–386 (October 6, 1992) (not codified), delays the waiver of sovereign immunity with respect to fines and penalties for violations of RCRA section 3004(j) involving storage of mixed waste for three years from October, 1992, so long as the waste is managed in compliance with all other applicable requirements. The delay of the waiver of sovereign immunity does not apply to the storage of mixed waste that is subject to an agreement, permit, or judicial or administrative order that was existing as of the effective date of the FFCA. For DOE facilities, the delay of the waiver of sovereign immunity can extend beyond three years if DOE is in compliance with the requirements of section 102(c)(3)(B) of the FFCA. The protection from fines and penalties for executive branch federal facilities, which extends for the full period of this enforcement policy, obviates the need for applying this policy to these federal facilities.

C. Effects of Other Violations

This policy affects only the civil enforcement priority that EPA will generally assign to section 3004(j) storage violations. Allegations of RCRA violations should generally not affect that priority, as long as the generator is otherwise managing its mixed wastes in an environmentally responsible manner. If, however, a facility inspection or other information reveals significant RCRA violations (other than of section 3004(j)) or a pattern of violations which evidence a disregard for compliance with the RCRA hazardous waste regulations, EPA may attach a greater priority to all violations—including storage of mixed waste in violation of section 3004(j)—at that facility.

III. Applicability

This policy applies to EPA enforcement activities in all States in which mixed waste falls within the jurisdiction of RCRA. It is not applicable in States where mixed waste is not regulated under RCRA, i.e., in authorized States which lack specific EPA approval of mixed waste regulatory programs. In those States where the State, as well as EPA, has authority to enforce the LDRs, this policy affects only the EPA enforcement programs.

RCRA mixed waste jurisdiction applies in States which are unauthorized for the "base" RCRA program. As of December 31, 1993, there were 8 such States and Territories that had not received RCRA base authorization. These States and Territories are: Alaska, American Samoa, Hawaii, Iowa, Mariana Islands, Puerto Rico, Virgin Islands, and Wyoming. In these States and Territories, the EPA Regional Offices administer both the base RCRA mixed

waste program and the LDRs, so this policy applies in these States.

RCRA mixed waste jurisdiction extends as well to authorized States that have been additionally authorized specifically for RCRA mixed waste programs. As of December 31, 1993, there were 35 States and one Territory authorized to implement RCRA mixed waste programs. These States and Territories are: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Guam, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, and Wisconsin. The RCRA 3004(j) storage prohibition is an element of the LDRs enacted in the Hazardous and Solid Waste Amendments (HSWA) of 1984. HSWA requires EPA to implement the LDR provisions as they apply to mixed waste until the authorized States receive approval from EPA to implement the LDR provision in lieu of the Agency. EPA therefore implements the LDRs, and this policy applies, in the States with authorized RCRA mixed waste programs, until the States have also been authorized for their LDR programs.

As of December 31, 1993, 21 States with mixed waste programs had received final authorization to implement LDRs covering solvents and dioxins, and 18 States have also received final authorization for or have adopted EPA's rules for "California List" LDRs. The 21 States are: Alabama, Arizona, Arkansas, California, Colorado, Georgia, Guam, Idaho, Illinois, Michigan, Minnesota, Missouri, Nevada, New York, North Carolina, North Dakota, Ohio, Texas, Utah, Vermont, and Wisconsin. These States' approved LDR authorities include State law counterparts to the RCRA 3004(j) storage prohibition. As these States have independent authority to enforce the LDRs and 3004(j), EPA's enforcement policy is not binding on these 21 States. Therefore, facility owners and operators should consult with the responsible officials in these States for clarification on these States' policy with respect to storage of LDR prohibited mixed waste.

During the term of this policy, additional States may receive authorization for mixed waste or LDR programs. Facility owners and operators should track the authorization status of their State programs in order to ascertain whether they are covered by this policy, or whether other restrictions based on State law might apply to mixed waste storage. During the next two years, EPA reserves the right to revisit this policy at any time.

IV. Highlights of Extended Enforcement Policy

In order to demonstrate that they are pursuing environmentally responsible management of their mixed wastes (and therefore should be accorded a reduced civil enforcement priority for section 3004(j) violations), facility owner/operators generating mixed wastes should be undertaking at least the following steps.

A. Inventory and Compliance Assessment of Storage Areas

Records should be maintained identifying each physical location or unit where mixed waste is stored, and identifying the method of storage (i.e., container or tank, see 40 CFR 264.73(b)/265.73(b)). An inspection of these storage areas for compliance with applicable RCRA standards for storage methods, including an assessment of compliance with the storage facility standards of 40 CFR part 264 or part 265 (interim status), Subparts I–J and DD, or the State counterparts to these standards should be performed regularly (see 40 CFR 264.15/265.15). The facility records should contain the results of the inspections as required by 40 CFR 264.73(b)(5)/265.73(b)(5). EPA encourages facility owner/operators to take action promptly to correct any deficiencies, since EPA expects to focus its enforcement efforts regarding section 3004(j) violations on those situations where a subsequent inspection or other information reveals significant RCRA violation(s), or a pattern of violations that indicate a disregard for compliance with the RCRA Subtitle C requirements.

B. Identification of Mixed Wastes

Facility owner/operators should maintain sufficient information to identify their mixed wastes. The identification should include the RCRA waste codes for the hazardous components, the source of the hazardous constituents and discussion of how the waste was generated (if known), the generation rate and volumes of mixed wastes in storage, and any process information relied upon to identify mixed wastes or make determinations that wastes are prohibited by the LDRs (See 40 CFR 264.73/265.73). If requested for purposes of an inspection, information on generation rates should include annual generation rates for all mixed wastes, in order to demonstrate that the facility's annual generation rate does not exceed 1,000 cubic ft/yr, based on the volumes and types of mixed wastes that this policy specifies should be counted.

C. Waste Minimization Plans

EPA understands that many mixed waste generators and facility owner/operators are undertaking active measures to avoid the generation of mixed wastes. Each mixed waste generator and facility owner/operator should develop a waste minimization plan (See 58 FR 31,114, May 28, 1993, for guidance), and retain the plan at the facility. The plan should address process changes that can be made to reduce or eliminate mixed wastes, methods to minimize the volume of regulated wastes through better segregation of materials, and substitution of non-hazardous materials. The plan should include a schedule for implementation, projections of volume reductions to be achieved, and assumptions that are critical to the accomplishment of the projected reductions.

D. Good Faith Efforts

This policy is limited in scope to those LDR-prohibited mixed wastes for which sufficient, lawful treatment capacity is not available. As stated earlier, EPA recognizes that commercial treatment and disposal capacity does not exist for many types of mixed wastes. However, since treatment or disposal capacity may become available in the future, facility owner/operators should be prepared to demonstrate that good faith efforts have been undertaken to ascertain whether treatment capacity is available for their mixed wastes. EPA further recognizes that the availability of a process may not always translate into adequate capacity available to each generator, and such circumstances should be identified.

Dated: April 7, 1994.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

Scott C. Fulton,

Acting Assistant Administrator, Office of Enforcement.

[FR Doc. 94–9570 Filed 4–19–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–180936; FRL 4774–6]

Receipt of Application for Emergency Exemption To Use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Idaho Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide Imidacloprid (CAS 105827–78–9) to treat up to 7,500 acres of apples to control aphids. The Applicant proposes the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 5, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180936," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on apples to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that aphids have been a chronic pest of apples in Idaho. Aphids feed on the plant tissues, which can stunt growth and affect future productivity of young trees, and causes fruit damage on large, vigorous trees. Aphids excrete large amounts of honeydew which drips on the fruit, causing russetting or providing a substrate for the growth of sooty mold, reducing the value of the fruit, which must be diverted to a processing market. The Applicant states that some of the once effective registered alternative pesticides have lost much of their effectiveness due to development of resistant aphid populations; other alternative pesticides are said to only provide suppression. One of the registered alternatives (phosphamidon) that was still somewhat effective was withdrawn from the market in 1991, due to non-support for re-registration, and existing stocks have been mostly depleted. Another chemical (mevinphos), although not recommended for this use, was used in 1993 by some, due to lack of alternatives, and subsequent cases of occupational poisoning of farm workers using this material led the manufacturer to remove uses for apples and pears from the product label, because of human risk concerns. Therefore, the Applicant claims that Idaho apple growers are left without adequate means to control aphids. The Applicant states that information collected last year for one sampling of apples indicated a 33 percent loss in crop value due to aphid damage.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.1 lb. active ingredient (a.i.), or 6.4 fluid oz. of product, per acre with a maximum of 5 applications on up to 7,500 acres of apples, with no more than 0.5 lb. a.i. (32 fluid oz. of product) applied per year. This amounts to a possible total of 3,750 lbs. of a.i., or 1,875 gal. of product. This is the first time that the Applicant has applied for the use of imidacloprid on apples.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing the first food use of an active ingredient. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Idaho Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: April 7, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–9571 Filed 4–19–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–64021; FRL 4771–6]

Notice of Receipt of Request to Amend Mevinphos (Phosdrin®) Through Deletion of Certain Sites from Label

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of request to amend and request for waiver.

SUMMARY: This notice, issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136d(f)(1), announces EPA's receipt of a request from the sole registrant Amvac Chemical Corporation of Los Angeles, California, for the amendment of its mevinphos registration through voluntary deletion of 26 sites from the label and a request to waive the 90–day comment period on this notice.

DATES: The deletions shall be effective April 20, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Joshua First, Special Review Branch, Special Review and Reregistration Division (7508W), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8032.

SUPPLEMENTARY INFORMATION:

I. Decision Not to Support in Reregistration of Certain Uses

Amvac Chemical Corp. has requested the deletions because the company no longer wishes to support the sites through the reregistration process.

II. Deletions Pursuant to Request for Voluntary Deletion from Label

The following 26 sites are being deleted from the label: alfalfa, apples, beans, beets, carrots, cherries, clover,

corn, cucumbers, dried peas, eggplant, grapefruit, okra, onions, oranges, peaches, pears, peppers, plums, potatoes, raspberries, sorghum, summer squash, tomatoes, turnip (all), and walnuts.

III. Existing Stocks

For the purpose of this order, existing stocks are defined as those stocks of mevinphos products that were in the United States and were formulated prior to December 20, 1993. Mevinphos products with labels predating this date may be sold and distributed until December 20, 1994.

EPA will not permit the continued sale or distribution of mevinphos products with labels containing the deleted uses after December 20, 1994. Sale or distribution of these products after this date will be a violation of federal law.

EPA reserves the right to amend this existing stocks provision, should conditions warrant such amendment.

IV. Registrations Subject to Label Deletions

The EPA registrations subject to this notice are: 5481–411, 5481–425, 5481–113, 5481–114, 5481–248, and 5481–412.

V. Deletion Request Approval

EPA approves the deletion of the above 26 sites, as well as the determination that from the date of this notice, all sale, distribution, and use of the existing stocks of these products shall cease within 1 year. Accordingly, this deletion order shall become effective April 20, 1994.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: April 7, 1994.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–9572 Filed 4–19–94; 8:45 am]

BILLING CODE 8560–50–F

[FRL–4876–6]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the measurement of ambient concentrations of sulfur dioxide. The new equivalent method is an automated method (analyzer) which utilizes a measurement principle based on UV fluorescence. The new designated method is identified as follows:

EQSA–0494–095, "Columbia Scientific Industries Model 5700 Sulfur Dioxide Analyzer", operated with software version 1.0 on any full scale range between 0–250 ppb and 0–1000 ppb, at any integration time setting from 20 to 99 seconds, at any temperature in the range of 15° to 30°C, at any AC line voltage in the range of 105 to 130 volts, and with or without any of the following options:

964–0121	Alarm Relay Contacts
964–0122	Input Solenoids
964–0124	Dual Analog Voltage Outputs
964–0125	Dual Current Outputs
964–0126	Printer
964–0131	Rack Mount
964–0012	Single Headed Pump

This method is available from Columbia Scientific Industries Corporation, 11950 Jollyville Road, Austin, Texas 78759. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 58, December 9, 1993, page 64766.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by States and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designation status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of

a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method will provide assistance to the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Carl Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 94–9567 Filed 4–19–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1019–DR]

Alabama; 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 Alabama (FEMA–1019–DR), dated March 30, 1994, and related determinations.

EFFECTIVE DATE: April 11, 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 the incident period for this disaster is closed effective April 10, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–9486 Filed 4–19–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1021–DR]

Virginia; 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 Commonwealth of Virginia (FEMA–1021–DR), dated April 11, 1994, and related determinations.

EFFECTIVE DATE: April 11, 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 April 11, 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 Commonwealth of Virginia, resulting from a severe winter ice storm on March 1–5, 1994, 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 Commonwealth of Virginia.

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. 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 Robert J. Gunter 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 Commonwealth of Virginia to have been affected adversely by this declared major disaster:

The cities of Emporia and Radford and the counties of Albemarle, Amherst, Appomattox, Augusta, Bedford, Buckingham, Campbell, Caroline, Charlotte, Craig, Culpeper, Fauquier, Fluvanna, Franklin, Greene, Goochland, Henry, Highland, Louisa, Madison, Nelson, Orange, Patrick, Prince Edward, Pulaski, Rappahannock, and Spotsylvania for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 94–9487 Filed 4–19–94; 8:45 am]

BILLING CODE 6718–02–M

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: June 9–11, 1994.

Place: Building H Conference Room, National Emergency Training Center, Emmitsburg, Maryland

Time: June 9, 1994, 1 p.m.–5 p.m., June 10, 1994, 9 a.m.–5 p.m., June 11, 1994, 9 a.m.–2 p.m.

Proposed Agenda: June 9–11: Conduct the On Campus Program Survey and Review the Current, Approved, and Proposed Budgets.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before May 31, 1994.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: April 13, 1994.

Frank H. Thomas,

Acting Deputy Administrator, U.S. Fire Administration.

[FR Doc. 94–9488 Filed 4–19–94; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Crowley American Transport, Inc.; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010950–011

Title: Aruba Bonaire Curacao Liner Association.

Parties: Crowley American Transport, Inc.

Genesis Container Line Ltd.

Sea-Land Service, Inc.

King Ocean Service De Venezuela S.A.

Kirk Line, Ltd.

Synopsis: The proposed amendment would decrease the notification period on independent actions from 10 calendar days to twenty-four hours. It also deletes Sea-Land as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 203–011421–002

Title: East Coast South American Discussion Agreement

Parties: Inter-American Freight Conference

Pan American Independent Line

Synopsis: The proposed amendment adds a new Article 5.1(n) which would authorize the parties to discuss, among other things, neutral-body or self-policing services.

Dated: April 14, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–9463 Filed 4–19–94; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Information Systems Management (OISM) within the Administration for Children and Families (ACF), is requesting reinstatement of approval from the Office of Management and Budget (OMB) for data collection necessary to implement sections 13731 and 13741 of Public Law 103–66, recordkeeping requirements contained in 45 CFR 95.600 and reporting requirements contained in 45 CFR 1355 and 1356. This information was previously approved under OMB Number 0990–0058.

ADDRESSES: Copies of this request for OMB clearance may be obtained from Edward E. Saunders, OISM, by calling (202) 205–7921.

Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Automated Data Processing Equipment and Services Conditions for Federal Financial Participation-General Administration of Public Assistance Payments Statewide Automated Child Welfare Information System.

OMB No.: 0990–0058.

Description: This request is authorized by the reporting and recordkeeping requirements contained in 45 CFR 95.600 and revised reporting requirements contained in 45 CFR part 1355 and 1356. The regulations at 45 CFR 1355 and 1356 have been revised to allow State public assistance agencies to submit reports requesting enhanced (75 percent) Federal financial participation to develop Statewide automated child welfare information systems. Proposed revisions of 45 CFR 95.600 will advise State public assistance agencies of the limitations on FFP imposed by section 13741 of Public Law 103–66. The effective date of this legislation is April 1, 1994.

Section 13713 of Pub. L. 103–66, provides enhanced FFP for the acquisition of ADP equipment and services in support of the administration of child welfare services. To receive Federal financial participation in the costs of ADP acquisitions, equipment and services which support States' administration of ACF/HHS public assistance programs, States must obtain ACF/HHS approval of Advanced Planning Documents and related procurement instruments. The effective date of this legislation was October 1, 1993 and the termination date for this enhanced FFP is September 30, 1996.

Annual Number of Respondents

Advance Planning Document Reporting Requirement

Annual Number of Respondents: 50.
Number of Annual Reports: 115.
Average Burden per Response: 60.
Total Burden Hours: 6,900.

RFP and Contract Reporting Requirements

Annual Number of Respondents: 50.
Number of Annual Reports: 96.
Average Burden per Response: 1.5.
Total Burden Hours: 144.

Emergency Funding Request Reporting Requirements

Annual Number of Respondents: 27.
Number of Annual Reports: 27.
Average Burden per Response: 1.
Total Burden Hours: 27.

Recordkeeping Requirements

Annual Number of Respondents: 14.
Number of Annual Reports: 14.
Average Burden per Response: 1.
Total Burden Hours: 14.

Total Burden for all Collections: 7,085.

Dated: April 11, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–9501 Filed 4–19–94; 8:45 am]

BILLING CODE 4184–01–M

Health Care Financing Administration

[OMC–017–N]

Health Maintenance Organizations: Qualification Determinations and Compliance Actions During the Period October 1, 1993 Through December 31, 1993

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the names, addresses, service areas or modified service areas, and dates of qualification or expansion of entities determined to be Federally qualified

health maintenance organizations (FQHMOs) during the period October 1, 1993 through December 31, 1993. Additionally, this notice sets forth compliance actions taken by the Office of Prepaid Health Care Operations and Oversight for the period October 1, 1993 through December 31, 1993. This notice is being published in accordance with our regulations at 42 CFR 417.144 and 417.163, which require publication in the **Federal Register** of certain determinations relating to FQHMOs.

FOR FURTHER INFORMATION CONTACT: Christine Boesz, (202) 619–0840.

SUPPLEMENTARY INFORMATION:

A. Qualification Determinations

As part of our evaluation and determination of whether an entity qualifies as a Federally qualified health maintenance organization (FQHMO), our regulations set forth at 42 CFR 417.144(e), promulgated under title XIII of the Public Health Service Act (the Act) (42 U.S.C. 300e), require publication in the **Federal Register** of the names, addresses and descriptions of the service areas of new FQHMOs. We interpret this requirement as applying to revisions of service areas of currently approved FQHMOs, as well. Our last notice containing this information was published on January 7, 1994 (59 FR 1021).

There are three categories of FQHMOs: operational, transitionally qualified, and preoperational. Definitions of these terms are set forth at § 417.141.

The Office of Prepaid Health Care Operations and Oversight has determined that the following entities are operational FQHMOs under section 1310(d) of the Act (42 U.S.C. 300e–9(d)) or have expanded their previously qualified service areas:

Expansions and Additions of Service Area Regional Components by Existing FQHMOs

1. *PacifiCare* (Group Model; Requirements are set forth at section 1310(b)(1) of the Act), 4000 Civic Center Dr., Suite 201, San Rafael, CA 94903–4133. PacifiCare's Federally qualified service area has been expanded to include Stanislas County.

Date of qualification for service area expansion: November 18, 1993.

2. *Good Health Plan of Oregon (GHP)* (Individual Practice Association Model; Requirements are set forth at section 1302(5) and 1310(b)(2)(a) of the Act), 1235 NE 47th Avenue, Suite 220, Portland Oregon 97213. GHP's approved Federally qualified expansion includes the following areas:

a. In the State of Oregon—

(1) The following counties in their entirety: Clackamas, Clatsop, Columbia, Multnomah, Washington, Yamhill.

(2) The following zip codes in portions of Marion and Tillamook counties:

Marion

97002, 97020, 97026, 97032, 97071, 97137, 97303, 97305, 97362, 97373, 97375, 97381

Tillamook

97108, 97118, 97130, 97131, 97136, 97147

(b) In the State of Washington—

(1) The following counties in their entirety: Clark, Skamania.

(2) The following zip codes in portions of Cowlitz county: 98603, 98609, 98616, 98625, 98674.

Date of qualification for service area expansion: December 23, 1993.

B. Compliance Actions

The Office of Prepaid Health Care Operations and Oversight gives notice of the following compliance action affecting FQHMOs for the period October 1, 1993, through December 31, 1993:

Notice of Revocation:

The Office of Prepaid Health Care Operations and Oversight considers voluntary relinquishment of participation to be a compliance action and sends a notice of revocation to the FQHMO. Notice was sent during the fourth quarter of calendar year 1993 to the following organization:

Organization	Date Issued	Reason
Rush-Presbyterian, St. Luke's Health Plans Inc., Chicago, IL.	12/23/93	Voluntary relinquishment

C. Availability of Additional Information

A cumulative list of FQHMOs and additional information may be obtained by writing to the following address:

Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, Room 4406 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

The list also may be obtained by visiting that office between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except for Federal holidays. Interested persons may contact Margie Sharif for an appointment by telephoning (202) 619–0845.

Authority: Title XIII of the Public Health Service Act (42 U.S.C. 300e).

Dated: April 11, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–9485 Filed 4–19–94; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Meeting of the National Advisory Council for Human Genome Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, May 9–10, 1994, National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland.

This meeting will be open to the public on May 9, 1994, from 8:30 a.m. to 10:30 a.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on May 9 at 10:30 a.m. to recess and on May 10 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 605, Bethesda, Maryland 20892, (301) 496–0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Jane Ades, (301) 402–2205, two weeks in advance of the meeting.

(Catalogue of Federal Domestic Program No. 93.172, Human Genome Research.)

Dated: April 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–9447 Filed 4–19–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

National Institute on Aging; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, May 9–11, 1994, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 9 a.m. on Monday, May 9 until 5 p.m.; from 9 a.m. on Tuesday, May 10 until 3:30 p.m.; and from 9 a.m. on Wednesday, May 11 until 11 a.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on May 9 from 8:30 to 9 a.m. and from 5 p.m. until recess; May 10 from 8:30 to 9 a.m. and from 3:30 p.m. until recess; and May 11 from 8:30 to 9 a.m. and from 11 a.m. until adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institute on Aging, NIH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute of clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Gateway Building, room 2C218, National Institutes of Health, Bethesda, Maryland 20892, (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Dr. George R. Martin, Scientific Director, NIA, Gerontology Research Center, 4940 Eastern Avenue, Baltimore, Maryland 21224, will furnish substantive program information.

Individuals who plan to attend and need assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: April 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–9450 Filed 4–19–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting: The National Kidney and Urologic Diseases Advisory Board and the Research Subcommittee and the Health Care Issues Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board, National Institute of Diabetes and Digestive and Kidney Diseases, and its Subcommittees on May 23, 1994.

All meetings will be held, as listed below, at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland, and will be open to the public, with attendance limited to space available.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, two weeks prior to the meeting. In addition, his office will provide a membership roster of the Board and an agenda and summaries of the meetings.

Name of Committee: Research subcommittee.

Date of Meeting: May 23.

Open: 8 a.m.–11 a.m.

Agenda: Discuss future kidney-related activities.

Name of Committee: Health Care Issues Subcommittee.

Date of Meeting: May 23.

Open: 8 a.m.–11 a.m.

Agenda: Discuss recommendations from the Barriers to Rehabilitation of Persons with End-Stage Renal Disease and Chronic Urinary Incontinence Workshop and future kidney related activities.

Name of Committee: National Kidney and Urologic Diseases Advisory Board.

Date of Meeting: May 23.

Open: 1 p.m.–4:30 p.m.

Agenda: Discuss Health Care Reform and future activities.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: April 12, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–9449 Filed 4–19–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings the following Heart, Lung, and Blood Special Emphasis Panels

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP for Somatic Gene Therapy for Cardiovascular Disease (Telephone Conference Call).

Dates of Meeting: May 9, 1994.

Time of Meeting: 10 a.m.

Place of Meeting: 5333 Westbard Avenue, Room 555, Bethesda, Maryland.

Agenda: To evaluate and review grant applications.

Contact Person: Jeffrey H. Hurst, Ph.D., 5333 Westbard Avenue, room 555, Bethesda, Maryland 20892, (301) 594–7418.

Name of Panel: NHLBI SEP for Review of the Asthma Academic Award.

Dates of Meeting: May 11, 1994.

Time of Meeting: 8 a.m.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Agenda: To evaluate and review grant applications.

Contact Person: Kathryn W. Ballard, Ph.D., 5333 Westbard Avenue, room 550, Bethesda, Maryland 20892, (301) 594–7450.

Name of Panel: NHLBI SEP for Review of the Tuberculosis Academic Award.

Dates of Meeting: May 12, 1994.

Time of Meeting: 8 a.m.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Agenda: To evaluate and review grant applications.

Contact Person: Kathryn W. Ballard, Ph.D., 5333 Westbard Avenue, room 550, Bethesda, Maryland 20892, (301) 594–7450.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases

Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: April 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–9448 Filed 4–19–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

National Institute on Aging; Meeting of the Task Force on Aging Research

Pursuant to Public Law 92–463, notice is hereby given that the Task Force on Aging Research will meet on Monday, May 23, 1994, from 8:30 to 11:30 a.m. in Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The entire meeting will be open to the public. The purpose of the meeting will be to consider the approval of the Task Force's final report. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ronald P. Abeles, Ph.D., Executive Secretary, Task Force on Aging Research, the Gateway Building, 7201 Wisconsin Avenue, suite 533, Bethesda, Maryland 20892, at (301) 496–3136, in advance of the meeting. Dr. Abeles will also provide substantive information on the meeting, a roster of the committee members and a summary of the meeting upon request.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health).

Dated: April 12, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–9451 Filed 4–19–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting of the Ad Hoc Voice and Voice Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Ad Hoc Voice and Voice Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on May 27, 1994. The meeting will take place from 1 p.m. to 4 p.m. in Conference Room 7, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of a speaker phone.

The meeting, which is open to the public, will discuss changes in the scientific field of voice and voice disorders since the Research Plan was written, compare the research portfolio of the Institute with the priorities in the Research Plan to determine areas of emphasis and levels of activity, and to identify gaps and to suggest new initiatives in preparation for the updating of the voice and voice disorders section of the Research Plan. Attendance by the public will be limited to the space available.

Summaries of the Subcommittee's meeting and a roster of members may be obtained from Ms. Monica M. Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, (301) 402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93–173, Biological Research Related to Deafness and Communication Disorders).

Dated: April 12, 1994.

Susan K. Feldman,

Committee Management Office, NIH.

[FR Doc. 94–9452 Filed 4–19–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 58 FR 64408–9, December 7, 1993), is amended to reflect the establishment of the Office of Program Planning and Legislation (OPPL) within the Office of the Director, National Center for Human Genome Research (OD/NCHGR). The establishment of the OPPL will allow the NCHGR to carry out its program planning and legislation, computer and network operations, and committee management functions at an appropriate level of the organization and will clarify lines of supervisory control.

Section HN–B, Organization and Functions is amended as follows:

Under the heading National Center for Human Genome Research (HN4), insert the following after the statement for the Office of Scientific Review (HN414):

Office of Program Planning and Legislation (HN415). (1) Advises the Director, Deputy Director, and senior Center staff on a broad range of functions and policy matters; (2) develops, implements, and supervises the program planning and evaluation activities of the NCHGR; (3) analyzes and tracks legislation and assists in the preparation of Congressional hearings, briefings, visits, and testimony of the Director; (4) plans, coordinates, and maintains automated data processing hardware, software, and computerized applications systems; and (5) coordinates all aspects of committee management, including the planning and operation of the activities of all Congressionally mandated committees and advisory councils.

Dated: April 5, 1994.

Harold Varmus,

Director, NIH.

[FR Doc. 94–9453 Filed 4–19–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–7122–08–1016; CACA 29283]

California Desert District, Barstow Resource Area, Amended Notice of Realty Action, Exchange of Public and Private Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended notice of realty action CACA 29283, exchange of public and private lands.

SUMMARY: This amendment changes the private exchange party identified in Notice of Realty Action CACA 29283 published October 28, 1993 (58 FR 207; pp. 58023–58014). The October 28, 1993 notice identified the private exchange party as Roger Hughes, an individual.

This amendment serves notice that the private exchange party is changed to Patricia A. Golson, an individual.

Identification of the new private exchange party is the only change to pending land exchange CACA 29283. All other aspects of the exchange, including the specific Federal and non-Federal lands involved, remain the same

as described in the October 28, 1993 Notice of Realty Action.

Additional information about this exchange is available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 (619) 256–3591.

Dated: April 5, 1994.

John Kalish,

Acting Area Manager.

[FR Doc. 94–9052 Filed 4–19–94; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Development of a Residential Subdivision Called Coconut Pointe, In the City of Melbourne Beach, Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice

SUMMARY: Coconut Pointe, Incorporated, (Applicant), is seeking an incidental take permit from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize the incidental take of a threatened species, the Florida scrub jay, *Aphelocoma coerulescens coerulescens*, incidental to construction of a 6.5 acre residential development consisting of 17 single family residences and associated infrastructure. The subdivision will be known as Coconute Pointe (Project), and is located on the west side of State Road A1A, in Section 33, Township 28 South, Range 38 East, in the city of Melbourne Beach, Brevard County, Florida.

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 a request to the Regional Office address below. The Service is soliciting data on *Aphelocoma coerulescens coerulescens* 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 May 20, 1994.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT-789192 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, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216-0912, (telephone 904/232-2580, fax 904/232-2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the scrub jay population has been reduced by at least half in the last 100 years. Surveys have indicated that scrub jays inhabit the Project site. Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, *Aphelocoma coerulescens coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of four alternatives. The no action alternative may result in some loss of habitat for *Aphelocoma coerulescens coerulescens* and exposure of the Applicant under Section 9 of the Act. Another alternative proposes the Project with no mitigation strategy which is commensurate with the Project's impacts to the scrub jay. A third alternative is the proposed Project with management of surrounding county owned lands as mitigation for the Project's impacts. The proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, purchase of offsite habitat for the scrub jay, the establishment of an endowment fund for the offsite acquired habitat, and the creation of an annual assessment on lot owners of the Project to fund future land management needs of the acquired offsite habitat. The HCP provides a funding mechanism for these mitigation measures.

Dated: April 8, 1994.

Nancy C. Coon,

Deputy Assistant Regional Director.

[FR Doc. 94–9466 Filed 4–19–94; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Development of a Residential Lot in the Country Cove Subdivision, In the Town of Malabar, Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. Harry Presley, the owner of a single family lot in the Country Cove subdivision, (Applicant) is seeking an incidental take permit from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize the incidental take of a threatened species, the Florida scrub jay, *Aphelocoma coerulescens coerulescens*, incidental to construction of a single family residence of a 2,500 square foot home on an approximately 0.5 acre lot within the subdivision. The lot is located in the Country Cove subdivision, in the Town of Malabar, Brevard County, Florida.

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 a request to the Regional Office address below. The Service is soliciting data on *Aphelocoma coerulescens coerulescens* 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 May 20, 1994.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–789188 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, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the scrub jay population has been reduced by at least half in the last 100 years. Surveys have indicated that suitable scrub jay habitat exists on the Applicant's property and surrounding areas. Construction of this individual homesite may therefore result in death of, or injury to, *Aphelocoma coerulescens coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development may reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of two alternatives. The no action alternative may result in some loss of habitat for *Aphelocoma coerulescens coerulescens* 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 proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, monitoring Florida scrub jay activity during construction of the home, retaining natural vegetation to the maximum extent practicable, enhancing native vegetation through replanting, a prohibition on pets, and installation of a bird feeder and bird bath on the property. The HCP provides a funding mechanism for these mitigation measures.

Dated: April 8, 1994.

Nancy C. Coon,

Deputy Assistant Regional Director.

[FR Doc. 94–9467 Filed 4–19–94; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–360–361 (Preliminary) and 731–TA–688–695 (Preliminary)]

Certain Carbon Steel Butt-Weld Pipe Fittings From France, India, Israel, Malaysia, the Republic of Korea, Thailand, the United Kingdom, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India and Israel of certain carbon steel butt-weld pipe fittings,[3] provided for in subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of India and Israel.

The Commission also determines,[4] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain carbon steel butt-weld pipe fittings from France, India, Israel, Malaysia, the Republic of Korea, Thailand,[5] the United Kingdom, and Venezuela that are alleged to be sold in the United States at less than fair value (LTFV)

Background

On February 28, 1994, a petition was filed with the Commission and the U.S. Department of Commerce by the U.S. Fittings Group, Washington, DC, an *ad hoc* trade association consisting of five domestic firms,[6] alleging that subsidized imports from India and Israel and LTFV imports from France, India, Israel, Malaysia, the Republic of Korea, Thailand (AST only), the United Kingdom, and Venezuela of certain carbon steel butt-weld pipe fittings are materially injuring and threatening to materially injure an industry in the United States. Accordingly, effective February 28, 1994, the Commission instituted countervailing duty investigations Nos. 701–TA–360 and 361 (Preliminary) and antidumping investigations Nos. 731–TA–688 through 695 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 10, 1994 (59 FR 11307). The conference was held in Washington, DC, on March 21, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Lynn M. Bragg did not participate in these investigations.

[3] The products covered by these investigations are carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches (355 millimeters), imported in either finished or unfinished condition. The pipe fittings are forged steel products used to join pipe sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other methods of fastening (e.g., threaded, grooved, or bolted fittings).

[4] Commissioner Lynn M. Bragg did not participate in these investigations. Chairman Don E. Newquist did not participate with respect to France.

[5] For Thailand, only the products of one producer—Awaji Sangyo (Thailand) Co., Ltd. (AST)—are subject to these determinations.

[6] The firms are Hackney, Inc., Dallas, TX; Ladish Co., Inc., Cudahy, WS; Mills Iron Works, Inc., Gardena, CA; Steel Forgings, Inc., Shreveport, LA; and Tube Forgings of America, Inc., Portland, OR.

By order of the Commission.

Issued: April 15, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–9536 Filed 4–19–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–357]

Decision Not To Review Initial Determination Granting Joint Motion To Terminate the Investigation With Respect to Respondent G.H. Bass & Co., Inc. on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Notice.

In the matter of Certain Sports Sandals and Components Thereof.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 8) issued on March 11, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Deckers Corporation and respondent G.H. Bass & Co., Inc. to terminate the investigation as to Bass on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3083.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, the sale for importation, and the sale within the United States after importation of sports sandals that infringe three claims of U.S. Letters Patent 4,793,075, on September 8, 1993.

On January 12, 1994, Deckers and Bass filed a joint motion to terminate the investigation on the basis of a proposed consent order. The ALJ issued an ID granting the joint motion and terminating the investigation as to Bass. No petitions for review of the ID or agency or public comments concerning the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: April 11, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–9537 Filed 4–19–94; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 337–TA–350

Notice of Decision Not To Review Initial Determination Granting Joint Motion To Terminate the Investigation on the Basis of a Settlement Agreement

In the Matter of Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 82) issued on March 16, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Harry E. Aine ("Aine") and the 12 remaining respondents in the investigation to terminate the investigation as to them on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464. On February 17, 1994, Aine and respondents Akahsic Memories Corp., Asahi Komag Co., Ltd., Denki Kagaku Kogyo, K.K., Digital Equipment Corp., HMT Technology Corp., Komag, Inc., Maxtor Corp., Micropolis Corp., Mitsubishi Kasei Corp., Nashua Corp., Quantum Corp., and Western Digital Corp. (collectively "the settling respondents") filed a joint motion to terminate the investigation with prejudice as to the settling respondents on the basis of a settlement agreement. No petitions for review of the ID were filed. No agency or public comments were received. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 C.F.R. 210.53. Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Dated: April 15, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–9538 Filed 4–19–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability: None.

Comments on the following assessment are due 30 days after the date of availability: AB–337 (Sub-No. 3X), Dokata, Minnesota & Eastern Railroad Corporation—Petition For Exemption—In Brown and Cottonwood

Counties, Minnesota. EA available 4/15/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–9496 Filed 4–19–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32483]

Exemption; Blue Rapids Railway Co.—Acquistion and Operation Exemption—Rail Line of Union Pacific Railroad Co.

Blue Rapids Railway Company (BR), a noncarrier, has filed a notice of exemption to acquire and operate 10.00 miles of rail line, known as the Bestwall Line, owned by Union Pacific Railroad Company (UP) between UP milepost 0.12 at Marysville, KS, and UP milepost 10.12 at Bestwall, KS.[1] The proposed acquisition transaction was expected to be consummated on or after April 1, 1994.

This proceeding is related to Georgia-Pacific Corporation—Continuance in Control Exemption—Blue Rapids Railway Company, Finance Docket No. 32484, wherein Georgia-Pacific Corporation has concurrently filed a notice of exemption to continue in control of BR when BR becomes a rail carrier upon consummation of the transaction described in this notice.

Any comments must be filed with the Commission and served on: Eugenia Langan, 1800 Massachusetts Avenue, NW, Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 13, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–9497 Filed 4–19–94; 8:45 am]

BILLING CODE 7035–01–P

[1] This line currently is embargoed due to flood damage sustained during the summer of 1993. BR proposes to restore the line to its preflood condition. BR asserts, that before operations are recommenced over the line, it will enter into an operating agreement with the Northeast Kansas & Missouri Railroad Division of the Mid-Michigan Railroad, Inc. (NEKM), an unaffiliated class III rail carrier, which then will operate the Bestwall Line upon restoration on behalf of BR. NEKM will, of course, be required to file for approval or exemption to operate the line if such an agreement is reached. BR states that appropriate authorization will be sought and obtained prior to recommencement of operations.

[Finance Docket No. 32484]

Exemption; Georgia-Pacific Corporation—Continuance in Control Exemption—Blue Rapids Railway Co.

Georgia-Pacific Corporation (G-P) has filed a notice of exemption to continue in control of Blue Rapids Railway Company (BR), upon BR becoming a class III rail carrier.

BR, a noncarrier, has concurrently filed a notice of exemption in Blue Rapids Railway Company—Acquisition and Operation Exemption—Rail Line of Union Pacific Railroad Company, Finance Docket No. 32483, to acquire and operate 10.00 miles of rail line, known as the Bestwall Line, owned by Union Pacific Railroad Company.[1] That exemption was expected to be consummated on or after April 1, 1994.

G-P, primarily a manufacturer and processor of paper and other forest products and incidentally a motor carrier,[2] controls seven shortline class III rail carrier subsidiaries and indicates that:

(1) The rail line to be acquired and operated will not connect with any G-P rail subsidiaries;

(2) The continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in their corporate family; and

(3) The transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Eugenia Langan, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

Decided: April 13, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–9497 Filed 4–19–94; 8:45 am]

BILLING CODE 7035–01–P

[1] BR intends to enter into an agreement with a nonaffiliated carrier, the Northeast Kansas & Missouri Railroad Division of the Mid-Michigan Railroad, Inc., to operate the line after restoration of the line and that carrier obtains appropriate authorization.

[2] G-P, doing business as Pulp and Paper Transport, is a motor carrier holding authority under No. MC–36322. Notwithstanding the limitation of 49 U.S.C. 10505(g)(1) forbidding exemptions authorizing intermodal ownership that is otherwise prohibited under 49 U.S.C. Subtitle IV, G-P's motor carrier status does not impose any obstacle to exemption of G-P's continuance in control of BR after it becomes a rail carrier. The only possibly relevant statutory limitation on intermodal ownership is in 49 U.S.C. 11344(c), which applies only when the applicant is a rail carrier or person controlled by a rail carrier or affiliated with a rail carrier and the transaction involves a motor carrier. G-P's only affiliation with rail carriers is with those it controls and section 11344(c) does not limit the acquisition by motor carriers (or noncarriers controlling motor carriers) of rail carriers. Amador Central Railroad Company and Georgia-Pacific Corporation—Exemption from 49 U.S.C. 11343, Finance Docket No. 31266 (ICC served May 23, 1989); see also, S. Rep. No. 445, 87 Cong., 1st Sess. 138, 144 (1961), Stone Container Corporation—Control Exemption—Abbeville-Grimes Railway Company, Finance Docket No. 31233, Slip op. 3 (ICC served May 23, 1988), and the cases cited there.

[Finance Docket No. 32391]

Wallkill Valley Railroad, Inc.—Exemption To Lease and Operate in Ulster County, NY

The Commission's Section of Environmental Analysis (SEA) hereby notifies all interested parties in this proceeding that SEA has prepared and made available an Environmental Assessment (EA) for the proceeding referenced above.

The Wallkill Valley Railroad Company (Wallkill), a noncarrier, filed a notice of exemption to operate a 400-foot segment of rail line and 400-foot side track between milepost 0.40 and milepost 0.40+400 at Kingston, NY. The segment is part of the 10.94-mile Wallkill Branch between milepost 0.40 at Kingston and milepost 11.34 at New Paltz, NY, that Consolidated Rail Corporation (Conrail) was authorized to abandon in Docket No. AB–167 (Sub-No. 59N), Consolidated Rail Corporation—Abandonment Between Kingston and New Paltz, NY. In 1986, Wallkill's president, John E. Rahl, acquired the line from Conrail. Mr. Rahl now proposes to lease the entire 10.94 mile line to Wallkill.

This environmental assessment is limited to Wallkill's proposed acquisition and operation of the 400-foot segment and parallel siding. Wallkill states that it plans to reactivate 400-feet of the 10.94 mile mainline and an 400-foot side track to provide freight service in the southern portion of the City of Kingston.

The EA will be available on April 20, 1994. There will be a 30 day comment period. Comments on the EA are due May 20, 1994. To obtain copies of the EA contact Judith Groves at (202) 927–

6245 or Phillis Johnson-Ball at (202) 927–6213, Section of Environmental Analysis, room 3219, Office of Economic and Environmental Analysis, 12th and Constitution Avenue, NW., Interstate Commerce Commission, Washington, DC TDD for hearing impaired: (202) 927–5721.

By the Commission, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–9499 Filed 4–19–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 7, 1994, a proposed Consent Decree in *United States and State of New Hampshire* versus *Conductron Corporation et al.*, Civil No. 94–174–L, was lodged with the United States District Court for the District of New Hampshire resolving these matters. The proposed Consent Decree concerns response actions for releases into the environment of hazardous substances, and restoration of natural resources, at the Savage Municipal Water Supply Well Superfund Site (the "Savage Site") located in Milford, New Hampshire, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq.

Under the terms of the Consent Decree, Conductron Corporation d/b/a Hendrix & Cable and Hendrix Real Estate Trust ("Hendrix"), and Hitchiner Manufacturing Co., Inc. ("Hitchiner") will undertake response actions for an area of the Savage Site, including extraction and treatment of contaminated groundwater, long-term monitoring, and institutional controls to protect human health, estimated to cost approximately $15 million, and will reimburse the United States and the State of New Hampshire for a total of approximately $1 million of their past costs related to the Savage Site and up to approximately $3 million in future oversight costs.

The Consent Decree also requires Hendrix and Hitchiner to undertake measures to protect and restore natural resources, including fish, at the Savage Site, involving testing and possible excavation of sediments from the process waste drainage stream known as the "Hitchiner-Hendrix Discharge Stream" that discharges into the Souhegan River. The National Oceanic and Atmospheric Administration ("NOAA"), the U.S. Department of the Interior and the State of New Hampshire, as trustees of natural resources under CERCLA, have agreed to give the settling defendants a covenant not to sue for natural resources damage in consideration of this work. The settling defendants will also pay the trustees' future costs.

The U.S. Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to United States v. Conductron Corporation, D.J. Ref. 90–11–3–970.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts. Copies of the Consent Decree also may be examined at the Environmental Enforcement Section Document Center, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree (excluding Appendices) may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $132.50 (25 cents per page reproduction cost) for the Consent Decree and Appendices, made payable to Consent Decree Library.

John C. Cruden,

Chief, Environment Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–9528 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Final (Consent) Judgment Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Final (Consent) Judgment in *United States* v. *Florida Rock Industries*, Civil Action No. 94–102–CIV–DAVIS (S.D. Fla.), was filed in the United States District Court for the Southern District of Florida on March 21, 1994.

The proposed Final (Consent) Judgement concerns alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1344, as a result of the unauthorized discharge of fill material into wetlands. The wetlands involved are portions of a 1280 acre tract of the East Everglades located south of Northwest 41st Street and west of the Florida Turnpike in Dade County, Florida. Florida Rock Industries violated the specific provisions of two permits issued by the Corps of Engineers by failing to create 39.5 acres of shallow water littoral zone at the site as upfront mitigation for permitted filling activities.

The proposed Final (Consent) Judgment requires Florida Rock Industries to fully comply with the terms of the original permits and to create a total of 43.9 acres of shallow water littoral zone in mitigation. This 43.9 acres is comprised of the 39.5 acres initially required by the permits plus an additional 4.4 acres to mitigate the impacts resulting from Florida Rock Industries' delay in complying with the original mitigation requirements. Additionally, Florida Rock Industries would be required to pay a $150,000 civil penalty to the United States and would be enjoined from performing any future work in navigable waters or wetlands without first obtaining any required permits from the Corps or other appropriate agency.

The Department of Justice will receive written comments relating to the proposed Final (Consent) Judgment for a period of 30 days from the date of publication of this notice. Comments should be addressed to William C. White, Assistant U.S. Attorney, Southern District of Florida, 99 N.E. 4th Street, Miami, Florida 33132, and should refer to *United States* v. *Florida Rock Industries*, Civil Action No. 94–102–CIV–DAVIS.

The proposed Final (Consent) Judgment may be examined at the Clerk's Office, United States District Court for the Southern District of Florida, 301 N. Miami Avenue, Miami, Florida 33128, in Civil Action No. 94–102–CIV–DAVIS.

Lois J. Schiffer,

Acting Assistant Attorney General, Environmental & Natural Resources Division.

[FR Doc. 94–9518 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 11, 1994, a Consent Decree in *United States, et al.*, v. *LTV Steel Company, Inc.*, Civil Action No. 91–1067, was lodged with the United States District Court for the Western District of Pennsylvania.

The United States, on behalf of the U.S. Environmental Protection Agency, filed a complaint against LTV Steel Company, Inc. ("LTV Steel") alleging violations by LTV at its Pittsburgh Coke Works of sections 520 and 530 of Article XX (Air Pollution Control) of the Allegheny County Health Department Rules and Regulations which have been incorporated into the federally enforceable Pennsylvania SIP. In the Consent Decree, LTV Steel has agreed to pay $900,000 in a civil penalty. The Consent Decree also requires LTV to implement significant upgrades to improve air pollution control performance at the facility.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.*, v. *LTV Steel Company, Inc.*, Civil Action No. 91–1067, Ref. No. 90–5–2–1–1566. The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania. Copies of the Consent Decree may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). When requesting a copy of the settlement agreement by mail, please enclose a check in the amount of $5.75 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–9530 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Department of Justice

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Gaither S. Walser, Executor of the Estate of Nancy Miller, et al.*, Civil Action No. C–89–886–S, was lodged on April 7, 1994, with the United States District Court for the Middle District of North Carolina. That action was brought against defendants pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for payment of past costs incurred by the United States at the JMC Furniture Site in Lexington, North Carolina. The decree requires two settlors to pay $145,000 towards the United States' past costs. The United States has incurred costs in excess of $1.2 million in connection with a removal action at the JMC Site.

This settlement is in addition to a consent decree with three prior settlors which involved the payment of $446,000, and which was entered by the Court on July 26, 1993.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Gaither S. Walser, Executor of the Estate of Nancy Miller, et al.*, DOJ Ref. #90–11–2–505.

The proposed consent decree may be examined at the Office of the United States Attorney, 324 West Market Street, Greensboro, North Carolina 27402; at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–9529 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging a Final Judgment by Joint Stipulation and Order of Dismissal Pursuant to the Resource Conservation and Recovery Act

Notice is hereby given that on March 24, 1994, a proposed Joint Stipulation and Order of Dismissal in *United States* versus *National Rolling Mills, Inc.* was lodged with the United States District Court for the Eastern District of Pennsylvania, Civil Action No. 91–1145. The Joint Stipulation and Order of Dismissal pertains to alleged violations of the Resource Conservation and Recovery Act ("RCRA") by National Rolling Mills, Inc. in Malvern, Pennsylvania, regarding the storage of hazardous wastes beyond the limits of the Land Disposal Regulations, failure to notify off-site treatment, storage, and disposal facilities as to appropriate treatment standards, and failure to maintain on-site copies of notifications.

The proposed Joint Stipulation and Order of Dismissal requires National Rolling Mills, Inc. to pay $300,000.00 to settle the United States' claims for a civil penalty for these alleged violations.

The Department of Justice will receive comments relating to the proposed Joint Stipulation and Order of Dismissal for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* versus *National Rolling Mills, Inc.* (E.D. Pa.) and DOJ Ref. No. 90–7–1–609. The proposed Joint Stipulation and Order of Dismissal may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106–4476, or at the office of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. A copy of the proposed Joint Stipulation and Order of Dismissal may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202) 624–0892. A copy of the proposed Joint Stipulation and Order of Dismissal may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $2.25 (25 cents per page reproduction costs) payable to "Consent Decree Library".

John C. Cruden,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 94–9527 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IBACOS, Inc.

Notice is hereby given that, on February 23, 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"), IBACOS, Inc. 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, Vanguard Plastics, Incorporated, McPherson, KS; and Trayco Incorporated, Lapier, MI, were admitted as members of IBACOS. Burt Hill/Pollock Krieg Architects, Inc.; The Ryland Group, Inc.; Ryland Homes Southwest Region; Ryland Homes West Region; Ryland Homes Midwest Region; Ryland Homes Southeast Region; and Ryland Homes Mid-Atlantic Region are no longer members.

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 IBACOS intends to file written notification disclosing all changes in membership.

On April 6, 1992, IBACOS filed its original notification pursuant to section 6(a) of the Act under the name ABACoS Development, Inc. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 6, 1992, 57 FR 19442.

The last notification was filed with the Department on October 18, 1993. A notice was published in the **Federal Register** on December 14, 1993, 58 FR 65399.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–9522 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Software Foundation, Inc.

Notice is hereby given that, on February 2, 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"), Open Software Foundation, Inc. ("OSF") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional 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, the identities of the new, non-voting members of OSF are as follows: Central & South West Services, Dallas, TX; Knowledgeware, Inc., Atlanta, GA; Expersoft Corporation, San Diego, CA; AGIP SpA, Milan, ITALY; National Westminster Bank Plc, London, United Kingdom; 4th Dimension Software, Irvine, CA; Interlink Computer Sciences, Santa Clara, CA; University of California Extension, Santa Cruz, Santa Clara, CA; Centre for Open Systems, Belrose, AUSTRALIA; Secom Information System Co., Ltd., Tokyo, JAPAN; OpenConnect Systems, Inc., Dallas, TX; Shell Oil Company, Houston, TX; Andersen Consulting, Tokyo, JAPAN; Hughes Applied Information Systems, Landover, MD; Sweden Post, Stockholm, SWEDEN; Telecom Finland, Ltd., Helsinki, FINLAND; Johann Wolfgang Goethe FB Informatik, Frankfurt, GERMANY; and X Consortium, Inc., Cambridge, MA. No new voting members have been added as of this filing.

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 OSF intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, OSF and the Open Software Foundation Institute, Inc. (the "Institute") 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 September 7, 1988 (53 FR 34594).

The last notification was filed with the Department on November 19, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 17, 1994 (59 FR 8020).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–9525 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on March 22, 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 certain 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, one affiliate member of PCA, the Rocky Mountain Cement Promotion Council, has resigned its membership and dissolved, and one associate member, Humboldt Wedag, has also resigned from PCA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On February 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 February 22, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 24, 1994, 59 FR 14002.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–9526 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Research Corporation

Notice is hereby given that, on March 22, 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"), Semiconductor Research Corporation ("SRC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. 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, SRC has added Omniview, Inc., Pittsburgh, PA as an affiliate member. The following company has been deleted from SRC membership: Arizona Packaging Software, Inc.

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 SRC intends to file additional written notification disclosing all changes in membership.

On January 8, 1985, SRC 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 January 30, 1985 (50 FR 4281).

The last notification was filed with the Department on February 15, 1994. A notice was published in the Federal

Register pursuant to section 6(b) of the Act on March 23, 1994 (59 FR 13746).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–9521 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sheldahl, Inc.

Notice is hereby given that, on March 15, 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"), Sheldahl, Inc. ("Sheldahl") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the joint research and development program. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture are Sheldahl, Inc., Northfield, MN; Delco Electronics Corporation, Kokomo, IN; Hughes Missile Systems Company, Tucson, AZ; Jabil Circuit, Inc., San Jose, CA; Litronic Industries, Costa Mesa, CA; Mentor Graphics, Inc., San Jose, CA; Silicon Graphics, Inc., Mountain View CA; and Wireless Access, Inc., San Jose, CA. The objective of the venture is to engage in cooperative research in the area of multi-chip systems to better understand the applications of this technology for high density electronic packaging, including without limitation prototype fabrication for the experimental demonstration of such technology. Partial funding for this program has been received from a government agency (ARPA) under Agreement No. MDA972–94–2–0006.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–9519 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Gas-Fueled Railway Research Demonstration Project

Notice is hereby given that, on March 22, 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"), Southwest Research Institute ("SwRI") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the "Gas-Fueled Railway Research Demonstration Project". 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, Union Pacific Railroad, Omaha, NE (effective December 22, 1993) has become a member of this group research project. Further, SwRI wishes to disclose that the Department of Energy is providing financial assistance to the research project through awarding Grant No. DE-FG02-93CH10582 in the amount of $200,000 which is fifteen percent (15%) of the total cost of the project with the remaining amount of $1,125,000, or eighty-five percent (85%), being provided by the participants.

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 SwRI intends to file additional written notification disclosing all changes in membership.

On December 30, 1993, SwRI 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 January 24, 1994, 59 FR 3566.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–9523 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Trauma Care Information Management System Consortium

Notice is hereby given that, on March 22, 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"), Rockwell International has filed on behalf of the Trauma Care Information Management System ("TCIMS") Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are American Telephone and Telegraph Company, New York, NY; ISX Corporation, Westlake Village, CA; Medical College of Georgia Research Institute, Inc., Augusta, GA; Digital Equipment Corporation, Maynard, MA; University of Maryland at Baltimore, Baltimore, MD; Rockwell International Corporation, Seal Beach CA; Science Applications International Corporation, San Diego, CA; Texas Instruments Incorporated, Dallas, TX; Uniformed Services University of the Health Sciences, Bethesda, MD; University of Southern California Information Sciences Institute, University Park, CA; and University of Texas at Arlington, Arlington, TX. The general area of planned activity is to perform a coordinated research and development program under a contract awarded by the Advanced Research Project Agency to design and develop a trauma care information management system.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 94–9524 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 TMC Turbine Engine Component Consortium

Notice is hereby given that, on February 28, 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 participants in the TMC Turbine Engine Component Consortium ("TMCTECC") have filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to TMCTECC and (2) the nature and objective of the TMCTECC. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to TMCTECC are General Electric Company, GE Aircraft Engines, Cincinnati, OH; United Technologies Corporation, Pratt & Whitney, West Palm Beach, FL; Textron, Inc., Textron Specialty Metals, Lowell, MA; Minnesota Mining and Manufacturing Company, St. Paul, MN; Howmet Corporation, Whitehall, MI; and Atlantic Research Corporation, Gainesville, VA. The objective of the TMCTECC is to respond to an anticipated solicitation from the Advanced Research Projects Agency for developing titanium matrix composites reinforced components and establishing low cost fiber and TMC and component manufacturing processes. A definitive agreement is pending and TMCTECC

intends to file additional written notifications when the definitive agreement is executed.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–9520 Filed 4–19–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last publication. These entries may include new collections, revisions, extensions, or reinstatements, if applicable. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–7316).

Any member of the public who wants to comment on recordkeeping/ reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

BUREAU OF LABOR STATISTICS; MONTHLY LABOR SURVEY

[1220–0145]

Form No.	Affected public	No. of respondents	Frequency	Avg. response—response time
MLS–1 MLS–260 MLS–262 MLS–263(L) MLS–264(L)	Households	34,500	4	10 minutes.

23,000 total hours in CY 1994.

The Monthly Labor Survey (MLS) is a household sample survey that parallels the Current Population Survey (CPS). The MLS will provide a stronger basis for interpreting official labor force statistics (employment and unemployment) generated from the redesigned CPS, which began in January 1994.

Extension

Employment Standards Administration,
Optional Use Payroll Form Under the Davis-Bacon Act,
1215–0149; WH–347
92 responses per respondent

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations

106,754 respondents; 56 minutes per response; 9,200,000 total hours;
1 form

The report is used by contractors to certify payrolls in accordance with requirements of Copeland and Davis-Bacon Acts, attesting that proper wages and fringe benefits were paid; reviewed by contracting agencies to verify that rates are legal and that employees are properly classified.

Extension

Mine Safety and Health Administration,
Mine Rescue Equipment Test and Maintenance Records,
1219–0093
Monthly

Businesses or other for profit; Small businesses or organizations 3,840 respondents; 15.5 minutes per response; 992 total hours. Breathing apparatus at mine rescue stations are required to be inspected and tested monthly, and certified by the signature and date of the person performing the inspection and test. Records of any correction action taken should be maintained at the mine rescue stations. The information is used to ensure that the breathing apparatus is operable in case of an emergency.

Signed at Washington, DC this 13th day of April, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–9533 Filed 4–19–94; 8:45 am]

BILLING CODE 4510–24–P

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Determination To Accept Submission #940001 for Review

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: The U.S. National Administrative Office gives notice that on April 15, 1994, Submission #940001 was accepted for review. The Submission was filed with the Office on

February 14, 1994, by the International Brotherhood of Teamsters (IBT), AFL–CIO, and concerns the operations of an employer in Chihuahua, Mexico. The allegations of the Submission relate principally to the right of freedom of association and the right to organize.

Article 16(3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the U.S. National Administrative Office. The objective of the review of the Submission will be to gather information to assist the U.S. National Administrative Office to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3 of the NAALC.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Jorge Perez-Lopez, Acting Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, NW., room C–4322, Washington, DC 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 14, 1994, the IBT filed a Submission with the U.S. National Administrative Office established under the NAALC concerning allegations involving the operations of an employer in Chihuahua, Mexico. The allegations of the Submission relate principally to the right of freedom of association and the right to organize.

Article 16(3) of the NAALC provides for the review of labor law matters in Canada and Mexico by the U.S. National Administrative Office. "Labor law" is defined in Article 49 of the NAALC to include freedom of association and the right to organize.

The procedural guidelines for the U.S. National Administrative Office, published in the **Federal Register** on April 7, 1994, specify that, in general, the Secretary of the U.S. National Administrative Office shall accept a Submission for review if it raises issues relevant to labor law matters in Canada or Mexico and if a review would further the objectives of the NAALC.

The Submission by the IBT relates to labor law matters in Mexico. A review would also appear to further the objectives of the NAALC, as set out in Article 1, which include improving working conditions and living standards in each Party's territory; promoting, to the maximum extent possible, the labor principles set out in Annex 1 of the NAALC, among them freedom of association and the right to organize; promoting compliance with, and effective enforcement by each Party of, its labor law; and fostering transparency in the administration of labor law. Accordingly, the Submission has been accepted for review. However, acceptance for review is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the Submission.

The objective of the review will be to gather information to assist the U.S. National Administrative Office to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3 of the NAALC. In particular, the review will focus on compliance with, and effective enforcement of, labor laws that guarantee the right of association and the right to organize freely and prohibit the dismissal of workers because of efforts to exercise those rights. The review will be completed, and a public report issued, within 120 days, or 180 days if circumstances require an extension of time, as set out in the procedural guidelines of the U.S. National Administrative Office.

Signed at Washington, DC, on April 15, 1994.

Jorge Perez-Lopez,

Acting Secretary, U.S. National Administrative Office.

[FR Doc. 94–9534 Filed 4–19–94; 8:45 am]

BILLING CODE 4510–28–M

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Determination to Accept Submission #940002 for Review

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: The U.S. National Administrative Office gives notice that on April 15, 1994, Submission #940002 was accepted for review. The Submission was filed with the Office on February 14, 1994, by the United Electrical, Radio, and Machine Workers of America (UE) and concerns the operations of an employer in Juarez, Mexico. The allegations of the Submission relate principally to the right of freedom of association and the right to organize.

Article 16(3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the U.S. National Administrative Office. The objective of the review of the Submission will be to gather information to assist the U.S. National Administrative Office to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3 of the NAALC.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Jorge Perez-Lopez, Acting Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, NW., Room C–4322, Washington, DC 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 14, 1994, the UE filed a Submission with the U.S. National Administrative Office established under the NAALC concerning allegations involving the operations of an employer in Juarez, Mexico. The allegations of the Submission relate principally to the right of freedom of association and the right to organize.

Article 16(3) of the NAALC provides for the review of labor law matters in Canada and Mexico by the U.S. National Administrative Office. "Labor law" is defined in Article 49 of the NAALC to include freedom of association and the right to organize.

The procedural guidelines for the U.S. National Administrative Office, published in the **Federal Register** on April 7, 1994, specify that, in general, the Secretary of the U.S. National Administrative Office shall accept a Submission for review if it raises issues relevant to labor law matters in Canada or Mexico and if a review would further the objectives of the NAALC.

The Submission by the UE relates to labor law matters in Mexico. A review would also appear to further the objectives of the NAALC, as set out in Article 1, which include improving working conditions and living standards in each Party's territory; promoting, to the maximum extent possible, the labor principles set out in Annex 1 of the NAALC, among them freedom of association and the right to organize; promoting compliance with, and effective enforcement by each party of, its labor law; and fostering transparency in the administration of labor law. Accordingly, the Submission has been accepted for review. However, acceptance for review is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the Submission.

The objective of the review will be to gather information to assist the U.S. National Administrative Office to better understand and publicly report on the Government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3 of the NAALC. In particular, the review will focus on compliance with, and effective enforcement of, labor laws that guarantee the right of association and the right to organize freely and prohibit the dismissal of workers because of efforts to exercise those rights. The review will be completed, and a public report issued, within 120 days, or 180 days if circumstances require an extension of time, as set out in the procedural guidelines of the U.S. National Administrative Office.

Signed at Washington, DC, on April 15, 1994.

Jorge Perez-Lopez,

Acting Secretary, U.S. National Administrative Office.

[FR Doc. 94-9535 Filed 4-19-94; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

[TA-W-29,318]

National Steel Pellet Co.; Keewatin, MN; Negative Determination Regarding Application for Reconsideration

By an application dated March 25, 1994, Counsel for the workers requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was published in the **Federal Register** on February 23, 1994 (59 FR 8662).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produced taconite pellets for its parent company, the National Steel Corporation. The Keewatin pellet plant has been idle since August 1, 1993 as a result of a labor dispute.

Counsel for the workers states that the Department did not survey the parent company to determine whether it had replaced the pellets provided by Keewatin with imported pellets. Also, counsel states that the workers should be determined eligible for TAA since they are eligible for unemployment insurance, (UI).

The Department's denial was based on the fact that the decreased sales or production criterion of the Group Eligiblity Requirements of the Trade Act was not met in 1992 compared to 1991 or in the first seven months of 1993 compared to the same period in 1992.

The dominant cause for the Keewatin plant being idle was the labor dispute which began on August 1, 1993. Accordingly, there was no need to survey the parent firm for imports. Further, company officials at National Steel indicated that a negligible amount of pellets are always imported from Canada but this had no impact on pellet production at Keewatin.

The fact that the workers are eligible for UI does not automatically qualify them for TAA. Both programs are separate as to funding and eligibility requirements. In order for workers to obtain TAA benefits they must meet all the requirements of section 222 of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of April 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94-9532 Filed 4-19-94; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202)606-8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsection (c)(4), and (6) of section 552b of title 5, United States Code.

This short notice period is necessitated by the need to review the applications in time to present them to the National Council on the Humanities at the May 5-6, 1994 meeting.

1. *Date:* April 22, 1994.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to Humanities Projects in Media program in response to the Request for Proposals to plan, script, and produce a one-hour film on the subject of American Pluralism.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94-9438 Filed 4-19-94; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Fire Endurance Test Acceptance Criteria Generic Letter Supplement; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Supplement 1 to Generic Letter 86-10,

"Fire Endurance Test Acceptance Criteria For Fire Barrier Systems Used to Separate Redundant Safe Shutdown Trains Within the Same Fire Area." This generic letter supplement is available in the Public Document Rooms under accession number 9403240197. The resolution of public comments received on this generic letter supplement is discussed in a memorandum to the Document Control Desk dated March 25, 1994, which is also available in the Public Document Rooms under accession number 9403290094. This generic letter supplement is also discussed in Commission information paper SECY-94-059 which is available in the Public Document Rooms under accession number 9404110360.

DATES: The generic letter supplement was issued on March 25, 1994.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Patrick M. Madden, (301) 504–2854.

SUPPLEMENTARY INFORMATION: None.

Dated at Rockville, Maryland, this 12th day of April, 1994.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Acting Chief, Generic Communications Branch, Division of Operating Reactor Support Office of Nuclear Reactor Regulation.

[FR Doc. 94–9480 Filed 4–19–94; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Annual Selection Meeting

AGENCY: President's Commission on White House Fellowships.

ACTION: Notice of annual selection meeting of the President's Commission on White House Fellowships Closed to the Public.

SUMMARY: Notice is hereby given that the annual selection meeting of the President's Commission on White House Fellowships will be held at The Burkshire Conference Center, Towson, Maryland, June 2 through June 5, 1994, beginning at 5 p.m.

The annual selection meeting is part of the screening process of the White House Fellowships program. During this four-day meeting, the applicants will be interviewed by members of the Presidential Commission. At the conclusion of this meeting, the Commissioners will recommend to the President those they propose be selected to serve as White House Fellows.

It has been determined by the Director of the Office of Personnel Management that because of the nature of the screening process, wherein personnel records and confidential character references must be used, which, if revealed to the public would constitute a clear invasion of the individual's privacy, the content of this meeting falls within the provisions of section 552(b) of Title 5 of the United States Code. Accordingly, this meeting is closed to the public.

DATES: The dates of the annual selection meeting of the President's Commission on White House Fellowships, which is closed to the public, are June 2–5, 1994.

FOR FURTHER INFORMATION CONTACT: Janet Kelliher, Administrative Officer, President's Commission on White House Fellowships, 712 Jackson Place, NW., Washington, DC 20503, (202) 395–4522.

Dated: April 11, 1994.

Brooke Shearer,

Director, President's Commission on White House Fellowships.

[FR Doc. 94–9442 Filed 4–19–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33873; File No. SR–OCC–91–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Modifying the Clearing Fund Assessment Formula; Correction

April 7, 1994.

In FR Document 94–8931 beginning on page 17806 for Thursday, April 14, 1994, the release number for File No. SR–OCC–91–03 should read 34–33873.

Dated: April 14, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9443 Filed 4–19–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33904; File No. SR–PSE–93–08]

Self-Regulatory Organizations; Pacific Stock Exchange; Notice of Filing of Amendment No. 1 to a Proposed Rule Change Relating to Amendment to its Rules Governing Competing Specialists

April 13, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 8, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 1 as described in Items I, II and III below. The proposed rule change was published for comment in Securities Exchange Act Release No. 32651 (July 16, 1993), 58 FR 40679 (July 29, 1993). No comments were received on the proposal. The Commission is publishing this notice to solicit comments on the Amendment from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to adopt procedures for its proposed competing specialist program. The Amendment extends the PSE's official policies relating to circuit breakers, previously approved by the Commission,[1] to Competing Specialists. The Amendment also outlines the procedures for registration, withdrawal, and participation in the competing specialist program. The text of this portion of the proposed Amendment is as follows:

Pacific Stock Exchange, Inc.; Procedures for Competing Specialists

The following are procedures for the Competing Specialist Pilot Program.

1. Registered Specialists are not eligible to act as Competing Specialists.

2. Applications to compete must be directed to the Equity Floor Trading Committee in writing and must list in order of preference the stock(s) in which the applicant intends to compete. The Equity Floor Trading Committee will consider the following in reviewing an application:

- financial capability
- adequacy of staffing on the Floor
- existence of adequate Chinese Wall Procedures at the applicant firm
- agreement of both Registered Specialists to allow trading of specific issues by a Competing Specialist

3. All applicants must be registered as members with the Exchange and must meet the net capital requirements pursuant to SEC Rule 15c3–1 (effective April 1, 1994) and capital requirements set forth in Rule 2.2(b) of the Rules of the Exchange, and conform to all other performance requirements and standards set forth in the Rules of the Exchange. All applicants who control, are controlled by, or are under common control with another person engaged in a securities or related business shall have and maintain appropriate Chinese Wall procedures as approved by a self-regulatory organization. A competing

[1] Securities Exchange Act Release No. 26368 (December 16, 1988), 53 FR 51942. *See also* Securities Exchange Act Release No. 27370 (October 23, 1989), 54 FR 43881, at n.5.

specialist will be subject to all the rules and policies applicable to a regular specialist, unless otherwise indicated.[2]

4. All applicant organizations, existing or newly created, must satisfy the Equity Floor Trading Committee that they have sufficient staffing to enable them to fulfill the functions of a specialist in all of the stocks in which the applicant will be registered as a Competing Specialist.

5. Order flow not specifically designated for a Competing Specialist must be routed to either Registered Specialist. Competing Specialists shall not make any payment for order flow that is traded on the PSE on a Competing Specialist basis.

6. In a competitive situation, if the Competing Specialist organization that received approval to compete with the Registered Specialist desires to terminate the competition by requesting that it be relieved of the stock that is the subject of the competition, it should so notify the Equity Floor Trading Committee at least 3 business days prior to the desired effective date of such withdrawal, except in those situations when such notice is not practicable.

7. Any Competing Specialist who withdraws his/her registration in a stock will be barred from applying to compete in that same stock for a period of ninety (90) days following the effective date of withdrawal.

8. Notwithstanding the existence of Competing Specialist situations, there is only one Exchange market in a security subject to competition. The Registered Specialist (ITS Coordinator) will be responsible for updating quotations; thus all competitors must communicate their markets to the ITS Coordinator and be responsible for their portion of the disseminated bid and/or offer. Also, competitors must cooperate with the Registered Specialist regarding openings and reopenings to ensure that they are unitary.

9. Limit orders entrusted to the Competing Specialist are to be represented and executed strictly according to time priority as to receipt of the order in accordance with the Exchange rules.

10. Competing Specialists must keep the Registered Specialists informed about the full size of any executable "all or none" orders in their possession since all-or-none orders cannot be represented in the disseminated quote. The Competing Specialist is expected to represent such orders on a "best efforts" basis to ensure the execution of the entire order at a single price or prices, or not at all.

11. The registration of any Competing Specialist may be suspended or terminated by the Equity Floor Trading Committee upon a determination of any substantial or continued failure by such Competing Specialist to engage in dealing in accordance with the Constitution and Rules of the Exchange.

12. The Exchange shall establish an effective date for competition to commence for a one-year pilot program. Since the Exchange cannot know what the impact of competition will be on its marketplace, it will limit competition during the pilot phase as follows:

a. The total number of stocks in which competition will be permitted shall initially be limited to ten per applicant firm, or as determined by the Board of Governors.

b. No applicant firm will have more than one Competing Specialist.

c. The number of Competing Specialists will be limited to two on each Equity Floor.

d. The number of competitors in any given stock will be limited to three (two Registered Specialists and one Competing Specialist).

e. During the pilot there will be a quarterly review of the program, or upon request by a Registered Specialist in a specific Competing Specialist issue.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed Amendment is to supplement the initial Competing Specialists filing with specific procedures and guidelines, as requested by the Commission staff.

2. Statutory Basis

The proposed Amendment is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed Amendment will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed Amendment were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–08 and should be submitted by May 11, 1994.

[2] The PSE has submitted a Chinese Wall filing for Competing Specialists which is currently under review (SR–PSE–93–36).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9444 Filed 4–19–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1994]

Advisory Committee On Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet May 5 and 6, 1994 in the Department of State.

The Committee will meet in open session from 9 a.m. on the morning of Thursday, May 5, 1994, until noon of that day, in room 7835, Main State. The Committee will be in closed session from 1 p.m. on Thursday, May 5 until 5 p.m., and Friday, May 6, 9 a.m. until 5 p.m., in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b (c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123.

Dated: April 8, 1994.

William Z. Slany,

Executive Secretary.

[FR Doc. 94–9507 Filed 4–19–94; 8:45 am]

BILLING CODE 4710–11–M

[Public Notice 1987]

Shipping Coordinating Committee; International Maritime Organization (IMO) Legal Committee; Meeting

In U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m., on Thursday, May 19, 1994, in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to report on the 70th Session of the International Maritime Organization (IMO) Legal Committee head March 21–25, 1994, and to begin preparations for the 71st Session to be held October 10–14, 1994.

To facilitate the attendance of those participants who may be interested in only certain aspects of the public meeting, the first subject addressed will be the draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention). The second major subject, which will be considered at approximately 11:30 a.m., will be possible revisions to the 1976 Convention on Limitation of Liability for Maritime Claims '76 LLMC).

The draft HNS Convention would impose strict liability upon the shipowner with an additional international fund modeled after the International Oil Pollution Compensation Fund. The convention would provide compensation for environmental damage as well as personal injury and property damage from a broad range of substances. At the 70th Session, the Legal Committee finalized decisions on several issues regarding the draft convention and agreed in principle on several others. Other important questions remain to be resolved. The views of the public are requested.

The Legal Committee resumed deliberations on the '76 LLMC at the 70th Session. Several decisions were made, and discussion centered on a draft protocol which provides for raising the limits of liability and a streamlined tacit amendment procedure. Work will continue at the 71st session in October. Although the United States has not ratified the '76 LLMC, interests within the United States—such as owners of foreign flag vessels and passengers on foreign flag vessels—may be affected by changes to the Convention. The views of the public are requested.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information or to submit views concerning the subjects of discussion, contact either Captain David J. Kantor or Lieutenant Lee A. Handford, U.S. Coast Guard (G–LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: April 6, 1994.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–9508 Filed 4–19–94; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1989]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea and Associated Bodies Working Group on Stability and Loan Lines and on Fishing Vessels Safety; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on May 5, 1994, at 9:30 a.m. in room 3317 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

The purpose of this Working Group meeting is to discuss the outcome for the 38th Session of the International Maritime Organization (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), which was held on March 14–18, 1994.

Items of discussion will include the following: Subdivision and damage stability standards of passenger ships; harmonization of probabilistic damage stability provisions for all ship types; technical revisions to the 1966 Load Line Convention; and probabilistic oil outflow.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information on this SLF Working Group meeting, contact Mr. H.P. Cojeen or Mr. W.M. Hayden at (202) 267–2988; U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street, SW., Washington, DC 20593–0001.

Dated: April 11, 1994.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94–9502 Filed 4–19–94; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of WRA, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause in Commuter Air Carrier Fitness Determination—Order 94–4–24.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that WRA, Inc., continues to be fit, willing, and able, to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of

Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Carol Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: April 14, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–9494 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD–94–035]

National Boating Safety Advisory Council Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) will meet to discuss various recreational boating safety issues. Agenda items include personal watercraft, multiple-uses of the waterways, boating accident reporting, boating education and lifesaving devices. The meeting will be open to the public.

DATES: The meeting will be held on May 16 and 17, 1994, from 8:30 a.m. to 5 p.m. daily. Written material should be submitted not later than May 2, 1994.

ADDRESSES: The meeting will be held at the Sonesta Hotel Portland, 157 High Street, Portland, Maine 04101. Written material should be submitted to Mr. Albert J. Marmo, Executive Director, Commandant (G–NAB), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Albert J. Marmo, Executive Director, Commandant (G–NAB), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1077.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 et seq. The agenda will include discussion of the following topics:

(1) Review of action taken at the 52nd meeting of the Council.

(2) Executive Director's Report.

(3) Discussion of Fiscal Year 1995 Coast Guard Budget.

(4) Update on Boating Standards Issues.

(5) Multiple-Use Waterways Subcommittee Report.

(6) Personal Watercraft Definition and Requirements Subcommittee Report.

(7) Presentation on R–BAR Insurance Based Boating Accident Register Coast Guard Grant Project.

(8) Report on the Passenger Vessel Safety Act of 1993.

(9) Council Discussion on Mandatory Boating Safety Education.

(10) Discussion of State of Principal Use Definition.

(11) Report on Inflatable Personal Flotation devices (PFDs) and Other Lifesaving Devices and Issues.

(12) Presentation on the Interaction Between Commercial and Recreational Vessels.

(13) Chairman's Session.

Attendance is open to the public. With advance notice, and at the Chairman's discretion, members of the public may present oral statements during the meeting. Persons wishing to make oral statements should notify the Executive Director, listed above under "ADDRESSES", no later than the day before the meeting. Written material may be submitted at any time for presentation to the Council. However, to ensure advance distribution to each Council member, persons submitting written material are asked to provide 25 copies to the Executive Director no later than May 2, 1994.

Dated: April 14, 1994.

W.J. Ecker,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–9554 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–14–M

[GGD–94–034]

National Boating Safety Advisory Council; Subcommittee Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council's (NBSAC) Personal Watercraft Definition and Requirements Subcommittee and Multiple-Use Waterways Subcommittee will meet to discuss various issues related to these topics. The agenda for each meeting will be to review the status of various projects undertaken by the subcommittee, initiate any necessary new tasks, and formulate recommendations to the Council. The meeting will be open to the public.

DATES: The meetings will be held on May 14, 1994, from 1:30 p.m. to 5 p.m. Written material should be submitted not later than May 2, 1994.

ADDRESSES: The meetings will be held at the Sonesta Hotel Portland, 157 High Street, Portland, Maine 04101. Written material should be submitted to Mr. Albert J. Marmo, Executive Director, Commandant (G–NAB), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Albert J. Marmo, Executive Director, Commandant (G–NAB), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1077.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 et seq.

Attendance is open to the public. With advance notice, and at the Chairman's discretion, members of the public may present oral statements during the meetings. Persons wishing to make oral statements should notify the Executive Director, listed above under **ADDRESSES**, no later than the day before the meetings. Written material may be submitted at any time for presentation to the Council. However, to ensure advance distribution to each Council member, persons submitting written material are asked to provide 25 copies to the Executive Director no later than May 2, 1994.

Dated: April 14, 1994.

W.J. Ecker,

Chief, Office of Navigation Safety and Waterways Services.

[FR Doc. 94–9555 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on May 12, 1994 at 9 a.m.

ADDRESSES: The meeting will be held at the Nassif Building. Headquarters, Department of Transportation, room

4236–38, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on May 12, 1994, at the Nassif Building, Headquarters, Department of Transportation, room 4236–4238, 400 7th Street, SW., Washington, DC 20590. The agenda for this meeting will include a progress report from the Flight Crewmember Flight/Duty/Rest Requirements Working Group. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on April 14, 1994.

Quentin J. Smith,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–9565 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Benton County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Benton County, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neuman, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Robert Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) on a proposal to build a four lane relocation of U.S. Route 65 in Benton County, Missouri. The improved highway would have a positive economic and social impact on the Lake of the Ozarks region by providing traffic relief, increased mobility, and enhanced social and economic opportunities.

1. The proposed highway project begins in Benton County south of the Missouri Route 52 South Junction, and proceeds southward to the Missouri Route 7 North Junction at Warsaw. It also includes highway from Route 83 south to Route MM. The total project distance is approximately 17.5 miles. The proposal will provide partial relocation of U.S. Route 65 through the Lake of Ozarks region. The proposed project would provide a four-lane roadway with freeway right of way for the entire length of the project. Interchanges will be provided at or near major arterial crossroads.

2. Alternatives currently under consideration include "build" alternatives, the "no build" alternative, and upgrading of existing facilities.

3. To date, preliminary information has been furnished to local officials, legislators, and other interested parties. Presentation of the concept has been made at the local level and input received. The scoping process has been initiated with Federal, State and local agencies. Further public hearings also will be held. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or the Missouri Highway and Transportation Department at the addresses provided above.

Issued on: January 18, 1994.

Donald Neumann,

Program Engineer, Jefferson City.

[FR Doc. 94–9503 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[NHTSA Docket No. 94–021; Notice 1]

Highway Safety Programs; Model Specifications for Devices to Measure Breath Alcohol

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice amends the Conforming Products List for instruments that conform to the Model Specifications for Evidential Breath Testing Devices (58 FR 48705).

EFFECTIVE DATE: April 20, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Robin Mayer, Office of Alcohol and State Programs, NTS–21, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; Telephone: (202) 366–9825.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974, (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications was published as Appendix D to that notice (49 FR 48864).

On September 17, 1993, NHTSA published a notice (58 FR 48705) to amend the Model Specifications. The notice changed the alcohol concentration levels at which instruments are evaluated, from 0.000, 0.050, 0.101, and 0.151 BAC, to 0.000, 0.020, 0.040, 0.080, and 0.160 BAC; added a test for the presence of acetone; and expanded the definition of alcohol to include other low molecular weight alcohols including methyl or isopropyl. The September 17, 1993, notice included, as Appendix A, a Conforming Products List (CPL) identifying those instruments found to conform with the Model Specifications.

Since the last publication of the CPL, six (6) instruments have been evaluated and found to meet the model specifications, as amended on September 17, 1993, for mobile and non-mobile use: CMI, Inc.'s, Intoxilyzer 5000CD/FG5 and SD2; Intoximeters, Inc.'s Intox EC–IR and Alcomonitor CC;

Life-Loc Inc.'s PBA 3000B; and National Draeger, Inc.'s Breathalyzer 7410. The designation of the National Draeger "Breathalyzer 7410" represents a change in the model designation, from "Alcotest 7410".

The Conforming Products List is therefore amended, as set forth below, to reflect the results of these evaluations. It identifies those instruments found to conform with the model specifications as amended in 58 FR 48705 (September 17, 1993), and also those instruments found to conform with the Model Specifications detailed in 49 FR 48854 (December 14, 1984).

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasures System, Inc. Port Huron, MI		
Alert J3AD*	X	X
BAC Systems, Inc., Ontario, Canada		
Breath Analysis Computer*.		X
CAMEC Ltd., North Shields, Tyne and Ware, England		
IR Breath Analyzer*.	X	X
CMI, Inc., Owensboro, KY		
Intoxilyzer Model 200.	X	X
1400	X	X
4011*	X	X
4011A*	X	X
4011AS*	X	X
4011AS–A*	X	X
4011AS–AQ*	X	X
4011 AW*	X	X
4011A27–10100*	X	X
4011A27–10100 with filter*.	X	X
5000*	X	X
5000 (w/Cal. Vapor Re-Circ.)*.	X	X
5000 (w/⅜" ID Hose option)*.	X	X
5000CD	X	X
5000CD/FG5	X	X
5000 (CAL DOJ)*	X	X
5000VA	X	X
PAC 1200*	X	X
S–D2	X	X
Decator Electronics, Decator, IL		
Alco-Tector model 500*.		X
Intoximeters, Inc., St. Louis, MO		
Photo Electric Intoximeter*.		X
GC Intoximeter MK II*.	X	X
GC Intoximeter MK IV*.	X	X
Auto Intoximeter*	X	X
Intoximeter Model 3000*.	X	X
3000 (rev B1)*	X	X
3000 (rev B2)*	X	X
3000 (rev B2A)*	X	X
3000 (rev B2A) w/FM option*.	X	X
3000 (Fuel Cell)*	X	X
3000 D*	X	X
3000 DFC*	X	X
Alcomonitor		X
Alcomonitor CC	X	X
Alco-Sensor III	X	X
Alco-Sensor IV	X	X
RBT III	X	X
RBT III–A	X	X
RBT IV	X	X
Intox EC–IR	X	X
Komyo Kitagawa, Kogyo, K.K.		
Alcolyzer DPA–2*	X	X
Breath Alcohol Meter PAM 101B*.	X	X
Life-Loc, Inc., Wheat Ridge, CO		
PBA 3000B	X	X
PBA 3000–P*	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK		
Alcolmeter Model.		
AE–D1*	X	X
SD–2*	X	X
EBA*	X	X
Auto-Alcolmeter*		X
Luckey Laboratories, San Bernadino, CA		
Alco-Analyzer Model 1000*.		X
2000*		X
National Draeger, Inc., Pittsburgh, PA		
Alcotest Model 7010*.	X	X
7110*	X	X
7410	X	X
Breathalyzer Model 900*.	X	X
900A*	X	X
900BG*	X	X
7410	X	X
National Patent Analytical Systems, Inc., Mansfield, OH		
BAC DataMaster	X	X
BAC DataMaster—Transportable.	X	X
Omicron Systems, Palo Alto, CA		
Intoxilyzer Model 4011*.	X	X
4011AW*	X	X
Plus 4 Engineering, Minturn, CO		
5000 Plus4*	X	X
Siemans-Allis, Cherry Hill, NJ		
Alcomat*	X	X
Alcomat F*	X	X
Smith and Wesson Electronics, Springfield, MA		
Breathalyzer Model 900*.	X	X
900A*	X	X
1000*	X	X
2000*	X	X
2000 (non-Humidity Sensor)*.	X	X
Stephenson Corp.		
Breathalyzer 900*	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, CA		
Alco-Analyzer 1000.		X
Alco-Analyzer 2000.		X
Alco-Analyzer 2100.	X	X
Verax Systems, Inc., Fairport, NY		
BAC Verifier*	X	X
BAC Verifier Datamaster*.	X	X
BAC Verifier Datamaster II*.	X	X

*Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (i.e., instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC.) Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993). (23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.8)

Michael B. Brownlee,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 94–9510 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration Office of Hazardous Materials Safety

Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before May 5, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Modification of exemption
9846–X	Flexcon and Systems, Inc., Lafayette, LA (See Footnote 1)	9846
10717–X	Union Tank Car Company, East Chicago, IN (See Footnote 2)	10717
10785–X	Kay-Ray/Sensall, Inc., Mt. Prospect, IL (See Footnote 3)	10785

(1) To modify exemption to provide for the manufacture of bulk bags not to exceed 3,300 pounds for use in transporting various Classes of hazardous materials.
(2) To modify the exemption to authorize DOT–111A100W2 and 111A60W2 tank cars without internal coatings to transport fuming sulfuric acid with less than 30% excess S03 to continue with a 3 year tank retest interval after age 20 provided tank shell was built with 9/16" or thicker plate.
(3) To reissue exemption originally issued on an emergency basis to manufacture, mark and sell non-DOT specification containers (radiation detection chamber) in certain non-contacting measurement systems.

Application No.	Applicant	Parties to exemption
4850–P	Directional Wireline Services, Inc., Lake Charles, LA	4850
7041–P	Albemarle Corporation, Baton Rouge, LA	7041
7774–P	Directional Wireline Services, Inc., Lake Charles, LA	7774
7887–P	MRED Industries, Inc., Petersburg, NY	7887
8214–P	TRW Vehicle Safety Systems, Queen Creek, AZ	8214
8845–P	Directional Wireline Services, Inc., Lake Charles, LA	8845
8915–P	Albemarle Corporation, Baton Rouge, LA	8915
9262–P	Directional Wireline Services, Inc., Lake Charles, LA	9262
9275–P	Cosmair Inc., North Brunswick, NJ	9275
9346–P	Arrow Terminals, Industry, PA	9346
9408–P	Albemarle Corporation, Baton Rouge, LA	9408
9507–P	IWECO, Inc., Houston, TX	9507
9549–P	Directional Wireline Services, Inc., Lake Charles, LA	9549
9672–P	Albemarle Corporation, Baton Rouge, LA	9672
9723–P	Inland Water Pollution Control, Detroit, MI	9723
9723–P	City Environmental, Inc., Detroit, MI	9723
9723–P	Universal Waste and Transit, Inc., Tampa, FL	9723
9723–P	Smith Systems Transportation, Inc., Scottsbluff, NE	9723
9769–P	Burlington Environmental, Inc., Seattle, WA	9769
9779–P	Western Unichem, Houston, TX	9779
10365–P	United States Enrichment Corporation (USEC), Bethesda, MD	10365
10429–P	Petrolite Corporation, St. Louis, MO	10429
10589–P	Union Tank Car Company, East Chicago, IN	10589
10898–P	Fluid System Components, Inc., Green Bay, WI	10898
11031–P	Weyerhaeuser Company, Tacoma, WA	11031
11031–P	Stone Forest Industries, Inc., Grants Pass, OR	11031
11031–P	Oregon Trucking Associations, Inc., Roseburg, OR	11031
11031–P	Boise Cascade Corporation, Boise, ID	11031
11031–P	Timber Products Trucking, Inc., Central Point, OR	11031
11031–P	Akzo Nobel Coatings, Inc., Salem, OR	11031
11031–P	Empire Rubber & Supply Co., Portland, OR	11031
11031–P	Medite Corporation, Medford, OR	11031
11031–P	Williamette Industries, Inc., Portland, OR	11031
11031–P	Oregon Trucking Associations, Inc., Portland, OR	11031
11119–P	DBF, Inc., Riverview, MI	11119
11218–P	Praxair, Inc., Danbury, CT	11218

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 13, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–9490 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 20, 1994.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11237–N	Dapco Industries, Inc., Ridgefield, CT.	49 CFR 173.34(e)	To authorize the ultrasonic testing method of 3A and 3AA cylinders used for transporting various hazardous materials classed as Division 2.1, 2.3, 6.1 and Class 3 and 8. (Mode 1, 2, 3.)
11238–N	Thiokol Corporation, Brigham City, UT.	49 CFR 172.101, 172.102, Code 109, 173.60(a), 173.61, 173.62.	To authorize the transportation of rocket motors, in propulsive stage containing one or more hazardous materials, classed as Division 1.3, in specially designed packaging. (Mode 1.)
11239–N	CO.ME.F Carpenteria, s.r.l., Tradate, Italy.	49 CFR 178.245–1(b)	To authorize the transportation of certain liquefied flammable and non-flammable refrigerant gases, Division 2.1 and 2.2, in non-DOT specification steel portable tanks equipped with openings in the shell which are not grouped together. (Mode 1, 2, 3.)
11240–N	Mead Fine Paper, Chillicothe, OH	49 CFR 173.31(A1)(c)	To authorize a one-time shipment of a DOT-Specification 111A100W1 rail car, which was filled after it was out-of-test, containing corrosive liquid, n.o.s., Class 8. (Mode 2.)
11241–N	Rohn and Haas Company, Philadelphia, PA.	49 CFR 179.13	To authorize the transportation of Class 3 material in quantities greater than those authorized by the CFR, not to exceed 270,000 pounds gross weight in DOT Specification 105J tank cars. (Mode 2.)
11242–N	Northrop Corporation, Hawthorne, CA.	49 CFR 172.200, 172.300, 173.400, 173.60, 173.62.	To authorize the interfacility transportation of Class 1 explosives packaged in strong wooden boxes and shipped as non-regulated in private owned enclosed vehicles. (Mode 1.)
11243–N	Thiokol Corporation, Brigham City, UT.	49 CFR 173.28(b)(4)	To authorize UN1A2/Y 300/S drums of 220 liter capacity embossed with a minimum wall thickness of less than 0.96 mm, equipped with polyethylene liner, to be reused without reconditioning, for the shipment of ammonium perchlorate, Division 5.1. (Mode 1.)
11244–N	Aerospace Design & Development, Inc., Niwot, CO.	49 CFR 178.57–2(b) and 178.57–5(a).	To authorize the transportation of 4 liter cylinders constructed of titanium alloy similar to DOT–4L Specification equipped with 951 psi operating pressure to provide air supply for self contained breathing apparatus. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 14, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–9489 Filed 4–19–94; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

April 13, 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.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0507.
Form Number: ATF F 5300.26 and ATF REC 5300/26.
Type of Review: Extension.
Title: Federal Firearms and Ammunition Excise Tax Return.
Description: This information is needed to determine how much taxes are owed for firearms and ammunition excise taxes. ATF uses this information to verify that a taxpayer has correctly determined and paid tax liability on the sale or use of firearms or ammunition. Businesses, including small businesses, may be required to use this form.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 875.
Estimated Burden Hours Per Respondent/Recordkeeper: 7 hours.
Frequency of Response: On occasion, Quarterly, Annually.
Estimated Total Reporting/ Recordkeeping Burden: 24,500 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–9454 Filed 4–19–94; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

April 13, 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: 1515–0020.
Form Number: CF 7539.
Type of Review: Reinstatement.
Title: Drawback Entry Covering Rejected and Same Condition Merchandise.
Description: CF 7539 is needed to establish the eligibility of rejected, same condition, substitution same condition or destroyed merchandise for return of duty. The form is used by claimant to provide the necessary information for Customs to approve the drawback claim.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 2,100.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 22,550 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. 94–9455 Filed 4–19–94; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

April 13, 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.

Internal Revenue Service

OMB Number: 1545–0013.
Form Number: IRS Form 56.
Type of Review: Extension.
Title: Notice Concerning Fiduciary Relationship.
Description: Form 56 is used to inform the IRS that a person is acting for another person in a fiduciary capacity so that the IRS may mail tax notices to the fiduciary concerning the person for whom he/she is acting. The data is used to ensure that the fiduciary relationship is established or terminated and to mail or discontinue mailing designated tax notices to the fiduciary.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 25,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—8 min.
Learning about the law or the form—32 min.
Preparing the form—46 min.
Copying, assembling, and sending the form to the IRS—15 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 292,800 hours.
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. 94–9456 Filed 4–19–94; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday
April 20, 1994

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

NOFA for the Traditional Indian Housing Development Program for Fiscal Year 1994; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3736; FR–3624–N–01]

NOFA for the Traditional Indian Housing Development Program for Fiscal Year 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for fiscal year 1994.

SUMMARY: A. This notice announces the availability of funding for Fiscal Year (FY) 1994 for the development of new Indian housing (IH) units and provides the applicable criteria, processing requirements and action timetable. All Indian Housing Authorities (IHAs) which have not been determined to be administratively incapable, in accordance with 24 CFR 905.135, are invited to submit applications for Indian housing developments in accordance with the requirements of this NOFA.

B. This NOFA contains information concerning the purpose of this NOFA; eligibility; available amounts; the procedures that an IHA must follow to apply for new Indian housing units. The procedures for rating, ranking, and funding IHA applications are also in this NOFA.

DATES: Applications must be physically received by the Indian field office (FO) having jurisdiction over the applicant on or before 4:30 p.m. (FO local time) June 6, 1994 for new Indian housing units. The applicant shall submit its application(s) for new housing units on Form HUD–52730 with all supporting documentation required by Appendix 2, and for demolition or disposition in accordance with 24 CFR part 905, subpart M.

FOR FURTHER INFORMATION CONTACT: Applicants may contact the appropriate Indian FO for further information. Refer to Appendix 1, for a complete list of FOs and telephone numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the information collection requirements contained in these application procedures for development funds were reviewed by the Office of Management and Budget and assigned OMB control number 2577–0030.

I. New Development

A. Authority

1. Statutory Authority

Sections 5 and 6, U.S. Housing Act of 1937 (42 U.S.C. 1437c, 1437d), as amended; U.S. Department of Housing and Urban Development and Independent Agencies' Appropriations Act for Fiscal Year 1993. Section 23, U.S. Housing Act of 1937, as added by section 554, Cranston-Gonzalez National Affordable Housing Act; section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Indian housing regulations

Indian housing development regulations are published at 24 CFR part 905.

B. Development Allocation Amount

The FY 1994 VA–HUD Appropriations Act (Pub. L. 103–124) made available $263,000,000 of budget authority for the traditional Indian Housing Development grants program (new Indian Housing units). Since some of the appropriated funds (approximately 2.5%) are to be derived from the recapture of prior year obligations, the actual amount available may be less. However, other adjustments within the Annual Contributions account in 1994, including the addition of carryover funds, are expected to abate the impact of this loss. At the time of this initial allocation of funds, $262,773,944 is available.

Up to $5,000,000 of the available Indian Housing Development funds will be made available by the Department in order to provide funds needed to replace units approved for demolition/disposition. Any portion of the $5,000,000 that is not designated for demolition/disposition replacements by July 1, 1994, as well as any amounts of actual recaptures that are realized and reallotted to the program, will be made available to the six Office of Native American Programs (ONAPs) on the same basis as the amounts allocated for new units.

Each of the ONAP jurisdictions has been designated as the smallest practical area for the allocation of assistance. Funds available for new units will be assigned to the ONAPS consistent with 24 CFR 791.403.

The competitive process, described in this NOFA, will be used to select IHA applications to be funded for new Indian Housing units. Departmental compliance with the metropolitan/non-metropolitan provisions of section 213(d) of the Housing and Community Development Act of 1974 may require the selection of lower rated metropolitan applications over higher rated non-metropolitan applications. The table below indicates the amount of grant authority available for new units in FY 1994 for the six ONAPs; the indicated amounts are inclusive of funds to meet off-site sewer and water requirements.

Chicago	$40,311,045
Oklahoma City	37,156,223
Denver	27,792,801
Phoenix	81,414,746
Seattle	22,336,995
Anchorage	48,762,135
Total	257,773,944

C. Eligibility For New Housing Units

All IHAs which have not been determined to be administratively incapable in accordance with 24 CFR 905.135, have been organized in accordance with 24 CFR 905.125 and 905.126, and have the required Tribal and/or local cooperation agreements as required by the U.S. Housing Act of 1937, as amended, are invited to submit applications for new Indian housing units.

All IHAs that have developments assisted under the U.S. Housing Act of 1937, as amended, and meet the requirements of 24 CFR part 905 subpart M, may apply for funds for demolition or disposition, whether eligible for new units or not.

D. Development Award Application Process

1. Application Due Date

An IHA may submit an application(s) for a project at any time after the publication date of this NOFA, to the Indian FO having jurisdiction over the IHA applicant on or before 4:30 p.m., FO local time, June 6, 1994 for new Indian housing units. The application(s) shall be submitted on Form HUD–52730 and shall be accompanied by all the legal and administrative attachments required by the form and the items specified in Appendix 2. A FAX of the application will NOT constitute physical delivery.

The application deadline is firm as to date and hour. HUD will treat as ineligible for consideration any application that is received after the application deadline. Applicants should make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

2. Application Kit

Application Form HUD–52730 may be obtained from any Indian FO listed in Appendix 1, or from the Indian Housing

Development Handbook 7450.1, Chapter 2.

3. Submittal of Complete Application

Completed applications must be submitted to the Indian FO having jurisdiction of the IHA applicant at the address/location listed in Appendix 1.

4. Action on Application

When the application is received by HUD, HUD will provide written notification to the IHA showing the date and time the application was received in the HUD office. The FO will begin review of the application within 14 calendar days after the application deadline. The application must be complete and must demonstrate legal sufficiency and the IHA must not have been disqualified for funding of new projects, as determined in accordance with § 905.135. If it is evident that any application fails to satisfy these technical requirements, the HUD FO will immediately return the application and will identify, in writing, the deficiencies. The IHA will be allowed to cure minor technical deficiencies within 14 calendar days of written notification by HUD. All responses must be in writing and received within 14 calendar days of the date HUD issues a written notification of deficiency. Under no circumstances may an applicant submit information which would affect the rating of the application after the original due date for application submission.

E. Ranking Factors and Selection Criteria

1. Rating and Ranking

Rating and ranking of applications from IHAs for new IH units will be done in accordance 24 CFR 905.220. Applications from new IHAs, or, in the case of an umbrella IHA that has added a new tribe, the application from the new tribe, will receive 100 points. If an IHA that serves more than one tribal government, or, in the case of Alaska, more than one village, submits applications for housing units in several of the communities, each application will be treated separately, for purposes of the number of points awarded.

For each Region, the rankings will be based on awarding points to each application for the following categories:

a. The relative unmet IHA need for housing units compared to the other eligible applications for that program type (i.e., low rent (LR) or mutual help (MH)), based on IHA waiting lists and the total number of units in management and in the development pipeline. There should be a separate waiting list for each program type. This need will be measured for each program type by dividing the number of families on the waiting list, by the IHA's total number of units in management and under development. If the result of this division is greater than 1.00, the points for this category shall be 40. Otherwise, the result of this division shall be multiplied by 40. If the IHA has 500 or more families on the waiting list, it is awarded the 40 points. The maximum number of points an IHA can receive is 40 points.

b. The relative IHA occupancy rate compared to the occupancy rates of other eligible IHA applications for that program type. The occupancy rate for an IHA shall be derived from the most recent data entered in the HUD Management Information Retrieval System (MIRS) national data base, which reports total units available and total units occupied based on information supplied by IHAs on forms submitted periodically to HUD. For all IHA projects in management, the total number of units occupied is divided by the total number of units available, multiplied by 100. This occupancy rate for an IHA will then be divided by the highest occupancy rate of any IHA (never to exceed 97%, in any event), and this ratio shall be multiplied by 20 to calculate an IHA's points for this category. The maximum number of points that an IHA can receive is 20 points. An existing IHA that is applying for a previously unfunded program type will be awarded a score equal to the highest rated score for this factor in the Regional competition.

c. Length of time since the last Program Reservation date. The number of days from January 1, 1994 to the date of the last Program Reservation for an IHA shall be divided by the longest time, in number of days, since the last Program Reservation for any IHA. This ratio shall be multiplied by 20 to calculate an IHA's points for this category. The maximum number of points that an IHA can receive is 20 points. FSS fund reservations for FY 1991 or FY 1992 and units received for demolition or disposition purposes will not be counted for rating and ranking purposes for new Indian housing units in FY 1994.

d. Current IHA development pipeline activity. The maximum number of points available for this factor is 20 and each IHA will start with 20 points. For each IHA development that was not completed (submittal of the ADCC documents) on January 1, 1994, points will be deducted as follows:

(1) For each IHA development which, within the past 24 months from the date this application was submitted, has not submitted an approvable Development Program within one year from the Program Reservation date for conventional and 18 months for turnkey development methods, 2 points may be deducted at the discretion of the ONAP Director up to a maximum deduction of 20 points.

(2) For each IHA development which, within the past 24 months from the date this application was submitted, has not achieved construction start within 30 months from the date of the Program Reservation (not counting days under statutory exclusions), 2 points may be deducted at the discretion of the ONAP up to a maximum deduction of 20 points.

(3) For each IHA development not meeting HUD requirements (during the past 24 months from the date of this application) for administration of development contracts as set forth in the regulations and handbooks, 2 points may be deducted at the discretion of the ONAP Director up to a maximum deduction of 20 points.

e. Computation. Scores for ranking shall be carried out to two decimal places (xx.xx).

2. Selection Criteria

a. The ranking process will produce an ordered list of IHA applications by Region that may receive funding. The order is established by the total number of points the application received in the rating process. If any funds remain after the initial funding cycle within the Region, the funds will be provided to more fully fund applications that were reduced due to the Maximum Units Award table shown in paragraph b. below.

b. The number of units awarded shall be based upon the following table to ensure a more equitable distribution and meaningful competition based on need. Exceptions to the maximum number of units awarded based on the table shall be made and approved by the Field Office Director upon proper justification.

Total of all units IHA requested in application(s) by program type	Maximum units awarded (subject to availability)
1,000 and above	300
750 to 999	200
500 to 749	150
400 to 499	100
300 to 399	80
200 to 299	60
199 or fewer	40

If an IHA that serves more than one tribal government, or in the case of

Alaska, more than one village, submits applications for housing units in several of the communities, each application will be treated separately, for purposes of the number of units awarded.

c. Tie breaker. In the case of ties, priority will be given to the application that has the highest ratio of units to:

(1). Pre-approved sites, and, if there is still a tie,

(2). BIA approved leases for the proposed project site(s).

3. Replacement Housing

IHA applications for demolition or disposition may require a commitment for replacement housing units on a one-for-one replacement to comply with requirements of section 18 of the U.S. Housing Act, as amended. IHAs are to process requests for demolition or disposition in accordance with 24 CFR part 905, subpart M.

F. Requests For Amendment Funds

1. Amendment funds may not be used for FY 94 approved projects. However, this will not restrict the availability of amendment funds in future years to those applicants approved in FY 1994.

2. Amendment funds will not be distributed to FOs on the same basis as funds for new units. Instead, they will be distributed by HUD Headquarters on the basis of (1) emergency requests from FOs or (2) in response to amendment money need surveys submitted by the FOs as requested. Requests that are not emergency requests will be evaluated using the following order of priority:

a. Projects with HUD-approved litigation settlement payable or which require funding to pay for litigation related legal costs.

b. Projects under construction to cover a HUD-approved cost increase.

c. Projects require a HUD-approved cost increase to enter the bidding process or execute construction contract/contract of sale.

d. Projects that require a HUD-approved cost increase for any reason not listed above.

II. Other Matters

A. HUD Reform Act

1. Required Disclosures by Applicants.

a. *Disclosures.* All applicants are required to disclose information with respect to any additional funds that can reasonably be expected to be received by them as assistance in excess of $200,000 (in the aggregate) during the Fiscal Year that will be related to the project.

Disclosure must be made relative to any related assistance from the Federal Government (agencies or instrumentalities other than HUD), a state, or a unit of general local government that is expected to be made available with respect to the project for which the applicant is seeking assistance.

The assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

b. *Updates.* The IHA applicant shall update this disclosure within 30 days of any substantial change. This update is required during the period when an application is pending or assistance is being provided.

2. Prohibited Disclosures by HUD Employees.

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to this funding competition. The requirements of the rule continue to apply until the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her FO counsel, or headquarters counsel for the IH development program.

B. Lobbying

Section 319 of the Department of the Interior and Related Agencies Appropriations Act hereafter referred to as the "Byrd amendment," prohibits grantees from using any federally appropriated funds to influence federal employees, members of Congress, and congressional staff regarding specific grants or contracts. The Department has determined that the requirements of the Byrd amendment do not apply to IHAs established by a Tribal government exercising its sovereign powers with respect to expenditures specifically permitted by other Federal law. The Byrd amendment requires all IHAs established under state law to submit the following documents for applications for grants exceeding $100,000.

1. Certification

A certification that no federal appropriated funds will be used for lobbying purposes. The certification shall be submitted on the Form entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements".

2. Disclosure Document

A document disclosing any lobbying activities (on Standard Form—LLL, "Disclosure of Lobbying Activities"), where any funds other than federally appropriated funds will be or have been used to influence federal employees, members of Congress, and congressional staff regarding specific grants or contracts.

C. Conversions

Project conversion between program type (LR or MH) may only be considered where:

1. An IHA submitted projects for mutual help (MH) and low rent (LR), each scored high enough to be funded, and the IHA has the waiting list to support the conversion, or

2. If only one application was submitted and approved, the application upon re-ranking in the other program has to score at least 0.01 higher than the number of points achieved by the highest rated application from any IHA which was not funded. If neither circumstance exists, the request to convert will not be approved.

D. Errors in Ranking and Rating FY 1993

1. Errors made by a FO during the 1993 fiscal year's rating and ranking that resulted in a change of rank order detrimental to an IHA may be corrected as follows:

a. The FO will construct a hypothetical distribution that would have existed if the error had not been made, and

b. The FO will determine what the unit award/funding would have been for the IHA subject to the funds that were available at the time.

2. Remedial action will be taken for errors made by a FO as follows:

a. The FO will deduct any funds needed from the FY 1994 fair share assigned to that FO before any FY 1994 rating and rankings are completed.

b. A correction of an error for an IHA will not adversely affect the IHA participation on the FY 1994 rating and ranking process. The IHA's application will be rated and ranked on the same basis as other applications and as if no error had been made.

E. Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Dated: April 5, 1994..

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix 1. Listing of Indian Field Offices.

Region V—Chicago

Chicago Office of Native American Programs, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–1282 or (800) 735–3239, *TDD Numbers:* 1–800–927–9275, 312–886–3741.

Region VI—Oklahoma

Oklahoma City Office of Native American Programs, Murrah Federal Building, 200 NW. 5th Street, Oklahoma City, Oklahoma 73102–3202, (405) 231–4101, *TDD Numbers:* 405–231–4181, 405–231–4891.

Region VIII—Denver

Denver Office of Native American Programs, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462, *TDD Number:* 303–844–6158.

Region IX —Phoenix

Office of Native American Programs, Two Arizona Center, 400 North Fifth Street, suite 1650, Phoenix, Arizona 85004–2360, (603) 379–4156, *TDD Number:* 602–379–4461.

Region IX —Albuquerque

Office of Native American Programs, suite 1830, 201 3rd St. NW., Albuquerque, New Mexico 87102–3368, (505) 766–1372, *TDD Number:* None.

Region X—Seattle

Seattle Office of Native American Programs, 909 First Avenue, Suite 200, Seattle, Washington 98104–1000, (206) 220–5270, *TDD Number: None.*

Region X—Anchorage

Anchorage Indian Housing Division, 949 East 36th Ave., suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633, *TDD Number:* 907–271–4328.

Appendix 2—New Indian Housing Units. Development Application Submission Checklist.

Certain submission requirements listed on the following checklist is included on the application form HUD–52730. It is the responsibility of the IHA to assure that all submission requirements of the checklist are met whether through the application form or by separate submittal:

1. Application Form HUD–52730:
   _____ Complete application on Form HUD–52730.
   _____ Attach all exhibits and tables as required.
2. IHA Resolution(s): each application must be accompanied by an IHA Resolution which contains the following:
   _____ A statement that authorizes the submission of the application for units.
   _____ A statement explaining how solid waste disposal for the proposed development will be addressed.
   _____ A statement regarding the planned access to public utility services and a listing of any official commitment(s) for these utility services for the development.
   _____ The IHA Resolution must advise HUD of any persons with a pecuniary interest in the proposed development. Persons with a pecuniary interest in the development shall include but not be limited to any developers, contractors, and consultants involved in the application, planning, construction or implementation of the development. During the period when an application is pending or assistance is being provided, the applicant shall update the disclosure required within thirty days of any substantial change.
3. Certifications: Each application must contain the following certifications provided by the Executive Director on IHA letterhead.
   _____ Certification Regarding Drug-Free Workplace Requirements as directed by 24 CFR 24.630 (b).
   _____ Certification that the IHA will comply with 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973.
   _____ Certification that the IHA will comply with Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
   _____ Certification that the IHA will adhere to the Federal Uniform Accessibility Standards/Architectural Barriers Act of 1968.
   _____ For IHAs established under state law, a certification that no federal appropriated funds will be used for lobbying purposes. (Form entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements.")
   _____ Where applicable, and only for IHAs established under state law, a statement disclosing lobbying activities using other than federal appropriated funds. (Standard Form—LLL, "Disclosure of Lobbying Activities.")
4. Letters: Each IHA application must be accompanied by a letter of support signed by the CEO of the general local government indicating:
   _____ support for the proposed application and development.
   _____ an authorization to apply for planning funds for the development.
   _____ where applicable, assurance to HUD that access road needs will be identified by Tribal Resolution (with BIA concurrence) and entered on the BIA Indian Reservation Roads prioritization schedule used by BIA for resource allocation (25 CFR part 170; 57 BIAM 4 and Supplement 4; and 24 CFR part 905 B, appendix I, Item 6).
5. Supporting Documentation: Each application must be accompanied by the following supporting documentation:
   _____ Disclosure of additional assistance from other sources that will be used in association with the project for which the applicant is seeking assistance.
   _____ Statement specifying the number of eligible applicant families by program type (LR or MH). The statement must be supported by a sufficient number of current applications from eligible families maintained by the IHA.
   _____ Identify sites in the application in accordance with §§ 905.230, 905.245 and 905.407.
6. Items That Should Be Submitted, If Not Previously Submitted:
   _____ Certified copy of the Transcript of Proceedings containing the IHA resolution pursuant to which the Application is being made.
   _____ IHA Organization Transcript or General Certificate.
   _____ Tribal Ordinance.
   _____ Cooperation Agreements. Where the provisions of the necessary local government cooperation are not contained in the ordinance or other enactment creating the IHA, the IHA shall submit an executed cooperation agreement (or copy of an existing one) for the location involved, which is sufficient to cover the number of units in the application.
7. Optional Items:
   _____ Preliminary Site Reports indicating pre-approved sites, and BIA approved leases for the proposed project site(s), if any.

[FR Doc. 94–9311 Filed 4–19–94; 8:45 am]

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federal register

Wednesday
April 20, 1994

Part III

Environmental Protection Agency

40 CFR Part 247, et al.

Comprehensive Guideline for Procurement of Products Containing Recovered Materials and Issuance of a Draft Recovered Materials Advisory Notice; Proposed Rule and Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 247, 248, 249, 250, 252, and 253

[FRL–4875–6]

RIN 2050–AE16

Comprehensive Guideline for Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing a Comprehensive Procurement Guideline designating items that are or can be made with recovered materials. The Comprehensive Procurement Guideline implements section 6002(e) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, and section 502 of Executive Order 12873. RCRA section 6002 requires EPA to designate items that are or can be produced with recovered materials and to recommend practices for the procurement of designated items by procuring agencies. Executive Order 12873 sets forth procedures for EPA to follow in implementing section 6002(e) of RCRA. The Executive Order requires EPA to designate items in a Comprehensive Procurement Guideline and to recommend procurement practices in a related Recovered Materials Advisory Notice. Once EPA designates an item, RCRA section 6002 requires any procuring agency using appropriated Federal funds to procure that item to purchase it with the highest percentage of recovered materials practicable. In addition to designating new items, the Comprehensive Procurement Guideline incorporates and reorganizes the five procurement guidelines previously issued by EPA. These guidelines are: paper and paper products, re-refined lubricating oil, retread tires, building insulation, and cement and concrete. Today's proposed action will foster markets for materials recovered from solid waste by using government purchasing power to stimulate use of these materials in the manufacture of new products.

DATES: EPA will accept public comments on this proposed rule until June 20, 1994.

ADDRESSES: The public must send an original and two copies of their comments to: RCRA Information Center (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Please place the docket number (F–94–PRMP–FFFFF) on your comments.

If any information is confidential, it should be identified as such. An original and two copies of Confidential Business Information (CBI) must be submitted under separate cover to: Document Control Officer (5305), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Documents related to today's rule are available for viewing at the RIC, located at: U.S. Environmental Protection Agency, RCRA Information Center, room M2616, 401 M Street, SW., Washington, DC 20460.

The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call (202) 260–9327 for appointments. Copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346, or, in the Washington metropolitan area, (703) 412–9810. For technical information on individual item designations, contact the following EPA staff: Plastic Pipe and Fittings, Geotextiles, Carpet, Floor Tile and Patio Blocks, Playground Surfaces and Running Tracks—Robin Moran, (202) 260–5066; Engine Coolant, Structural Fiberboard and Laminated Paperboard, Rockwool and Fiberglass Insulation, Cement Containing Blast Furnace Slag, and Hydraulic Mulch—Dana Arnold, (202) 260–8518; Yard Trimmings Compost—Hope Pillsbury, (202) 260–2797; Temporary Traffic Control Devices, Office Recycling Containers and Waste Receptacles, Plastic Desktop Accessories, Remanufactured Toner Cartridges, Binders, and Plastic Trash Bags—Beverly Goldblatt, (202) 260–7932. For all other technical information, contact Beverly Goldblatt at (202) 260–7932, or Dana Arnold at (202) 260–8518.

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I. Authority

This guideline is proposed under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962, and section 502 of Executive Order 12873 (58 FR 54911, October 20, 1993).

II. Background

Today, the Environmental Protection Agency (EPA) is proposing a Comprehensive Procurement Guideline designed to encourage the purchase and use of products containing recovered materials. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires EPA to designate items that are or can be made with recovered materials and to recommend practices to assist procuring agencies in meeting their obligations with respect to designated items under RCRA section 6002. After EPA designates an item, RCRA requires that each procuring agency, when purchasing a designated item, must purchase that item composed of the highest percentage of recovered materials practicable.

Executive Order 12873 (Executive Order or E.O.) sets forth the procedure for EPA to follow in implementing RCRA section 6002(e). Section 502 of the Order requires EPA to designate items in a Comprehensive Procurement Guideline (CPG) and to recommend procurement practices in a related Recovered Materials Advisory Notice (RMAN). Today's proposed rule fulfills the CPG requirement of the Executive Order. The proposed RMAN also appears in today's **Federal Register**.

Since 1983, EPA has issued five guidelines for the procurement of products containing recovered materials. The guidelines issued to date are listed in Table 1.

TABLE 1.—EPA Guidelines for Procurement of Products Containing Recovered Materials

Guideline	CFR part	Date (FR)
Cement and concrete containing fly ash.	40 CFR Part 249.	January 28, 1983 (48 FR 4230).
Paper and paper products.	40 CFR Part 250.	June 22, 1988 (53 FR 23546).
Re-refined lubricating oils.	40 CFR Part 252.	June 30, 1988 (53 FR 24699).
Retread tires.	40 CFR Part 253.	November 17, 1988 (53 FR 46558).
Building insulation.	40 CFR Part 248.	February 17, 1989 (54 FR 7327).

Today, EPA is proposing to designate 21 additional items and to amend the building insulation guideline to establish recovered materials content levels for fiberglass and increase the levels for rockwool. The new items that EPA is proposing for designation are: engine coolant, structural fiberboard and laminated paperboard, plastic pipe and fittings, geotextiles, cement containing blast furnace slag, carpet, floor tile and patio blocks, traffic cones and traffic barricades, playground surfaces and running tracks, hydraulic mulch, yard trimmings compost, office recycling containers and office waste receptacles, plastic desktop accessories, remanufactured toner cartridges, binders, and plastic trash bags.

This preamble describes the requirements of RCRA section 6002 and Executive Order 12873, explains the basis for designating specific products as procurement items subject to RCRA section 6002, describes the proposed changes to the building insulation guideline, and incorporates and recodifies the existing five guidelines into a revised 40 CFR part 247. The related RMAN, which also appears in today's **Federal Register**, discusses EPA's proposed recommendations for implementing RCRA section 6002 with respect to procurement of the designated items. The RMAN also provides information regarding the price, availability, and performance of these products.

For the convenience of the reader, Table 2 lists acronyms referenced throughout this preamble.

TABLE 2.—COMMONLY REFERENCED ACRONYMS

Acronym	Term
AASHTO	American Association of State Highway and Transportation Officials.
APC	American Plastics Council.
ASHRAE	American Society for Heating, Refrigeration and Air Conditioning Engineers.
ASTM	American Society for Testing and Materials.
BOCA	Building Officials Council of America.
CABO	Council for American Builders Association.
CPG	Comprehensive Procurement Guideline.
C&D	Construction and Demolition Debris.
E.O.	Executive Order 12873.
EPA	Environmental Protection Agency.
FHWA	Federal Highway Administration.
GGBF	Ground Granulated Blast Furnace (Slag).
GSA	General Services Administration.
HDPE	High Density Polyethylene.
HSWA	Hazardous and Solid Waste Amendments of 1984.
ICBO	International Conference of Building Officials.
LDPE	Low Density Polyethylene.
LLDPE	Linear Low Density Polyethylene.
METRO	Metro Portland Solid Waste Department.
OFPP	Office of Federal Procurement Policy.
PET	Polyethylene Terephthalate.
PP	Polypropylene.
PS	Polystyrene.
PVC	Polyvinyl Chloride.
RCRA	Resource Conservation and Recovery Act of 1976.
RMAN	Recovered Materials Advisory Notice.

A. Materials in Solid Waste

As discussed in section II.E of this preamble, RCRA section 6002 provides criteria for EPA to consider when selecting items for designation. One of these criteria is the impact of procurement of the item on the solid waste stream: EPA's designation of an item should promote the statute's underlying objective of using the stimulus of government procurement to foster markets for items containing materials recovered from solid waste. Consistent with this objective, each of the items that EPA proposes to designate today is made with one or more materials recovered from solid waste. This section briefly discusses these materials and, where applicable, alternative uses for them.

Generally, solid waste has several components, such as municipal solid waste, construction and demolition debris, and non-hazardous industrial waste. EPA produces biennial characterizations of the generation and recovery of municipal solid waste in the United States. Similar national characterizations of the other components of non-hazardous solid waste are unavailable, although some state and local governments have characterized one or more of these other components within their jurisdiction. Under RCRA section 6002, EPA considers materials recovered from any component of solid waste for purposes of designating items containing recovered materials.

EPA's latest municipal solid waste characterization study, which presents 1990 waste generation and recovery data, addresses the following materials: paper and paperboard, glass, metals, plastics, rubber and leather, textiles, wood, food wastes, yard trimmings, miscellaneous inorganic wastes, and other materials. Table 3 shows the 1990 generation and recovery of these materials. The largest components of the municipal solid waste stream are paper and paperboard (37.5 percent), yard trimmings (17.9 percent), plastics (8.3 percent), and glass (6.7 percent). Paper, paperboard, and yard trimmings alone accounted for over 55 percent of the materials generated in 1990.

TABLE 3.—MATERIALS GENERATION AND RECOVERY IN THE U.S. MUNICIPAL WASTE STREAM, 1990

[In millions of tons]

Materials	Generation	Recovery
Paper and Paperboard	73.3	20.9
Glass	13.2	2.6
Metals		
Ferrous	12.3	1.9
Aluminum	2.7	1.0
Other Nonferrous	1.2	0.8
Plastics	16.2	0.4
Rubber and Leather	4.6	0.2
Textiles	5.6	0.2
Wood	12.3	0.4
Other	3.2	0.8
Food Wastes	13.2	(1)
Yard Trimmings	35.0	4.2
Misc. Inorganic Wastes	2.9	(1)
Totals	195.7	33.4

Source: "Characterization of Municipal Solid Waste in the U.S.: 1992 Update," U.S. EPA, July 1992.

[1] Negligible.

EPA's existing procurement guidelines foster markets for several of the municipal solid waste components identified in Table 3—paper and paperboard, rubber (tires), and plastics and glass (used in building insulation)—as well as used oil and fly ash generated by coal burning utilities. The proposed revisions and new item designations address paper, plastics, glass, yard trimmings, wood, rubber, and other materials.

1. Paper and Paperboard

As shown in Table 4, paper and paperboard are major components of the solid waste stream. In 1990, the municipal waste stream included over 73 million tons of waste paper, or 37.5 percent of total municipal solid waste generated. Paper waste includes office papers, newspapers, corrugated containers and other paper packaging, and a mixture of other papers (e.g., direct mail). In 1990, the United States generated nearly 13 million tons of newspapers, 6 million tons of office papers, and nearly 33 million tons of containers and packaging.

A significant portion of paper is recovered and used in the manufacture of new paper and paperboard products. In 1992, the American paper industry recovered nearly 40 percent of paper and paperboard generated in the U.S., or approximately 34 million tons. Of this, 26.5 million tons were used in U.S. mills to make recycled paper and paperboard products, 0.8 million tons were used in the manufacture of other products, and 6.3 million tons were exported. Table 4 provides the tonnage of various grades of paper and paperboard recovered in 1992, as reported by the American Forest & Paper Association.

TABLE 4.—RECOVERY OF PAPER AND PAPERBOARD IN 1992

[In millions of short tons]

Grade	Tonnage
Newspapers	7.2
Mixed papers	4.0
Corrugated	15.4
Pulp substitutes	3.7
High grade deinking	3.3
Totals	33.6

Source: American Forest & Paper Association.

In 1993, the American paper industry set a goal of recovering 50 percent of paper and paperboard generated by the year 2000. The industry estimates that 78 percent of all paper and paperboard recovered domestically in the year 2000 will be used in the manufacture of new paper and paperboard, 7 percent will be used in other products, and 15 percent will be exported. The industry projects that much of the growth in use of recovered paper will be in containerboard (corrugated medium and linerboard) and tissue products, although use in newsprint and printing and writing paper is expected to grow as well.

In addition to use in new paper products, recovered paper and paperboard can be used to make such items as hydraulic mulch and board products used in the construction industry for insulation and structural applications. Increasing demand for products made with recovered paper may help increase the supply of these products and can lead to an increase in the price of these materials. For technical performance and economic reasons, the paper industry is not now capable of using 100 percent recovered paper in all of its products. Also, despite the significant investment made by the paper industry over the last several years in equipment and capacity to use recovered paper, it is still difficult to find markets for recovered paper in some parts of the United States.

2. Plastics

Plastics in the waste stream include non-durable goods such as consumer packaging, containers, toys, and housewares; durable goods such as furniture, appliances, and computers; and commercial/industrial goods such as pipe, cable, siding, and auto parts. Plastics made up 8.3 percent by weight (16.2 million tons) of municipal solid waste according to EPA's 1992 characterization study. By volume, plastics were the second highest

component (21 percent) of municipal solid waste. The EPA characterization study also showed that plastics were recovered at a rate of 2.2 percent by weight in 1990.

The American Plastics Council (APC) reported that the 1992 recycling rate for postconsumer plastic bottles and rigid containers was 15.4 percent; for other types of plastic packaging, the recycling rate was 6.5 percent. The report, entitled, "Post-Consumer Plastics Recycling Rates: 1991 and 1992," is based on data compiled from 229 companies involved in the reclamation of postconsumer plastics. Information was compiled from plastic reclaimers who carried out the last value-added step before remanufacture, and plastics handlers, reclaimers, or brokers who were exporting the materials for recycling. According to APC, the most commonly recycled postconsumer products are polyethylene terephthalate (PET) soft drink bottles, with a 40.6 percent recycling rate, and high density polyethylene (HDPE) milk and water jugs, with a 23.5 percent recycling rate. Other postconsumer resins, including polyvinyl chloride (PVC), low density polyethylene (LDPE) (including linear low density polyethylene (LLDPE)), and polystyrene (PS) are recycled at rates lower than 1 percent; polypropylene (PP) is recycled at a somewhat higher rate of 3 percent.

PET has the highest recycling rate of all postconsumer resins. APC reported a 23.8 percent overall recycling rate (460.5 million pounds) for postconsumer PET. This rate reflects the high recycling rate for PET soft drink bottles, which are the most widely recycled plastic product. PET custom bottles (e.g., peanut butter jars and cooking oil bottles), other PET packaging, and non-packaging materials (e.g., x-ray film) are recycled at much lower rates (4.6 percent, 0.3 percent, and 12.6 percent, respectively). Currently, the primary market for postconsumer PET is fiber for use in products such as ski jackets, sleeping bags, and carpet. Other markets for postconsumer PET include geotextiles, soft drink bottles, and household product containers.

There is a large potential supply of HDPE from postconsumer sources, as well as preconsumer sources. APC reported that 443.9 million pounds of postconsumer HDPE were recycled in 1992. The supply of postconsumer HDPE is mainly from recycled milk and water jugs, detergent bottles and other household products bottles. Other sources reported that 427.6 million pounds of preconsumer (or post-industrial) HDPE were recycled in 1990. The availability of postconsumer HDPE is expected to increase as more communities include HDPE products in their recycling collection programs and as improvements in recovered plastics processing are achieved.

There is also a supply of recovered PVC, although relatively small amounts of postconsumer PVC are available. PVC bottles make up a small percentage of the consumer container market and typically have not been collected in local recycling programs. APC reported that 20.6 million pounds of postconsumer PVC was recycled in 1992. Other sources estimate that the amount of preconsumer recovered PVC were approximately 130.9 million pounds in 1990, and the supply of preconsumer recovered PVC now is expected to be greater due to increased diversion from the waste stream. Sources of preconsumer PVC include industrial scraps from the manufacture of vinyl siding, blister packs and floor tiling. EPA was unable to obtain estimates of post-industrial plastic recovery rates.

Currently, the price of most recovered resins is not competitive with virgin resin; thus, many communities are discouraged from including plastics in their collection programs. Further, there are still many technical barriers to the efficient processing of recovered plastics. For example, the various plastic resins are not mutually compatible, requiring that they be separated during processing. The development of higher value end-markets for the plastics that are currently being collected may off-set the costs of processing the recovered plastic and encourage more communities to recover plastics from the waste stream, which, in turn, will increase supply.

3. Glass

The glass found in municipal solid waste is primarily in the form of containers, although glass is also found in durable goods such as furniture, appliances, and consumer electronics. The chemical composition of glass varies with its use. For example, container glass differs from glass used in automotive windshields. For this reason, glass from one product may not be used easily in the manufacture of other products.

In 1990, approximately 22 percent of glass containers were recovered for recycling, with a 20 percent recovery rate for all glass in municipal solid waste. By 1992, 27 percent of all glass containers manufactured and sold in the U.S. were recycled. If refillables are counted, the glass recycling rate increases to 33 percent.

The major market for recovered container glass is the glass container manufacturing industry. There are 75 container plants in the U.S., but they are not distributed uniformly across the country. They are not now using all of the container glass being recovered.

A potential alternative market for recovered container and other glass is the fiberglass insulation manufacturing industry. EPA's 1989 building insulation products procurement guideline included fiberglass insulation, but EPA did not recommend recovered materials levels for this item. Today, EPA is recommending recovered materials levels for fiberglass insulation in order to foster use of recovered glass in this product.

4. Yard Trimmings

Roughly 35 million tons per year of yard debris (leaves, lawn clippings, bush and tree trimmings) and kitchen scraps (fruit and vegetable scraps) together comprise about 28 percent of municipal solid waste. Yard materials alone comprise 18 percent of the municipal waste stream.

These materials can be composted to produce a usable product, rather than landfilled or incinerated. Today, 26 states have laws or regulations that prohibit yard materials from being landfilled.

5. Wood

EPA estimates that approximately 12.3 million tons of wood were generated as municipal solid waste in 1990. Only 3 percent (400,000 tons) was recovered. The sources of wood include furniture, miscellaneous durables, wood packaging (including pallets), and other miscellaneous products.

Wood also is present in construction and demolition (C&D) debris—materials generated as a result of construction, renovation, or demolition of structures. C&D debris is disposed in both municipal and C&D landfills. Generation of C&D debris fluctuates with seasons, climate, weather, and the local and national economy. As a result, there are no generally accepted estimates of C&D debris generation. According to one report, various studies estimated generation rates ranging from 0.12 to 3.52 pounds/person/day. ["Construction Waste & Demolition Debris Recycling . . . A Primer," prepared for SWANA/EPA/MITE by Gershman, Brickner & Bratton, Inc.]

Wood can account for as much as 30 percent of C&D debris, particularly if land has been cleared for construction. According to one article, Maine and Oregon reported that more than 97 percent of their wood waste was

landfilled as recently as 1988. (Gitlin, Lisa, "Integrating Wood into the Recycling Loop," *Recycling Today*, June 1991) However, as landfill tipping fees increase and landfill space becomes limited in some states, wood chipping and reclamation of wood from C&D is increasing. Communities with public or private wood reclamation programs include Baltimore (the Loading Dock), the Bronx (Urban Solutions), Berkeley (Urban Ore), San Jose, Chicago, Milwaukee, Portland, Cleveland, and San Diego. Some of these programs reclaim parts for reuse, while others chip wood for new applications, or both. Much of the wood is turned into fuel, compost, or mulch, including hydraulic mulch.

Recovery of wood is increasing, however. In particular, in the West, there is growing demand for secondary sources of wood fiber due to restrictions on timber harvesting. In 1993, the Metro Portland Solid Waste Department (METRO) reported that more than 216,000 tons of wood were generated in 1992, including wooden shipping containers and pallets, untreated dimensional lumber and finishing pieces from C&D activities, and large stumps from landclearing. METRO estimated that 46 percent of these materials were recovered, excluding wood that was salvaged for reuse.

Although a comprehensive list of C&D debris recovery programs is not available, published reports indicate that programs exist in all parts of the U.S. and that it is technologically and economically feasible to recover wood wastes for use in such items as board products, industrial boiler fuel, landscaping and hydraulic mulches, sludge bulking media, and animal bedding.

6. Rubber

The predominant source of rubber in municipal solid waste is rubber tires. There are approximately 2–3 billion scrap tires currently stockpiled across the U.S., and over 240 million more are generated annually. Improperly operated stockpiles can create serious health and environmental threats from fires and insect- or rodent-borne diseases. Most states now have scrap tire management legislation fostering alternatives to tire stockpiling and disposal. One of these alternatives is tire retreading, which is the focus of EPA's 1988 tire procurement guideline. Another alternative is to use crumb rubber, either alone or mixed with plastics, to produce new products. Several of the items proposed for designation today contain recovered crumb rubber from tires.

Crumb rubber, a fine granular or powdered material capable of being used to make traffic cones and other products, is currently recovered from whole scrap tires using thermal and/or mechanical processing techniques. Crumb rubber is also derived from the tire retreading process, when a worn tire tread is removed from a retreadable tire casing during a buffing process before a new tread surface is affixed. Rubber materials derived from this process are frequently referred to as "buffings" or "buffing dust." Approximately 200 million tons of tire buffings are generated each year by the tire retreading industry in the United States.

7. Engine Coolants

Annually, more than 200 million gallons of engine coolant are sold in the United States. After purchase, engine coolant is diluted 50 percent with water before placement in the engine. If the majority of engine coolant sold annually is replacing spent engine coolant (rather than refilling leaking radiators), then 400 million gallons of spent engine coolant mixtures require disposal each year. Engine coolant is disposed by discharging it into a sewage treatment system, dumping it on the ground, recycling it, or managing it as a hazardous waste.

Some sewage treatment systems are designed in such a manner that they can treat spent engine coolant without a problem. Increasingly, sewage treatment plants require notification prior to or even restrict the discharge of spent engine coolant to their systems. In addition, engine coolant can cause damage to a septic treatment system if it is flushed into the system, and can cause harm to the environment if it is dumped on the ground.

Used engine coolant may become contaminated by heavy metals (predominately lead and copper) to such a degree that it is a hazardous waste according to EPA's regulations. Some engine coolant has failed the Toxicity Characteristic Leaching Procedure (TCLP) test because of heavy metals and, therefore, is subject to regulation as a hazardous waste in accordance with Federal and state hazardous waste management regulations. States such as New Jersey have chosen to list spent engine coolant as a hazardous waste.

The concentration of hazardous contaminants in spent engine coolant seems to depend on many factors, including: the maintenance and use of the vehicle, the design of the engine, the amount of corrosion inhibitor additives. The amount of heavy metals in spent coolant should greatly decrease in the next few years because of a trend in the automotive industry to use aluminum and plastic in radiators rather than brass. Use of plastic and/or aluminum parts reduces or eliminates the need for lead solder, thereby reducing or removing the source of lead and copper contamination. This industry trend may reduce, if not eliminate, the issue of contaminated engine coolant and disposal as a hazardous waste.

Spent engine coolant can be recycled by removing contaminants and breakdown products of the original ingredients and replacing corrosion inhibitors. Generators of spent engine coolant can either purchase equipment to reclaim the fluid themselves or contract with an engine coolant reclaimer.

8. Blast Furnace Slag

Iron blast furnace slag, or ground granulated blast furnace slag (GGBF slag), is a by-product of the production of iron in a blast furnace. It is produced when water quenches molten blast-furnace slag. Approximately 16 million tons of it are generated annually and are not reused within the original manufacturing process.

Approximately 75 percent of GGBF slag is used in aggregate applications such as fill, road bases, and the coarse aggregate component of asphalt and concrete, while the remaining 25 percent (3–4 million tons) is stockpiled. In other words, by the year 2000, as much as an additional 24 million tons of slag will have accumulated in stockpiles. GGBF slag can be used in cement and concrete for a variety of applications.

B. Benefits of Recycling

By all measures, the United States generates more solid waste (including municipal solid waste, construction and demolition debris and non-hazardous industrial waste) than any other country in the world. While the rate of increase of waste generation has slowed over the last 10 years, amounts generated measured on a per capita or total basis continue to grow. The occurrence of regional waste disposal capacity shortages and the difficulty in siting new disposal facilities continue to plague State and local decision-makers responsible for managing solid waste—creating national concern. In RCRA, Congress acknowledged the importance of recycling in helping to alleviate these problems and recognized that recycling is not merely the collection of materials, but includes the need for products to be made from these materials and purchased by consumers.

Section 6002 was added to RCRA to foster markets for products made from

materials diverted from the solid waste stream by using Federal purchasing power to stimulate the demand for products made with recovered materials. The statute does this by requiring EPA to issue guidelines to be used by Federal agencies to procure recycled products. President Clinton's Executive Order 12873 further bolsters the Federal government's commitment to buy products containing recovered materials by "streamlining" the process used by EPA in fulfilling its obligation under RCRA section 6002 to designate items that are or can be made with recovered materials.

Executive Order 12873 was issued with recognition that the Nation's interest is served when the Federal government makes more efficient use of natural resources by maximizing recycling and preventing waste wherever possible and that the Federal government should—through cost-effective waste prevention and recycling activities—work to conserve disposal capacity, and serve as a model in this regard for private and other public institutions. The use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used. Aluminum recycling, for instance, can save up to 97 percent of the energy requirements for making new aluminum, as compared to the use of bauxite. Use of recovered materials can reduce the generation and release of air and water pollutants often associated with manufacturing (including air emissions that contribute to the level of "greenhouse gases" and ozone depletion). Air pollutant reductions of nearly 25 percent have been associated with the manufacture of glass from recovered materials, while reductions from the manufacture of steel and aluminum can be as high as 85 percent and 95 percent, respectively, when recovered materials are used. Additionally, water pollutant reductions in the manufacture of steel and aluminum can be as high as 75 percent and 95 percent, respectively, when recovered materials are used. Using recovered materials also reduces the environmental impacts of mining, harvesting, and other extraction of natural resources, while conserving non-renewable resources for future use. Recycling can also divert large amounts of materials from landfills, conserving increasingly valuable space for the management of materials that truly require disposal. This reduces the need to expand existing or site new disposal facilities, allowing local officials to devote more attention to health, education, and safety issues.

Executive Order 12873 also points out that the use of recycled products by the Federal government can spur private sector development of new technologies and the use of such products, thereby creating business and employment opportunities that enhance local, regional and national economies. Technological innovation associated with the use of recovered materials can translate into economic growth and make American industry more competitive in the global economy.

Both RCRA and the E.O. recognize the interdependence between buying recycled products and the success of recycling. For recycling to occur, industry must use recovered materials as feedstock for the manufacture of new products. Despite the environmental and economic efficiencies that can be realized by using recovered materials as feedstock, a manufacturer's primary responsibility remains to produce products that meet the demand of the consumer. The Federal government, through its purchasing decisions as a consumer, can play a key role in influencing manufacturer's decisions on products made with recovered materials. By purchasing products containing recovered materials pursuant to the guidelines established under RCRA and Executive Order 12873, the Federal government has the opportunity to increase markets for recovered materials and to contribute significantly to an increased level of recycling in this country. These guidelines also serve to stimulate the purchase of recycled products nationwide, since many State and local governments, as well as the private sector, use these guidelines as a framework for their purchases.

Executive Order 12873 also requires Federal agencies to consider waste prevention in their acquisition of products and services. Waste prevention is the design, manufacture, purchase, or use of materials or products to reduce the volume or toxicity of the waste stream. EPA has not yet issued guidance on how to incorporate the concept of waste prevention in purchasing decisions. The Agency will be addressing this matter when EPA issues its guidance on "environmentally preferable-products," as required by section 503 of the Executive Order. Today's notice pertains only to the issuance of a Comprehensive Procurement Guideline designating items that are or can be made with recovered materials. A Recovered Materials Advisory Notice, which recommends recycled content levels at which the designated items are available, is published separately in today's **Federal Register**.

C. Requirements

RCRA section 6002 and Executive Order 12873 set forth requirements for the procurement of products containing recovered materials. The requirements of RCRA section 6002 apply to "procuring agencies," as defined in section V; Executive Order requirements apply only to Federal "Executive agencies," as defined in section 202 of Executive Order 12873.

1. RCRA Section 6002

RCRA section 6002 requires EPA to designate items that are or can be made with recovered materials and to recommend practices to assist procuring agencies in purchasing the designated items. Once an item is designated by EPA, procuring agencies that use appropriated Federal funds to purchase the item are required to purchase it composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of postconsumer recovered materials), taking into consideration the limitations set forth in section 6002(c)(1) (A) through (C) (i.e., competition, price, availability, and performance). The requirement applies when the purchase price of the item exceeds $10,000 or when the total cost of such items, or of functionally equivalent items, purchased during the preceding fiscal year was $10,000 or more. Within one year after EPA designates an item, RCRA section 6002(d)(2) requires that Federal agencies revise their specifications to require the use of recovered materials to the maximum extent possible without jeopardizing the intended end-use of the item. Section 6002(d)(1) further requires Federal agencies responsible for drafting or reviewing specifications to review all of their product specifications to eliminate both provisions prohibiting the use of recovered materials and requirements specifying the exclusive use of virgin materials. This revision process should have been completed by May 8, 1986.

Once EPA designates an item, responsibility for complying with RCRA section 6002 rests with the procuring agencies. For each item designated by EPA, RCRA section 6002(i) requires each procuring agency to develop an affirmative procurement program, which sets forth the agency's policies and procedures for implementing the requirements of RCRA section 6002. The program must assure that the agency purchases items composed of recovered materials to the maximum extent practicable and that these purchases are

made consistent with applicable provisions of Federal procurement law. In accordance with RCRA section 6002(i), the affirmative procurement program must contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring vendors to reasonably estimate, certify, and verify the recovered materials content of their products; and

(4) A program to monitor and annually review the effectiveness of the affirmative procurement program.

Finally, RCRA section 6002(g) requires the Office of Federal Procurement Policy to implement the requirements of RCRA section 6002 and to coordinate this policy with other Federal procurement policies in order to maximize the use of recovered materials. RCRA further requires OFPP to report to Congress every two years on actions taken by Federal agencies to implement such policy.

2. Executive Order 12873

Executive Order 12873, entitled "Federal Acquisition, Recycling, and Waste Prevention," was signed by President Clinton on October 20, 1993. Section 502 of the Order establishes a new, two-part process for EPA to use when developing and issuing the procurement guidelines for products containing recovered materials, as required by RCRA section 6002(e). The first part, the Comprehensive Procurement Guideline, involves designating items that are or can be made with recovered materials, an activity requiring rulemaking. As with the previous guidelines, the CPG is to be developed using formal notice-and-comment rulemaking procedures. The final CPG is to be codified in the *Code of Federal Regulations*. Today's proposed CPG is being developed under the procedures established in the Executive Order.

The second part, the Recovered Materials Advisory Notice, provides recommendations to procuring agencies on purchasing the items designated in the CPG. The E.O. directs EPA to propose the RMAN in the **Federal Register** and to take comment on the proposal. The RMAN for items proposed for designation in today's CPG also appears in today's **Federal Register**.

EPA is also required to provide guidance to Executive agencies on procuring environmentally-preferable products. Section 503 of the Executive Order requires EPA to develop and issue guiding principles that Executive agencies should use in purchasing environmentally-preferable products. EPA is developing these guiding principles separately from the CPG and RMAN and will provide an opportunity for the public to participate in their development.

Section 401 requires Executive agencies to consider the use of recovered materials and other environmental factors in acquisition planning for all procurements and in the evaluation and award of contracts.

Section 402 directs the head of each Executive agency to implement the affirmative procurement program requirements of RCRA section 6002(i) and to include in the affirmative procurement programs a requirement that all purchases of EPA-designated items meet or exceed the EPA-recommended levels. It further requires agency affirmative procurement programs to encourage that (1) documents be transferred electronically, (2) all government documents printed internally be printed double-sided, and (3) contracts, grants, and cooperative agreements issued after October 20, 1993, include provisions that require documents to be printed double-sided on recycled paper that meets or exceeds the standards established in the Executive Order or in future EPA Recovered Materials Advisory Notices.

Sections 501, 504, 505, and 506 of the Executive Order describe requirements for Executive agencies to incorporate the provisions of RCRA section 6002(d)(1) and requires specific actions to be taken by certain agencies. Section 501 of the Executive Order requires Executive agencies to review and, where applicable, revise their specifications, product descriptions, and standards to enhance Federal procurement of products containing recovered materials. When agencies convert to Commercial Item Descriptions (CIDs), they are required to ensure that the CIDs meet or exceed the recovered materials requirements of the specifications or product descriptions that they replace.

Section 504 requires Executive agency heads to purchase uncoated printing and writing paper with a minimum of 20 percent postconsumer content beginning December 31, 1994. Section 505 further requires the General Services Administration and other Federal agencies to revise their paper specifications to eliminate barriers, unrelated to performance, to purchasing paper or paper products made by production processes that minimize emissions of harmful by-products.

Section 506 reinforces the procurement guidelines for re-refined oil and retread tires by requiring commodity managers to finalize specification revisions for the products and to develop and issue specifications for tire retreading services. Once these specifications are finalized, commodity and fleet managers are required to take affirmative steps to procure retread tires and re-refined oil.

Section 602 of the Executive Order directs Executive agencies to set goals for purchasing recycled and other environmentally-preferable products and to maximize the number of recycled products purchased, relative to non-recycled alternatives.

Finally, section 301 requires the Federal Environmental Executive to submit an annual report to the Office of Management and Budget on the actions taken by agencies to comply with the requirements of the Executive Order, including the affirmative procurement program requirements set forth in RCRA section 6002. To enable the Federal Environmental Executive to develop this report, Executive agencies are required to provide information on their implementation actions.

3. Other Requirements and Policies

There are several other policies and procedures that may affect the procurement of products containing recovered materials by Federal and other government agencies. For the convenience of the reader, EPA has briefly summarized requirements and policies set forth in the Federal Acquisition Regulation, OFPP Policy Letter 92–4, and OMB Circulars A–102, A–119, and A–131.

a. Federal Acquisition Regulation. The Federal Acquisition Regulation (FAR) (48 CFR part 1) is the primary regulation used by Executive agencies in their acquisition of supplies and services. Part 23 sets forth requirements and procedures for Federal agencies to use when procuring EPA-designated items.

b. OFPP Policy Letter 92–4. OFPP's Policy Letter 92–4, "Procurement of Environmentally-Sound and Energy-Efficient Products and Services" (57 FR 53362), establishes Executive branch policies for the acquisition and use of environmentally-sound, energy-efficient products and services. In addition to reiterating the requirements of RCRA section 6002, the Policy Letter requires Executive agencies to: (1) Identify and procure products and services that, all factors taken into consideration, are environmentally-sound and energy-efficient, and (2) employ life cycle cost analysis to assist in making product and service selections.

c. OMB Circular A–102. On August 5, 1992, OMB published proposed revisions to OMB Circular A–102,

"Grants and Cooperative Agreements with State and Local Governments" (57 FR 34599). If finalized as proposed, paragraph 7(h) of the proposed revision will require state and local government recipients of Federal assistance funding to comply with RCRA section 6002.

d. OMB Circular A–119. OMB Circular A–119, "Federal Participation in the Development and Use of Voluntary Standards" (54 FR 57645), sets forth policy for Executive agencies to follow in working with voluntary standards bodies and in adopting and using voluntary standards. Paragraph 7(a)(4) recommends that Federal agencies give preference to adopting and using standards that "foster materials, products, systems, or practices that are environmentally-sound and energy-efficient."

e. OMB Circular A–131. OMB Circular A–131, "Value Engineering" (58 FR 31056), requires Executive agencies to use value engineering as a management tool to reduce program and acquisition costs. Paragraph 8(b) requires agencies to develop guidelines for both in-house personnel and contractors to identify programs/projects with the most potential to yield savings from the application of value engineering techniques. Paragraph 3(b)(4) further requires this guidance to ensure that the application of value engineering to construction and other projects/programs includes consideration of environmentally-sound and energy-efficient results.

D. Criteria for Selecting Items for Designation

RCRA section 6002(e) requires EPA to consider the following criteria when determining which items it will designate:

(1) Availability of the item;

(2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream;

(3) Economic and technological feasibility of producing the item; and

(4) Other uses for the recovered materials used to produce the item.

EPA also consulted with Federal procurement and requirement officials to identify other criteria to consider when selecting items for designation. Based on the information obtained from these sources, the Agency decided that the limitations set forth in RCRA section 6002(c) should also be factored into its selection decisions. The criteria of RCRA section 6002(c) fit within the considerations of availability called for by RCRA section 6002(e). That section requires each procuring agency that procures an item designated by EPA to procure the item composed of the highest percentage of recovered materials practicable, while maintaining a satisfactory level of competition. The decision not to procure an EPA-designated item containing recovered materials may be based only on the following:

(1) The item is not reasonably available within a reasonable period of time;

(2) The item fails to meet the performance standards set forth in the agency's specification; or

(3) The item is available only at an unreasonable price.

EPA recognized that the above limitations could restrict procuring agencies from purchasing EPA-designated items with recovered materials content, and thereby, could limit the potential impact of an individual item designation. For this reason, EPA considered the limitations cited in RCRA section 6002(c) along with the statutory criteria when selecting items for designation in today's proposed CPG. Thus, the Agency developed the following considerations to use as guidance when selecting items for designation: use of materials found in solid waste, economic and technological feasibility and performance, impact of government procurement, availability and competition, and other uses for recovered materials.

1. Use of Materials Found in Solid Waste

All items that EPA designates in the CPG are manufactured with materials recovered or diverted from the solid waste stream. These include both materials recovered from municipal solid waste and materials recovered from other solid waste streams, such as construction and demolition debris and other non-hazardous industrial waste streams. Once recovered or diverted, these materials are reclaimed and refined, disassembled and remanufactured, or separated and processed for use as feedstock to manufacture a new product.

The potential impact that procuring agencies may have on the solid waste stream by procuring an EPA-designated item varies depending on the sophistication of the process used to recover or refine the material used in the manufacture of the item and on the recovered materials content of the final product. Additionally, although designating a single item may not have a significant impact on the amount of solid waste recovered or diverted from the waste stream, EPA believes that designating several items made from the same recovered material in the CPG can lead to the diversion of substantial quantities of that material from the waste stream.

Information on the materials used to produce each item EPA proposes for designation is presented in subsection a, "Use of Materials in Solid Waste," in the individual item designation discussions in sections VIII–XV of this preamble.

2. Economic and Technological Feasibility and Performance

Before selecting an item for designation, EPA determines that, based on its market research, it is economically and technologically feasible to use recovered materials to produce the item. EPA uses several indicators in making this determination. Availability of the item in the marketplace and procurement of the item by Federal and/or other government agencies are primary indicators that it is economically and technologically feasible to produce that product with recovered materials content. Other indicators include ability of the item to meet performance specifications, general acceptance of the item by consumers and purchasers, and use of recovered feedstock by manufacturers.

Prior to selecting an item for designation, EPA also considers the ability of the item to meet the standards, specifications, or commercial item descriptions set forth by Federal agencies or national standard-setting organizations.

Information on the economic and technological feasibility of producing each item EPA proposes for designation, including the availability of the item and the number of manufacturers that produce the item, the ability of the item to meet Federal or national specifications, the recovered materials content levels used by manufacturers to produce the item, and other information relevant to the economic and technological feasibility of producing and using the item, is discussed in subsection b, "Technically Proven Uses," in the individual item designation discussions in sections VIII–XV of this preamble.

3. Impact of Government Procurement

The impact of government procurement of products containing recovered materials is a combination of: (1) Direct purchases by Federal agencies, (2) purchases made by state and local agencies using Federal monies, and (3) purchases made by contractors to these government agencies. Thus, when considering items for designation, EPA examines whether

government agencies and their contractors purchase the items.

Government procurement also has an impact that extends far beyond the Federal, state, and local levels. As encouraged in Executive Order 12873, the Federal government often serves as a model for private and other public institutions. Because of this secondary effect, EPA includes items that are not unique to or primarily used by government agencies. Many of the items that EPA selects for designation are selected because they have broad application both in government and in the private sector.

Information on the potential impact of government procurement for each item EPA proposes for designation is presented in subsection c, "Impact of Government Procurement," in the individual item designation discussions in sections VIII–XV of this preamble.

4. Availability and Competition

The items EPA selects for designation are available nationally either from national distributors or manufacturers or from regional or local sources. The relative availability of an item influences the ability of a procuring agency to secure an adequate level of competition when procuring an item. In the event that a satisfactory level of competition is unattainable, a procuring agency may elect to waive the requirement to purchase an EPA-designated item with recovered materials content based on the limitations listed in RCRA section 6002(c).

Information on the availability of each item EPA proposes for designation, including the number of manufacturers that produce the items, is presented in subsection b, "Technically Proven Uses," in the individual item designation discussions in sections VIII–XV of this preamble.

5. Other Uses for Recovered Materials

In selecting items for designation, EPA also considers the following:

(1) The possibility of one recovered material displacing another recovered material as feedstock, thereby resulting in no net reduction in materials requiring disposal;

(2) The diversion of recovered materials from one product to another, possibly creating shortages in feedstocks for one or both products; and

(3) The ability of manufacturers to obtain recovered materials in sufficient quantity to produce the item under consideration.

While other uses for recovered materials are a consideration, they were not a determining factor when selecting items for designation in today's proposed rule because there is a need for additional markets for all recovered materials used to manufacture the proposed designated items.

6. Other Considerations

As mentioned in the introduction to section II.D, EPA also considers price as a factor affecting the availability of an item. However, the price of products, whether virgin or recycled, is affected by many variables, including availability and costs of material feedstocks, energy costs, labor costs, rate of return on capital, transportation charges, and the quantity of the item ordered. In addition, price may vary depending on whether the product is a common stock item or requires a special order. Price can also be affected by the geographical location of the purchaser because some products may not be uniformly available throughout the United States. Therefore, the best sources of current price information for quantities of items to be delivered to specific locations are the manufacturers and vendors of the recycled products.

Relative prices of recycled products compared to prices of comparable virgin products also vary. In many cases, recycled products may be less expensive than their virgin counterparts. In other cases, virgin products may have lower prices than recycled products. However, other factors can also affect the price of virgin products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Therefore, while price is a consideration, in most cases, it is not a determining factor when selecting items for designation. It becomes a determining factor only when EPA obtains evidence that the relative price of an item with recovered materials content is significantly higher than the relative price of a comparable virgin product. For this reason, EPA did not address price in the individual item designation discussions presented in sections VIII–XV of this preamble.

EPA also considered the feasibility of designating experimental or developmental products containing recovered materials. In the Agency's experience, such designations do not result in Federal procurement of products containing recovered materials, because the items are not reasonably available, or there is only one source; this leads to an unsatisfactory level of competition. For this reason, EPA does not intend to designate experimental or developmental products until it can be shown that they meet all of EPA's selection criteria, as described above. (For additional discussion of designating experimental and developmental products, see EPA's comments on General Accounting Office Report No. B–251080, "Solid Waste: Federal Program to Buy Products with Recovered Materials Proceeds Slowly.")

E. Methodology for Selecting Items for Designation

As described in section II.C.2, Executive Order 12873 directs EPA to propose a Comprehensive Procurement Guideline and related Recovered Materials Advisory Notice. This section explains the methodology EPA used to select items for designation and the rationale used to develop the recommended recovered materials content levels for the items proposed for designation in today's CPG. The recommended recovered materials content levels can be found in the related RMAN, which also appears in today's **Federal Register**.

1. Selection of Items for Designation

EPA began its efforts to develop the CPG and RMAN by first creating an interagency working group consisting of technical, research and development, environmental, and procurement officials from several of the major Federal purchasing agencies.

The Agency then compiled a broad list of potential products made from recovered materials. In developing this list, EPA initially consulted publicly-available sources of information including the "Official Recycled Products Guide," GSA's "Recycled Products Guide," the McDonald's Corporation's "McRecycle® Database," and over 50 other information sources. To this list, EPA added items which, prior to the issuance of the Executive Order, EPA considered designating (i.e., fiberboard, hydraulic mulch, plastic pipe, geotextiles, and compost). EPA next distributed its broad list of candidate items to the working group for review and evaluation. Working group representatives, based on their experiences in setting product specifications and their knowledge of the marketplace and the procurement practices of their respective agencies, identified other items to be added to the candidate list of products. Finally, based on a review of publicly-available information, EPA's own product research, and input from the working group, EPA developed a final candidate list.

Next, for each item on the final candidate list, EPA considered the following questions that relate to the

key criteria described previously in section II.D:

(1) Use of Materials in Solid Waste:

• Is the item made using a material that represents a significant portion of the solid waste stream or presents a solid waste disposal problem?

(2) Economic and Technological Feasibility and Performance:

• Does the item perform as well as necessary to meet a procuring agency's needs?

• Are there standards or specifications that would enable a procuring agency to buy the item containing recovered materials?

• Is the item available at a reasonable price considering normal market fluctuations?

(3) Impact of Government Procurement:

• Is the item purchased in appreciable quantities by the Federal government or by State and local governments?

(4) Availability and Competition:

• Is the item available from an adequate number of sources to ensure competition?

• Is the item generally available, rather than available in a limited market area?

For each item meeting one or more of these key criteria, EPA sought additional information and conducted further analyses to determine whether the item met all or most of the remaining criteria. For some items, EPA was unable to obtain sufficient information to determine if all or most of the criteria were met. These products are still under investigation at this time. Thus, based on product reviews and additional analyses, EPA developed three product lists:

(1) A list of items that EPA is proposing for designation in today's Federal Register,

(2) A list of items that might be designated in the near future pending receipt of additional information and further review, and

(3) A list of items that EPA determined cannot be designated at this time because of limited availability, unreasonable price, or the inability of manufacturers at this time to produce these items with recovered materials content.

The items in the first list are discussed in detail in sections VIII–XV of today's preamble. The second list, those that may be designated pending the receipt of additional relevant information, is presented in section XVI. The third list, those that cannot be designated at this time, is presented in section XVIII, along with a brief explanation of the basis for EPA's determination that the item cannot be designated at this time.

2. Recommended Recovered Materials Content Levels

For most of the item designations proposed today, EPA is proposing recommended recovered materials content levels. These recommendations are contained in the RMAN, which is also published in today's **Federal Register**. The purpose of the recommendations is to assist procuring agencies in fulfilling their obligations under RCRA section 6002 and Executive Order 12873 to purchase designated items composed of the highest percentages of recovered materials practicable. To determine the percentages of recovered materials contained in the proposed items, EPA identified and evaluated pertinent data sources and information. First, for the items EPA previously considered for designation, EPA reviewed the previously-gathered data. EPA also gathered and evaluated publicly-available information and information provided by other Federal agencies. Additionally, in the case of items considered for designation subsequent to issuance of the Executive Order, EPA reviewed and evaluated information obtained from product manufacturers. Based on this information, EPA established a range of recovered materials content levels within which each of the designated items is available. In establishing the range, EPA's objective was to ensure the availability of the item, while challenging manufacturers to increase their use of recovered materials.

EPA believes that a range of content levels is appropriate at this time for three reasons. First, EPA has only limited information on recovered materials content levels for the newly-designated items. Second, rather than being purchased centrally, many of the newly-designated items will be purchased locally, meaning that the recovered materials content of these designated items is likely to vary substantially, making it problematic to recommend a single content level at this time. Third, the Executive Order directs EPA to propose a Recovered Materials Advisory Notice that presents "the range of recovered materials content levels within which the designated recycled items are currently available." In recommending a range, EPA believes that it is providing sufficient information to enable procuring agencies to set appropriate procurement specifications when purchasing newly-designated items.

It is EPA's intention to provide procuring agencies with the best and most current information available to assist them in fulfilling their statutory obligations under RCRA section 6002. To do this, EPA will monitor the progress made by procuring agencies in purchasing designated items with the highest recovered materials content practicable and revise the recommended content ranges accordingly. Revisions to recovered materials content ranges will be published in a RMAN. EPA anticipates that, over time, the recommended ranges will narrow.

Today, EPA also proposes to increase the recommended recovered materials content level for rock wool insulation and add recommended content levels for fiberglass insulation. Both items were designated in the existing building insulation guideline. In the existing procurement guidelines, EPA recommended a single content level for each designated item. When proposing changes to these recommendations today, in those instances where there is sufficient information on current manufacturing practices to determine that a single recovered materials content level is appropriate (e.g., rock wool insulation), EPA will propose one. In other instances, EPA will recommend a range of recovered materials content levels (e.g., for fiberglass insulation).

3. Updates of the CPG and RMAN

Section 502 of Executive Order 12873 directs EPA to quickly propose a list of items that are available with recovered materials content and to recommend recovered materials content levels for these items. As described above, EPA relied on a streamlined process for conducting research and obtaining product information. To meet the 180-day deadline, EPA determined that it would be necessary to rely on information already in its possession or readily available. Therefore, EPA focused its efforts on obtaining publicly-available information, and information that EPA could quickly obtain from other Federal agencies.

The E.O. requires EPA to update the CPG annually. EPA will also update the RMAN periodically to reflect changes in market conditions. The Agency will establish a process for the public to suggest items for consideration and to provide information on products made from recovered materials. EPA intends to issue a **Federal Register** notice that will describe this process and provide information on how the public can participate. Today, the Agency is soliciting options for increasing public participation in developing the updates of the CPG and the RMAN.

F. Request for Comments

EPA requests information and comment throughout this preamble. In general, the Agency is requesting comments on: (1) The items selected for designation in sections VIII–XV; (2) the items selected for potential future designation as listed in section XVI; and (3) the accuracy of the information presented in the item designations themselves. Requests for specific comments and information are included in the narrative discussions for each of the designated items, which follow in sections VIII–XV.

In addition to the proposed CPG, EPA is requesting comment on a draft RMAN. The RMAN, which can be found in the notice section of today's **Federal Register**, recommends recovered materials content levels or ranges of levels and methods of procuring each of the items EPA is proposing to designate.

III. Consolidation of Procurement Guidelines Into 40 CFR Part 247

Currently, EPA's five existing procurement guidelines are codified in 40 CFR parts 248, 249, 250, 252, and 253. In addition, 40 CFR part 247 contains general guidance for purchasing products containing recovered materials; however, part 247 pre-dates the 1984 amendments to RCRA and, therefore, does not address the statutory provisions requiring agencies to establish affirmative procurement programs.

Today, EPA proposes to delete the outdated general guidance in part 247 and to consolidate the existing five guidelines and new item designations into a new part 247. The proposed new part 247, Comprehensive Procurement Guideline, will contain two subparts: Subpart A—General, which will include the requirements of RCRA section 6002 and definitions, and Subpart B—Item Designations. This consolidation will allow EPA to: (1) Specify the statutory requirements once, instead of repeating them in each individual guideline, (2) define all applicable terms in one subpart, instead of in each individual guideline, and (3) provide procuring agencies with one, central list of the designated products. Consolidating these provisions into one Part will make them easier for procuring agencies to locate and use. In addition, each of the five existing guidelines contains general sections addressing its purpose, scope, and applicability. The applicability sections of the guidelines do not contain identical text, which has created confusion among procuring agencies. By consolidating the procurement guidelines into one part, EPA will be avoiding duplication and ambiguity.

RCRA section 6002 and Executive Order 12873 require agencies to establish affirmative procurement programs for items designated by EPA. In addition, section 6002 requires agencies to review their specifications for designated items and revise them as necessary to permit the use of recovered materials to the maximum extent practicable. These requirements have been explained in each of EPA's earlier guidelines and will be found in subpart A of the proposed part 247. Subpart A also will contain applicable definitions found in RCRA, definitions used in the five existing procurement guidelines, and definitions for the items that EPA proposes to designate today. Subpart B will contain EPA's designated list of items that are or can be made with recovered materials. The items will be grouped into eight product categories: paper and paper products, vehicular products, construction products, transportation products, park and recreation products, landscaping products, non-paper office products, and miscellaneous products. The first category will contain the existing designation of paper and paper products, while the existing designations of lubricating oil containing re-refined oil and retread tires will be found in the vehicular products category, and the construction products category will include the existing designations of cement and concrete containing fly ash and building insulation products containing recovered materials.

While this proposal includes both existing and new designations and existing and new definitions, EPA is specifically requesting comment on the proposed framework of part 247 and the proposed item designations and definitions. The existing designations and definitions were included today for convenience, to enable the reader to see all of the contents of the proposed new part. It is not EPA's intent to re-examine the existing provisions.

The following sections of the preamble discuss each of the sections of the proposed part 247. They indicate which provisions are consolidations of the existing procurement guidelines and which sections are proposed additions.

IV. Purpose, Scope, and Applicability

Subpart A of proposed part 247 is primarily a consolidation of the general provisions of the five existing guidelines. As discussed in the previous section of the preamble, it is not EPA's intent to use today's proposal to re-examine the existing guidelines. Instead, these provisions are included in proposed part 247 for the convenience of the reader. In the following discussion, EPA discusses the provisions of subpart A, identifying which regulatory provisions and preamble discussions are repeated from earlier procurement guidelines and which are new provisions for which EPA requests comment.

A. Purpose and Scope

Proposed § 247.1 is primarily a consolidation of the purpose and scope sections of the five existing procurement guidelines. In addition, paragraph (b) references the Recovered Materials Advisory Notice, consistent with the procurement guidelines process being implemented today.

B. Applicability

Proposed § 247.2 is a consolidation of the applicability sections of the five existing procurement guidelines. This section of the preamble addresses who is a "procuring agency" and to which purchases the statutory requirements apply. Most of the following discussion is repeated from the preambles of the five existing procurement guidelines for the convenience of the reader. The only change is in subsection 2, which is new and responds to concerns raised by other Federal agencies regarding the applicability of RCRA section 6002 to private party recipients of Federal monies other than through contracts.

1. Statutory Provisions

Many of the requirements of RCRA section 6002 apply to "procuring agencies," which are defined in RCRA section 1004(17) as "any Federal agency, or any State agency or agency of a political subdivision of a State that is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." Under the statute, responsibility for complying with RCRA section 6002 rests with each individual procuring agency.

Under RCRA section 6002(a), the procurement requirements apply to any purchase by procuring agencies of an item costing more than $10,000 or when the procuring agencies purchased $10,000 worth of the item or of functionally equivalent items during the preceding fiscal year. The requirements apply to both direct and indirect purchases.

2. Who is a Procuring Agency?

The statutory definition of procuring agency identifies three types of "agencies": (1) Federal agencies, (2)

State or local agencies using appropriated Federal funds, and (3) contractors. Based on the statutory language, EPA believes that government agencies and their contractors are "procuring agencies," but private recipients of Federal funds other than through contracts are not procuring agencies and, therefore, are not subject to RCRA section 6002.

EPA concluded that, under the statutory definition, Federal agencies are always procuring agencies because the requirements of RCRA section 6002 apply to Federal agencies whether or not appropriated Federal funds are used for procurement of designated items. It should be noted, however, that the requirements of section 6002 apply only when Federal agencies procure designated items. The statutory requirements do not apply to Federal agencies when they simply disburse funds to State or local agencies because, in that instance, the Federal agencies are not purchasing or acquiring anything. In this case, the State or local agencies are procuring agencies and must comply with these guidelines if they use the appropriated Federal funds for procurement of designated items.

The statutory definition of procuring agency also includes any person contracting with the defined Federal, State, or local agencies. A contractor is a "procuring agency" and subject to section 6002 when procuring designated items for work performed under contracts with Federal agencies, or contracts with State and local agencies where appropriated Federal funds are used.

Because RCRA is explicit in identifying only government agencies and their contractors as "procuring agencies," EPA concluded that private party recipients (e.g., non-profit organizations, individuals) of Federal loans, grants, or funds under a cooperative agreement are not procuring agencies. This is true whether the originator of the grant, loan, or cooperative agreement is a Federal agency or a State or local agency recipient of Federal funds. In proposed § 247.2, EPA is adding a new subparagraph (c)(2) regarding private party recipients of Federal funds to reflect this revised interpretation of RCRA section 6002. EPA requests comment on this interpretation.

3. To Which Purchases Does Section 6002 Apply?

As previously noted, the following discussion is a consolidation of similar discussions in the existing procurement guidelines and is included for the convenience of the reader.

Purchases made as a result of a solicitation by procuring agencies for their own general use or that of other agencies (e.g., purchases by GSA's Federal Supply Service) are "direct" purchases. Purchases of items as part of a contract are also "direct" purchases.

The definition of "procuring agency" makes it clear that the requirements of section 6002 also apply to "indirect purchases," i.e., purchases by a State or local agency using appropriated Federal funds or, in some instances, its contractors. In other words, section 6002 applies to purchases of designated items meeting the $10,000 threshold made by States, political subdivisions of States, or their contractors.

However, the guideline does not apply to such purchases if they are unrelated to or incidental to the Federal funding, i.e., not the direct result of the grant, loan, or funds disbursement. For example, if an entity has a Federal grant or contract to do research and builds or expands a laboratory to conduct the research, the construction is incidental to the grant or contract, as is the purchase of construction materials.

The guideline applies whenever Federal monies, including block grants, are used, whether or not they are commingled with non-Federal funds.

4. What is the $10,000 Threshold?

As previously noted, the following discussion is a consolidation of similar discussions in the existing procurement guidelines and is included for the convenience of the reader.

RCRA section 6002(a) provides that the procurement requirements of the statute apply: (1) When the purchase price of an item exceeds $10,000 or (2) when the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. Thus, RCRA section 6002 clearly sets out a two-step procedure for determining whether the $10,000 threshold has been reached. First, procuring agencies must determine whether they purchased $10,000 worth of a designated item or functionally equivalent items during the preceding fiscal year. If so, the requirements of section 6002 apply to all purchases of these items occurring in the current fiscal year. Second, if the procuring agencies did not procure $10,000 worth of a designated item during the preceding fiscal year, they are not subject to RCRA section 6002 unless, in the current fiscal year, they make a purchase of the item exceeding $10,000. The requirements of RCRA section 6002 then apply to the $10,000 purchase of the designated item; to all subsequent purchases of the item made during the current fiscal year, regardless of size; and to all procurements of the designated item made in the following fiscal year.

Section 6002(a) does not specify that the procurement requirements are triggered when the aggregate quantity of items purchased during the current fiscal year is $10,000 or more. Therefore, EPA does not believe that Congress intended to require procuring agencies to keep a running tally during the year of procurements of designated items. Maintaining such a running tally would be very burdensome. Rather, procuring agencies need only compute their total procurements of a designated item once at the end of the fiscal year and only if they intend to claim an exemption from the requirements of RCRA section 6002 in the following fiscal year.

Finally, Federal agencies should note that the requirements of RCRA section 6002 apply to each Federal agency as a whole. This point is particularly important in determining whether the $10,000 threshold has been reached. During each fiscal year, each major Federal agency as a whole, purchases, or causes the purchase of, more than $10,000 worth of many of the designated items. Therefore, the requirements of section 6002 will apply to all procurements of these items by these agencies and their subunits.

V. Definitions

Most of the definitions found in § 247.3 are the same as those used in the five existing procurement guidelines. The terms "recovered materials," "procuring agency," "person," and "Federal agency" are defined the same as in RCRA. "Postconsumer material" is defined as in Executive Order 12873, while "Postconsumer paper" has the same definition as currently provided in EPA's paper procurement guideline. Other terms are standard industry or purchasing definitions (e.g., purchasing, purchasing activities, Commercial Item Description, Invitation for Bid, Request for Proposal, specification). EPA requested comment on these definitions and the definition of "practicable" during the development of the existing five procurement guidelines and, therefore, is not requesting comment on them today.

EPA is proposing to add the following item-specific new terms: fittings, geotextiles, hydraulic mulch, hydroseeding, laminated paperboard, plastic pipe and fittings, and structural fiberboard. They are based on industry definitions, including ASTM or other standard specifications, or represent descriptions of the scope of items being

designated. EPA specifically requests comment on each of these definitions.

VI. The Affirmative Procurement Program

Within one year after EPA designates an item, RCRA section 6002(i) requires each procuring agency purchasing more than $10,000 of that item, or functionally equivalent items, in a fiscal year to establish an affirmative procurement program for that item. ("Procuring agency" is discussed in section IV.B.2; $10,000 threshold and functionally equivalent are discussed in section IV.B.4) section 402 of Executive Order 12873 reinforces this requirement and further provides that Executive agencies "shall ensure that their affirmative procurement programs require that 100 percent of their purchases of products meet or exceed the EPA guideline standards," considering the limitations set forth in section 6002(c)(1) (A) through (C) (i.e., competition, price, availability, and performance). As described in section II.E.2, EPA is proposing, in a Recovered Materials Advisory Notice, recommended recovered materials content levels within which the designated items are available. These content levels, referred to as "standards" in section 402 of the Executive Order, are proposed in the RMAN that also appears in today's **Federal Register.**

An affirmative procurement program is an agency's strategy for maximizing its purchases of an EPA-designated item. The affirmative procurement program should be developed in a manner that assures that items composed of recovered materials are purchased to the maximum extent practicable consistent with Federal procurement law. RCRA section 6002(i) requires that, at a minimum, an affirmative procurement program consist of four elements: (1) A preference program; (2) a promotion program; (3) procedures for obtaining estimates and certifications of recovered materials content and, where appropriate, reasonably verifying those estimates and certifications; and (4) procedures for monitoring and annually reviewing the effectiveness of the affirmative procurement program. In addition, section 402 of Executive Order 12873 requires an agency affirmative procurement program to encourage the electronic transfer of documents, the two-sided printing of government documents, and the inclusion of provisions in contracts, grants, and cooperative agreements that require documents to be printed two-sided on recycled paper.

In previous guidelines, EPA recommended that specific actions be taken by requesting officials, contracting officers, and architects and engineers when purchasing designated items. In consulting with acquisition policy and requirements officials from several major Federal agencies, EPA determined that these item-specific recommendations did not provide enough flexibility for procuring agencies to determine the appropriate delineation of responsibilities for implementing the requirements of RCRA section 6002. Based on this information and because of the broad array of products proposed for designation in today's rule, EPA will no longer make specific recommendations for individuals within an agency to implement the requirements of RCRA section 6002 and Executive Order 12873. Instead, EPA is recommending that the Environmental Executive within each major procuring agency take the lead in developing the agency's affirmative procurement program and in implementing the requirements set forth in this CPG. This recommendation is consistent with the basic responsibilities of an Agency Environmental Executive as described in sections 302 and 402 of Executive Order 12873. Section 302 charges each Agency Environmental Executive with coordinating all environmental programs in the areas of acquisition, standard and specification revision, facilities management, waste prevention, recycling, and logistics. Section 402(c) of the E.O. further requires each Agency Environmental Executive to track and report, to the Federal Environmental Executive, agency purchases of EPA-designated items. In the absence of such an individual, EPA recommends that the head of the implementing agency appoint an individual who will be responsible for ensuring the agency's compliance with RCRA section 6002 and Executive Order 12873.

RCRA and the Executive Order require procuring agencies to establish affirmative procurement programs for each item EPA designates. In fulfilling this requirement, EPA recommends that each agency develop one comprehensive affirmative procurement program with a structure that provides for the integration of new items as they are designated. EPA encourages agencies to implement preference programs for non-designated items as well, in order to maximize their purchases of recycled products and foster markets for recovered materials.

A. Specifications

RCRA section 6002(d)(1) requires Federal agencies responsible for drafting and reviewing specifications for procurement items purchased by Federal agencies to review and revise their specifications and remove requirements specifying virgin materials only or excluding the use of recovered materials. This revision process should have been completed by May 8, 1986. For items designated by EPA, section 6002(d)(2) directs Federal agencies to revise their specifications to require the use of recovered materials to the maximum extent possible without jeopardizing their intended end-use. For the items previously designated by EPA (i.e., paper and paper products, re-refined lubricating oil, retread tires, building insulation, and cement and concrete containing fly ash), procuring agencies were required to have completed their revisions within one year of each item designation. For items proposed for designation in today's CPG, agencies must complete these revisions within one year after the date of publication of the final CPG, as required by RCRA section 6002(d)(2).

As discussed in section II.C.2, sections 501, 504, 505, and 506 of Executive Order 12873 also address Federal specification requirements. Section 501 of the Order requires Executive agencies to review and revise their specifications, product descriptions, and standards to enhance Federal procurement of products containing recovered materials. When agencies convert to Commercial Item Descriptions, they are required to ensure that the Commercial Item Descriptions meet or exceed the recovered materials requirements in the specifications or product descriptions they replace.

Section 505 requires the General Services Administration and other Executive agencies to revise their paper specifications to eliminate barriers, unrelated to performance, to purchasing paper or paper products made by production processes that minimize emissions of harmful by-products. Section 504 requires Executive agency heads to purchase uncoated printing and writing paper with a minimum of 20 percent postconsumer content beginning December 31, 1994, and 30 percent postconsumer content beginning December 31, 1998. In lieu of these postconsumer content levels for paper, Section 504(c) of the Order allows Executive agencies, under specific circumstances, to purchase printing and writing paper that contains 50 percent recovered materials. The levels contained in the Executive Order

replace the corresponding standards now contained in the paper guideline. In the next several months, EPA intends to issue a draft RMAN which will contain revisions to EPA's recommended recovered materials content levels for paper and paper products. The draft RMAN will incorporate the recovered materials content levels required in the Executive Order. Executive agencies should note, however, that, beginning December 31, 1994, the standards in the Executive Order are applicable to their paper purchases even if EPA does not incorporate them into the paper guideline.

Section 506 reiterates the requirements in the procurement guidelines for re-refined lubricating oil and retread tires. This section specifically requires commodity managers for tires and lubricating oils to finalize their specification revisions for those products, to develop and issue specifications for tire retreading services, and to take affirmative steps to procure these items. It also requires fleet managers to take affirmative steps to procure retread tires and re-refined oil once they become available.

B. Preference Program

A preference program is the system by which an agency implements its stated "preference" for purchasing products containing recovered materials. RCRA section 6002(i)(3) requires procuring agencies to consider the following options when implementing their preference programs: minimum content standards, case-by-case policy development, or a substantially equivalent alternative.

To assist procuring agencies in establishing their preference programs, when EPA designates an item, it examines these statutory options and recommends the approach it believes to be the most effective for purchasing the designated item. Procuring agencies may elect either to adopt EPA's recommended approach or to develop their own approaches, provided that, in accordance with section 402 of the Executive Order, the selected approach meets or exceeds EPA's recommended approach. The approach that EPA recommends for each of the items designated in today's CPG is described in the Recovered Materials Advisory Notice which also appears in today's **Federal Register**.

1. Minimum Content Standards

One approach that RCRA section 6002(i)(3) requires procuring agencies to consider is the establishment of minimum content standards. When a procuring agency establishes a minimum recovered materials content standard for an item designated by EPA, RCRA section 6002(i)(3)(B) requires the procuring agency to assure that its standard requires the maximum amount of recovered materials content available for that item, without jeopardizing the intended end use of the item.

To assist procuring agencies with establishing their minimum content standards, EPA recommends recovered materials content levels, where appropriate, for most of the items it designates. EPA notes that under RCRA section 6002(i), it is the procuring agency's responsibility to establish minimum content standards, while EPA provides recommendations regarding the levels of recovered materials in the designated items. To make it clear that EPA does not establish minimum content standards for other agencies, EPA will no longer refer to its recommendations as "minimum content standards," as was done in previous guidelines. Instead, EPA will refer to its recommendations as "recovered materials content levels," consistent with RCRA section 6002(e) and Executive Qrder 12873.

EPA also notes a change in its approach to establishing recovered materials content levels. For items designated in previous guidelines, with the exception of retread tires, EPA recommended single number recovered materials content levels that represented the national minimum levels for procuring agencies to use when requesting designated items. Henceforth, EPA is recommending recovered materials content ranges within which the items are available. EPA recommends that procuring agencies use these ranges, in conjunction with their own research into the recovered materials content of items available to them, to establish their minimum content standards. In some instances, EPA will recommend one level (e.g., 100 percent recovered materials), rather than a range, because the item is universally available at the recommended level. The methodology that EPA uses to establish recovered materials content ranges for the items that the Agency designates is described in section II.E. The recommended recovered materials content levels for the items proposed for designation in this CPG can be found in the RMAN which also appears in today's **Federal Register**.

2. Case-by-Case Policy Development

A second approach that RCRA section 6002(i)(3) requires procuring agencies to consider is case-by-case policy development. RCRA section 6002(i)(3)(A) describes case-by-case policy development as "a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable," subject to the limitations of RCRA section 6002(c)(1)(A) through (C) (i.e., competition, price, availability, and performance). The case-by-case approach is appropriate where a procuring agency determines that the minimum content standard it has established for a particular designated item is not appropriate for a specific procurement action (i.e., the procuring agency is unable to acquire the item within the limitations described in RCRA section 6002(c)(1)(A) through (C)). The case-by-case approach allows a procuring agency to specify different (usually lower) minimum content standards for specific procurement actions, while still ensuring that the agency fulfills its responsibility to procure the designated item containing the highest amount of recovered materials practicable.

This approach is not intended to obviate the need for an agency minimum recovered materials content standard. It should be applied to singular procurement actions only where the agency's minimum content standard is unattainable. If a procuring agency determines that it is consistently unable to procure an EPA-designated item using the minimum content standard it establishes, then the agency should evaluate its needs and adjust its content standard accordingly.

3. Substantially Equivalent Alternative

A third approach that RCRA section 6002(i)(3) requires procuring agencies to consider is a substantially equivalent alternative to minimum content standards and case-by-case policy development. For some items, the use of minimum content standards is inappropriate because the product is remanufactured, reconditioned, or rebuilt (e.g., remanufactured toner cartridges). In these instances, EPA will recommend that procuring agencies use a substantially equivalent alternative. For example, as discussed in the draft RMAN which also appears in today's **Federal Register**, in the case of toner cartridges, EPA recommends that procuring agencies establish a two-pronged program consisting of: (1) Remanufacturing their expended toner cartridges and (2) purchasing remanufactured toner cartridges when new cartridges are needed. Minimum content standards are inapplicable because the recovered material is the expended toner cartridge, rather than

the individual components used to produce a new cartridge.

4. Requirements for Contractors and Grantees

Government contractors and State and local government agency recipients of appropriated Federal funds, including assistance funds, are also subject to the requirements of RCRA section 6002. These requirements are applicable where the contractor or state or local government agency uses $10,000 of appropriated Federal funds, or used $10,000 or more of appropriated Federal funds the previous year, to purchase an EPA-designated item. Section IV.B.2 describes the applicability of RCRA section 6002 to government contractors and state and local governments in further detail.

5. Exceptions

A procuring agency may not always be able to purchase a designated item with recovered materials content. RCRA section 6002(c)(1) allows a procuring agency to except its purchase of an EPA-designated item with recovered materials content based on the following determinations:

(1) The agency is unable to secure a satisfactory level of competition.

(2) The item is not reasonably available within a reasonable period of time.

(3) The item fails to meet the performance standards set forth in the agency's specification.

(4) The item is available only at an unreasonable price.

Section 402 of Executive Order 12873 further requires that, if a procuring agency waives its requirement to purchase an EPA-designated item with recovered materials content, it must provide a written justification specifying one or more of the exceptions listed above.

C. Promotion Program

RCRA section 6002(i)(2)(B) requires each procuring agency to adopt a program to promote its preference to buy EPA-designated items with recovered materials content. The promotion component of the affirmative procurement program educates staff and notifies an agency's current and potential vendors, suppliers, and contractors of the agency's intention to buy recycled products.

In the previous guidelines, EPA targeted its recommendations for promoting the affirmative procurement program at the agency's vendors and contractors. EPA has determined that the education of an agency's employees is also an important part of the promotion program. Therefore, EPA believes that an agency's promotion program should consist of two components: An internal promotion program and an external promotion program.

1. Internal Promotion

There are several methods that procuring agencies can use to educate their employees about their affirmative procurement programs. These methods include preparing and distributing agency affirmative procurement policies, publishing articles in agency newsletters and publications, including discussions of an agency's affirmative procurement program in staff and technical manuals, and conducting workshops and training sessions to educate employees about their responsibilities under an agency's affirmative procurement program.

2. External Promotion

Methods for educating existing contractors and potential bidders of an agency's preference to purchase products containing recovered materials include publishing articles in appropriate trade publications, participating in vendor shows and trade fairs, placing statements in solicitations, and discussing an agency's affirmative procurement program at bidders' conferences.

D. Estimation, Certification, and Verification

RCRA section 6002(i)(2)(C) requires the affirmative procurement program to include procedures for estimating, certifying, and, where appropriate, reasonably verifying the amount of recovered materials content utilized in the performance of a contract. RCRA section 6002(c)(3) further provides "the contracting officer shall require that vendors: (A) Certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements and (B) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials."

E. Procedures to Monitor and Review the Procurement Program

Procuring agencies should monitor their affirmative procurement programs to ensure that they are fulfilling their requirements to purchase items composed of recovered materials to the maximum extent practicable. RCRA section 6002(i)(2)(D) requires the affirmative procurement program to include procedures for annually reviewing and monitoring the effectiveness of an agency's affirmative procurement program. Section 402 of Executive Order 12873 requires the Environmental Executive of each Executive agency to track and report on agency purchases of EPA-designated items. Additionally, RCRA section 6002(g) requires the Office of Federal Procurement Policy (OFPP) to submit a report to Congress every two years on actions taken by Federal agencies to implement the affirmative procurement requirements of the statute. Also, section 301 of Executive Order 12873 requires the Federal Environmental Executive to submit a report annually, at the time of agency budget submission, to the Office of Management and Budget (OMB) on Executive agency compliance with the Order. In order to fulfill their responsibilities, EPA anticipates that the Federal Environmental Executive and OFPP will request information from appropriate agencies on their affirmative procurement practices. Therefore, it is important for agencies to monitor their affirmative procurement programs to ensure compliance with RCRA section 6002 and Executive Order 12873.

In order to comply with the Executive Order, agencies will need to evaluate their purchases of products made with recovered materials content. This will also allow them to establish benchmarks from which progress can be assessed. To evaluate their procurements of products containing recovered materials, procuring agencies may choose to collect data on the following:

(1) The percentages of recovered materials content in the items procured or offered;

(2) Comparative price information on competitive procurements;

(3) The quantity of each item procured over a fiscal year;

(4) The availability of each item with recovered materials content; and

(5) Performance information related to recovered materials content of an item.

EPA recognizes that a procuring agency may be unable to obtain accurate data for all items designated by EPA. However, EPA believes that estimates will be sufficient to determine the overall effectiveness of an agency's affirmative procurement program. In the cost estimates for this proposal, EPA estimates that Federal agencies will spend an average of 10 hours per product per year to perform recordkeeping and reporting tasks associated with this affirmative procurement program requirement and potential information requests from EPA, OMB, and the Federal Environmental Executive.

VII. Proposed Categories of Item Designations

To organize the products that EPA selected for designation, we developed the following product categories: Paper and office paper, vehicular, construction, transportation, park and recreation, landscaping, non-paper office, and miscellaneous. The categories were developed to describe the application of each designated item.

- Paper and Office Paper Products—as defined in 40 CFR 250.4(aa). This category does not include paper and paper products used in construction applications.
- Vehicular Products—products used in repairing and maintaining automobiles, trucks, and other vehicles. Examples of vehicular products include lubricants, bumpers, mud flaps, and engine coolant.
- Construction Products—products used in constructing roads and the interior and exterior components of commercial and residential buildings.
- Transportation Products—products used for directing traffic, alerting drivers, and containing roadway noise and pollution. Examples of transportation products include safety cones, traffic signs, and sound barriers.
- Park and Recreation Products—products used in operating and maintaining parks and recreational areas. Examples of park and recreation products include playground equipment and running tracks.
- Landscaping Products—products used to contain, maintain, or enhance decorative and protective vegetation or areas surrounding buildings and roadways. Examples of landscaping products include compost, garden implements, and landscape timbers.
- Non-Paper Office Products—equipment and accessories used by government agencies and businesses to perform daily operational and administrative functions of an office. Examples of non-paper office products include toner cartridges, desktop accessories, and waste receptacles.
- Miscellaneous Products—includes all other products not covered by the categories listed above.

VIII. Paper and Paper Products

As previously discussed, EPA issued a paper procurement guideline in 1988. The guideline establishes recovered materials content levels for various paper products, including printing and writing paper. In addition, section 504 of Executive Order 12873 establishes minimum content standards for specified uncoated printing and writing papers purchased by Federal executive agencies. These standards replace the corresponding standards in the paper guideline.

In today's proposed CPG, EPA includes the existing paper and paper products designation and related definitions only for purposes of showing readers what will be included in the final CPG. In the draft Recovered Materials Advisory Notice published elsewhere in the **Federal Register** today, however, EPA is not including revisions to the existing recommended recovered materials content levels for paper products. In the next several months, EPA intends to issue another draft Recovered Materials Advisory Notice for public comment. This additional draft RMAN will incorporate the minimum content standards established by the Executive Order, amend the recommended recovered materials levels for other paper products, and address a variety of issues that have been raised as procuring agencies have implemented affirmative procurement programs for paper products containing recovered materials. Federal executive agencies should note, however, that, beginning December 31, 1994, the standards in the Executive Order are applicable to their paper purchases even if EPA does not incorporate them into the paper guideline.

IX. Vehicular Products

A. Re-Refined Lubricating Oil and Retread Tires

EPA issued procurement guidelines for re-refined lubricating oil and retread tires in 1988. Proposed § 247.12 will include the existing designations of these two items and a new designation of engine coolants. EPA is including the existing designations and definitions of re-refined lubricating oil and retread tires in the proposed part 247 today only for purposes of showing readers where they will be placed in the new CPG. EPA is not re-opening the item designations or related definitions for public comment.

B. Engine Coolants

1. Background

Engine coolant, also known as antifreeze, is a necessary automotive chemical. Engine coolants are manufactured from one of two chemicals: Ethylene glycol or propylene glycol. Coolant additives are then added to inhibit corrosion within the engine.

Spent engine coolants can be reclaimed by removing contaminants and breakdown products of the original ingredients and replacing corrosion inhibitors. Engine coolant reclamation results in both waste reduction and materials recovery benefits.

Engine coolant reclamation units are readily available in a range of capacities and prices. GSA offers engine coolant reclamation units from three sources through the New Item Introductory Schedule program.

There is one potential impediment to reclamation of engine coolants: the mixing of the two types of engine coolant, ethylene glycol and propylene glycol. Propylene glycol-based engine coolant has just recently been marketed nationwide for consumer purchase. Reclaimers will reject spent engine coolants if they contain more than one percent propylene glycol because it interferes with reclamation of ethylene glycol due to differences in the chemistry of the two materials.

2. Rationale for Designation

EPA believes that engine coolant satisfies the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* As discussed above in section II.A, significant quantities of spent engine coolants require disposal annually. In some instances, spent engine coolant can exhibit the toxicity characteristic of hazardous waste by failing EPA's Toxicity Characteristic Leaching Procedure (TCLP). If a procuring agency determines that its spent engine coolant is a hazardous waste, it must manage the engine coolant in accordance with applicable Federal or state hazardous waste management requirements, including the generator requirements found in 40 CFR Part 262 and the requirements for recyclable materials found in 40 CFR § 261.6. Because state hazardous waste regulations generally apply in lieu of the Federal regulations, procuring agencies should contact their state environmental agency (or, if the state is not authorized, the appropriate EPA Regional Office) for specific information on applicable requirements.

b. *Technically proven uses.* Reclamation of engine coolants is done in one of two ways: filtration or distillation. Data from both types of reclamation strongly support the designation of reclaimed engine coolants. Both the Navy and the Postal Service are reclaiming engine coolants and have not encountered performance problems with the reclaimed product. The American Society for Testing and Materials' (ASTM) D15 committee on engine coolants has published standards for reclaimed engine coolants (see ASTM D 3306, D 4985).

c. *Impact of government procurement.* Government agencies operate a large number of vehicles. The Federal

government alone, including the U.S. Postal Service, operates a fleet of more than 500,000 vehicles of all types: passenger vehicles, light and heavy trucks, buses, ambulances, off-road vehicles, etc.

Military installations, the Postal Service, and some Federal civilian agencies have motor pools or vehicle maintenance facilities at which vehicles are serviced. The Navy informed EPA that it established engine coolant reclamation at some installations to recover this material and reduce liability if spent engine coolants were to be mismanaged. Limited EPA research revealed that one naval shipyard has been able to recover 6,000 gallons of engine coolant annually, resulting in a cost savings of about $5 per gallon, factoring in avoided disposal costs and the cost of purchasing new engine coolant. If all government agencies were to establish engine coolant reclamation programs, the potential recovery of used engine coolant could be significant.

However, not all agencies have motor pools or vehicle maintenance centers where engine coolant recycling could be established. In fact, maintenance of the majority of the Federal civilian fleet occurs at commercial service centers. Nevertheless, EPA believes that it is important to begin to establish engine coolant reclamation programs throughout the Federal fleet in order to recover this material. EPA further believes that state and local government fleets and private sector fleets will follow the Federal lead, thus reducing the amount of engine coolants requiring disposal each year.

3. Designation

Today, in § 247.12(c), EPA proposes to designate reclaimed engine coolant as an item that is or can be made with recovered materials.

X. Construction Products

In proposed part 247, § 247.13 contains designations of the following construction products: building insulation, structural fiberboard and laminated paperboard, plastic pipe and fittings, geotextiles, cement and concrete, carpet, and floor tiles and patio blocks. The following subsections discuss each of these items. EPA previously designated building insulation products and cement and concrete containing fly ash in 1989 and 1983 procurement guidelines, respectively. These designations are included in § 247.13 (a) and (e) for the convenience of the reader and, therefore, EPA is not requesting comment on them. However, as explained in sections X.A and X.E below, EPA today proposes to amend the scope of these two item designations.

A. Building Insulation Products

The 1989 building insulation products procurement guideline designated a variety of insulation products, including loose-fill, blanket and batt, board, and spray-in-place. These products are made with a variety of materials, including cellulose fiber, mineral wool (fiberglass and rock wool), perlite composite board, and plastic foams. Today, in subparagraph (3) of proposed § 247.13(a), EPA is proposing to add structural fiberboard and laminated paperboard products to the list of board insulations. EPA discusses these two products in section X.B below and requests comment on adding them to the building insulation products designation.

Further, EPA notes that there has been confusion about whether the 1989 procurement guideline included fiberglass insulation, although it was listed in the item designation under both loose-fill and blanket and batt insulations, because the Agency did not recommend recovered materials content levels for it. Procuring agencies should note that an item is designated if it is listed in the designation, whether or not EPA recommends a recovered materials level. Procuring agencies should further note that, in the companion Recovered Materials Advisory Notice published in the **Federal Register** today, EPA is recommending recovered materials content levels for fiberglass insulation.

B. Structural Fiberboard and Laminated Paperboard

1. Background

a. *Prior proposal to designate "cellulosic" fiberboard.* In the proposal to the building insulation products procurement guideline (53 FR 29165, August 2, 1988), EPA proposed to designate "cellulose fiberboard" and recommend a recovered materials content level of 50 percent postconsumer recovered paper for this item. Cellulose fiberboard was not included in the final building insulation guideline, because several questions regarding definitions and recovered materials content were unresolved.

Specifically, there are several categories of fiberboard: particleboard, medium density fiberboard, hardboard, and structural fiberboard. Of these, EPA's proposed "cellulose fiberboard" is a type of structural fiberboard. Because "structural fiberboards" have both insulating and structural applications, however, commenters stated that it was unclear whether EPA was proposing to include both applications. They also stated that it was unclear whether the proposed guideline applied to laminated paperboard, which also can be made with recovered materials, because structural fiberboard and laminated paperboard have different definitions and recovered materials content. They pointed out that EPA proposed a definition of "cellulosic fiberboard" based on ASTM Standard Specification C 208, "Insulating Board (Cellulosic Fiber), Structural and Decorative," which does not apply to laminated paperboard.

In light of the commenters' concerns, EPA decided to conduct additional research into "cellulose fiberboard" products. Based on this research and additional information provided by product manufacturers, EPA now proposes to designate both structural fiberboard and laminated paperboard products for both insulating and structural applications.

b. *Overview of structural fiberboard and laminated paperboard products.* Structural fiberboard products have a lower density than other fiberboards. Historically, both structural fiberboard and laminated paperboard were considered to be insulating products. Because they have structural applications, as well, the industry considers them to be "structural fiberboard," rather than "cellulosic" or "insulating" fiberboard. Therefore, EPA now proposes to use the term "structural" fiberboard, rather than "cellulosic" fiberboard.

The industry further differentiates laminated paperboard products because of their higher densities than structural fiberboard products. ASTM specification C 208 defines "cellulosic" fiberboard products as having a density between 10 lbs/ft^3 and 31 lbs/ft^3. By contrast, laminated paperboard products have a density in the range of 42 lbs/ft^3.

Structural fiberboard and laminated paperboard products are used in construction for both insulating and structural purposes. They can be used as overlay board in built-up roofing, wall sheathing, sound-deadening under flooring and in wall assemblies, acoustical and non-acoustical wall and ceiling coverings, and insulation board.

c. *Use of recovered materials in other board products.* Manufacturers of particleboard, hardboard, and medium density fiberboard also are beginning to use recovered materials. EPA knows of one manufacturer producing hardboard from wood recovered from demolition debris and one manufacturer producing particleboards using recovered cotton

stalks and cotton burrs. METRO Portland reports that one-fourth of the wood recovered in the metropolitan Portland area in 1992 was processed into feedstock for hardboard, particleboard, and medium density fiberboard. (See "1992/93 Wood Market Profile," METRO Solid Waste Department, August 1993.) EPA requests additional information about the use of recovered materials to produce particleboard, hardboard, and medium density fiberboard. In particular, EPA requests comment on the following issues:

- What is the size (in expenditures or volume) of the Federal government market for these items?
- What is the availability of each of these items produced with recovered materials—national, regional, or local?
- What type(s) of recovered materials are used? What volume of these materials is used to produce each item?
- What are the applicable ASTM or other performance standards for each item? Do the standards preclude the use of recovered materials? Do items containing recovered materials meet the performance requirements in these standards?
- What is the price of these items relative to the price of similar items made with virgin materials?
- How many manufacturers of each item are there?

2. Rationale for Designation

EPA believes that structural fiberboard and laminated paperboard products satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* As discussed above in section II.A, both paper and wood are significant components of municipal solid waste, and wood is a significant component of construction and demolition debris. Although recovered paper is used by the pulp and paper industry, there continues to be a need for additional markets for this material.

b. *Technically proven uses.* Both structural fiberboard and laminated paperboard can be produced with high levels of recovered materials without compromising product performance. Five of the seven manufacturers of structural fiberboard and all of the laminated paperboard manufacturers use recovered materials, and the other two structural fiberboard manufacturers are experimenting with using recovered materials.

In addition, both structural fiberboard and laminated paperboard containing recovered materials are established products with established specifications. ASTM specification C 208 applies to structural fiberboard products containing recovered materials. Both structural fiberboard and laminated paperboard meet other applicable performance requirements, such as those established by the American National Standards Institute (ANSI), American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), Federal Housing Administration, and the various building code organizations.

c. *Impact of government procurement.* Government agencies purchase structural fiberboard and laminated paperboard products for residential, institutional, and commercial applications. In 1990, $5.3 million worth of these products were purchased with appropriated Federal funds. Many Federal agencies disburse funds to State and local agencies for using in building construction, renovation and repair—activities for which use of structural fiberboard and laminated paperboard are appropriate. Therefore, EPA expects both direct and indirect procurement of these items to increase as a result of today's proposed designation.

3. Designation

Today, in § 247.13(b), EPA proposes to designate structural fiberboard and laminated paperboard products, including building board, insulating formboard, sheathing, shingle backer, sound-deadening board, roof insulating board, acoustical and non-acoustical ceiling tile, insulating wallboard, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard). The proposed designation includes both insulating and structural uses of structural fiberboard and laminated paperboard products.

C. Plastic Pipe and Fittings

1. Background

Plastic pipe is used to collect and transport liquids, gases, and slurries from one point to another. Plastic fittings are used when installing piping systems. Plastic pipe is used in drain, waste, and vent (DWV) applications, sewer systems, water distribution, gas distribution, oil and gas production, electrical conduit, and industrial, agricultural, and mining operations. The use of plastic pipe in various applications increased dramatically in the last 20 years, due primarily to its ability to resist corrosion.

Plastic pipe applications predominantly fall into two categories: pressure and non-pressure uses. Pressure-rated applications include the oil, gas and mining industries, and pipe used for the transport of potable water. Pressure-rated pipe must be able to handle significant internal pressure, necessitating greater structural strength than non-pressure applications.

Most pressure-rated pipe and pipe rated for carrying potable water uses are not currently good candidates for using recovered resins. Several industry experts have expressed concern about potential contamination of potable water from pipe made from non-virgin plastic materials. Also, because the quality and performance of recovered resins in plastic pipe are only now being evaluated, manufacturers generally have been unwilling to risk the use of recovered resins in pressure-rated pipe. The fear of pipe failure, which could result in physical and chemical hazards and expensive repairs, has led manufacturers to concentrate primarily on non-pressure and non-potable water pipe applications for recovered plastic. Therefore, applications requiring pressure-rated pipe are not included in today's proposed guideline.

Compared to pressure applications, non-pressure applications, including sewer, drainage, DWV, and conduit, generally have lower stresses and, thus, would not impede the use of recovered materials in plastic pipe and fittings. Sewer pipe is used in sanitary and storm sewer applications. Drainage pipe is used in surface and subsurface applications, such as building foundations, highway construction, and general land drainage to collect and convey water by gravity flow. DWV pipe is somewhat similar to drainage pipe, but is used primarily in residential housing and other building projects. Conduit is used in power and communications ducts and to house electrical wires.

Plastic pipe is classified as either reinforced thermosetting resin pipe or thermoplastic pipe, depending on the manufacturing processes and resins used. EPA found no information indicating that pipe made from thermoset resins is being made with recovered materials.

Thermoplastic pipe has the largest share of the plastic pipe market. Thermoplastic resins include polyvinyl chloride (PVC), polyethylene (PE), acrylonitrile-butadiene-styrene (ABS), polypropylene (PP), polybutylene (PB), and chlorinated polyvinyl chloride (CPVC). The resins are formed into pipe by an extrusion process in which molten resins are continuously forced through a mold. The formed pipe is then sized and hardened by cooling the pipe with water. Fittings are manufactured using an injection-molding process that forces the molten plastic under pressure

into metal molds and then cools the mold. Recovered materials may be used in either the extrusion or the injection-molding process.

A few variations in the manufacturing processes for thermoplastic pipe are used to increase the stiffness of the pipe. Two types of thermoplastic pipe are corrugated and smoothwall. Corrugated pipe is extruded and vacuum-suctioned into molds to make the corrugations (i.e., ridges and recesses). The corrugation adds strength to the pipe and makes it flexible so that it may be rolled onto spools for transport. Smoothwall pipe is extruded and sent through a sizing ring to obtain the desired thickness. Strength is obtained by increasing the thickness of the wall. For the purposes of this guideline, thermoplastic pipe includes both corrugated and smoothwall pipes.

PVC and HDPE resins alone comprise over 90 percent of the total thermoplastic pipe market. The majority of all plastic pipe (about 75 percent) is made from PVC materials. About 3.1 billion pounds of PVC pipe were manufactured in 1991. The largest use (48 percent) of PVC pipe is in sewer and drain applications, including sanitary and storm sewers, subsurface drain systems, building connections, drainage, and DWV systems. PVC pipe also is used as conduit in power and communications ducts. Conduit, or electrical conduit, is a type of plastic tubing with predominantly smaller diameters than typical pipe applications and is used to house buried or submerged wire and cable.

Pipe produced from polyethylene, mainly HDPE, occupies the second largest domestic market for plastic pipe. Corrugated drain pipe accounts for about 18 percent of the HDPE pipe market and is used in surface and subsurface drainage applications for collecting and conveying water by gravity flow. Corrugated drain pipe is used in building foundations, highways, land and agricultural drainage applications, and communications ducts. Installation involves placement in soil and gravel beds which provide support to the flexible pipe walls. Solid wall HDPE pipe is inserted into existing pipes for slip-lining applications and is used in the rehabilitation of existing systems and in new drainage systems.

2. Rationale for Designation

EPA believes that plastic pipe and fittings satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Non-pressure plastic pipe manufacturers can use recovered HDPE and PVC. As discussed above in section II.A, plastics are a significant component of municipal solid waste, and PVC is present in construction and demolition debris (e.g., scraps from installation of vinyl siding).

b. *Technically proven uses.* Recovered plastics have been used successfully in the manufacture of non-pressure plastic pipe and fittings for use in sewer, drainage, DWV, and electrical conduit applications. PVC is the predominant resin used to manufacture all of these except drainage pipe, which is commonly made of HDPE. EPA has identified 10 manufacturers of plastic pipe that use recovered resins.

Pipe fittings are manufactured by the injection-molding process, a process which generally can use recovered resins. The information available to EPA indicates that no technical barriers preclude the use of recovered PVC or HDPE resin in the manufacture of fittings.

EPA is seeking information about use of recovered materials in the manufacture of conduit. Although it is technically feasible to manufacture conduit with recovered resins, EPA has been unable to identify manufacturers marketing their conduit as containing recovered materials. EPA believes that at least one manufacturer currently uses recovered resin in producing conduit, but the manufacturer does not market the product as such. Therefore, EPA requests information on the extent to which conduit is produced from recovered resins.

Numerous organizations set performance and product specifications for plastic pipe, including ASTM. There are currently about 20 ASTM standards for non-pressure HDPE and PVC pipe. The materials specifications in some of these standards explicitly require the use of virgin resin; others neither allow nor disallow recovered materials content. However, all of these standards allow the use of rework materials (e.g., industrial scrap commonly reused within the manufacturing process). While manufacturers using recovered resin cannot meet the virgin materials requirements of some ASTM standards, they can receive verification by independent testing labs that their products meet the performance requirements contained within those standards. For the past few years, many ASTM members have been interested in allowing the use of recovered materials, either by revising existing materials requirements or developing new standards. However, the process of revising or developing an ASTM standard often takes several years. There are currently a few projects within ASTM to develop new standards for non-pressure pipe containing recovered resin.

Some industry opponents of the use of recovered resin in pipe manufacturing claim that performance tests designed for virgin resin may not adequately assess recovered materials, because requirements for virgin resin (e.g., molecular weight, stabilizers) may not be equivalent for the mixed characteristics of recovered resin. They contend that it may be incorrect to state that a product containing recovered materials "passes ASTM performance specifications" because the original tests were designed only to account for the consistency of virgin resin inputs. Further, they claim that the tests do not guarantee long-term performance because they are conducted over a short time period. Of course, the validity of short-term testing is also at issue for virgin materials.

Several pipe manufacturers have conducted research demonstrating that pipe made with recovered materials meets ASTM performance specifications. One company has demonstrated repeatedly that its HDPE corrugated drain pipe meets the requirements of ASTM standard F 405, "Standard Specification for Corrugated Polyethylene (PE) Tubing and Fittings," including the ultra-violet additive test, crush test, and stress-crack test, with no recorded failures. In 1993, the University of Toledo Polymer Institute conducted testing, funded in part by an EPA grant, on the suitability of using recovered HDPE resin for drainage pipe applications. The results showed that pipes manufactured from postconsumer resin blends of 25–75 percent (virgin resin comprised the remaining material) demonstrated acceptable performance in terms of stiffness, flattening, brittleness, and environmental stress crack resistance.

While there remains some disagreement among industry experts on the appropriate testing of pipe containing recovered materials, EPA believes there is sufficient performance evidence to propose designating certain non-pressure plastic pipe. EPA seeks information on performance testing relating to sewer, drainage, DWV and conduit plastic pipes and fittings made of recovered materials.

c. *Impact of government procurement.* Several Federal agencies purchase, either directly or indirectly, plastic pipe and fittings. Federal agencies are not required to track the level of detailed information on purchases of individual construction materials necessary to determine the Federal government's actual share of the pipe market. Direct purchases of some materials are tracked

by the General Services Administration's Federal Procurement Data System (FPDS), which tracks direct purchases of $25,000 or greater made by Federal agencies. FPDS indicated that $1.1 million was spent on plastic pipe products in 1991.

The direct purchases recorded by any agency in FPDS are only a fraction of the total purchases made through actions taken by the Federal government. The majority of the Federal government's plastic pipe purchases are made indirectly through grants or contracts. Because Federal expenditures on pipe products are not well-tracked, and because pipe products and their uses are so diverse, it is not possible to assess the extent to which Federal purchasing power can influence the market for plastic pipe containing recovered materials. However, anecdotal information obtained from discussions with Federal purchasing officials indicates that the Federal government purchases large quantities of plastic pipe. Federal agencies expected to be the largest purchasers of plastic pipe and fittings, and their uses of plastic pipe, are described below.

The Federal Highway Administration (FHWA) disburses approximately $19 billion per year in Federal funding for highway projects. Plastic pipe is an integral part of many of these projects, serving primarily drainage functions on bridges and under and along roads. One manufacturer alone claimed to have supplied approximately $40 million of plastic pipe to Federally-funded highway projects.

The Department of Housing and Urban Development (HUD) funds several programs for the renovation of existing housing and the construction of new housing, including the installation and renovation of water and sewer systems. The Public Housing Development Program, the Public Housing Modernization Program, and the Community Development Block Grants Program account for over $4.5 billion of HUD's total budget. Many of these projects involve the installation of plastic pipe.

In the Department of Agriculture, one branch of the U.S. Forest Service is responsible for maintenance and construction projects on National Forest lands, including the building of public facilities, irrigation and planting projects, and drainage systems. In addition, the Soil Conservation Service uses corrugated HDPE drainage pipe and corrugated and solid wall PVC drain and sewer pipe in subsurface drainage systems.

While exact data are not available on Federal market share, this anecdotal information indicates that the Federal government may have a substantial impact on the procurement of non-pressure plastic pipe made with recovered materials.

3. Designation

Today, in § 247.13(c), EPA proposes to designate plastic pipe and fittings made from thermoplastic resins, including PVC and HDPE, for the following applications: sewer, drainage, conduit, and drain, waste and vent (DWV).

D. Geotextiles

1. Background

Geotextiles are permeable civil engineering fabrics that are used in a variety of construction applications. The four main functions of a geotextile are separation, drainage, filtration, and slope reinforcement. Depending on the application, a geotextile may serve one or more of these functions. The five main applications for geotextiles are: road building, drainage, erosion control, soil stabilization, and waste containment (e.g., landfill construction).

The physical, mechanical, and hydraulic properties of a geotextile depend on the materials used to make the fiber, and the manufacturing process used to construct the fiber. Most geotextiles are made of plastic polymers, although some are made of natural fibers such as jute. Of the many different types of plastic polymers that can be used to make geotextiles, polyolefins and polyesters are used most often. Currently, in North America, 83 percent of all geotextiles are made of polypropylene, 14 percent of polyester, 2 percent of polyethylene, and 1 percent of other plastic resins.

Geotextiles may be made of woven or nonwoven fabrics. Woven geotextiles generally are stronger than nonwoven fabrics of the same weight, and dominate the drainage, asphalt overlay, and lining systems markets. Nonwoven geotextiles generally are permeable to moisture, resistant to rot and mildew, and conform to the subgrade soils. Nonwoven fabrics dominate the stabilization and separation, and subgrade and base reinforcement markets. Both woven and nonwoven geotextiles are produced using postconsumer recovered plastic and in-house plastic scrap, including postconsumer PET bottles.

Products related to geotextiles include geogrids, geonets, and geocomposites. These products are used in similar applications as geotextiles, but they have distinctly different basic properties. Geogrids are used in high-strength applications, primarily for reinforcement. They are made from either high density polyethylene, high tenacity polyester, or polypropylene. Geogrids are distinguished from other geotextile products by their large openings (called "apertures") which allow soil to pass through from one side of the geogrid to the other. Geonets are similar in appearance to geogrids; however, geonets have diamond-shaped apertures rather than square apertures and are almost always made of polyethylene. Geonets are used almost exclusively for their drainage capability and are always used in conjunction with another geosynthetic material, such as a geotextile. Specifications do not prohibit the use of recovered materials in these products. EPA has not identified any manufacturers of geogrids or geonets that use recovered resin. Although there appear to be no technical reasons why recovered resins cannot be used to manufacture these products, EPA understands that manufacturers may be reluctant to use recovered resins in geonets and geogrids because of their higher strength applications (e.g., reinforcement). Therefore, EPA requests information on manufacturers of geogrids or geonets using recovered materials, and information on their performance.

Geocomposites combine the best features of different civil engineering materials. They are almost always made of synthetic materials; however, it is also possible to make a geocomposite by combining a synthetic material with a nonsynthetic material, such as bentonite clay. Examples of synthetic geocomposites include geotextile-geomembrane composites, geotextile-geonet composites, geotextile-polymer-core composites, and geomembrane-geogrid composites. Like geotextiles and related products, geomembranes are classified as a geosynthetic material. However, geomembranes are not considered in this guideline because there are no technically proven examples of geomembranes made with recovered materials, and there are specifications that prohibit the use of recovered plastic in the manufacture of geomembrane liners.

Geocomposites may be formed either by laying one material over the other or by welding them together. For example, geotextiles and geonets can be laid next to each other to form a geotextile-geonet-geotextile "sandwich" for conveying landfill leachate or conducting air beneath pond liners. In contrast, geomembranes and geogrids made of the same polymer can be welded together to form a geocomposite with enhanced strength and friction

capabilities. Two geocomposite manufacturers advertise their products as being made with postconsumer recovered materials. These manufacturers reportedly make their geocomposites using a polyester geotextile that contains postconsumer PET.

2. Rationale for Designation

EPA believes that geotextiles satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Both woven and nonwoven geotextiles are produced using postconsumer recovered PET and recovered PP. As discussed above in section II.A, plastics are a significant component of municipal solid waste.

b. *Technically proven uses.* EPA has identified seven geotextile manufacturers and two geocomposite manufacturers who claim to use recovered plastic to make their products. Three geotextile manufacturers produce needlepunched, nonwoven polyester geotextiles from recovered PET. Another company produces woven and nonwoven geotextiles containing postconsumer polypropylene. A fifth manufacturer produces geotextiles from recovered polypropylene scrap for use in erosion control applications. Two other companies reportedly use recovered plastic to make geotextiles. Two manufacturers of geocomposites use recovered PET as well. These products are available to government procuring agencies, as they are made by some of the largest geotextile manufacturers. No manufacturers of geogrids or geonets containing recovered materials have been identified.

Standards for the manufacture and use of geotextiles are governed primarily by ASTM's Committee D–35 on Geosynthetics, which has developed 13 applicable to geotextiles. All but one of these geotextile standards describe procedures for testing geotextiles for certain properties, such as tensile strength and ultraviolet light resistance. These test methods are used mainly to compare different types of geotextiles and for acceptance testing. The one ASTM geotextile standard that is not a test method provides instructions on how to accept, store, and handle geotextiles. None of these standards preclude the manufacture of geotextiles from recovered resin.

Other organizations that oversee the use of geotextiles include the American Association of State Highway and Transportation Officials (AASHTO), State departments of transportation, and several Federal agencies such as the Federal Highway Administration and EPA. None of these organizations require that geotextiles be made of virgin resin.

EPA has been extensively involved in the research and application of geosynthetic materials for use in waste containment systems. Any use of geotextiles in municipal solid waste or hazardous waste containment applications must comply with applicable EPA regulations and technical guidance.[1] Although these regulations do not specifically require their use, geotextiles are being used for several purposes in waste containment applications.[2] Application of geosynthetics to the containment of municipal or hazardous waste involves a variety of screening tests to properly select a material for use at a specific location to contain a specific waste. EPA has found that virtually no data exist on the performance of geotextiles containing recovered materials in waste containment applications. The EPA guidance document entitled, "Technical Guidance Document—Quality Assurance and Quality Control for Waste Containment Facilities" (EPA/600/R–93/182), states that geotextiles containing recovered materials may be appropriate, for example, in the gas collection layer above the waste and in the protection layer between the drainage stone and geomembrane, taking into consideration the design parameters. EPA seeks information on performance data of geotextiles containing recovered materials in waste containment applications, and requests comment on whether geotextiles containing recovered materials should be recommended for other uses in waste containment applications.

c. *Impact of government procurement.* Government agencies purchase geotextiles and related products. EPA estimates the 1990 expenditures for these products purchased with appropriated Federal dollars to be $216 million, or about 63 percent of the Agency's estimate of the geotextile industry's total output value. The Federal government represents such a large share of the geotextile market because geotextiles are used extensively in highway construction. Eighty percent of highway construction and maintenance is funded from the Federal Highway Trust Fund, which is distributed to States by the Federal Highway Administration.

Other Federal agencies that use geotextiles include the Department of Defense, Army Corps of Engineers, and the U.S. Forest Service. Uses of geotextiles by these agencies include drainage applications, building roads, constructing retaining walls, supporting backfill, landfill applications and constructing dams.

3. Designation

Today, in § 247.13(d), EPA proposes to designate geotextiles for use in road building, drainage, erosion control, and soil stabilization, and for use in the gas collection layer and the protection layer between the drainage stone and the geomembrane liner in waste containment systems. EPA is not proposing to designate geocomposites as a separate guideline item; however, a geotextile layer of a geocomposite would be covered under this designation.

E. Cement and Concrete

1. Background

In 1983, EPA issued a procurement guideline designating cement and concrete containing fly ash generated by coal burning utilities for use in concrete products such as pipe and block (48 FR 4229, January 28, 1983). In the preamble to that guideline, EPA noted that it considered including the use of ground granulated iron blast furnace slag (GGBF slag) in cement and concrete. EPA stated that GGBF slag was not sufficiently available to warrant a guideline on a national scale. EPA further noted that GGBF slag was being reused at a very high rate as an aggregate and as fill material.

In the 1983 guideline, EPA encouraged procuring agencies to apply the general provisions of the guideline in those cases where GGBF slag suitable for use in cement becomes available (48 FR 4236). However, it has since been EPA's experience that, as a general rule, procuring agencies are unwilling to try a product containing recovered materials unless EPA specifically designates that product in a procurement guideline. Despite the language in the 1983 guideline encouraging its use and despite the availability of ASTM and AASHTO specifications for its use, EPA was recently informed that fewer than 10 states have specifications which include or allow GGBF slag. One slag producer informed EPA that it has experienced significant hesitance on the part of state

[1] EPA's municipal solid waste landfill regulations are found in 40 CFR part 258. EPA's regulations for hazardous waste landfills, surface impoundments, and waste piles are found in 40 CFR part 264, subparts N, K and L, respectively.

[2] Additional information on the use of geotextiles in waste containment applications is provided in the background information document, "Procurement Guideline for Geosynthetic Materials: Draft Final Feasibility Study" which has been placed in the RCRA docket.

transportation agencies to use cement and concrete containing GGBF slag.

The GGBF slag producers are located in the Eastern U.S. and, because of transportation costs, their products generally are available in the Eastern states. However, the slag producers recently informed EPA that Portland cement manufacturers are able to produce GGBF slag, which expands the national availability of cement and concrete containing GGBF slag. According to the slag producers, GGBF slag is available in over 30 states.

GGBF slag clearly falls within the statutory definition of "recovered materials." It is a by-product of the production of iron in a blast furnace and is not reused within the original manufacturing process.

Based on this information and the information presented below, EPA now concludes that the scope of the cement and concrete guideline should include GGBF slag.

2. Rationale for Designation

EPA believes that cement and concrete containing GGBF slag satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* As discussed in section II.A of this preamble, approximately 75 percent of the GGBF slag generated annually is used in aggregate applications, but significant additional quantities are not currently used and must be stockpiled.

b. *Technically proven uses.* It is technologically and economically feasible to process blast furnace slag into an additive for cement and concrete. The slag is ground into a consistency somewhat finer than Portland cement. In concrete, GGBF slag replaces a portion of the Portland cement. In some concrete mixtures, GGBF slag can replace up to 75 percent of the Portland cement, on a pound for pound basis. Most concrete mixtures containing GGBF slag use between 25 and 50 percent slag.

Like coal fly ash, GGBF slag can improve the performance of concrete. According to information provided by the slag producers, GGBF slag can result in higher strength; lower heat; lower permeability; better durability in marine, salt, and chemical environments; and lighter color. The producers also state that GGBF slag can be used compatibly with coal fly ash and other cementitious and pozzolanic materials when used in concrete.

There are approximately 1.2 million tons of domestic cement industry grinding capacity specifically devoted to the manufacture of GGBF slag. In addition, several Portland cement manufacturers have devoted grinding capacity to GGBF slag. Currently, five companies operate six grinding plants to produce GGBF slag. Additionally, two Portland cement companies may begin producing GGBF slag at three locations, and a third company recently bought a GGBF slag plant.

Consensus and state specifications are evidence of the performance of GGBF slag in cement and concrete. ASTM and AASHTO each have two specifications applicable to use of GGBF slag: ASTM C 989, Ground Granulated Blast-Furnace Slag for Use in Concrete Mortars; ASTM C 595, Blended Hydraulic Cements; AASHTO M 302, Ground Granulated Blast Furnace Slag for Use in Concrete and Mortars; and AASHTO M 240, Blended Hydraulic Cements. In addition, there is an American Concrete Institute Standard Practice, ACI 226.R1, Ground Granulated Blast-Furnace Slag as a Cementitious Constituent in Concrete. The States of Maryland, West Virginia, Pennsylvania, Virginia, Georgia, South Carolina, and Florida also have adopted specifications which allow use of GGBF slag.

c. *Impact of government procurement.* In the 1983 guideline, EPA noted that almost one-half of total U.S. cement consumption is in public construction projects, many of which are funded with Federal funds. Factoring in usage of cement containing fly ash and uses for which recovered materials may be inappropriate, the potential impact of designating GGBF slag still could be substantial.

3. Designation

Today, in § 247.13(e), EPA proposes to add GGBF slag to the existing designation of cement and concrete containing fly ash.

F. Carpet

1. Background

Broadloom carpet, meaning roll goods in 12-foot widths, for wall-to-wall installation, generally is comprised of face fibers (made of nylon, polyester, wool, or polyethylene) inserted into a primary backing, which is usually made of polypropylene materials. The fiber is then locked or glued into place by a layer of latex adhesive; a secondary backing made of polypropylene or jute fiber then is applied to provide stability. Carpet squares or tiles are manufactured first as broadloom carpet; however, after inserting the fiber into the primary backing, a sheet made of polypropylene or other material is added for stability, and a secondary backing made of PVC, polyurethane, or other hardback material is applied. Finally, the carpet is cut into squares, usually 18" x 18".

The majority of carpet manufactured in the U.S. is made of nylon carpet fibers, with a smaller percentage (about 10 percent) being made of polyester. Currently, recovered materials are being used to produce carpet fiber, carpet backing, and carpet cushioning.

Although nylon comprises a much larger share of the carpet fiber market than polyester, at this time, carpet containing recovered materials is being manufactured only from recovered PET. In addition, one major manufacturer of nylon and nylon carpet fibers has initiated a pilot project to recover nylon from old carpet and remanufacture it into new products, including new carpet fiber. Because this process is only now being developed, it is premature to include carpet made from recovered nylon within the scope of the item designation proposed today. EPA seeks information regarding other manufacturers of carpet fiber, or other carpet components, that are or can be made with recovered materials (e.g., recovered polypropylene or rubber backing).

EPA is aware of only one manufacturer that uses recovered materials to make carpet backing; this company uses its own waste. The Agency aware of one company that makes carpet cushioning of recovered materials, including postconsumer materials. EPA requests information on other manufacturers of carpet backing or cushioning using recovered materials. EPA currently is not considering these items for designation because only one manufacturer of each has been identified.

2. Rationale for Designation

EPA believes that polyester carpet fiber meets the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Both manufacturers identified by EPA make carpet fiber from postconsumer PET (i.e., polyester). The main source of postconsumer PET is recovered soft drink bottles, which are washed, ground, melted, and then spun into fiber. As discussed above in section II.A, plastic, including PET, is a significant portion of the nation's municipal solid waste.

b. *Technically proven uses.* Of the two manufacturers of carpet containing recovered PET, one offers carpet in one commercial style and 100 to 150 residential styles of carpet; the carpet is marketed nationally. The other manufacturer offers carpet in 1,800 patterns and in 70 colors; the carpet also is marketed nationwide. This

manufacturer currently has a contract under GSA's New Item Introductory Schedule for polyester carpet containing recovered materials. Additionally, carpet containing recovered materials has been installed in at least two Federal government buildings, and several State government buildings. Both companies claim that their products meet applicable performance requirements.

There are numerous specifications that must be considered when purchasing carpet; however, EPA is not aware of any specifications that explicitly prohibit the use of carpet fiber made of recovered materials.

ASTM has several test methods for carpet fiber, including abrasion resistance, electrostatic propensity, flammability, specific optical density of smoke, colorfastness, pilling and fuzzing resistance, and fiber tuft bind. Other organizations that have standards pertaining to carpet include the American Association of Textile Chemists and Colorists, and the Carpet and Rug Institute. ASTM does not have any standards that preclude the use of recovered materials in carpet, and EPA is not aware of such standards from any other organizations.

EPA knows of one Federal agency specification (issued by the Department of Army, Army Corps of Engineers) that requires the use of only nylon or wool carpet, and thereby prohibits the purchase of polyester carpet. The requirement to use nylon or wool carpet may be due to the particular application, and differences in the material's resiliency, appearance retention, and other properties. EPA requests information on whether there are specific carpet applications for which use of polyester carpet is inappropriate.

c. *Impact of government procurement.* Although EPA was not able to obtain any quantitative information, virtually all Federal agencies purchase carpet. Use of polyester carpet containing recovered materials both will create a market for this item and demonstrate its performance.

3. Designation

Today, in § 247.13(f), EPA proposes to designate carpet made of polyester fiber for use in low- and medium-wear applications. The proposed designation does not include polyester carpet for use in heavy-wear applications.

G. Floor Tiles and Patio Blocks

1. Background

a. *Floor tiles.* Floor tiles are used in a variety of applications, including office spaces, entranceways, bathrooms, laboratories, and hallways. EPA has identified 10 manufacturers and/or distributors of floor tiles containing recovered materials. The recovered materials used in these products include rubber derived from old tires, and various plastic resins, most commonly PVC (i.e., vinyl). Five of the 10 companies make floor tiles with postconsumer tire rubber. Some of the companies add a small amount of virgin rubber, adhesive fabric, or coloring agents to their products. All five companies market their products nationally for applications such as entrance ways in airports and stores, furniture showrooms, skating rinks, and fitness centers. In addition, five companies nationally market floor tiles made from recovered PVC, including some postconsumer resin. A few types of floor tile are made with preconsumer PVC from swimming pool liners, roof membranes, and automobile dashboard cutouts. These interlocking tiles are used in various applications, such as fitness centers, bathrooms, and cafeterias. Another type of tile is made of postconsumer PVC from car doors and fender strips. These interlocking tiles are used for heavy-duty applications such as entrance vestibules, work areas behind cashier counters, and under heavy equipment in fitness centers.

b. *Patio blocks.* Patio blocks are used in the construction of patio areas and walkways for gardens and trails. EPA has identified six manufacturers of patio blocks made with recovered materials. The recovered materials used to make these products include rubber derived from old tires and blends of plastics resins (e.g., HDPE and LDPE), rubber/plastic, and rubber/wood.

2. Rationale for Designation

EPA believes that floor tiles and patio blocks containing recovered rubber or plastic meet the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* As discussed above in section II.A, both plastic and tires are significant components of solid waste. While both are being recovered, additional markets are needed.

b. *Technically proven uses.* Floor tiles made of recovered rubber or plastic have been used in a variety of applications, including fitness centers, bathrooms, cafeterias, entrance vestibules, work areas, and laboratories. These uses are consistent with the potential uses by procuring agencies. Patio blocks made of recovered materials have been used in the construction of garden walkways and trails. EPA is not aware of any specifications that prohibit the use of recovered materials in the manufacture of floor tiles or patio blocks; thus, the Agency requests comment on this issue.

c. *Impact of government procurement.* Floor tiles are used by Federal agencies in a variety of building applications. Patio blocks are used in the design of walkways, such as for gardens or trails. Federal agencies that may use patio blocks include the U.S. Park Service, U.S. Forest Service, and Housing and Urban Development.

3. Designation

Today, in § 247.13(g), EPA proposes to designate floor tiles and patio blocks containing rubber or plastic. This designation does not preclude a procuring agency from purchasing floor tiles or patio blocks manufactured using other materials. It simply requires that a procuring agency, when purchasing floor tiles or patio blocks manufactured from rubber or plastic, purchases such items made with recovered materials. EPA requests comment on whether there are any particular uses or applications of floor tiles and patio blocks that would preclude the use of recovered materials.

XI. Transportation Products

A. Temporary Traffic Control Devices

1. Background

Temporary traffic control devices are used in a variety of situations where it is necessary to re-direct, channel, or restrict traffic in areas of highway construction or repairs. They may also be used to mark a road hazard that may exist in the way of traffic. For purposes of controlling traffic, such devices must be stable and clearly visible. Traffic cones must be able to withstand impact without damage to themselves or to vehicles. In addition, temporary traffic control devices must be manageable by work crews responsible for transporting, handling, and storing them. Definitions, applications, and requirements for traffic control devices are found in the "Manual on Uniform Traffic Control Devices" (MUTCD), which is published by the Federal Highway Administration.

Today, EPA proposes to designate two types of temporary traffic control devices—traffic cones and traffic barricades.

a. *Traffic cones.* Traffic cones are conical in shape with a broadened and weighted base, making them able to withstand significant wind gusts without tipping or blowing away. In order to be able to withstand an impact without damaging a vehicle, the upper component of a traffic cone is typically

made from LDPE or PVC. The lower component of the traffic cone is typically made from a rubber or plastic material capable of providing ballast and friction with the surface of the roadway. Typical applications for traffic cones are described in section 6C–4 of the MUTCD.

EPA identified several manufacturers and distributors of traffic cones containing postconsumer LDPE and PVC resins, as well as crumb rubber from scrap tires. In general, both recovered and postconsumer recovered plastics are used in the upper component of the cones, and crumb rubber is used in the base. EPA requests information on use of other recovered materials in the manufacture of traffic cones.

b. *Traffic barricades.* There are three types of traffic barricades: Type I, Type II, or Type III. Type I or Type II barricades are intended for use in situations where traffic is maintained through an area being constructed and/or reconstructed. Type III barricades are used when a road section is closed-off to traffic. Applications for traffic barriers are described in section 6C–9 of the MUTCD.

Traffic barricades are typically made from wood, metal, plastic, or a combination of these materials. The traditional design of the barricades typically involves the use of metal in the supporting frame and wood in the cross rails. In past years, many manufacturers of traffic barricades have shifted to the use of recovered materials in both the supporting frame and rails of the barricades. Manufacturers use recovered materials to manufacture the housing and lenses used in lighting devices affixed to the barricades as well.

EPA identified several manufacturers and distributors of Type I and Type II traffic barricades containing recovered fiberglass and plastics, including HDPE, and blends of HDPE and PET or LDPE. EPA requests information on use of other recovered materials in the manufacture of Type I, Type II, or Type III traffic barricades.

EPA acknowledges that the metal frames and wood panels used in the manufacture of certain traffic barricades may contain recovered scrap metal or wood. EPA does not intend to limit the use of such items and requests information on the use of recovered metals or wood in the manufacture of traffic barricades.

c. *Other devices.* Other temporary traffic control devices, such as tubular markers, drums, or vertical panels, can serve the same purposes as traffic cones and barricades. Tubular markers are defined in section 6C–3, vertical panels in section 6C–5, and drums in section 6C–7 of the MUTCD.

EPA identified one manufacturer of vertical panels using recovered polypropylene and crumb rubber and one manufacturer of tubular markers using recovered PVC and crumb rubber. Because there would be insufficient competition in supplying these two items containing recovered materials, EPA is not proposing to designate them today. In addition, because EPA was unable to identify any manufacturers of drums using recovered materials, the Agency also is not proposing to designate drums today.

Although no manufacturers of drums containing recovered materials were identified, EPA recognizes the common practice of using recovered commercial tire sidewalls around the base of drums to stabilize them on the roadway. EPA requests information on use of recovered materials in the manufacture of traffic control drums, tubular markers, or vertical panels.

2. Rationale for Designation

EPA believes that temporary traffic control devices satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* As discussed above in section II.A, plastic and rubber are significant components of the solid waste stream. Both of these materials are technically and economically feasible to recover for reuse, and additional markets for them are needed.

Many manufacturers of traffic control devices are currently working to increase the amounts of postconsumer plastic and rubber used in their products.

b. *Technically proven uses.* Temporary traffic control devices made with recovered materials have been produced in the U.S. for several years. Manufacturers have been using high percentages of crumb rubber buffings in the lower component of traffic cones since the conception of this device, but have not advertised this fact. The substitution of recovered resins in the plastic components of traffic control devices is technically and economically feasible in this application. This is evidenced by the substantial increase in the procurement of these items by state agencies. A recent multi-state procurement led by the State of New York involved more than 30,000 traffic cones made with 50 percent total recovered materials and 6 percent postconsumer materials. A recent procurement by a large city involved more than 300 traffic barricades made with 100 percent postconsumer recovered content.

As previously stated, temporary traffic control devices must be stable and clearly visible. Traffic cones must be able to withstand impact without damage to themselves or to vehicles. In addition, temporary traffic control devices must be manageable by work crews transporting, handling, and storing them. General performance requirements for temporary traffic control devices involve appearance, size, weight, and durability. Manufacturers are currently able to use recovered materials successfully in the production of these devices and meet applicable performance specifications.

Section 635 of "Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP–85" contains the Federal specifications for temporary traffic control devices. EPA examined the specifications, and found that section 635.02 does not preclude the use of recovered materials in temporary traffic control devices. Further, the Federal specifications reference the requirements contained in the MUTCD, which also do not preclude the use of recovered materials.

In addition to the Federal specifications, state procuring agencies may have additional materials or performance requirements for temporary traffic control devices. Several state procuring agencies have additional requirements and programs to test or confirm material properties of traffic control devices prior to acceptance of shipment. Most of the currently available traffic barricades containing recovered materials are able to meet or exceed specific state requirements. In addition, at least five states explicitly specify a preference for traffic control devices made from recovered materials.

EPA believes that, as procuring agencies begin to obtain current information about traffic control devices made with recovered materials, they will find that these devices meet their performance requirements and will increase usage of these products.

c. *Impact of government procurement.* Government agencies purchase, or use appropriated Federal funds to purchase, temporary traffic control devices. The Federal government represents a large share of the market for traffic control devices, including traffic cones and barricades. State highway departments use monies from the Federal Highway Trust Fund to complete major construction and renovation projects, in which the use of traffic control devices is extensive. Other major users of traffic control devices include the Department

of Transportation, Army Corps of Engineers, and Department of Interior. EPA requests information on other government entities that use temporary traffic control devices.

3. Designation

Today, in § 247.14, EPA proposes to designate two types of temporary traffic control devices used in controlling or restricting vehicular traffic—traffic cones and traffic barricades. As discussed above, EPA also requests information about the use of recovered materials in the manufacture of other types of temporary traffic control devices.

XII. Park and Recreation Products

A. Playground Surfaces and Running Tracks

1. Background

a. *Playground surfaces.* EPA has identified 20 manufacturers/distributors of playground surfaces made with recovered materials. These companies offer products made of postconsumer rubber derived from old tires. Three of these companies use other recovered materials as well, including blends of rubber/asphalt, rubber/compost, and rubber/PVC. One of these companies also makes playground surfaces containing postconsumer PVC.

Playground surfaces made of rubber are often more desirable than other surfacing materials, such as wood chips, sand, and asphalt, because they can provide more cushioning, reduce injuries and abrasions, and may be safer for children.

b. *Running tracks.* Some of the companies that make playground surfaces also make running tracks containing postconsumer tire rubber. EPA obtained information from four of these companies, which indicated that they offer running tracks made of high percentages of postconsumer rubber. Some of the companies use either a layer of virgin resin to provide added spike resistance, or small percentages of preconsumer recovered rubber for coloring. One of these companies constructed the 1984 Olympic running tracks with recovered materials, and has constructed running tracks for universities, schools, and state governments.

2. Rationale for Designation

EPA believes that playground surfaces and running tracks satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Playground surfaces and running tracks can contain recovered rubber and PVC. As discussed above in section II.A, both of these materials are significant components of municipal solid waste, and PVC is also found in construction and demolition debris.

b. *Technically proven uses.* The companies surveyed by EPA have sold playground surfaces made with recovered materials for a variety of installations, including McDonalds' playgrounds, schools, and military bases. Running tracks made of recovered rubber have also been constructed at universities, schools, military bases, the U.S. Olympics, and the White House.

GSA does not have specifications for playground surfaces or running tracks; however, Federal agency installations of these products must comply with applicable State or local construction codes, as well as the Consumer Product Safety Commission standards and the Americans With Disabilities Act. The Consumer Products Safety Commission requires that playground surfaces meet certain performance standards to reduce head injuries, including ASTM specification F 1292, pertaining to impact attenuation standards. Playground surfacing and running tracks must also comply with the Americans With Disabilities Act, which provides that mobility-impaired persons cannot be prohibited from access to public places.

EPA requests information on any other specifications that apply to the use and manufacture of playground surfaces and running tracks, and what impact these specifications would have on the use of recovered materials in the manufacture of these items.

c. *Impact of government procurement.* Playground surfaces and running tracks are used by Federal agencies for installation at military bases and parks and recreation facilities. Playground surfaces are also used in day care centers and housing developments.

3. Designation

Today, in § 247.15, EPA proposes to designate playground surfaces and running tracks containing recovered rubber or plastic. This designation does not preclude a procuring agency from purchasing playground surfaces or running tracks manufactured using other materials. It simply requires that a procuring agency, when purchasing playground surfaces or running tracks manufactured from rubber or plastic, purchases such items made with recovered materials.

XIII. Landscaping Products

A. Hydraulic Mulch

1. Background

Hydraulic mulch is a landscaping and erosion control product. It is made of small pieces of cellulose fibers, which can be either wood or paper. It is applied to a soil surface by mechanical spraying, usually in a process known as hydroseeding, which involves spraying a mixture of water, seeds, and the hydraulic mulch over soil. The mulch provides stability for the soil, preventing erosion, and provides protection and warmth for the seeds, facilitating germination. Other ingredients also may be added to the mixture, such as a non-toxic green dye, fertilizer, a tacking agent, or a wetting agent.

a. *Paper-based hydraulic mulch.* Paper-based hydraulic mulch is produced using recovered paper as a feedstock. Old newspapers are the primary recovered paper used, but some manufacturers also are mixing in over-issue newspapers and/or magazines, and postconsumer corrugated containers, office paper, and telephone books.

Paper-based hydraulic mulch is manufactured primarily by cellulose insulation manufacturers. EPA is aware of 37 manufacturers that produce both cellulose insulation and hydraulic mulch. In 1990, hydraulic mulch manufacturers consumed 98,000 tons of recovered newspaper, and the American Forest & Paper Association (AFPA) projects consumption to increase to 180,000 tons by 1995. The majority of these manufacturers use up to 100 percent postconsumer and recovered paper.

b. *Wood-based hydraulic mulch.* Wood-based hydraulic mulch generally is manufactured with wood fibers, which are recovered from wood scraps, wood chips, and bark. At least one manufacturer of wood-based hydraulic mulch produces a blended product containing 50 percent recovered paper. Another manufacturer produces wood-based hydraulic mulch containing 100 percent postconsumer recovered wood and blends of postconsumer recovered wood and paper.

c. *Applications.* Hydraulic mulch is used for re-seeding and soil stabilization during highway construction; seeding during mine site reclamation, pipeline installation, and landfill closure; residential and industrial landscaping; temporary erosion control at construction sites; and seeding of athletic fields and golf courses.

It can be used alone or in conjunction with straw or hay. Hydraulic mulch is preferred for steep slopes and embankments where seed is blown into place, rather than applied with mechanical seeding machines. It also works best with low-growing ground cover seeds that are frequently planted for erosion control. In general, straw mulch is considered the best product for erosion control and promoting vegetative growth; however, depending on climate, hydraulic mulch or a combination of straw and hydraulic mulch is preferred. In the latter situation, hydraulic mulch is used to anchor the straw to prevent it from blowing away.

2. Rationale for Designation

EPA believes that hydraulic mulch products satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* As discussed above in section II.A, paper is a significant component of the solid waste stream, but one that is technically and economically feasible to recover for reuse. Construction and demolition debris contains a significant percentage of wood. Although recovered paper is used by the pulp and paper industry, there continues to be a need for additional markets for this material.

b. *Technically proven uses.* Production of hydraulic mulch products has grown steadily over the past six years. There are at least 37 manufacturers of paper-based hydraulic mulch located throughout the U.S. There also are several manufacturers of wood-based hydraulic mulch using recovered wood.

The hydraulic mulch industry is divided on the benefits and drawbacks of paper-based and wood-based hydraulic mulch. Manufacturers of each item claim superior performance of their products. It is EPA's understanding that the International Erosion Control Association is developing performance standards for hydraulic mulch to resolve the dispute over performance. The standards will be based on the amount of vegetation produced, not on physical specifications of the product. As of early 1994, these standards were still under development.

c. *Impact of government procurement.* Government agencies purchase, or use appropriated Federal funds to purchase, hydraulic mulch products. EPA estimated the 1990 expenditures for these products to be $10–15 million, or approximately 50 percent of the hydraulic mulch industry's total revenues. The Federal government represents a large share of this market, because hydraulic mulch products are used extensively in highway construction, funded with monies from the Federal Highway Trust Fund. Other major users of seeding products are the General Services Administration, Forest Service, Army Corps of Engineers, and several bureaus within the Department of Interior. In addition, Federal grant monies from the Department of Housing and Urban Development can be used in landscaping and other soil management activities.

Federal and state specifications can be a barrier to increased use of hydraulic mulch products. A 1990 survey conducted by a mulch manufacturer revealed that 19 states either disallowed the use of paper-based hydraulic mulch or had specifications that did not specifically include this product in the list of approved materials. EPA examined this information and found that some state and Federal specifications prohibit the use of paper-based hydraulic mulch. Reasons provided ranged from lack of information to previous performance problems with paper-based hydraulic mulch. Some of the agencies' experience with performance was more than ten years old, however, and did not reflect improvements to quality made by manufacturers of paper-based hydraulic mulch since the agencies last tested the product.

Other states and Federal agencies permit paper-based hydraulic mulch to be used. Limited research conducted for EPA revealed that at least the States of California, Illinois, Michigan, Pennsylvania, Texas, Virginia, and Washington allow the use of paper-based hydraulic mulch. EPA requests information about other state specifications allowing the use of paper-based hydraulic mulch.

Based on the successful usage of paper-based hydraulic mulch by these other states and by Federal agencies, EPA believes that usage of this product will increase as procuring agencies begin to obtain current information about the performance characteristics of paper-based hydraulic mulch, and begin to use the products currently available.

3. Designation

Today, in § 247.16(a), EPA proposes to designate hydraulic mulch products used for landscaping and erosion control in hydroseeding applications and as an over-spray for straw mulch. This designation includes both paper-based hydraulic mulch and wood-based hydraulic mulch containing recovered materials. Potential uses include re-seeding and soil stabilization during highway construction; seeding during pipeline installation, mine site reclamation, and landfill closure; residential, institutional, and commercial landscaping; temporary erosion control at construction sites; and seeding of athletic fields and golf courses.

B. Yard Trimmings Compost

1. Background

Composting is a biological process of stabilizing organic matter under controlled conditions into a product that is rich in humus and provides organic matter and nutrients to the soil. Compost has been defined by the Compost Council, the trade association for the composting industry, in its "Composting Glossary," as follows:

> Compost is the stabilized and sanitized product of composting; compost is largely decomposed material and is in the process of humification (curing). Compost has little resemblance in physical form to the original material from which it was made. Compost is a soil amendment, to improve soils. Compost is not a complete fertilizer unless amended, although composts contain fertilizer properties, e.g., nitrogen, phosphorus, and potassium, that must be included in calculations for fertilizer application.

Composting serves as an alternative method of managing those organics that would otherwise be landfilled. Although up to 60 percent of municipal solid waste is potentially compostable (including food and paper), yard trimmings are the least controversial feedstock for compost. Yard trimmings composting returns yard trimmings and leaves to the soil. When grass clippings are included with leaves and other yard trimmings, the resulting compost can serve as a suitable nitrogen source with an optimal carbon/nitrogen ratio for most applications.

The amount of compost produced from mixed municipal solid waste produced in the U.S. is currently not high. As of February 1993, there were 20 mixed municipal solid waste composting facilities in operation, 10 pilot programs, and about 60 projects under development. The amount of compost being produced from food scraps is even smaller, with much of the current production coming from pilot projects. For this reason, EPA is not including compost made with mixed municipal solid waste and/or food scraps in today's proposed item designation.

High quality compost is fully "mature," which means that the composting process is completed. Mature compost is free of pathogens and weed seeds. Compost is used as a soil conditioner, soil amendment, lawn top dressing, potting soil mixture, rooting

medium, and mulch for shrubs and trees, and for improvement of golf and other sports turf. It can also be used in erosion control and soil reclamation. Compost can be used in agriculture, horticulture, silviculture (growing of trees), and in landscaping. Compost can also be used in land reclamation and revegetation of roadsides after road construction. As a result, compost should have wide applicability to procuring agencies for landscaping, gardening, seeding, and other applications.

An important consideration for the compost purchaser is the availability of sufficient quantities of high quality compost and certainty that it is of sufficiently high quality for its intended use. Because of the high volume of yard trimmings currently discarded each year, there is no shortage of raw materials that would preclude composting facilities from supplying large volumes of yard trimmings compost. A significant portion of the yard trimmings is being composted, and the percentage is increasing. Only 651 yard trimmings composting facilities were operating in 1988. This increased to more than 2,200 yard trimmings composting facilities at the end of 1991, continuing to increase to nearly 3,000 facilities at the end of 1992. Thus, the quantity of compost available from local sources is expected to increase in the near future.

2. Rationale for Designation

EPA believes that yard trimmings compost satisfies the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* As discussed above in section II.A, yard debris (leaves, lawn clippings, bush and tree trimmings) comprise 18 percent of the municipal waste stream. These materials can be composted and used as soil amendments, rather than landfilled or incinerated. Thus, the use of compost can significantly reduce the amount of yard trimmings, grass clippings, and leaves disposed in landfills.

b. *Technically proven uses.* Adding compost to soils can improve their suitability for plant growth. The organic matter in compost is particularly beneficial in poor soils. Adding compost to clay soils reduces soil density and compaction, increases aeration, and increases soil porosity and drainage. These changes lessen the danger of root rot disease. Compost added to sandy soils binds soil particles to increase water and nutrient retention, as well as resistance to drought and erosion.

The Composting Council is helping to define and develop industry-wide standards for composts made from various combinations of these materials. The standards will include a Standard Operating Guide for composting facilities, which is currently available in draft form from The Composting Council, as well as standards for suitability of different types of composts for different markets, depending on the content of the compost.

Other advantages of compost, in addition to organic materials and nutrients being returned to the soil are the following:

- The soil tilth and soil structure are improved.
- Soil temperature is moderated, so that plant roots are warmed in winter and, through water retention, are cooled in dry, hot conditions.
- Increased organic content increases soil microbial activity, which fosters plant growth.
- Compost creates a favorable environment for earthworms that aerate soil and allow water to reach plant roots.
- Mature composts suppress some plant diseases, such as wilt and root rot, which reduces the need for chemical pesticides and fungicides.
- All compost nutrients, such as nitrogen, are in organic form and, therefore, are released slowly over time. The use of compost can reduce the need for fertilizer by 30 percent.
- Because less fertilizer and fewer pesticides are needed, non-point source run-off can be reduced.

(i) *Disease control.* Research conducted at Ohio State University and verified in Florida, Pennsylvania, Alabama, and elsewhere, shows that compost can replace part and, in some cases, all of the fumigants and fungicides used on food crops or landscape projects on Federal lands. When compost of bark and other materials is used in potting mixes, this will prevent rotting of seedlings and roots caused by certain organisms. Also, compost has been shown to be important in controlling wilt disease in certain flowers commonly grown for indoor use. Specifically, compost prevents fusarium wilt disease on cyclamens, which is important because there are no fungicides available which can do so. Other projects have demonstrated that the use of compost can control disease and result in reduced use of fertilizers, which can leach into surface waters.

(ii) *Benefits for soil reclamation.* Compost can be used in soil reclamation projects. The fine organic composition increases the soil's water-holding capacity. Compost also increases water infiltration into the soil. The formation of compost-soil aggregates reduces soil compaction, increases soil friability and, therefore, decreases the erodability of soil. The nutrient and organic carbon content of compost serve as a food source for soil microbes, thus increasing the availability of the soil's organic and nutrient content to plants and aiding faster recycling of nutrients within the system. Finally, there are water-stable aggregates that are formed from the microbial by-products that prevent the formation of surface crusts on soil, which can inhibit seedling growth.

c. *Impact of government procurement.* Military installations alone have about 20 million acres of land. The potential compost usage (at 40 cubic yards per acre) for even part of this acreage would be immense. In addition, the Forest Service and Park Service maintain 500,000 miles of roadsides and embankments. Therefore, the Federal market for compost made with yard trimmings, leaf compost, and/or grass clippings could be substantial.

3. Designation

Today, in § 247.16(b), EPA proposes to designate compost made from yard trimmings, leaves, and/or grass clippings for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

XIV. Non-Paper Office Products

A. Office Recycling Containers and Office Waste Receptacles

1. Background

Office recycling containers and office waste receptacles are similar in their manufacture and basic materials content. The most common types of these containers are made from paper, plastic, or steel. They include all indoor receptacles used for the collection and transport of waste and/or recyclable materials, such as deskside containers, centralized containers, and other containers for collecting and transporting waste and/or recyclables. Desk tray style recycling containers are covered under section XIV.B, which discusses plastic desktop accessories.

a. *Paper containers.* GSA has fiberboard office recycling containers available through its Special Order Program. Recycling containers made from fiberboard or other papers are covered under the paperboard section of EPA's procurement guideline for paper and paper products (40 CFR part 250).

Currently, EPA has information on fiberboard recycling containers only. However, since office recycling

containers and office waste receptacles are similar in their manufacture and basic materials content, this information is also applicable to office waste receptacles made from recovered paper.

b. *Plastic containers.* Plastic office recycling containers and office waste receptacles are made primarily from HDPE or LDPE, but EPA is aware of at least one vendor that manufactures the product using commingled plastic resins.

c. *Steel containers.* EPA does not have specific data on office recycling containers or office waste receptacles made from recovered steel. However, all steel products are universally made with at least some recovered steel. EPA requests information on the levels of recovered materials contained in steel containers and receptacles.

2. Rationale for Designation

EPA believes that office recycling containers and office waste receptacles satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* As discussed in Section II.A, plastics and paper are significant components of the solid waste stream. Steel is also a significant component of the solid waste stream. It is recovered in significant quantities and used in the manufacture of most new steel products.

b. *Technically proven uses.* EPA is aware of at least four manufacturers that produce office recycling containers and office waste receptacles using recovered plastic. In addition, containers are available through GSA's Federal Supply Schedule 72 VII B, "Recycling Collection Containers and Specialty Waste Receptacles." Also, GSA has fiberboard recycling containers available through its Special Order Program. EPA is aware that there are manufacturers that produce office recycling containers and office waste receptacles made from steel and is interested in obtaining information on these items.

According to the information available to EPA, there are no national or Federal specifications that preclude the use of recovered materials in the manufacture of office recycling containers and office waste receptacles. In lieu of referencing national or Federal specifications, procuring agencies usually incorporate recovered materials content requirements into their solicitation or contract documents when purchasing these products.

c. *Impact of government procurement.* Government agencies purchase, or use appropriated Federal funds to purchase, office recycling containers and office waste receptacles. EPA does not have specific data on the number of office recycling containers and office waste receptacles procured by government agencies, although EPA expects that the quantities are significant. Thus, the Agency believes that these items are procured in sufficient quantities to support the designation of these items.

3. Designation

Today, in § 247.17(a), EPA proposes to designate office recycling containers and office waste receptacles made from plastic, paper, and steel, as items that are or can be made with recovered materials. This designation includes all indoor receptacles used for the collection and transport of waste and/or recyclable materials, such as deskside containers, centralized containers, and other containers for collecting and transporting waste and/or recyclables, and other items as determined by the procuring agency. This designation does not preclude a procuring agency from purchasing containers or receptacles manufactured using other materials, such as wood. It simply requires that a procuring agency, when purchasing office recycling containers or office waste receptacles manufactured from plastic, paper, or steel, purchase such containers made with recovered materials.

B. Plastic Desktop Accessories

1. Background

Plastic desktop accessories include desk organizers, desk sorters, desk trays, letter trays, memo pad holders, note pad holders, and pencil holders. They are typically made from polystyrene and are manufactured by injection-molding. These items are grouped together due to their similarity in manufacture and composition.

Currently, EPA has information on plastic desktop accessories made from postconsumer recovered polystyrene only. EPA requests information on desktop accessories made from other recovered materials and the recovered materials content levels of those products.

2. Rationale for Designation

EPA believes that plastic desktop accessories satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* As discussed in Section II.A, plastics are a significant component of the solid waste stream.

b. *Technically proven uses.* EPA is aware of at least three manufacturers that produce plastic desktop accessories with postconsumer recovered materials content. In addition, several office products distributors carry these accessories as part of their product lines. GSA also makes these products available through its Federal Supply Schedule.

According to the information available to EPA, there are no national or Federal specifications that preclude the use of recovered materials in the manufacture of plastic desktop accessories. In lieu of referencing national or Federal specifications, procuring agencies usually incorporate recovered materials content requirements into their solicitation or contract documents when purchasing these products.

c. *Impact of government procurement.* Government agencies purchase, or use appropriated Federal funds to purchase, plastic desktop accessories. EPA does not have specific data on the number of plastic desktop accessories procured by government agencies. However, EPA believes that these items are procured in sufficient quantities to support the designation of these items.

3. Designation

Today, in § 247.17(b), EPA proposes to designate plastic desktop accessories as items that are or can be made with recovered materials. This designation includes desk organizers, desk sorters, desk trays, letter trays, memo pad holders, note pad holders, and pencil holders, and other items as determined by the procuring agency. This designation does not preclude a procuring agency from purchasing desktop accessories manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing plastic desktop accessories, purchase these accessories made with recovered materials. EPA encourages agencies purchasing desktop accessories made with other materials to seek these items containing recovered materials as well.

C. Remanufactured Toner Cartridges

1. Background

For purposes of today's rule, remanufactured toner cartridges are defined as toner cartridges used in laser printers, photocopiers, facsimile machines, or microphotographic printers that have been remanufactured in accordance with the procedures set forth in GSA's Standard Procedure FCG-STD-111.

Section 630 of the Treasury, Postal Service, and General Government Appropriations Act, 1993 (Pub. L. 102–123), amended 42 U.S.C. 6962 by adding a new section requiring Federal agencies to purchase recycled toner cartridges (42 U.S.C. 6962j). Section 401 of the

Treasury, Postal Service and General Government Appropriations Act, 1994 (Pub. L. 103–123), amended and replaced 42 U.S.C. 6962j. Federal agencies are no longer "required" to purchase recycled toner cartridges, but they are "authorized to give preference to" remanufactured toner cartridges.

It is clear that remanufacturing toner cartridges diverts a significant number of expended toner cartridges from the solid waste stream and that they are readily available in the marketplace. Therefore, today EPA is proposing to designate remanufactured toner cartridges for purchase by procuring agencies.

2. Rationale for Designation

EPA believes that remanufactured toner cartridges satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* Although EPA does not have specific data on the actual number of expended toner cartridges requiring disposal each year, the Agency is convinced that a significant number of expended toner cartridges are diverted from the solid waste stream by toner cartridge remanufacturing efforts.

b. *Technically proven uses.* Remanufactured toner cartridges are commonly used by government agencies and private businesses. Toner cartridge remanufacturing services are available and increasing in usage as well. Over the past few years, the number of vendors that offer toner cartridge remanufacturing services has increased substantially. As of January 1994, GSA maintained a New Item Introductory Schedule for remanufactured toner cartridges. In addition, GSA has two vendors that provide remanufactured toner cartridges to its supply program.

The performance of a remanufactured toner cartridge can vary based on the condition of the cartridge and the process used to remanufacture it. Currently, there is no Federal testing program for remanufactured toner cartridges. However, GSA has set forth procedures by which remanufacturers providing remanufactured toner cartridges to its supply program are to disassemble, clean, refill, and reassemble expended cartridges. Several states, including Wisconsin, Connecticut, and Mississippi, also have performance requirements in their specifications for remanufactured toner cartridges.

c. *Impact of Government procurement.* Government agencies purchase, or use appropriated Federal funds to purchase, toner cartridges. EPA does not have specific data on the number of toner cartridges procured by government agencies, although EPA anticipates that the quantities are substantial. Thus, the Agency believes that these items are procured in sufficient quantities to support the designation of these items.

3. Designation

Today, in § 247.17(c), EPA proposes to designate toner cartridges as items that are or can be made with recovered materials. This designation includes both remanufactured toner cartridges and toner cartridge remanufacturing services.

D. Binders

1. Background

According to the information available to EPA, there are three types of binders: chipboard, vinyl or plastic-covered chipboard or paperboard, and cloth-covered chipboard or paperboard. The paperboard or chipboard component of all three binder types is made from high percentages of postconsumer recovered cardboard or paper. Many binders, such as the three-ring binders, also contain steel components which, as explained previously in this section, are universally made from recovered steel.

EPA is interested in obtaining information on other types of binders made with recovered materials and the levels of recovered materials contained in these binders.

a. *Chipboard binders.* Chipboard binders are manufactured with high percentages of postconsumer recovered cardboard or paper. Chipboard binders are covered under the paperboard section of EPA's guideline for paper and paper products (40 CFR part 250).

b. *Plastic-covered binders.* In plastic-covered binders, the paperboard or chipboard is usually covered with vinyl or plastic, such as polyethylene, and may have another clear plastic coating over the vinyl or plastic. The chipboard or paperboard component of a plastic-covered binder is covered under the paperboard section of EPA's guideline for paper and paper products (40 CFR part 250).

c. *Cloth-covered binders.* The chipboard or paperboard component of a cloth-covered binder is made with high percentages of postconsumer recovered cardboard or paper. Chipboard and paperboard are covered under the paperboard section of EPA's guideline for paper and paper products (40 CFR part 250). EPA is not aware of any manufacturers of cloth-covered binders that use recovered materials when producing the cloth cover and requests comment on the validity of this information

2. Rationale for Designation

EPA believes that binders satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* As discussed in Section II.A, plastics and paper are significant components of the solid waste stream.

b. *Technically proven uses.* EPA is aware of at least three manufacturers that produce plastic-covered binders with recovered plastic content in the covering, and two manufacturers that produce chipboard binders with recovered paper content. At least one of the manufacturers of plastic-covered binders with recovered plastic content sells its binders through GSA's New Item Introductory Schedule. As previously discussed, the paperboard or chipboard component of the binders for which EPA has information is made from high percentages of postconsumer recovered cardboard or paper. Several states have also issued solicitations for plastic-covered and chipboard binders containing recovered materials.

According to the information available to EPA, there are no national or Federal specifications that preclude the use of recovered paper in the manufacture of chipboard binders. GSA's specification for binders, A–A–2549A, "Binder, Loose-Leaf (Ring)," covers four types of binders, including cloth bound, flexible cover; cloth bound, stiff cover; plastic bound, flexible cover; and plastic bound, stiff cover. In the specification, GSA requires its binders to contain "a minimum of 100% waste paper, including a minimum of 30% postconsumer recovered materials." Based on EPA's information, there are no requirements in this specification that preclude the use of recovered materials in the plastic covering of plastic-covered binders. However, one manufacturer stated that one test method cited in the specification, the Cold Crack test, may prohibit the use of recovered plastic in the covering for plastic-covered binders. EPA requests information on the ability of vendors to meet this specification.

c. *Impact of government procurement.* Government agencies purchase, or use appropriated Federal funds to purchase, binders. EPA does not have specific data on the number of binders procured by government agencies, although EPA anticipates that the quantities are significant. Thus, EPA believes that these items are procured in sufficient quantities to support the designation of these items.

3. Designation

Today, in § 247.17(d), EPA proposes to designate binders as items that are or can be made with recovered materials. This designation includes plastic-covered binders with recovered plastic content and chipboard binders with postconsumer recovered paper content. This designation does not preclude a procuring agency from purchasing a binder covered with or manufactured using another material, such as cloth. It simply requires that a procuring agency, when purchasing plastic-covered or chipboard binders, purchase these binders made with recovered materials.

E. Plastic Trash Bags

1. Introduction

Plastic trash bags, also called trash can liners, are widely available with recovered materials content. They come in a wide variety of colors, ranging from clear to black; sizes, ranging from 11 gallon to 55 gallon; and thicknesses, ranging from 0.5 mil to 1.7 mil. According to the information available to EPA, HDPE, LDPE, and LLDPE are the recovered materials most commonly used to manufacture these items. The actual amount of recovered materials contained in a bag is affected by the color, size, and thickness of the bag.

Currently, EPA has information on trash bags made from postconsumer recovered plastic only. EPA is interested in obtaining information on trash bags made from other recovered materials and the recovered materials content levels of those products.

2. Rationale for Designation

EPA believes that plastic trash bags satisfy the statutory criteria for selecting items for designation.

a. *Use of materials in solid waste.* As discussed in Section II.A, plastics are a significant component of the solid waste stream.

b. *Technically proven uses.* EPA is aware of at least five manufacturers that produce trash bags with recovered materials content. In addition, trash bags with recovered materials content are available from the GSA "Supply Catalog." Also, the National Association of State Purchasing Officials' Recycled Product Database, which provides detailed information on state purchases of products containing recovered materials, lists 88 different contracts for plastic liners with recovered materials content.

GSA's Commercial Item Description (CID) for general purpose plastic bags, A–A–2299B, covers plastic trash bags. This CID is based on performance requirements. According to the information available to EPA, CID A–A–2299B does not preclude the use of recovered materials in the manufacture of plastic trash bags. In addition, several states, including Michigan, Nebraska, Minnesota, Delaware, and Wisconsin, have their own specifications for plastic trash bags containing recovered materials.

c. *Impact of government procurement.* Government agencies purchase, or use appropriated Federal funds to purchase, trash bags. EPA does not have specific data on the number of trash bags procured by government agencies, although EPA anticipates that the quantities are significant. Thus, the Agency believes that these items are procured in sufficient quantities to support the designation of these items. As previously discussed, the National Association of State Purchasing Officials' Recycled Product Database lists 88 different contracts for plastic liners with recovered materials content.

3. Designation

Today, in § 247.17(e), EPA proposes to designate plastic trash bags as items that are or can be made with recovered materials. This designation does not preclude a procuring agency from purchasing a trash bag manufactured using another material, such as paper. It simply requires that a procuring agency, when purchasing trash bags, purchase these items made from recovered materials. EPA encourages agencies purchasing trash bags made with other materials to seek these items containing recovered materials as well.

XV. Miscellaneous

In the proposed Part 247, EPA is establishing § 247.18 for item designations that do not fall within any other product category. However, EPA is not currently proposing to designate any items in this category.

XVI. Other Items Considered for Designation

As explained above in section II.E, in selecting the list of items to designate today, EPA began with a broad list of items known to contain recovered materials. EPA developed three smaller lists from this broad list: items to designate today, items potentially to designate depending on receipt of further information, and items that are not candidates for designation. This section addresses the second and third list.

As also discussed in section II.E, EPA plans to establish a process for the public to provide us with information about use of recovered materials to manufacture products. This process will enable us to obtain current information about designated items, the items discussed in this section, and any other products that are or can be made with recovered materials. EPA will issue a separate **Federal Register** notice regarding this process.

EPA believes that the following items are potential candidates for designation, but the Agency currently has insufficient information about them. For many of these items, EPA has information pertinent to only one or two of the item selection criteria. The available information has been placed in the RCRA docket. EPA requests that product manufacturers, vendors, government agencies, and others, provide information pertinent to all of the selection criteria, the types and percentage(s) of recovered materials used in the items, and applicable specifications or specifications provisions that present a barrier to use of recovered materials in the items. Refer to Section II.D of this preamble for the selection criteria.

Vehicular Products—grease containing re-refined oil, truck bed mats containing recovered rubber or plastic, and mud flaps containing recovered rubber.

Construction Products—plastic lumber products, shower dividers containing recovered HDPE, carpet runners, curbing/parking stops containing recovered plastic, snow fence containing recovered plastic, stoneware and other floor tile, acoustical panels other than fiberboard panels, particleboard, hardboard, medium density fiberboard, downspout splashblocks, wall coverings, and asphalt patching and paving materials made from recovered asphalt roofing materials.

Landscaping Products—garden and soaker hoses, and lawn and garden edging containing recovered plastic.

Non-paper Office Products—Tyvek envelopes, reinked printer ribbons, audio/video cassette tape cases, and rulers and other accessories containing recovered materials.

Miscellaneous Products—dock bumpers, latex paint, mattresses/mattress pads/pillows, and absorbents containing recovered paper and other recovered materials.

In addition, EPA considered the following items for designation but, based on the available information, has determined that it would be inappropriate to designate them at this time. Included is a brief description of the basis for this determination. EPA requests additional information about these products that would demonstrate that they are candidates for designation

as procurement items under RCRA section 6002.

Glass Fiber—Glass fiber is a component of a product rather than a product itself. The existing building insulation products procurement guideline applies to two items containing glass fiber: fiberglass insulation and glass fiber-reinforced plastic rigid foam.

Pallet Stretch Wrap—According to the information available to EPA, this item is recyclable but is not currently available containing recovered materials.

Sheet Glass—According to the information available to EPA, this item currently is not commonly available containing recovered materials.

Strapping—According to the information available to EPA, there is only one source for strapping containing recovered materials.

XVII. Availability

Once the item designations in today's proposed CPG are finalized, EPA will develop lists of manufacturers or vendors of these items. These lists will be updated periodically as new sources are identified and product information changes. Procuring agencies should contact the manufacturers directly to discuss their specific needs and to obtain detailed information on the availability and price of recycled products meeting those needs. To assist procuring agencies, the lists will be made available at no charge by calling EPA's RCRA Hotline at (800) 424–9346, or, in the Washington, DC area, at (703) 412–9810. They also will be available for review in the RIC. For additional details about the location and schedule of the RIC, see the ADDRESSES section at the beginning of this preamble.

The General Services Administration (GSA) also publishes "Environmental Products Guide," which lists items available through its Federal Supply Service. This Guide is updated periodically as new items become available. Copies of the GSA "Environmental Products Guide" can be obtained by contacting GSA's Centralized Mailing List Service in Fort Worth, Texas at (817) 334–5215.

In addition to the information provided by EPA and GSA, there are other publicly-available sources of information about products containing recovered materials. For example, the "Official Recycled Products Guide" (RPG) was established in March 1989 to provide a broad range of information on recycled products. Listings include product, company name, address, contact, telephone, fax, type of company (manufacturer or distributor), and minimum recycled content. Price information is not included. The RPG is available on a subscription basis from American Recycling Market, Inc., (800) 267–0707. Private corporations that have researched recycled product availability may also be willing to make this information publicly available. For instance, as part of their McRecycle USA® program, the McDonald's Corporation established a Registry Service for manufacturers and suppliers of recycled products. The Corporation has compiled a database of registrants and makes this information available upon request. More information on the McRecycle USA® Registry Service is available by calling (800) 220–3809.

State and local recycling programs are also a potential source of information on local distributors and availability. In addition, state and local government purchasing officials that are contracting for recycled products may have relative price information. A list of state purchasing/procurement officials has been placed in the RCRA public docket and will be updated periodically. Also included in the public docket is a list of States with recycled products purchasing programs, current as of April 1994.

Information is also available from trade associations whose members manufacture or distribute products containing recovered materials. A list of trade associations with members that manufacture or distribute recycled products is included in the RCRA public docket for this notice.

XVIII. Economic Impact Analysis

A. Requirements of Executive Order 12866

Executive Order 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "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 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; 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.

The cost of the proposed rule is below the $100 million threshold. However, EPA believes that the rule may raise policy issues and, therefore, is considering it a significant regulatory action. To enable the Agency to evaluate the potential impact of today's action, EPA has conducted an Economic Impact Analysis (EIA), discussed below. For more information on the EIA, see the technical background document for the CPG in the docket for today's proposed rule.

B. Summary of Benefits

As stated in Section II.B, "Benefits of Recycling," there are many benefits to this rule. In particular, this rule will result in more efficient use of natural resources by encouraging recycling and preventing waste. By purchasing products containing recovered materials pursuant to the guidelines established under RCRA and Executive Order 12873, the Federal government will be increasing the amount of recovered materials used in making these designated products, thus increasing markets for recovered materials.

These guidelines may further stimulate the purchase of recycled products nationwide, since many State and local governments, as well as members of the private sector, use these guidelines as a framework for their purchases. Because of the increased Federal and State demand for products made from recovered materials, EPA anticipates that this rule will stimulate recycling businesses and local government recycling programs. Finally, the increase in recovery of post-consumer materials will result in a conservation of municipal landfill and incineration capacity since less material will be going to these disposal facilities.

C. Summary of Costs

EPA estimates that the annualized costs of today's proposed rule will range from $1.6 to $4 million, with costs being spread across procuring agencies (i.e., Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and contractors to both). EPA estimates that the annualized cost for each product designated in the CPG will average approximately $430 for each Federal agency ($600 for each Federal agency that writes product specifications), $140 for each State, $50 for each local government entity, and approximately $20 per contractor.

Table 5 below presents the estimated annualized costs to procuring agencies for today's proposed rule. The table

presents costs annualized over 10 years at a three percent discount rate. Because there is considerable uncertainty regarding several of the parameters that drive the costs, EPA conducted a sensitivity analysis to identify the range of potential costs of this rule. Thus, high-end and low-end estimates are presented along with the best estimate. The primary parameters affecting the range of cost estimates are the number of products each procuring agency is assumed to procure each year and the number of contractors that will be affected by this rule. EPA is requesting comment on both these variables and any other assumptions in the analysis. Details on specific assumptions are presented in the technical background document.

TABLE 5.—SUMMARY OF ANNUALIZED COSTS OF PROPOSED CPG

Procuring agency	Total annualized costs ($1000)	Best estimate total annualized costs ($1000)	Best estimate average annual costs per item per entity
Federal Agencies	$340–170	$340	$430
States	160–80	160	140
Local Governments	2,700–1,300	2,110	50
Contractors	800–20	240	20
Total	4,000–1,600	2,900	

D. Impacted Entities

RCRA section 6002 applies to procuring agencies that use at least a portion of Federal funds to procure over $10,000 worth of a designated product in a given year. EPA estimates that this would apply to 35 Federal agencies, all 56 States and territories and 1900 local governments. EPA based the assumptions on the number of local entities that would be impacted on information regarding the amount of Federal funds that are dispersed to specific counties. A description of this information is provided in the technical background document for this proposed rule. In addition, EPA assumed that between 100 and 1,000 contractors may be affected. EPA requests comments on these assumptions.

E. CPG Requirements

Cost incurred by procuring agencies are divided into five subsections relating to the affirmative procurement program requirements of RCRA section 6002(i). The subsections are initial review; affirmative procurement program modification; specification review; estimation, certification, and verification; and recordkeeping and reporting. A summary of each requirement is presented below. Costs were developed assuming a 10-year time frame, a social discount rate of three percent and an average loaded hourly wage of approximately $32 per hour (the equivalent of a mid-level Federal Grade Series—GS–12).

1. Initial Review

EPA estimates that costs to procuring agencies to complete their initial review in the first year would be $1.2 million. These costs include the costs incurred by a procuring agency to review today's proposed rule and determine the actions needed to implement the rule. EPA estimates that Federal, State, and local governments will require approximately 18 hours to complete this initial review activity. This cost will be incurred in the first year only.

2. Affirmative Procurement Modification

EPA estimates that the costs to procuring agencies to modify their affirmative procurement programs to incorporate the requirements of today's proposed rule would be $1.4 million and would occur in the first year. These activities can include developing or modifying agency policies and procedures; revising staff, contracts, and grants manuals; and including requirements in assistance agreements and standard solicitation documents. EPA estimates that procuring agencies will require approximately two hours per item designated in the CPG to accomplish these activities.

3. Specification Review

EPA estimates that the costs to procuring agencies to review their specifications to incorporate the requirements of today's proposed rule would be $240,000. These costs include the costs incurred by Federal procuring agencies to review and revise their specifications for designated items to incorporate recovered materials content standards, as required in RCRA section 6002(d)(2). Specification review can include reviewing specifications to identify provisions requiring revision, conducting necessary research to support specification revisions, and revising the specifications. Of the 35 Federal agencies that could be significantly impacted by today's proposed rule, EPA estimates that 11 agencies will revise their specifications to incorporate recovered materials content requirements.

For most product categories, EPA estimates the potential time for a Federal specification-writing agency to review and revise its product specifications would average 40 hours per product in the first year. However, for construction products, the potential cost could be more significant because of the complexity of the specifications for these products. Therefore, EPA has estimated that the time required to review and revise specifications for construction products would be twice that required for the other product categories (i.e., an average of 80 hours). Table 6 below presents the potential costs to Federal agencies for reviewing and revising specifications. EPA requests comment on its estimate of the number of hours allocated for each category of items.

The statute does not require State and local governments and contractors to review and revise their specifications for designated items. However, State and local governments will have to consider the inclusion of requirements for procuring designated items in solicitation documents and other contract vehicles. EPA anticipates that these costs would be the incremental cost of incorporating these additional requirements into existing documents where procurement of designated items is a concern. EPA believes that these costs would be minimal.

Contractors will be affected by the incorporation of recovered materials requirements in government solicitations and contract documents. All potential contractors will spend

additional resources reading the additional procurement language in these documents. Potential contractors must seek out information about products that contain recovered materials and must verify that they conform with the content standards required in the solicitation. They also must ensure that the use of recovered materials is compatible with other aspects of their proposal. Thus, the incorporation of these additional requirements in solicitation and contract documents will increase the potential contractor's cost of preparing a bid. All bidders, including unsuccessful bidders, will bear these additional information collection costs, which may be passed on to the government in the form of higher bid prices. EPA requests comment on the additional time necessary for contractors to construct bids involving products containing the proposed recovered materials content requirements. The Agency also requests comment on the number of contracts and contractors that will be affected by this proposal and asks for additional information in order to estimate more accurately the costs that may be borne by contractors as a result of today's proposal.

TABLE 6.—POTENTIAL FEDERAL COSTS FOR SPECIFICATION REVISIONS

Product category	No. of items	Total No. of agencies potentially affected	Specification review and revision time per item (in hours)	Costs per product category (In $1000)
Vehicular Products	1	2	40	$3
Construction Products	8	10	80	207
Transportation Products	2	1	40	3
Park and Recreation Products	2	4	40	10
Landscaping Products	2	5	40	13
Non-Paper Office Products	6	1	40	8

Since today's proposed rule does not address paper and paper products, there will be no costs incurred in this category.

4. Estimation, Certification and Verification

EPA estimates that the costs to procuring agencies to perform the estimation, certification, and verification requirements resulting from today's proposed rule are $1.4 million. These costs include costs incurred by establishing procedures for estimating, certifying, and, where appropriate, verifying the amount of recovered materials utilized in the performance of a contract. EPA estimates that procuring agencies will require approximately two hours per item per year to accomplish these activities.

5. Annual Review and Preference Program Modification

EPA estimates that the annual costs to procuring agencies to annually review and modify their preference programs are $750,000. These costs include costs incurred by procuring agencies to annually review and modify their preference programs to ensure that when they purchase designated items, they purchase them containing the highest percentage of recovered materials practicable. EPA anticipates that as procuring agencies determine, through their market research, that products are available with higher percentages of recovered materials, that they will adjust their preference programs, including their minimum content standards, accordingly, and that this process will occur on a continual, rather than annual basis. Where this is the case, procuring agencies then modify their preference programs to incorporate the new recovered materials content levels. To accomplish this task, EPA estimates that procuring agencies will require approximately one hour per product per year.

6. Recordkeeping and Reporting

EPA estimates that the annual costs to procuring agencies for additional recordkeeping and reporting requirements resulting from today's proposed rule are $240,000. These costs include costs incurred by procuring agencies to ensure their compliance with RCRA section 6002 and Executive Order 12873. Based on the Office of Federal Procurement Policy's current reporting format, EPA anticipates that Federal agencies would expend approximately 10 hours per item to complete this activity. Other procuring agencies are not subject to this requirement.

F. Product Cost

Another potential cost of today's proposed action is the possible price differential between an item made with recovered materials and equivalent item manufactured using virgin materials. As discussed in section II.D.6, relative prices of recycled products compared to prices of comparable virgin products vary. In many cases, recycled products may be less expensive than their virgin counterparts. In other cases, virgin products may have lower prices than recycled products. However, other factors can also affect the price of virgin products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left to the procuring agency which may or may not incur additional costs due to price differentials. EPA requests comment on the potential impact of today's proposed rule on the costs to procuring agencies to purchase designated items containing recovered materials versus those same items made with virgin materials.

G. Regulatory Flexibility Analysis

The primary purpose of the Regulatory Flexibility Analysis is to identify if there is an adverse impact to small businesses that are directly regulated by the rule and to examine regulatory alternatives that fall within the scope of the statutory requirements that would reduce impacts to small businesses, small organizations, or small governmental jurisdictions subject to the regulation. The RCRA procurement requirements apply to procuring agencies that procure more than $10,000 of a designated product. No exemption is included in the statute for small businesses. Therefore, EPA has decided that alternative regulatory approaches for small businesses are not appropriate for this rule.

With regard to possible impacts to small businesses, there may be both positive and negative impacts to individual businesses. EPA anticipates that this rule will provide additional opportunities for small recycling

businesses to begin supplying recovered materials to manufacturers and products made from recovered materials to procuring agencies. In addition, other small businesses that do not directly contract with procuring agencies may be affected positively by the increased demand for recovered materials. These include small businesses involved in materials recovery programs and materials recycling. Municipalities that run recycling programs are also expected to benefit from the increased demand for certain recovered materials.

EPA is unable to determine the number of small businesses that may be adversely impacted by this proposed rule. It is possible that if a small business that currently supplies products to a procuring agency uses virgin materials only, today's proposed CPG may reduce its ability to compete for future contracts. However, the proposed CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet new specification or solicitation requirements for products containing recovered materials. Thus, many small businesses that market to procuring agencies have the option to adapt their product lines to meet specifications.

XIX. Supporting Information

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"Construction Waste & Demolition Debris Recycling . . . A Primer," Solid Waste Association of North America.

"Integrating Wood into the Recycling Loop," Lisa Gitlin, Recycling Today, June 1991.

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"Summary Report: Development of Preliminary Products List for the Comprehensive Procurement Guideline," prepared for EPA by Science Applications International Corporation, Inc., March 1994.

"Recycled Products Research for the Comprehensive Procurement Guideline," prepared for EPA by Science Applications International Corporation, Inc., March 1994.

Engine Coolants

"Automotive and Heavy-Duty Engine Coolant Recycling by Filtration," prepared for EPA's Risk Reduction Engineering Laboratory by Battelle Columbus, October 1991.

Construction Products—General

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Letter to Dana Arnold, U.S. EPA, from George R. Phelps, Director of Government and Industry Affairs, North American Insulation Manufacturers Association, December 20, 1993.

Structural Fiberboard/Laminated Paperboard

"Draft Report on Fiberboard," prepared for EPA by Science Applications International Corporation, Inc., September 19, 1991.

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Minutes of *Ex Parte* Meeting Between EPA and Representatives of Fiberboard Manufacturers, November 14, 1988.

Plastic Pipe and Fittings

"Federal Procurement Guideline Feasibility Study for Plastic Pipe," Draft Report, prepared for EPA by Science Applications International Corporation, Inc., May 1993.

"Research on the Suitability of Recycled High Density Polyethylene (HDPE) Resins for Drain Pipe Applications," University of Toledo Polymer Institute, July 1, 1993.

Geotextiles and Related Products

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Cement and Concrete

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Temporary Traffic Control Devices

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"Research on Traffic Barriers," prepared by EPA Region 5, undated.

"List of GSA Contractors," FAX to Paul Ruesch, U.S. EPA from Al Garza, U.S. General Services Administration, February 1, 1994.

"Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects," FP–85, Section 635, Federal Highway Administration, U.S. Department of Transportation.

"Manual on Uniform Traffic Control Devices," Sections 6C–8, 6C–9, and 6C–10, U.S. Department of Transportation, 1988.

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Product information, Utility Plastic Recycling Inc., January 31, 1994.

Product information, WLI Industries, Inc.

Product information, The Roadmarket Company.

Product information, The Plastic Lumber Co., Inc.

Product information, Don Zwiers & Associates

Product information, Fender Enterprises.

Product information, Scientific Developments, Inc.

Excerpt from "Detailed Product Listings," Indiana Energy Policy.

Hydraulic Mulch

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"Paper Fiber Hydraulic Mulch Use and Performance," prepared for EPA by Science Applications International Corporation, Inc., September 1991.

Compost

"A New Sense of Quality Comes to Compost," by Gene Logsden, Biocycle, December 1989, pp. 48–50.

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"Industrial Compost is a Microbial Banquet," Editorial, Environmental Technology World, October 1993.

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"Composting: What You Should Know," brochure of the Solid Waste Association of North America (SWANA), Silver Spring, Maryland 1992.
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"Yard Debris Compost for Erosion Control," Bill Stewart and Lauren Ettlin, Biocycle, December 1993, pp. 46–47.
"Use of Composts in Revegetating Acid Lands," C.A. Brandt and P.L. Hendrickson, Battelle Memorial Institute, September 1991.
"Look Who's Composting," Ron Alexander and Rod Tyler, Lawn and Landscape Maintenance, exclusive market report, November 1992, pp. 23–33.
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"Environmental Impact of Composting Yard Trimmings," Michael A. Cole, Indiana Yard Waste Solutions Conference, January 27, 1993.

List of Subjects

40 CFR Part 247

Carpet, Cement industry, Engine coolant, Floor tiles, Geotextiles, Government procurement, Insulation, Landscaping industry, Office products, Paper and paper products industry, Park and recreations, Patio blocks, Petroleum, Pipe, Recycling, Tires, Traffic control devices.

40 CFR Parts 248, 249, 250, 252, and 253

Cement industry, Government procurement, Insulation, Paper and paper products industry, Petroleum, Recycling.

Dated: April 13, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, under the authority at 42 U.S.C. 6912 and 6962 and EO 12873, subchapter I of title 40 of the Code of Federal Regulations is proposed to be amended as set forth below.

PARTS 248, 249, 250, 252, and 253 [REMOVED]

1. Parts 248, 249, 250, 252 and 253 are removed.

2. Part 247 is revised to read as follows.

PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

Subpart A—General

Sec.

247.1 Purpose and scope.
247.2 Applicability.
247.3 Definitions.
247.4 Affirmative procurement programs.

Subpart B—Item Designations

247.10 General.
247.11 Paper and paper products.
247.12 Vehicular products.
247.13 Construction products.
247.14 Transportation products.
247.15 Park and recreation products.
247.16 Landscaping products.
247.17 Non-Paper office products.
247.18 Miscellaneous products. [reserved]

Authority: 42 U.S.C. 6912(a) and 6962; E.O. 12873, 58 FR 54911.

Subpart A—General

§ 247.1 Purpose and scope.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6962, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of this part.

(b) This guideline sets forth the requirements of RCRA section 6002, the U.S. Environmental Protection Agency's (EPA) designation of items that are or can be made with recovered materials, and definitions. EPA's recommendations for procuring the designated items are found in the companion Recovered Materials Advisory Notice(s).

(c) EPA believes that adherence to the recommendations in the Recovered Materials Advisory Notice(s) constitutes compliance with RCRA section 6002. However, procuring agencies may adopt other types of procurement programs consistent with RCRA section 6002.

§ 247.2 Applicability.

(a)(1) This guideline applies to all procuring agencies and to all procurement actions involving items designated by EPA in this part, where the procuring agency purchases $10,000 or more worth of one of these items during the course of a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more.

(2) This guideline applies to Federal agencies, to State and local agencies using appropriated Federal funds to procure designated items, and to persons contracting with any such agencies with respect to work performed under such contracts. Federal procuring agencies should note that the requirements of RCRA section 6002 apply to them whether or not appropriated Federal funds are used for procurement of designated items.

(3) The $10,000 threshold applies to procuring agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger department or agency.

(b) The term "procurement actions" includes:

(1) Purchases made directly by a procuring agency and purchases made directly by any person (e.g., a contractor) in support of work being performed for a procuring agency, and

(2) Any purchases of designated items made "indirectly" by a procuring agency, as in the case of procurements resulting from grants, loans, funds, and similar forms of disbursements of monies.

(c)(1) This guideline does not apply to purchases of designated items which are unrelated to or incidental to Federal funding, i.e., not the direct result of a contract or agreement with, or a grant,

loan, or funds disbursement to, a procuring agency.

(2) This guideline also does not apply to purchases made by private party recipients (e.g., individuals, non-profit organizations) of Federal funds other than contracts (i.e., grants, loans, cooperative agreements, and other funds disbursements).

§ 247.3 Definitions.

As used in this Comprehensive Procurement Guideline and the related Recovered Materials Advisory Notice(s):

Act or *RCRA* means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq;*

Blanket insulation means relatively flat and flexible insulation in coherent sheet form, furnished in units of substantial area. Batt insulation is included in this term;

Bleached papers means paper made of pulp that has been treated with bleaching agents;

Board insulation means semi-rigid insulation preformed into rectangular units having a degree of suppleness, particularly related to their geometrical dimensions;

Bond paper means a generic category of paper used in a variety of end use applications such as forms (see *form bond*), offset printing, copy paper, stationery, etc. In the paper industry, the term was originally very specific but is now very general;

Book paper means a generic category of papers produced in a variety of forms, weights, and finishes for use in books and other graphic arts applications, and related grades such as tablet, envelope, and converting papers;

Brown papers means papers usually made from unbleached kraft pulp and used for bags, sacks, wrapping paper, and so forth;

Building insulation means a material, primarily designed to resist heat flow, which is installed between the conditioned volume of a building and adjacent unconditioned volumes or the outside. This term includes but is not limited to insulation products such as blanket, board, spray-in-place, and loose-fill that are used as ceiling, floor, foundation, and wall insulation;

Ceiling insulation means a material, primarily designed to resist heat flow, which is installed between the conditioned area of a building and an unconditioned attic as well as common ceiling floor assemblies between separately conditioned units in multi-unit structures. Where the conditioned area of a building extends to the roof, ceiling insulation includes such a material used between the underside and upperside of the roof;

Cellular polyisocyanurate insulation means insulation produced principally by the polymerization of polymeric polyisocyanantes, usually in the presence of polyhydroxl compounds with the addition of catalysts, cell stabilizers, and blowing agents;

Cellular polystyrene insulation means an organic foam composed principally of polymerized styrene resin processed to form a homogenous rigid mass of cells;

Cellular polyurethane insulation means insulation composed principally of the catalyzed reaction product of polyisocyanurates and polyhydroxl compounds, processed usually with a blowing agent to form a rigid foam having a predominantly closed cell structure;

Cellulose fiber loose-fill means a basic material of recycled wood-based cellulosic fiber made from selected paper, paperboard stock, or ground wood stock, excluding contaminated materials which may reasonably be expected to be retained in the finished product, with suitable chemicals introduced to provide properties such as flame resistance, processing and handling characteristics. The basic cellulosic material may be processed into a form suitable for installation by pneumatic or pouring methods;

Coarse papers means papers used for industrial purposes, as distinguished from those used for cultural or sanitary purposes;

Commercial Item Descriptions means a series of simplified item descriptions under the Federal specifications-and-standards program used in the acquisition of commercial off-the-shelf and commercial type products;

Computer paper means a type of paper used in manifold business forms produced in rolls and/or fan folded. It is used with computers and word processors to print out data, information, letters, advertising, etc. It is commonly called computer printout;

Conditioned means heated and/or mechanically cooled;

Corrugated boxes means boxes made of corrugated paperboard, which, in turn, is made from a fluted corrugating medium pasted to two flat sheets of paperboard (linerboard); multiple layers may be used;

Cotton fiber content papers means paper that contains a minimum of 25 percent and up to 100 percent cellulose fibers derived from lint cotton, cotton linters, and cotton or linen cloth cuttings. It is also known as rag content paper or rag paper. It is used for stationery, currency, ledgers, wedding invitations, maps, and other specialty papers;

Cover stock or *cover paper* means a heavyweight paper commonly used for covers, books, brochures, pamphlets, and the like;

Doilies means paper place mats used on food service trays in hospitals and other institutions;

Duplicator paper means writing papers used for masters or copy sheets in the aniline ink or hectograph process of reproduction (commonly called spirit machines);

Engine lubricating oils means petroleum-based oils used for reducing friction in engine parts;

Envelopes means brown, manila, padded, or other mailing envelopes not included with *stationery;*

Facial tissue means a class of soft absorbent papers in the sanitary tissue group;

Federal agency means any department, agency, or other instrumentality of the Federal government; any independent agency or establishment of the Federal government including any government corporation; and the Government Printing Office;

Fiber or fiberboard boxes means boxes made from containerboard, either solid fiber or corrugated paperboard (general term); or boxes made from solid paperboard of the same material throughout (specific term);

Fiberglass insulation means insulation which is composed principally of glass fibers, with or without binders;

Fittings refers to a piping component used to join or terminate sections of pipe, or to provide changes in direction or branching in a pipe system;

Floor insulation means a material, primarily designed to resist heat flow, which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, floor insulation includes such as material installed around the perimeter of or on the slab. In the case of mobile homes, floor insulation also means skirting to enclose the space between the building and the ground;

Foam-in-place insulation is rigid cellular foam produced by catalyzed chemical reactions that hardens at the site of the work. The term includes spray-applied and injected applications such as spray-in-place foam and pour-in-place;

Folding boxboard means a paperboard suitable for the manufacture of folding cartons;

Form bond means a lightweight commodity paper designed primarily for business forms including computer printout and carbonless paper forms (see manifold business forms);

Foundation insulation means a material, primarily designed to resist heat flow, which is installed in foundation walls between conditioned volumes and unconditioned volumes and the outside or surrounding earth, at the perimeters of concrete slab-on-grade foundations, and at common foundation wall assemblies between conditioned basement volumes;

Gear oils means petroleum-based oils used for lubricating machinery gears;

Geotextiles means any permeable textile material used with foundation, soil, rock, earth, or any other geotechnical engineering related material, as an integral part of a manmade project, structure, or system;

Glass fiber reinforced polyisocyanurate/polyurethane foam means cellular polyisocyanurate or cellular polyurethane insulation made with glass fibers within the foam core;

Hydraulic fluids means petroleum-based hydraulic fluids;

Hydraulic mulch means a mulch that is a cellulose-based (paper or wood) protective covering that is mixed with water and applied through mechanical spraying in order to aid the germination of seeds and to prevent soil erosion;

Hydroseeding means the process of spraying seeds mixed with water through a mechanical sprayer (hydroseeder). Hydraulic mulch, fertilizer, a tacking agent, or a wetting agent can also be added to the water/seed mix for enhanced performance;

Industrial wipers means paper towels especially made for industrial cleaning and wiping;

Invitation for Bids means the solicitation for prospective suppliers by a purchaser requesting their competitive price quotations;

Laminated paperboard means board made from one or more plies of kraft paper bonded together, with or without facers, that is used for decorative, structural, or insulating purposes;

Ledger paper means a type of paper generally used in a broad variety of recordkeeping type applications such as in accounting machines;

Loose-fill insulation means insulation in granular, nodular, fibrous, powdery, or similar form, designed to be installed by pouring, blowing or hand placement;

Manifold business forms means a type of product manufactured by business forms manufacturers that is commonly produced as marginally punched continuous forms in small rolls or fan folded sets with or without carbon paper interleaving. It has a wide variety of uses such as invoices, purchase orders, office memoranda, shipping orders, and computer printout;

Mill broke means any paper waste generated in a paper mill prior to completion of the papermaking process. It is usually returned directly to the pulping process. Mill broke is excluded from the definition of *recovered materials;*

Mimeo paper means a grade of writing paper used for making copies on stencil duplicating machines;

Mineral fiber insulation means insulation (rock wool or fiberglass) which is composed principally of fibers manufactured from rock, slag or glass, with or without binders;

Newsprint means paper of the type generally used in the publication of newspapers or special publications like the Congressional Record. It is made primarily from mechanical wood pulps combined with some chemical wood pulp;

Office papers means note pads, loose-leaf fillers, tablets, and other papers commonly used in offices, but not defined elsewhere;

Offset printing paper means an uncoated or coated paper designed for offset lithography;

Paper means one of two broad subdivisions of paper products, the other being paperboard. Paper is generally lighter in basis weight, thinner, and more flexible than paperboard. Sheets 0.012 inch or less in thickness are generally classified as paper. Its primary uses are for printing, writing, wrapping, and sanitary purposes. However, in this guideline, the term paper is also used as a generic term that includes both paper and paperboard. It includes the following types of papers: bleached paper, bond paper, book paper, brown paper, coarse paper, computer paper, cotton fiber content paper, cover stock or cover paper, duplicator paper, form bond, ledger paper, manifold business forms, mimeo paper, newsprint, office papers, offset printing paper, printing paper, stationery, tabulating paper, unbleached papers, writing paper, and xerographic/copy paper;

Paper napkins means special tissues, white or colored, plain or printed, usually folded, and made in a variety of sizes for use during meals or with beverages;

Paper product means any item manufactured from paper or paperboard. The term *paper product* is used in this guideline to distinguish such items as boxes, doilies, and paper towels from printing and writing papers. It includes the following types of products: corrugated boxes, doilies, envelopes, facial tissue, fiberboard boxes, folding boxboard, industrial wipers, paper napkins, paper towels, tabulating cards, and toilet tissue;

Paper towels means paper toweling in folded sheets, or in raw form, for use in drying or cleaning, or where quick absorption is required;

Paperboard means one of the two broad subdivisions of paper, the other being paper itself. Paperboard is usually heavier in basis weight and thicker than paper. Sheets 0.012 inch or more in thickness are generally classified as paperboard. The broad classes of paperboard are containerboard, which is used for corrugated boxes; boxboard, which is principally used to make cartons; and all other paperboard;

Perlite composite board means insulation board composed of expanded perlite and fibers formed into rigid, flat, rectangular units with a suitable sizing material incorporated in the product. It may have on one or both surfaces a facing or coating to prevent excessive hot bitumen strike-in during roofing installation;

Person means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Federal agency, State, municipality, commission, political subdivision of a State, or any interstate body;

Phenolic insulation means insulation made with phenolic plastics which are plastics based on resins made by the condensation of phenols, such as phenol or cresol, with aldehydes;

Plastic pipe and fittings means non-pressure rated uses of plastic pipe and fittings made from thermoplastic resins, including polyvinyl chloride (PVC) and high density polyethylene (HDPE), for the following applications: sewer, drainage, conduit, and drain, waste and vent (DWV);

Plastic rigid foam means cellular polyurethane insulation, cellular polyisocyanurate insulation, glass fiber reinforced polyisocyanurate/polyurethane foam insulation, cellular polystyrene insulation, phenolic foam insulation, spray-in-place foam and foam-in-place insulation;

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. *Postconsumer material* is a part of the broader category of *recovered materials.*

Postconsumer recovered paper means:

(1) Paper, paperboard and fibrous wastes from retail stores, office buildings, homes and so forth, after they

have passed through their end-usage as a consumer item including: Used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards and used cordage; and

(2) All paper, paperboard and fibrous wastes that enter and are collected from municipal solid waste;

Practicable means capable of being used consistent with: Performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition;

Printing paper means paper designed for printing, other than newsprint, such as offset and book paper;

Procurement item means any device, good, substance, material, product, or other item, whether real or personal property, which is the subject of any purchase, barter, or other exchange made to procure such item;

Procuring agency means any Federal agency, or any State agency or agency of a political subdivision of a State, which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract;

Purchasing means the act of and the function of responsibility for the acquisition of equipment, materials, supplies, and services, including: Buying, determining the need, selecting the supplier, arriving at a fair and reasonable price and terms and conditions, preparing the contract or purchase order, and follow-up;

Purchasing activities means all activities included in the purchasing function;

Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process;

Recovered materials, for purposes of purchasing paper and paper products, means waste material and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term *recovered materials* includes:

(1) Postconsumer materials such as—

(i) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: Used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(ii) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) Manufacturing, forest residues, and other wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: Envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(iii) Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(iv) Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and

(v) Fibers recovered from waste water which otherwise would enter the waste stream.

Recyclable paper means any paper separated at its point of discard or from the solid waste stream for utilization as a raw material in the manufacture of a new product. It is often called *waste paper* or *paper stock*. Not all paper in the waste stream is recyclable; it may be heavily contaminated or otherwise unusable;

Request for Proposal means a request for an offer by one party to another of terms and conditions with reference to some work or undertaking; the initial overture or preliminary statement for consideration by the other party to a proposed agreement;

Re-refined oils means used oils from which the physical and chemical contaminants acquired through previous use have been removed through a refining process;

Retread tire means a worn automobile, truck, or other motor vehicle tire whose tread has been replaced;

Rock wool insulation means insulation which is composed principally from fibers manufactured from slag or natural rock, with or without binders;

Specification means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. In general, specifications are in the form of written commercial designations, industry standards, and other descriptive references;

Spray-in-place insulation means insulation material that is sprayed onto a surface or into cavities and includes cellulose fiber spray-on as well as plastic rigid foam products;

Spray-in-place foam is rigid cellular polyurethane or polyisocyanurate foam produced by catalyzed chemical reactions that hardens at the site of the work. The term includes spray-applied and injected applications;

State means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

Stationery means writing paper suitable for pen and ink, pencil, or typing. Matching envelopes are included in this definition;

Structural fiberboard means a fibrous-felted, homogenous panel made from lignocellulosic fibers (usually wood, cane, or paper) and having a density of less than 31 lbs/ft^3 but more than 10 lbs/ft^3. It is characterized by an integral bond which is produced by interfelting of the fibers, but which has not been consolidated under heat or pressure as a separate stage of manufacture;

Tabulating cards means cards used in automatic tabulating machines;

Tabulating paper means paper used in tabulating forms for use on automatic data processing equipment;

Tire means the following types of tires: Passenger car tires, light- and heavy-duty truck tires, high speed industrial tires, bus tires, and special service tires (including military, agricultural, off-the-road, and slow speed industrial);

Toilet tissue means a sanitary tissue paper. The principal characteristics are softness, absorbency, cleanliness, and adequate strength (considering easy disposability). It is marketed in rolls of varying sizes or in interleaved packages;

Unbleached papers means papers made of pulp that have not been treated with bleaching agents;

Wall insulation means a material, primarily designed to resist heat flow, which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside, as well as common wall

assemblies between separately conditioned units in multiple unit structures;

Waste paper means any of the following materials:

(1) Postconsumer materials such as:

(i) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: Used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(ii) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) Manufacturing wastes, forest residues, and other wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: Envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

Writing paper means a paper suitable for pen and ink, pencil, typewriter or printing; and

Xerographic/copy paper means any grade of paper suitable for copying by the xerographic process (a dry method of reproduction).

§ 247.4 Affirmative procurement programs.

(a) RCRA section 6002(d) required Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies to revise their specifications by May 8, 1986, to eliminate any exclusion of recovered materials and any requirement that items be manufactured from virgin materials.

(b) RCRA section 6002(d) further requires that within one year after the effective date of each item designation by the EPA, each procuring agency must assure that its specifications for these items require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of these items.

(c) RCRA section 6002(i) provides that each procuring agency which purchases items designated by EPA must establish an affirmative procurement program, containing the four elements listed below, for procuring such items containing recovered materials to the maximum extent practicable:

(1) Preference program for purchasing the designated items;

(2) Promotion program;

(3) Procedures for obtaining estimates and certifications of recovered materials content and for verifying the estimates and certifications; and

(4) Annual review and monitoring of the effectiveness of the program.

(d)(1) For the items previously designated by EPA, procuring agencies were required to establish affirmative procurement programs by the following dates: Paper, 6/22/89; lubricating oil, 6/30/89; retread tires, 11/17/89; and building insulation products, 2/17/90.

(2) For each additional item designated by EPA, procuring agencies must establish affirmative procurement programs within one year after EPA promulgates the item designation as a final rule.

Subpart B—Item Designations

§ 247.10 General.

EPA designates the items listed in this subpart as items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of RCRA section 6002.

§ 247.11 Paper and paper products.

Paper and paper products, excluding building and construction paper grades.

§ 247.12 Vehicular products.

(a) Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils.

(b) Tires, excluding airplane tires.

(c) Reclaimed engine coolants.

§ 247.13 Construction products.

(a) Building insulation products, including the following items:

(1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;

(2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);

(3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and

(4) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.

(b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including the following: Building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).

(c) Plastic pipe and fittings made from thermoplastic resins, including PVC and HDPE, for the following non-pressure applications: sewer, drainage, conduit, and drain, waste and vent (DWV).

(d) Geotextiles for use in road building, drainage, erosion control, and soil stabilization, and for use in the gas collection layer and the protection layer between the drainage stone and the geomembrane liner in waste containment systems.

(e) Cement and concrete, including concrete products such as pipe and block, containing coal fly ash or ground granulated blast furnace (GGBF) slag.

(f) Carpet made of polyester fiber for use in low- and medium-wear applications.

(g) Floor tiles and patio blocks containing recovered rubber or plastic.

§ 247.14 Transportation products.

Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.

§ 247.15 Park and recreation products.

Playground surfaces and running tracks containing recovered rubber or plastic.

§ 247.16 Landscaping products.

(a) Hydraulic mulch products containing recovered paper or recovered wood used for landscaping and erosion control hydroseeding applications and as an over-spray for straw mulch.

(b) Compost made from yard trimmings, leaves, and/or grass clippings for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

§ 247.17 Non-paper office products.

(a) Office recycling containers and office waste receptacles containing recovered plastic, paper, or steel.

(b) Plastic desktop accessories.

(c) Remanufactured toner cartridges.

(d) Binders.

(e) Plastic trash bags.

§ 247.18 Miscellaneous products. [Reserved]

[FR Doc. 94–9420 Filed 4–19–94; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–4875–7]

Recovered Materials Advisory Notice

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of draft document for review.

SUMMARY: The Environmental Protection Agency today is providing notice of the issuance of a draft Recovered Materials Advisory Notice. Under section 6002 of the Resource Conservation and Recovery Act of 1976, EPA designates items that are or can be made with recovered materials and provides recommendations for the procurement of these items. EPA previously designated five items and combined the designations and recommendations in item-specific procurement guidelines. Executive Order 12873 directs EPA to change the process for designating items and providing recommendations. EPA now is to designate procurement items in a Comprehensive Procurement Guideline and to provide recommendations in related Recovered Materials Advisory Notices. Elsewhere in today's **Federal Register**, EPA is proposing its first Comprehensive Procurement Guideline. It designates the items for which the Recovered Materials Advisory Notice provides recommended recovered materials content levels. These recommendations are organized within the following product categories: vehicular products, construction products, transportation products, park and recreation products, landscaping products, and non-paper office products.

DATES: EPA will accept public comments on the recommendations contained in the draft Recovered Materials Advisory Notice until June 20, 1994.

ADDRESSES: The public must send an original and two copies of comments, referencing docket F–94–PRMP–FFFFF to the RCRA Information Center (5305), U.S. EPA, 401 M Street SW., Washington, DC 20460. Commenters wishing to submit Confidential Business Information (CBI), should submit an original and two copies of the CBI, referencing docket F–94–PRMP–FFFFF, under separate cover to the Document Control Officer (5305), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public comments and relevant documents are available for viewing at the RCRA Information Center (RIC), located in room M2616, at the EPA address listed above. The RIC is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327. Materials may be copied for $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, (800) 424–9346, or, in the Washington, DC metropolitan area, (703) 412–9810. For technical information regarding the recommendations for the following individual items, contact the referenced EPA staff: Building insulation, structural fiberboard, laminated paperboard, cement and concrete containing GGBF slag, hydraulic mulch, and engine coolants—Dana Arnold, (202) 260–8518; plastic pipe, geotextiles, carpet, floor tiles and patio blocks, and playground surfaces and running tracks, Robin Moran—(202) 260–5066; yard trimmings compost—Hope Pillsbury, (202) 260–2797; traffic control devices and non-paper office products—Beverly Goldblatt, (202) 260–7932. For all other technical information, contact Beverly Goldblatt, (202) 260–7932, or Dana Arnold, (202) 260–8518.

SUPPLEMENTARY INFORMATION:

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I. Authority

The draft Recovered Materials Advisory Notice is published under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 2962, and Executive Order 12873 (58 FR 54911, October 20, 1993).

II. Introduction

Section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA) establishes a Federal buy-recycled program. RCRA section 6002(e) requires EPA to (1) designate items which are or can be produced with recovered materials and (2) prepare guidelines to assist procuring agencies in complying with affirmative procurement requirements set forth in paragraphs (c), (d), and (i) of section 6002. Once EPA has designated items, section 6002 requires that any procuring agency using appropriated Federal funds to procure those items must purchase them containing the highest percentage of recovered materials practicable.

EPA previously issued five guidelines for procurement of products containing recovered materials: Cement and concrete containing fly ash (40 CFR part 249, 48 FR 4230, January 28, 1983), paper and paper products (40 CFR part 250, 53 FR 23546, June 22, 1988), re-refined lubricating oil (40 CFR part 252, 53 FR 24699, June 30, 1988), retread tires (40 CFR part 253, 53 FR 46558, November 17, 1988), and building insulation products (40 CFR part 248, 54 FR 7327, February 17, 1989). Each of these guidelines contains item designations and procurement recommendations for the designated items. Both the item designations and the procurement recommendations were then codified in the Code of Federal Regulations (CFR).

In order to expedite the process of issuing procurement guidelines, Executive Order 12873 (58 FR 54911, October 22, 1993), which was signed by President Clinton on October 20, 1993, directs EPA to change the procedure used for designating items and providing procurement recommendations. Under the Order, EPA is to issue a regulation, known as a Comprehensive Procurement Guideline (CPG), which will contain the item designations, and a guidance document, known as a Recovered Materials Advisory Notice (RMAN), which will contain EPA's recommendations for purchasing the designated items. The Order further directs EPA to update the CPG annually and the RMAN periodically, after public comment, to reflect changes in market conditions. Under this procedure, EPA will continue to codify the item designations in the CFR, but not the recommendations. In accordance with the Order, the recommendations will be available in the guidance document (i.e., the Recovered Materials Advisory Notice).

EPA is proposing the CPG concurrently in today's **Federal Register**. In the CPG, EPA proposes to consolidate the five existing procurement guidelines and the proposed new item designations into one document. Similarly, in today's draft RMAN, EPA is establishing a framework for consolidating the recommendations made in the five existing procurement guidelines and the recommendations for the proposed new procurement items into one document. The recommendations are organized into eight product categories corresponding to the categories used in the CPG: paper and paper products, vehicular products, construction products, transportation products, park and recreation products, landscaping products, non-paper office products, and miscellaneous products. When EPA finalizes the RMAN, the existing recommendations for paper and paper products will be found in the first category, the recommendations for re-refined lubricating oil and retread tires will be found in the vehicular products category, and the recommendations for building insulation products and cement and concrete will be found in the construction products category.

Although EPA intends to consolidate the recommendations from the five existing procurement guidelines into the RMAN, they are not included in today's draft RMAN in order to avoid confusion over the scope of recommendations on which EPA is requesting comment. Notice of the issuance of the final RMAN will be provided when the CPG is issued as a final rule. At that time, the recommendations in EPA's existing procurement guidelines will be consolidated into the final RMAN.

Later this year, EPA intends to issue a draft paper products RMAN for public comment. This additional draft RMAN will contain revisions to EPA's recommended recovered materials content levels for paper products and address a variety of issues that have been raised as procuring agencies have implemented affirmative procurement programs for paper products containing recovered materials. It also will incorporate the minimum content standards for specified uncoated printing and writing papers established in section 504 of Executive Order 12873. Federal executive agencies should note, however, that, beginning December 31, 1994, the standards in section 504 of the Order are applicable to their paper purchases whether or not EPA proposes to add them to the paper guideline. Federal executive agencies also should note that the Order requires them to purchase paper containing postconsumer recovered materials or specified recovered materials immediately.

In addition to establishing the new framework, today's draft RMAN contains general recommendations for affirmative procurement programs, recommended recovered materials content levels for the 21 new items proposed for designation in the CPG, an increase in the recommended recovered materials content level of rock wool insulation, and a range of recommended recovered materials content levels for fiberglass insulation. (Both rock wool and fiberglass insulation were designated previously in the existing building insulation products procurement guideline.)

Executive Order 12873 requires EPA to update the recommended recovered materials content levels periodically to reflect current usage of recovered materials in designated items. The Agency will establish a process for the public to provide current information about the percentages of recovered materials used in designated items. EPA intends to issue a **Federal Register** notice that will describe this process and provide information on how the public can participate. Today, the Agency is soliciting options for increasing public participation in developing the updates of the RMAN.

Finally, since EPA uses acronyms for organizations and materials throughout this preamble, they are listed in Table 1 for the convenience of the reader.

TABLE 1.—Acronyms Used in the Recovered Materials Advisory Notice

Acronym	Term
AASHTO	American Association of State Highway and Transportation Officials.
ASHRAE	American Society for Heating, Refrigeration and Air Conditioning Engineers.
ASTM	American Society for Testing and Materials.
BOCA	Building Officials Council of America.
CABO	Council for American Builders Association.
CPG	Comprehensive Procurement Guideline.
DWV	Drain, waste, and vent.
E.O.	Executive Order 12873.
EPA	Environmental Protection Agency.
GGBF	Ground granulated blast furnace (slag).
GSA	General Services Administration.
HDPE	High density polyethylene.
LDPE	Low density polyethylene.
PET	Polyethylene terephthalate.
PP	Polypropylene.

TABLE 1.—Acronyms Used in the Recovered Materials Advisory Notice—Continued

Acronym	Term
PVC	Polyvinyl chloride.
RCRA	Resource Conservation and Recovery Act.
RMAN	Recovered Materials Advisory Notice.

III. Recovered Materials Content

A. Use of Minimum Recovered Materials Content Standards

For most designated items, EPA recommends in today's draft RMAN that procuring agencies establish minimum recovered materials content standards. EPA stated in previous guidelines that the use of minimum content standards would satisfy the statutory requirement to procure products containing the highest levels of recovered materials practicable (see for example, 53 FR 23553, June 22, 1988).

For some items, the use of minimum content standards is inappropriate because the product is remanufactured, reconditioned, or rebuilt (e.g., remanufactured toner cartridges). In these instances, EPA will recommend that procuring agencies use a substantially equivalent alternative to the minimum content standards approach. For example, in the case of toner cartridges, EPA recommends that procuring agencies establish a two-pronged program consisting of remanufacturing their expended toner cartridges and purchasing remanufactured toner cartridges when replacement cartridges are needed. Minimum content standards are inapplicable because the recovered material is the expended cartridge, rather than individual components used to produce a new cartridge.

EPA notes that, under RCRA section 6002(i), it is the procuring agencies' responsibility to establish minimum recovered materials content standards, while EPA provides recommendations regarding the levels of recovered materials in the designated items. To make it clear that EPA does not establish minimum content standards for other agencies, EPA will no longer refer to its recommendations as recovered materials content "standards," as was done in the existing procurement guidelines. Instead, EPA will refer to its recommendations as recovered materials content "levels," consistent with RCRA section 6002(e) and Executive Order 12873.

The Order directs EPA to present, in the RMAN, "the range of recovered materials content levels within which the designated recycled items are currently available." In meeting this provision, EPA will recommend ranges that reflect the best information available to the Agency about the use of recovered materials in the manufacture of a given item and that encourage manufacturers to use the maximum amount of recovered materials without compromising competition or product performance and availability. EPA recommends that procuring agencies use these ranges, in conjunction with their own research into the recovered materials content of items available to them, to establish their minimum content standards. In some instances, EPA will recommend one level (e.g., 100 percent recovered materials), rather than a range, because the item is universally available at that recommended level; EPA recommends that procuring agencies establish their minimum content standards at that level.

B. Methodology for Recommending Recovered Materials Content Levels

EPA identified and evaluated pertinent data sources and information regarding the percentages of recovered materials contained in the items proposed for designation in the CPG. Prior to issuance of Executive Order 12873, EPA was considering five items for designation—fiberboard, hydraulic mulch, plastic pipe, geotextiles, and compost. For these items, EPA reviewed previously-gathered data. For the other items, EPA reviewed and evaluated information obtained from product manufacturers. In addition, EPA gathered and evaluated publicly-available information and information provided by other Federal agencies. Based on this information, EPA established a range of recovered materials content levels within which each of the items proposed for designation is available. In establishing the ranges, EPA's objective was to ensure the availability of the item, while challenging manufacturers to increase their use of recovered materials.

EPA believes that a range of content levels is appropriate at this time for three reasons. First, EPA has only limited information on recovered materials content levels for the newly-designated items. Second, rather than being purchased centrally, many of these items will be purchased locally, meaning that the recovered materials content of these items is likely to vary substantially, making it problematic to recommend a single content level at this time. Third, the Executive Order directs EPA to propose an RMAN that presents "the range of recovered materials content levels within which the designated recycled items are currently available." By recommending ranges, EPA believes that sufficient information will be provided to enable procuring agencies to set appropriate procurement specifications when purchasing the newly designated items.

It is EPA's intention to provide procuring agencies with the best and most current information available to assist them in fulfilling their statutory obligations under RCRA section 6002. To do this, EPA will monitor the progress made by procuring agencies in purchasing designated items with the highest recovered materials content practicable and will adjust the recommended content ranges accordingly. EPA anticipates that, over time, the recommended ranges will narrow.

As discussed above, EPA also is increasing the recommended recovered materials content level for rock wool insulation and adding recommended recovered materials content levels for fiberglass insulation, both of which were designated in the existing building insulation guideline. In the existing procurement guidelines, EPA recommended a single content level for each designated item. When changing these recommendations, in those instances where there is sufficient information on current manufacturing practices to determine that a single recovered materials content level is appropriate (e.g., rock wool insulation), EPA will recommend one. In other instances, EPA will recommend a range of recovered materials content levels (e.g., for fiberglass insulation).

IV. Affirmative Procurement Programs

A. General Recommendations

An affirmative procurement program is an agency's strategy for maximizing its purchases of an EPA-designated item. RCRA section 6002(i) requires that an affirmative procurement program consist of a minimum of four elements: (1) A preference program; (2) a promotion program; (3) procedures for obtaining estimates and certifications of recovered materials content and, where appropriate, reasonably verifying those estimates and certifications; and (4) procedures for monitoring and annually reviewing the effectiveness of the program. In addition, Executive Order 12873 requires an agency affirmative procurement program to encourage the electronic transfer of documents, the two-sided printing of government documents, and the inclusion of provisions in contracts, grants, and cooperative agreements that require

documents to be printed two-sided on recycled paper.

EPA discussed preference programs in the previous section of the preamble, in which EPA generally recommended that procuring agencies establish minimum content standards for designated items. This section of the preamble discusses promotion and monitoring. Certification is discussed in section IV.B.

In previous guidelines, EPA recommended that specific actions be taken by requesting officials, contracting officers, and architects and engineers when purchasing designated items. In consulting with acquisition policy and requirements officials from several major Federal agencies, EPA determined that these item-specific recommendations did not provide enough flexibility for procuring agencies to determine the appropriate delineation of responsibilities for implementing the statutory requirements. Based on this information and because of the broad array of products proposed for designation today in the CPG, EPA will no longer make specific recommendations for individuals within an agency to implement the requirements of RCRA section 6002 and Executive Order 12873. Instead, EPA recommends that the Environmental Executive within each major procuring agency take the lead in developing the agency's affirmative procurement program and in implementing the recommendations set forth in this RMAN.

The basic responsibilities of an Agency Environmental Executive are described in sections 302 and 402 of Executive Order 12873. Section 302 charges each Agency Environmental Executive with coordinating all environmental programs in the areas of acquisition, standard and specification revision, facilities management, waste prevention, recycling, and logistics. Section 402(c) of the Order further requires each Agency Environmental Executive to track and report, to the Federal Environmental Executive, agency purchases of EPA-designated items. In the absence of such an individual, EPA recommends that the head of the implementing agency appoint an individual who will be responsible for ensuring the agency's compliance with RCRA section 6002 and Executive Order 12873.

Although RCRA section 6002 and the Executive Order require procuring agencies to establish affirmative procurement programs for each EPA-designated item, EPA recommends that each agency develop one comprehensive affirmative procurement program with a structure that allows for the integration of new items as they are designated. EPA encourages agencies to implement preference programs for non-guideline items as well, in order to maximize their purchases of recycled products and foster markets for recovered materials.

RCRA section 6002(i)(2)(B) requires each procuring agency to adopt a program to promote its preference to buy EPA-designated items with recovered materials content. The promotion component of the affirmative procurement program educates staff and notifies an agency's current and potential vendors, suppliers, and contractors of the agency's intention to buy recycled products.

In the previous guidelines, EPA targeted its recommendations for promoting the affirmative procurement program at the agency's vendors and contractors. EPA has determined that the education of an agency's employees is also an important part of the promotion program. Therefore, EPA believes that an agency's promotion program should consist of two components: an internal promotion program and an external promotion program.

There are several methods that procuring agencies can use to educate their employees about their affirmative procurement programs. These methods include preparing and distributing agency affirmative procurement policies, publishing articles in agency newsletters and publications, including affirmative procurement program requirements in agency staff manuals, and conducting workshops and training sessions to educate employees about their responsibilities under agency affirmative procurement programs.

Methods for educating existing contractors and potential bidders of an agency's preference to purchase products containing recovered materials include publishing articles in appropriate trade publications, participating in vendor shows and trade fairs, placing statements in solicitations, and discussing an agency's affirmative procurement program at bidders' conferences.

Procuring agencies should monitor their affirmative procurement programs to ensure that they are fulfilling their requirements to purchase items composed of recovered materials to the maximum extent practicable. RCRA section 6002(i)(2)(D) requires the affirmative procurement program to include procedures for annually reviewing and monitoring the effectiveness of agency affirmative procurement programs. Section 402 of Executive Order 12873 requires the Environmental Executive of each Executive agency to track and report on agency purchases of EPA-designated items. Additionally, RCRA section 6002(g) requires OFPP to submit a report to Congress every two years on actions taken by Federal agencies to implement the affirmative procurement requirements of the statute. Also, section 301 of Executive Order 12873 requires the Federal Environmental Executive to submit an annual report to OMB, at the time of agency budget submission, on Federal compliance with the Order. In order to fulfill their responsibilities, EPA anticipates that the Federal Environmental Executive and OFPP will request information from Federal agencies on their affirmative procurement practices. Therefore, it is important for agencies to maintain adequate records of procurements that may be affected by Executive Order and RCRA requirements.

In order to comply with the Executive Order, agencies will need to track their purchases of products made with recovered materials content. This will also allow them to establish benchmarks from which progress can be assessed. To maintain adequate records on procurement of products containing recovered materials, procuring agencies may choose to collect data on the following:

- The percentages of recovered materials content in the items procured or offered;
- Comparative price information on competitive procurements;
- The quantity of each item procured over a fiscal year;
- The availability of each item with recovered materials content; and
- Performance information related to recovered materials content of an item.

EPA recognizes that a procuring agency may be unable to obtain accurate data for all items designated by EPA. However, EPA believes that, in many cases, estimated data will suffice in determining the effectiveness of the agency's affirmative procurement program.

B. Calculation of Product Content for Purposes of Certification

RCRA section 6002(i)(2)(C) requires the affirmative procurement program to include procedures for estimating, certifying, and, where appropriate, reasonably verifying the amount of recovered materials content utilized in the performance of a contract. In addition, RCRA section 6002(c) requires contracting officers to obtain from vendors a certification "that the percentage of recovered materials to be used in the performance of the contract

will be at least the amount required by applicable specifications or other contractual requirements." When an item is made on a batch basis, the certification should be for the recovered materials content of the batch. However, batch certifications are not always possible; in those cases, certification of recovered materials use over a specified period of time is appropriate.

Because each product will be different, in today's draft RMAN, EPA recommends that procuring agencies discuss certification with product vendors to ascertain the appropriate period for certifying recovered materials content. EPA recommends that, whenever feasible, the recovered materials content of a product be certified on a batch-by-batch basis or as an average over a calendar quarter or some other appropriate averaging period as determined by the procuring agencies.

V. Recommendations for Vehicular Products

Part B of the draft RMAN contains EPA's recommendations for vehicular products. EPA's existing recommendations for re-refined lubricating oil and retread tires will be placed in Sections B–1 and B–2, respectively, in the final RMAN. Section B–3 contains EPA's recommendations for engine coolants.

A. Engine Coolants

1. Preference Program

In today's draft RMAN, EPA recommends that procuring agencies whose vehicles are serviced by a motor pool or vehicle maintenance facility establish a program for engine coolant reclamation and reuse, consisting of either reclaiming the spent engine coolants on-site for use in the agencies' vehicles, or establishing a service contract for reclamation of the agencies' spent engine coolant for use in the agencies' vehicles.

EPA has no information about the availability of reclaimed engine coolants for procurement as a product, although the Agency is aware that some local government agencies purchase reclaimed engine coolants. EPA requests information from manufacturers and purchasers about the performance, availability, and relative price of reclaimed engine coolants. EPA further requests information from public or private purchasers of reclaimed engine coolants about specifications used to procure this item.

Procuring agencies should note that engine coolants can contain either ethylene glycol or propylene glycol. Because of chemistry differences, these two types of engine coolant currently must be reclaimed separately. Therefore, in order to implement an engine coolant reclamation program, EPA recommends that procuring agencies purchase only one type of engine coolant or establish procedures to prevent commingling of engine coolants containing ethylene glycol and propylene glycol.

Procuring agencies also should note that, in some instances, spent engine coolant can exhibit the toxicity characteristic of hazardous waste by failing EPA's Toxicity Characteristic Leaching Procedure (TCLP). If a procuring agency determines that its spent engine coolant is a hazardous waste, it must manage the engine coolant in accordance with applicable Federal or state hazardous waste management requirements, including the generator requirements found in 40 CFR Part 262 and the requirements for recyclable materials found in 40 CFR 261.6. Because state hazardous waste regulations generally apply in lieu of the Federal regulations, procuring agencies should contact their state environmental agency (or, if the state is not authorized, the appropriate EPA Regional Office) for specific information on applicable requirements.

2. Background

Engine coolants, also know as antifreeze, are a necessary automotive chemical. Engine coolants are manufactured from one of two chemicals: Ethylene glycol or propylene glycol. Coolant additives are then added to inhibit corrosion within the engine.

Spent engine coolants can be reclaimed by removing contaminants and breakdown products of the original ingredients and by replacing corrosion inhibitors. Engine coolant reclamation is done in one of two ways: filtration or distillation. Reclamation results in both waste reduction and materials recovery benefits.

There is one potential impediment to reclamation of engine coolants: the mixing of the two types of engine coolant, ethylene glycol and propylene glycol. Propylene glycol-based engine coolant has just recently been marketed nationwide for consumer purchase. Engine coolant reclaimers will reject spent engine coolant if it contains more than 1 percent propylene glycol because it interferes with their reclamation of ethylene glycol due to differences in the chemistry of the two materials.

Military installations, the Postal Service, and some Federal civilian agencies have motor pools or vehicle maintenance facilities at which vehicles are serviced. The Postal Service informed EPA that it has established engine coolant reclamation programs at all of its vehicle maintenance facilities. Some Naval installations also reclaim spent engine coolants or contract for reclamation services. Limited EPA research revealed that one naval shipyard has been able to recover 6,000 gallons of engine coolant annually. The Postal Service does not maintain quantitative statistics on its engine coolant reclamation program.

EPA believes that other procuring agencies can successfully implement similar programs.

3. Specifications

The American Society for Testing and Materials' (ASTM) D15 committee on engine coolants has published standards for reclaimed engine coolants. Procuring agencies should refer to ASTM specifications D 3306 and D 4985.

VI. Recommendations for Construction Products

Part C of the draft RMAN contains EPA's recommendations for construction products. Recommendations for specific items are in the following sections of the draft RMAN:

- Section C–1—building insulation products,
- Section C–2—structural fiberboard and laminated paperboard products,
- Section C–3—plastic pipe and fittings,
- Section C–4—geotextiles and related products,
- Section C–5—cement and concrete,
- Section C–6—polyester carpet, and
- Section C–7—floor tiles and patio blocks.

A. Building Insulation Products

EPA recommended an affirmative procurement program for building insulation products in its 1989 procurement guideline (54 FR 7327, 40 CFR part 248). Specifically, EPA recommended that procuring agencies use recovered materials content standards when purchasing cellulose loose-fill and spray-on insulation, perlite composite board, plastic rigid foam insulation, phenolic rigid foam insulation, and rock wool insulation. For fiberglass insulation, "cellulosic" fiberboards, and polystyrene rigid foam insulation, EPA recommended that agencies use a case-by-case approach to purchasing these items containing recovered materials, because either they were not reasonably available or there was insufficient competition for EPA to recommend content levels. Today, EPA is revising the recommendations to (1) increase the recommended content level

for rock wool insulation, (2) recommend a range of recovered materials content levels for fiberglass insulation, and (3) recommend recovered materials content levels for structural fiberboard and laminated paperboard used for insulating purposes. This section explains the recommendations for fiberglass and rock wool insulation, while the fiberboard/paperboard recommendations are explained in section V.B below.

Tables C–1 and C–2 of the draft RMAN contain the recommended recovered materials content levels for rock wool and fiberglass insulation products and for fiberboard and paperboard, respectively. The item designations and definitions for these products are found in 40 CFR part 247.

1. Rock Wool Insulation

EPA is increasing the recommended recovered materials content level for rock wool insulation products based on a Procurement Guidelines Advisory (PGA) issued by EPA in 1990 (September 10, 1990). The PGA presented information obtained through research on use of recovered materials by the rock wool insulation industry, which indicated that EPA's original recommended minimum content level for rock wool (50 percent recovered materials) was below the current level of recovered materials typically being used by rock wool manufacturers. Based on a request from rock wool manufacturers and additional research, EPA decided to increase the recommended recovered materials content level for rock wool insulation to 75 percent recovered materials, thereby encouraging an increase in the amount of recovered materials used in rock wool procured by government agencies.

2. Fiberglass Insulation

a. *Preference program.* In today's draft RMAN, EPA recommends that procuring agencies establish minimum recovered cullet content standards for fiberglass insulation, based on EPA's recommended range of 20–25 percent recovered cullet.

b. *Background.* At the time the building insulation products procurement guideline was issued, EPA could not identify any manufacturers that were using recovered materials to make fiberglass insulation on a routine basis. EPA was aware of several efforts on the part of manufacturers to do so, however. For this reason, EPA recommended that procuring agencies conduct market research to determine if fiberglass insulation containing recovered materials was available and, if so, try to obtain it on a case-by-case basis. EPA further recommended that procuring agencies use the case-by-case approach until they determined that fiberglass insulation containing recovered materials was reasonably available. Procuring agencies could then establish minimum content standards for use in purchasing fiberglass insulation.

Since the guideline was issued, several developments have occurred that have caused EPA to revisit the feasibility of recommending that procuring agencies establish minimum content standards for fiberglass insulation. First, collection of postconsumer glass bottles has increased, and manufacturers now are using both pre- and postconsumer glass cullet to make fiberglass insulation more routinely than when the insulation guideline was issued. Second, in 1991, the State of California enacted the Fiberglass Recycled Content Act, A.B. 1340, mandating that fiberglass manufactured and sold within the State contain specified percentages of cullet; manufacturers have been producing fiberglass insulation meeting these percentage requirements. Third, in 1993, the ASTM published consensus Standard Specification D 5359, Glass Cullet Recovered from Waste for Use in Manufacture of Glass Fiber. This specification is aimed at improving the quality of glass cullet supplied to fiberglass insulation manufacturers. It creates three grades of glass cullet and specifies the chemical composition, color mix ratio, contaminants restrictions, and particle size for each grade.

The California legislation mandates a "cullet" content of 10 percent in 1992, increasing to 20 percent in 1994. "Cullet" includes both postconsumer bottle glass and any other glass not generated by fiberglass manufacturing. The law also requires that the content increase to 30 percent in 1995, if it is determined, based on a public meeting to be held in 1994, that the higher content level is feasible.

Fiberglass insulation manufacturers indicated to EPA that, based on the availability and cost of recovered cullet meeting their feedstock specifications, they can now produce fiberglass insulation containing 20 percent recovered cullet. They further indicated that, since the California law required them to increase cullet usage in fiberglass insulation manufactured or sold in the State, they believed that supplies of recovered cullet would increase, and they could increase cullet content in products available nationwide to 25 percent beginning in 1997.

From our research and the additional information provided by the fiberglass manufacturers, EPA concludes that fiberglass insulation containing 20 percent recovered glass cullet is now reasonably available nationwide. EPA further concludes that fiberglass insulation containing postconsumer glass bottle cullet is not reasonably available due to inconsistent supplies of postconsumer glass cullet meeting the industry's specifications.

Given the fluctuations in price and availability of cullet meeting the fiberglass manufacturers' specifications, however, EPA believes that some manufacturers will be able to use 25 percent cullet at some of their plants now, while others may not be able to use 25 percent cullet even in 1997. For this reason, EPA is recommending a recovered materials content range of 20–25 percent cullet. Using this range, procuring agencies should establish their minimum content standards for fiberglass insulation at the highest level practicable.

c. *Use of postconsumer glass bottle cullet.* EPA is aware that there are insufficient markets in some parts of the U.S. for postconsumer glass bottle cullet collected through municipal solid waste programs and that fiberglass insulation is a potential market for this material. Fiberglass manufacturers have experienced problems obtaining postconsumer glass bottle cullet that meets their feedstock quality specifications, however. EPA requests information on the feasibility of establishing a postconsumer cullet standard for fiberglass insulation to create a market for these materials. In particular, EPA requests information about the sources, availability, and cost of postconsumer cullet meeting the fiberglass manufacturers' feedstock quality specification and, in light of this information, recommendations for the minimum postconsumer cullet content levels that are practicable.

d. *Specifications.* As previously discussed, in 1993, ASTM issued a standard for the composition of cullet used in the manufacture of fiberglass insulation. EPA wants to ensure that procuring agencies are aware of this standard so that they can promote the availability of consistent supplies of recovered cullet meeting the feedstock specifications of the fiberglass manufacturers.

3. Polystyrene Rigid Foam

Polystyrene rigid foam insulation was included in the scope of the original building insulation products procurement guideline, but EPA did not recommend a recovered materials

content level for this item because it was commercially unavailable containing recovered materials. EPA now is aware of one manufacturer using recovered materials. One manufacturer does not constitute adequate competition, however.

Therefore, EPA requests information on other manufacturers of polystyrene rigid foam insulations using recovered materials. EPA is interested in learning the type(s) and percentage(s) of recovered materials used by each manufacturer.

B. Structural Fiberboard and Laminated Paperboard Products

1. Preference Program

In today's draft RMAN, EPA recommends that procuring agencies establish minimum recovered materials content standards for use in purchasing structural fiberboard and laminated paperboard products, whether for insulating, structural, or decorative applications. EPA recommends that the standards be based on the content levels shown in Table C–2 of the draft RMAN.

2. Background

Structural fiberboard and laminated paperboard products, whether used for insulating or for structural applications, are manufactured with a variety of recovered materials. In structural fiberboard, the recovered materials used include wood wastes, bagasse (sugar cane waste), over-issue newspapers and magazines, and postconsumer newspaper, corrugated, and mixed paper. In laminated paperboard, postconsumer paper is the principal recovered material used, including old newspapers and old corrugated containers. In structural fiberboard products, the range of recovered paper content is 18 to 100 percent, with most manufacturers now using 20 percent postconsumer recovered paper. In laminated paperboard products, two of the manufacturers use 100 percent postconsumer paper, while the third manufacturer uses varying percentages of postconsumer recovered paper, depending on customers' specifications.

RCRA section 6002 emphasizes postconsumer content in the case of paper. Consistent with the Act and because paper and paperboard are the largest components of the municipal waste stream, EPA believes that it is important to foster markets for postconsumer recovered paper. EPA emphasized postconsumer content for most grades of paper and paperboard in the 1988 paper procurement guideline. In today's draft RMAN, EPA recommends postconsumer recovered paper content levels for both structural fiberboard and laminated paperboard products.

EPA does not believe, however, that Congress intended for use of postconsumer paper to increase in all products at the expense of other recovered materials. Doing so would simply substitute one component of the waste stream—paper—for other components. Doing so could also endanger established markets for the other components. Therefore, we believe that it is appropriate when purchasing products, such as structural fiberboard, that can contain other recovered materials in addition to paper, to encourage continued use of these other recovered materials as well. The recovered materials content levels recommended today for structural fiberboard products balance usage of both kinds of recovered materials and recognize that these products create a market for bagasse and wood wastes, as well as for postconsumer paper.

a. *Structural fiberboard products.* There are seven manufacturers of structural fiberboard. Table 2 shows the current recovered materials content of their products. While one manufacturer of structural fiberboard products is able to use 100 percent postconsumer recovered paper, the other manufacturers are not able to do so. These other manufacturers use different processes and equipment that were not designed to handle larger percentages of recovered paper. Fiberboard is made from a watery pulp which is deposited on a screen, after which water is vacuumed off. Because paper holds water, introduction of levels of recovered paper greater than 20 percent requires a reduction in the speed of the production line in order to dry the board. As a result, production costs increase.

TABLE 2.—RECOVERED MATERIALS CONTENT OF STRUCTURAL FIBERBOARD PRODUCTS

Manufacturer	Percentage	Type of recovered materials
Company A	100	Postconsumer newspapers.
Company B	60	Recovered wood, postconsumer and over-issue paper.
	80	Bagasse.
Company C	20	Postconsumer paper.
Company D	5	Postconsumer newspaper and corrugated.
Company E	0	Experimenting with up to 25 percent postconsumer/ over-issue newspaper.
Company F	10–15	Postconsumer newspaper.
Company G	0	Experimenting with up to 10 percent postconsumer newspaper.

Based on this information, EPA proposes that procuring agencies establish a two-part minimum recovered materials content standard for use in purchasing structural fiberboard, consisting of a postconsumer recovered paper component and a recovered materials component. In today's draft RMAN, EPA recommends content levels of 20 percent for the postconsumer recovered paper component, and 40–80 percent for the recovered materials component. In other words, EPA recommends that structural fiberboard products contain a total recovered materials content between 60 and 100 percent recovered materials, including 20 percent postconsumer recovered paper. This standard challenges those manufacturers using less than 20 percent postconsumer recovered paper to increase their usage of these materials. At the same time, it recognizes that several structural fiberboard manufacturers utilize high percentages of other recovered materials.

As shown in Table 2, some manufacturers are now using postconsumer recovered paper in combination with over-issue paper (a preconsumer material). Under today's recommended recovered materials content level, the use of over-issue recovered paper cannot be counted toward the postconsumer recovered paper component but would count toward the total recovered materials content.

b. *Laminated paperboard products.* EPA knows of three manufacturers of laminated paperboard products that use recovered materials. Two manufacturers use 100 percent postconsumer paper. The third manufacturer uses varying amounts of postconsumer paper, depending on its customers' specifications. Based on this information, EPA is recommending recovered materials content levels for

laminated paperboard products of 100 percent postconsumer recovered paper.

3. Specifications

a. *Structural fiberboard products.* The primary product standard used for structural fiberboard products is ASTM C 208, Insulating Board (Cellulosic Fiber), Structural and Decorative. Fiberboards made with wood, bagasse, and paper can satisfy this standard. However, the specification lists wood and "cane," but not paper, as cellulosic fibers, and does not include floor underlayment and roof overlay, two products which are made by a structural fiberboard manufacturer using 100 percent postconsumer paper. Therefore, in today's draft RMAN, EPA recommends that procuring agencies reference the technical requirements of this standard and specify that structural fiberboard products made from recovered paper and products such as floor underlayment and roof overlay are included.

Another pertinent specification is the American National Standard for Cellulosic Fiberboard (ANSI/AHA A194.1–1985). It neither requires use of virgin materials nor precludes use of recovered materials and, therefore, is appropriate to use with structural fiberboard products containing recovered materials.

In addition, the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) provides thermal ratings for "vegetable" fiberboards including "homogeneous board from repulped paper" used as building board.

b. *Laminated paperboard products.* No ASTM or other single specification exists that contains requirements for laminated paperboard. However, laminated paperboard products are tested using some of the standards specified in product and testing specifications for structural fiberboard. Additionally, laminated paperboard products are tested against major codes, including Federal Housing Administration, the Council for American Builders Association (CABO), the Building Officials Council of America (BOCA), and the International Conference of Building Officials. Reports of both CABO and BOCA provide results of tests of laminated paperboard products. ASHRAE also provides thermal ratings for laminated paperboard products.

c. *"R"-values.* As with other products made with recovered materials, EPA believes that specifications for structural fiberboard and laminated paperboard products should focus on performance requirements. For insulating products, energy value or "R" value, is a principal performance standard. EPA was told that "R" value specifications, if set at inappropriately high levels, can be used to preclude products made with recovered materials. In today's draft RMAN, EPA recommends that agencies review their specifications and revise them as appropriate to obtain the appropriate "R" value needed without unnecessarily precluding the purchase of products containing recovered materials.

C. Plastic Pipe and Fittings

1. Preference Program

In today's draft RMAN, EPA recommends that procuring agencies establish minimum recovered materials content standards for use in purchasing plastic pipe and fittings for the following non-pressure applications: Drainage; sewer; drain, waste and vent (DWV); and conduit. EPA recommends that procuring agencies establish the standards within the range of recovered materials content levels shown in Table C–3 of the draft RMAN.

2. Background

Plastic pipe and fittings are currently manufactured with recovered PVC and HDPE. The following sections and Table 3 provide information on the current availability of pipe and fittings containing recovered materials for the non-pressure applications covered by this guideline. Each entry on Table 3 reflects data from a manufacturer; however, manufacturers names are not listed. It should be noted that some manufacturers produce more than one product (e.g., both corrugated and smoothwall drainage pipe).

TABLE 3.—RECOVERED MATERIALS CONTENT OF PLASTIC PIPE

Pipe application	Resin	Postconsumer materials (percent)	Total recovered materials (percent)
Corrugated drain	HDPE	20–50	55.
	HDPE	30	100.
	HDPE	Up to 100	100.
	HDPE	20–50	40–50.
	HDPE	100	100.
Smoothwall drain	HDPE	20	55.
	HDPE	85	100.
	HDPE	Up to 100	Up to 100.
	HDPE	Not available	Not available.
	PVC	0	Up to 100.
Sewer	PVC	0	20–30.
	PVC/HDPE	0	40–100.
	HDPE	Not available	Not available.
	PVC	Up to 100	Up to 100.
Drain, waste and vent (DWV)	PVC/HDPE	40–100	40–100.
Conduit	PVC	Not available	Not available.

a. *Drainage.* EPA has identified 10 manufacturers of drainage pipe (both corrugated and smoothwall) using total recovered materials contents ranging from 40 to 100 percent. Six of the 10 manufacturers reportedly use up to 100 percent total recovered HDPE. Eight of the 10 drainage pipe manufacturers use postconsumer HDPE as well, ranging from 20 to 100 percent. Thus, the majority of drainage pipe manufacturers that use recovered materials are currently using postconsumer resin, which indicates to EPA that the technical feasibility of manufacturing drainage pipe with up to 100 percent postconsumer materials has been adequately demonstrated. Therefore, for drainage pipe and fittings, EPA recommends minimum postconsumer recovered materials content levels between 40 and 100 percent.

Based on the information in Table 3, there is no substantial difference in the

range of recovered materials for corrugated and smoothwall pipe. Therefore, EPA recommends that procuring agencies establish one recovered materials standard to cover both types of drainage pipe.

EPA believes that manufacturers have demonstrated that it is technically feasible to produce drainage pipe made with up to 100 percent postconsumer HDPE. However, EPA requests comment on whether there is an adequate supply of quality postconsumer HDPE feedstock to meet the needs of the drainage pipe market.

b. *Sewer.* EPA has identified four manufacturers of sewer pipe made of recovered materials ranging from 20 to 100 percent. Although two of these manufacturers reportedly use HDPE, EPA understands that PVC is the dominant resin used in the manufacture of sewer pipe. The American Plastics Council reported that only 0.2 percent of postconsumer PVC sold in 1992 was recycled, compared with a 5 percent recycling rate for postconsumer HDPE. Postconsumer PVC is not as widely available as postconsumer HDPE. Therefore, for sewer pipe and fittings, EPA is recommending total recovered materials content levels of 40 to 100 percent, rather than postconsumer recovered materials content levels. EPA requests comment on whether there is an adequate supply of quality postconsumer PVC to justify recommending postconsumer content levels. Further, EPA seeks information on the availability of any standards, such as described above in section VI.A.2 for glass cullet, that are being used to specify the quality requirements of postconsumer PVC feedstock, which would aid in fostering increased markets for this material.

c. *DWV.* EPA has information on only one manufacturer of DWV pipe, who reportedly uses 40 to 100 percent recovered PVC or HDPE. However, it is likely that there are other manufacturers of DWV pipe that use recovered materials, but do not market their product as such. EPA understands from discussions with pipe industry representatives that PVC is the dominant resin used in DWV manufacturing. EPA is not recommending postconsumer recovered materials content levels for DWV pipe at this time, for the reasons cited above for sewer pipe. Rather, for DWV pipe and fittings, EPA recommends minimum recovered content levels in a range of 40 to 100 percent total recovered materials content. EPA seeks information on other manufacturers of DWV pipe made from recovered materials, including the percentages of total recovered resin and postconsumer resin and the type of resin used.

d. *Conduit.* EPA understands that PVC is the dominant resin used in the manufacture of conduit. Available information indicates no technical reasons why conduit could not contain recovered resin, because the manufacturing process and performance requirements are similar to those for the other types of pipe covered by the Comprehensive Procurement Guideline. Therefore, for conduit, EPA recommends recovered materials content levels in the range of 40 to 100 percent total recovered materials—the same range recommended for the other types of pipe. Due to the low availability of postconsumer PVC feedstock, EPA is not recommending postconsumer recovered materials content levels for conduit at this time.

EPA has not identified manufacturers of conduit who market their product as containing recovered resin, although EPA believes that at least one manufacturer is currently using recovered materials. Therefore, EPA requests information on the manufacture of conduit containing recovered resin and the percentage of recovered materials used.

3. Specifications

ASTM has approximately 20 standards for non-pressure HDPE and PVC pipe. (These standards are listed in the feasibility study for a plastic pipe procurement guideline, which has been placed in the docket for today's draft RMAN.) The materials specifications of some of these standards explicitly require the use of virgin resin; others neither allow nor preclude recovered materials content. Manufacturers who use recovered resin in their pipe products cannot meet the virgin materials requirement of some ASTM standards; however, they can receive verification by independent testing labs that their products meet the performance requirements contained within those standards. For the past few years, many members of ASTM have been interested in allowing the use of recovered materials, either by revising existing material requirements or developing new standards. However, ASTM's process of revising or developing a standard often takes several years. ASTM currently has a few projects to develop new standards, or revise existing standards, that allow recovered resin in certain non-pressure pipe applications.

In today's draft RMAN, EPA recommends that procuring agencies evaluate the ASTM standards which pertain to their pipe applications to determine whether those standards preclude the use of recovered resin. If the applicable ASTM standard precludes recovered materials, EPA encourages procuring agencies to purchase pipe that is certified to meet the applicable ASTM performance requirements, in lieu of being "ASTM approved". Procuring agencies also are encouraged to review their own construction specifications and revise them to allow for pipe meeting the ASTM performance standards and made from recovered materials.

The American Association of State Highway and Transportation Officials (AASHTO) Standard M 252–93, "Corrugated Polyethylene Drainage Tubing," also precludes the use of recovered resin. EPA understands that some members of AASHTO are evaluating whether sufficient testing and performance data exist to consider revising this standard to allow for pipe made of recovered materials. EPA encourages revision of the AASHTO standard if the technical data satisfy the concerns about the performance of plastic pipe containing recovered resins.

D. Geotextiles and Related Products

1. Preference Program

In today's draft RMAN, EPA recommends that procuring agencies establish recovered materials content standards, based on the recovered materials content levels shown in Table C–4 of the draft RMAN, for use in purchasing geotextiles. EPA further recommends that procuring agencies establish recovered materials content standards for the geotextile component of a geocomposite based on the recovered materials content levels shown in Table C–4.

2. Background

Geotextiles are currently manufactured with recovered polyethylene terephthalate (PET) and polypropylene (PP). The following sections and Table 4 provide information on the current availability of geotextiles and related products containing recovered materials. Each entry in Table 4 represents data from a manufacturer; however, manufacturers names are not listed.

TABLE 4.—RECOVERED MATERIALS CONTENT OF GEOTEXTILES AND RELATED PRODUCTS

Product	Resin	Postconsumer Materials (Percent)	Total Recovered Materials (Percent)
Geotextiles	PP	20	20
	PP	(1)	100
	PET	(1)	100
	PET	(1)	100
	PET	(1)	100
Geocomposites	PET	60	60
	PET	60	60
Geonets	(2)	(2)	(2)
Geogrids	(2)	(2)	(2)

[1] Not available.
[2] No available information.

a. *Geotextiles.* As shown in Table 4, geotextiles are currently produced using recovered PP and PET, including postconsumer recovered resin. EPA knows of two additional companies that reportedly use recovered plastic to make geotextiles; however, the specific percentage of recovered materials content could not be obtained and, therefore, was not included in Table 4.

(i) *Polyethylene terephthalate.* Three geotextile manufacturers produce needlepunched, nonwoven polyester geotextiles from 100 percent recovered PET. EPA does not have information on the percentage of postconsumer content in these products. However, EPA believes that it is technically feasible to manufacture geotextiles with a high percent of postconsumer PET, and that there are sufficient supplies of postconsumer PET feedstock available for the geotextile market. In 1992, postconsumer PET had the highest recycling rate of all plastic resins, 23.8 percent (460.5 million pounds), according to the American Plastics Council. Therefore, for geotextiles made of PET, in today's draft RMAN, EPA recommends recovered materials content levels in a range of 50 to 100 percent postconsumer materials.

(ii) *Polypropylene.* One company produces woven and nonwoven geotextiles containing 20 percent postconsumer PP. Another manufacturer produces geotextiles from 100 percent recovered PP for use in erosion control applications. The American Plastics Council reported that, in 1992, postconsumer PP was recycled at a rate of 3.0 percent (222.4 million pounds). EPA believes that there is a sufficient supply of postconsumer PP to justify recommending recovered materials content levels in a range of 20 to 100 percent postconsumer materials. EPA believes that if procuring agencies purchase geotextiles within this range, there will be an increase in demand for postconsumer PP, which may thereby contribute to an increase in its diversion from the waste stream. EPA requests information on whether there are sufficient supplies of postconsumer recovered PP of appropriate quality to meet the needs of the geotextile industry. EPA also requests information on whether there are any quality specifications for postconsumer PP feedstock, such as the ASTM specification for glass cullet described in section V.A.2 above, which would be useful to plastics processors and remanufacturers. In addition, EPA requests comment on whether a separate standard should be recommended for woven vs. nonwoven geotextiles (either made of PET or PP), due to the higher strength properties of woven geotextiles.

b. *Geogrids and geonets.* No geogrid or geonet manufacturers are known to use recovered plastic to make their products. EPA requests comment on whether there are manufacturers of geogrids and geonets containing recovered resin.

c. *Geocomposites.* Geocomposite products are combinations of other types of geosynthetics, for example, geogrid-geomembrane composites, geotextile-geomembrane composites, and geotextile-geotextile composites. EPA is aware of two geocomposite manufacturers that make their products with 60 percent postconsumer PET, and market their products for landfill liner and cap applications. EPA understands that the geocomposites made by one of these companies consist of a 100 percent recovered PET geotextile combined with a geomembrane.

EPA is not recommending separate recovered materials content levels for geocomposites; however, EPA recommends that procuring agencies establish minimum recovered materials content standards for the geotextile layer of geocomposites, based on the recovered materials content levels for geotextiles set forth in Table C–4 of the draft RMAN.

3. Specifications

EPA has identified no standards that preclude the use of recovered resin in the manufacture of geotextiles, geonets, geogrids or geocomposites.

a. *Geotextiles.* Standards for the manufacture and use of geotextiles are governed primarily by ASTM. ASTM's Committee D–35 on Geosynthetics has developed 22 standards, 13 of which apply to geotextiles. All but one of these geotextile standards describe procedures for testing geotextiles for certain properties, such as tensile strength and ultraviolet light resistance. These test methods are used mainly to compare different types of geotextiles and for acceptance testing. The one ASTM geotextile standard that is not a test method provides instructions on how to accept, store, and handle geotextiles. None of these standards require that geotextiles be manufactured with virgin resin.

Other groups that oversee the use of geotextiles include the AASHTO, State Departments of Transportation, and several Federal agencies such as the Federal Highway Administration and EPA. None of these groups require that geotextiles be made of virgin resin.

Because there are no specifications that prohibit the use of recovered resins in the manufacture of geotextiles, EPA does not foresee that procuring agencies will encounter any problems with procuring geotextiles containing recovered materials that meet the desired applications.

b. *Geogrids, geonets, and geocomposites.* Only one of the 13 ASTM geotextile standards also applies to these related products. This standard, ASTM D 4716, "Standard Test Method for Constant Head Hydraulic Transmissivity (In-Plane Flow) of Geotextiles and Geotextile Related

Products," describes how to measure the flow of water through geotextiles and related products under different circumstances. This standard does not preclude the use of recovered plastics in the manufacture of geotextiles or related products.

E. Cement and Concrete Containing Ground Granulated Blast Furnace Slag

1. Preference Program

In today's draft RMAN, EPA recommends that procuring agencies revise their procurement programs for cement and concrete or for construction projects involving cement and concrete to allow use of ground granulated blast furnace (GGBF) slag, as appropriate. EPA recommends that procuring agencies specifically include provisions in all construction contracts to allow for the use, as optional or alternate materials, of cement or concrete which contains GGBF slag, where appropriate.

Due to variations in GGBF slag, cement strength requirements, costs, and construction practices for the particular cement or concrete application, EPA is not recommending that procuring agencies establish a specific minimum content standard for cement or concrete containing GGBF slag. However, EPA notes that, according to ASTM Standard Specification C 595, Standard Specification for Blended Hydraulic Cements, GGBF slag may replace up to 70 percent of the portland cement in some concrete mixtures. Most GGBF slag concrete mixtures contain between 25 and 50 percent GGBF slag by weight. EPA recommends that procuring agencies refer to ASTM C 595 for the GGBF slag content appropriate for the intended use of the cement and concrete.

2. Background

EPA's 1983 procurement guideline for cement and concrete containing fly ash contains recommendations for the use of those products. In the Comprehensive Procurement Guideline proposed elsewhere in the **Federal Register** today, EPA is proposing to amend the cement and concrete designation to add use of GGBF slag. As explained in the proposed CPG, EPA considered designating cement and concrete containing GGBF slag in the 1983 guideline but did not do so because the product was not available nationwide. From information recently provided by GGBF slag producers, EPA concludes that GGBF slag is now sufficiently available to add it to the cement and concrete guideline.

EPA proposes to revise the 1983 recommendations to incorporate the use of GGBF slag in cement and concrete. Specifically, EPA is revising the general procurement provision and the sections on guide specifications, contract specifications, materials specifications, and performance standards. In the final RMAN, EPA will combine the proposed revisions with the existing recommendations for cement and concrete containing fly ash.

There has been some confusion about whether the scope of the 1983 cement and concrete guideline includes municipal combustor ash, because the title of the guideline is "cement and concrete containing fly ash." While the text of the 1983 guideline clearly explains that the item designation is limited to fly ash generated by coal burning utilities, EPA plans to clear up any ambiguity in the final RMAN, by referring to the material as coal fly ash.

3. Specifications

ASTM, AASHTO, and the American Concrete Institute publish consensus specifications for cement and concrete, including the use of recovered materials such as GGBF slag in these items. EPA lists these specifications in the draft RMAN and recommends that procuring agencies use these voluntary consensus specifications for cement and concrete containing GGBF slag.

In addition, the States of Maryland, West Virginia, Pennsylvania, Virginia, Georgia, South Carolina, and Florida have adopted specifications which allow use of GGBF slag in cement and concrete. The specifications are available from the state transportation departments should procuring agencies wish to adapt them for use in their affirmative procurement programs for cement and concrete containing GGBF slag.

F. Carpet

1. Preference Program

In today's draft RMAN, EPA recommends that, for polyester carpet used in low- and medium-wear applications, procuring agencies establish minimum content standards at a level of 100 percent postconsumer recovered materials, as shown in Table C–6 of the draft RMAN.

EPA further recommends that Federal procuring agencies use GSA's New Item Introductory Schedule when purchasing polyester carpet containing recovered materials. EPA also recommends that procuring agencies review their specifications and revise them to permit, where suitable, the use of polyester carpet containing recovered materials. In particular, EPA recommends that agencies currently limiting carpet materials to nylon and/or wool consider adding polyester carpet, where appropriate, to enable them to procure carpet containing recovered materials.

2. Background

Broadloom carpet, meaning roll goods in 12-foot widths, for wall-to-wall installation, generally is comprised of face fibers (made of nylon, polyester, wool, or polyethylene) inserted into a primary backing, which is usually made of polypropylene materials. The majority of carpet manufactured in the U.S. is made of nylon carpet fibers, with a smaller percentage (about 10 percent) made of polyester.

In the CPG, the proposed item designation for polyester carpet is limited to uses in low- and medium-wear applications. Therefore, the recommendations for recovered materials content levels are also limited to polyester carpet used in low- and medium-wear applications.

As discussed in the CPG, although nylon comprises a much larger share of the carpet fiber market than polyester, at this time, carpet containing recovered materials is being manufactured only from recovered PET. In addition, one major manufacturer of nylon and nylon carpet fibers has initiated a pilot project to recover nylon from old carpet and remanufacture it into new products, including new carpet fiber. Because this process is only now being developed, EPA is limiting the proposed item designation in the CPG to polyester carpet and is not recommending recovered materials content levels for nylon carpet in today's draft RMAN.

The General Services Administration (GSA) lists recovered polyester carpet on its current New Item Introductory Schedule (NIIS), which is effective until September 30, 1995. EPA has identified two companies that manufacture carpet fiber with 100 percent postconsumer PET. One of these vendors is currently listed under this GSA contract. An item may be listed on the NIIS for up to 3 years; during that time, the item can be purchased by Federal agencies while testing is conducted and data are gathered to ensure the product's performance. If the item is acceptable and demand warrants, it may be placed under a permanent method of supply.

3. Specifications

GSA does not establish specifications for items listed on a New Item Introductory Schedule. GSA currently does not have separate specifications for polyester carpet made of recovered

materials, but does require that carpet containing recovered materials meet the same technical requirements as carpet made from virgin materials. Examples of GSA's specifications for polyester carpet include pile density, pile weight, twist, colorfastness, tuft bind, and flammability. The test methods required to verify these specifications are consistent with those of other organizations (e.g., ASTM).

Today's draft recommendations for polyester carpet do not apply in cases where Federal specifications require the use of carpet made with nylon, wool, or other materials. However, if a specification allows flexibility in choosing the type of carpet fiber, EPA recommends that procuring agencies evaluate whether polyester carpet is appropriate to meet their needs, and, if so, to specify polyester carpet containing recovered materials.

G. Floor Tiles and Patio Blocks

1. Preference Program

In today's draft RMAN, EPA recommends that, for floor tiles and patio blocks made of rubber or plastic, procuring agencies establish minimum recovered materials content standards. EPA recommends that procuring agencies establish the standards within the range of recovered materials content levels shown in Table C–7 of the draft RMAN. EPA's recommendation does not preclude procuring agencies from purchasing floor tiles or patio blocks manufactured from another material. It simply recommends that procuring agencies, when purchasing floor tiles or patio blocks made from rubber or plastic, purchase these items made from recovered materials.

2. Background

Table 5 provides information on the availability of floor tiles and patio blocks made of recovered materials. Each entry reflects data from a manufacturer; however, manufacturers names are not listed.

TABLE 5.—RECOVERED MATERIALS CONTENT OF FLOOR TILES AND PATIO BLOCKS

Product	Material	Post-consumer materials (percent)	Total recovered materials (percent)
Floor Tiles.	Rubber ...	75–95	95
	Rubber ...	75–95	75–95
	Rubber ...	90	90
	Rubber ...	99	99
	Rubber ...	98	98
	PVC	100	100
		20	100
	PVC	100	100
	PVC	(1)	100
	PVC	(1)	100
	Mixed plastic.	(1)	(1)
	PVC	(1)	90–100
Patio Blocks.	Rubber ...	(1)	(1)
	Rubber ...	100	100
	Rubber ...	100	100
	Composite plastics.	20	100
	Plastic/wood.	60	100
	Rubber/plastic.	80–90	(2)

[1] Not available.
[2] Up to 90.

a. *Floor tiles.* EPA has identified 10 manufacturers and/or distributors of floor tiles containing recovered materials. The recovered materials used in these products include rubber derived from old tires, and various plastic resins, most commonly PVC (i.e., vinyl). Five of the 10 companies make floor tiles with postconsumer tire rubber, with recovered materials content levels ranging from 75–99 percent. The companies add a small amount of virgin rubber, adhesive fabric, or coloring agents to their products. All five companies market their products nationally for applications such as entrance ways in airports and stores, furniture showrooms, skating rinks, and fitness centers. For floor tiles made of rubber, EPA recommends minimum postconsumer recovered materials content levels between 90 and 100 percent.

Five of the 10 companies nationally market floor tiles made from recovered plastic, mainly PVC, in a range of 90 to 100 percent total recovered materials, with 20 to 100 percent postconsumer resin. A few types of floor tile are made of 90 to 100 percent preconsumer PVC from swimming pool liners, roof membranes, and automobile dashboard cutouts. These interlocking tiles are used in various applications, such as fitness centers, bathrooms, and cafeterias. Another type of tile is made of 100 percent postconsumer PVC from car doors and fender strips. These interlocking tiles are used for heavy-duty applications such as entrance vestibules, work areas behind cashier counters, and under heavy equipment in fitness centers. Because supplies of postconsumer PVC are not widely available, for floor tiles made of recovered plastic, EPA recommends total recovered materials content levels between 90 and 100 percent.

b. *Patio blocks.* EPA has identified 6 manufacturers of patio blocks made with recovered materials. The recovered materials used to make these products include rubber derived from old tires and blends of plastics resins (e.g., HDPE and LDPE), rubber/plastic, and rubber/wood. Two manufacturers offer patio blocks containing 100 percent postconsumer tire rubber. One manufacturer offers a product made of a rubber/plastic blend containing 80–90 percent postconsumer recovered materials. Based on this information, for patio blocks containing rubber or rubber blends (e.g., rubber/plastic or rubber/wood), EPA recommends recovered materials content levels of 90–100 percent postconsumer recovered materials.

Two manufacturers offer patio blocks made with blends of recovered plastic materials. One of these manufacturers produces patio blocks made with composite plastic (HDPE and LDPE) containing 20 percent postconsumer recovered materials and 100 percent total recovered materials.

The other manufacturer offers patio blocks made of a plastic/wood blend containing 60 percent postconsumer materials and 100 percent total recovered materials. Because some of the resins used to make patio blocks are not widely available at this time from postconsumer sources (e.g., LDPE), for patio blocks made of plastic or plastic blends, EPA recommends total recovered materials content levels in a range from 90–100 percent.

3. Specifications

Floor tiles made of recovered rubber or plastic have been used in a variety of applications, including fitness centers, bathrooms, cafeterias, entrance vestibules, work areas, and laboratories. These uses are consistent with the potential uses by procuring agencies. Patio blocks made of recovered materials have been used in the construction of garden walkways and trails. EPA is not aware of any specifications that prohibit the use of recovered materials in the manufacture of floor tiles or patio blocks.

EPA knows of one specification for rubber floor tiles, ASTM F 1344, "Standard Specification for Rubber Floor Tile." This specification does not preclude the use of recovered materials

in the manufacture of floor tiles. EPA is not aware of any specifications for patio blocks and requests information about them.

VII. Recommendations for Transportation Products

Part D of the draft RMAN contains EPA's recommendations for transportation products. Today, in Section D–1, EPA makes recommendations for temporary traffic control devices.

A. Temporary Traffic Control Devices

1. Preference Program

In today's draft RMAN, EPA recommends that, based on the recovered materials content levels shown in Table D–1, procuring agencies establish minimum content standards for traffic cones and Type I and Type II traffic barricades.

2. Background

a. *Traffic cones.* As shown in Table 6, traffic cones are currently manufactured using LDPE, PVC, and crumb rubber from tires. Percentages of recovered LDPE and PVC range from 50 to 100 percent, with the postconsumer content of these materials ranging up to 15 percent. The base of the cones is typically manufactured from 50 to 100 percent crumb rubber derived from whole scrap tires or buffings recovered during the retreading process. "Buffings" are considered to be postconsumer recovered materials.

Based on this information, in today's draft RMAN, EPA recommends recovered materials content levels in the range of 50–100 percent total recovered materials for traffic cones, consisting of recovered plastic resins, rubber from whole scrap tires or derived from the retreading process, or blends of the two materials. At this time, due to the fact that many of the traffic cones identified by EPA contained relatively small percentages of postconsumer recovered plastics, EPA is not recommending that procuring agencies establish a postconsumer recovered materials content standard. Most manufacturers of these products indicated that they were seeking to increase percentages of postconsumer recovered content, however. Should procuring agencies establish postconsumer recovered materials content standards, the supply of traffic cones meeting the standards might not be sufficient. EPA is requesting information on the availability of traffic cones manufactured with postconsumer recovered materials that meet Federal performance specifications.

TABLE 6.—RECOVERED MATERIALS CONTENT IN TRAFFIC CONES AND TRAFFIC BARRICADES

Type of product	Material	Postconsumer materials (percent)	Total recovered materials (percent)
Traffic cones	PVC	3–15	68–92.
	PVC	6–7	50.
	PVC	0	100.
	Crumb rubber	15–25	15–25.
	Crumb rubber-base	50–100	100.
	LDPE-cone	0	50.
	HDPE	50–100	100.
	HDPE	80–100	100.
	HDPE	99–100	100.
Traffic barricades. (Types I and II)	HDPE + LDPE	90	100.
	HDPE + PET	80–100	100.
	Fiberglass	0	100.
	Wood + Metal	Not available	Not available.

b. *Traffic barricades.* As shown in Table 6, Type I and II traffic barricades are typically made from wood, metal, HDPE, PET, LDPE, fiberglass or combinations of these materials. For barricades containing recovered plastic, percentages of postconsumer recovered plastic range from 50 to 100 percent, with total recovered materials content at 100 percent. Four of the five manufacturers use 80–100 percent postconsumer recovered plastic. EPA was not able to obtain information on use of recovered wood or metals and requests this information for Type I, Type II or Type III traffic barricades.

Based on the information in Table 6, for Type I and II traffic barricades, EPA recommends a minimum recovered materials content level of 100 percent total recovered materials content. In addition, for barricades containing recovered plastic resins, EPA recommends postconsumer recovered plastic levels in a range from 80–100 percent. Numerous manufacturers in the United States make traffic barricades capable of meeting or exceeding this content level.

3. Specifications

Section 635 of "Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP–85" contains Federal specifications for temporary traffic control devices. This section includes descriptions of various temporary traffic control devices. EPA examined the specifications and found that section 635.02 of these specifications does not preclude the use of recovered materials in these devices. The Federal specifications reference the requirements contained in the MUTCD, which also do not preclude use of recovered materials.

In addition to the Federal specifications, state procuring agencies may have additional materials or performance requirements for temporary traffic control devices. Several state procuring agencies have additional requirements and programs to test or confirm materials properties of traffic control devices prior to acceptance of shipment. Most currently available traffic barricades containing recovered materials are able to meet or exceed specific state requirements. In addition, at least five states explicitly specify a preference for traffic control devices made from recovered materials.

VIII. Recommendations for Park and Recreation Products

Part E of the draft RMAN contains EPA's recommendations for park and recreation products. Today, in Section E–1, EPA is making recommendations for playground surfaces and running tracks.

A. Playground Surfaces and Running Tracks

1. Preference Program

In today's RMAN, EPA recommends that, based on the recovered materials content levels shown in Table E–1, procuring agencies establish minimum recovered materials content standards for use in purchasing playground surfaces and running tracks made of rubber or plastic. EPA's recommendation does not preclude procuring agencies from purchasing playground surfaces or running tracks manufactured from another material. It simply recommends that procuring agencies, when purchasing playground surfaces or running tracks made from rubber or plastic, purchase these items made from recovered materials.

2. Background

Tables 7 and 8 provide information on the availability of playground surfaces and running tracks made of recovered materials, respectively. Each entry represents data from a manufacturer or distributor; however, company names are not listed.

TABLE 7.—RECOVERED MATERIALS CONTENT OF PLAYGROUND SURFACES

Product	Material	Postconsumer material (percent)	Total recovered materials (percent)
Playground surfaces	Rubber/asphalt	60 (tires)/40 (asphalt)	100
	Rubber	100	100
	Rubber	100	100
	Rubber	90	90
	Rubber	50	50
	Rubber	100	100
	Rubber	100	100
	Rubber	100	100
	Rubber/compost	100	100
	Rubber/PVC	80 (rubber)/20 (PVC)	100
	PVC	100	100
	Rubber	100	100
	Rubber	100	100
	Rubber	90	90
	Rubber	90	90
	Rubber	90	90
	Rubber	100	100
	Rubber	100	100
	Rubber	100	100
	Rubber	100	100
	Rubber	100	100

TABLE 8.—RECOVERED MATERIALS CONTENT OF RUNNING TRACKS

Product	Material	Postconsumer material (percent)	Total recovered materials (percent)
Running tracks	Rubber	77	77
	Rubber	100	100
	Rubber	100 (90–95 for colored products)	100
	Rubber	100	100

a. *Playground surfaces.* EPA has identified 20 manufacturers/distributors of playground surfaces made with recovered materials. These companies offer products made of postconsumer rubber derived from old tires, with a range of 50 to 100 percent postconsumer rubber. Three of these companies use other recovered materials as well, including blends of rubber/asphalt, rubber/compost, and rubber/PVC. One of these companies also makes playground surfaces of 100 percent postconsumer PVC. Fourteen of the 20 companies offer playground surfaces made with 100 percent postconsumer materials. All but one of the 20 companies offers this product with 90 percent or greater postconsumer materials. Therefore, for playground surfaces made of rubber or plastic, EPA recommends recovered materials content levels in a range of 90–100 percent postconsumer materials.

b. *Running tracks.* Some of the companies that make playground surfaces also make running tracks of postconsumer rubber from tires. EPA obtained information from four of these companies, each of which offers running tracks containing 77–100 percent postconsumer rubber. Three of the four companies offer running tracks containing 100 percent postconsumer recovered rubber. One of these companies also offers a colored running track that contains 90–95 percent postconsumer recovered rubber. Those companies that do not use 100 percent postconsumer recovered materials use either a layer of virgin resin to provide added spike resistance, or use 5 to 10 percent preconsumer rubber for coloring. One of these companies constructed the 1984 Olympic running tracks with recovered materials, and has constructed running tracks for universities, schools, and state governments. Based on this information, for running tracks made of rubber or plastic, EPA recommends recovered materials content levels in a range from 90–100 percent postconsumer recovered materials.

3. Specifications

GSA does not have specifications for playground surfaces or running tracks; however, Federal agency installations of these products must comply with applicable State or local construction codes, as well as standards set by the Consumer Product Safety Commission

and the Americans With Disabilities Act. The Consumer Product Safety Commission requires that playground surfaces meet certain performance standards to reduce head injuries, including ASTM F 1292 pertaining to impact attenuation standards. Playground surfacing and running tracks must also comply with the Americans With Disabilities Act which provides that mobility-impaired persons cannot be prohibited from access to public places.

Running tracks are not listed in GSA's Federal Supply Schedule, but playground surfaces are listed [Group 78, Part 1, Schedule C; Class 7830; Special Item Number (SIN) 192–37e, "Playground Equipment, Safety Surfacing, and Replacement Parts"]. At least one contractor under this SIN offers playground surfaces made with recovered rubber.

IX. Recommendations for Landscaping Products

Part F of the draft RMAN contains EPA's recommendations for landscaping products. Today, in sections F–1 and F–2, respectively, EPA makes recommendations for hydraulic mulch products and for yard trimmings compost.

A. Hydraulic Mulch Products

1. Preference Program

In today's draft RMAN, EPA recommends that, based on the recovered materials content levels shown in Table F–1, procuring agencies establish minimum content standards for hydraulic mulch products. For paper-based hydraulic mulch, EPA recommends a level of 100 percent postconsumer paper. For wood-based hydraulic mulch and hydraulic mulch containing both recovered wood and paper, EPA recommends a level of 100 percent recovered materials. The recovered materials content should be based on the dry weight of the fiber, exclusive of any dyes, wetting agents, seeds, fertilizer, or other non-cellulose additives.

2. Background

The majority of manufacturers about which EPA has information are using recovered materials at a content level of 100 percent. Depending on the manufacturer, the recovered materials used are postconsumer and over-issue paper, recovered wood, or a combination of recovered paper and wood.

Paper-based hydraulic mulch is produced using recovered paper as a feedstock. Postconsumer newspapers are the primary recovered paper used, but some manufacturers are mixing in over-issue newspapers and/or magazines, and postconsumer corrugated containers, office paper, and telephone books.

Paper-based hydraulic mulch is manufactured primarily by cellulose insulation manufacturers. EPA is aware of 37 manufacturers that produce both cellulose insulation and hydraulic mulch. Recovered paper content ranges between 80 and 100 percent, with the majority of these manufacturers using 100 percent postconsumer paper.

Wood-based hydraulic mulch generally is manufactured with 100 percent wood fibers, which are separated from wood scraps, wood chips, and bark. At least one manufacturer of wood-based hydraulic mulch produces a blended product containing 50 percent recovered paper. Another manufacturer produces wood-based hydraulic mulch products containing 100 percent postconsumer recovered wood and blends of postconsumer recovered wood and paper.

3. Specifications

Manufacturers of both paper-based and wood-based hydraulic mulch products claim superior performance compared to the other product. It is EPA's understanding that the International Erosion Control Association is developing performance standards for hydraulic mulch to resolve the dispute over performance. The standards will be based on the amount of vegetation produced, not on physical specifications of the product. As of January 1994, these standards were still under development.

Limited research conducted for EPA revealed that at least the States of California, Illinois, Michigan, Pennsylvania, Texas, Virginia, and Washington allow the use of paper-based hydraulic mulch. EPA requests information on other state or consensus specifications for hydraulic mulch products containing recovered materials.

B. Yard Trimmings Compost

1. Preference Program

In today's draft RMAN, EPA recommends that procuring agencies purchase or use compost made from yard trimmings, leaves, and/or grass clippings for use in such applications as landscaping, seeding of grass or other plants on roadsides and embankments, under trees and shrubs, and in erosion control and soil reclamation.

EPA further recommends that those procuring agencies that have an adequate volume of yard trimmings, leaves, and/or grass clippings, as well as sufficient space for composting, should implement a composting system to produce a mature, high-quality compost from these materials for use in landscaping and other applications.

2. Background

Composting is a biological process of stabilizing organic matter under controlled conditions into a product that is rich in humus and provides organic matter and nutrients to the soil. Compost serves as an alternative method of managing those organics that would otherwise be landfilled. Yard trimmings are the least controversial feedstock for compost. When grass clippings are included with leaves and other yard trimmings, the resulting compost can serve as a suitable nitrogen source with an optimal carbon/nitrogen ratio for most applications.

Compost can be used in agriculture, horticulture, silviculture (growing of trees), and in landscaping. It is used as a soil conditioner, soil amendment, lawn top dressing, potting soil mixture, rooting medium, and mulch for shrubs and trees, and for improvement of golf and other sports turf. It also can be used in erosion control and in land reclamation and revegetation of roadsides after road construction. As a result, compost should have wide applicability to procuring agencies for landscaping, gardening, seeding, and other applications.

Because of the high volume of yard trimmings currently discarded each year, there is no shortage of raw materials that would preclude composting facilities from supplying large volumes of yard trimmings compost. A significant portion of the yard trimmings is being composted, and the percentage is increasing. At the end of 1992, there were nearly 3,000 composting facilities in the U.S. Thus, the quantity of compost available from local sources is expected to increase in the near future.

The State of Maine has developed quality standards for compost products used by various state agencies or purchased with state funds. The quality standards have been set for six types of compost products, ranging from topsoil (three classes), to wetland substrate, to mulch (two classes). For each of these types of compost product, standards for maturity, odor, texture, nutrients, pH, salt content, organic content, pathogen reduction, heavy metals, foreign matter, moisture content and density have been established. EPA has placed a copy of this regulation, "Chapter 560 Standards

for Compost Products", in the docket for the draft RMAN.

3. Specifications

Procuring agencies should ensure that there is no language in their specifications for fertilizers and soil amendments that would preclude or discourage the use of compost. For instance, if specifications address the use of straw or hay in roadside revegetation projects, procuring agencies should assess whether compost could be substituted for straw or hay or used in combination with them.

The Composting Council is helping to define and develop industry-wide standards for composts. The standards will include a Standard Operating Guide for composting facilities, which is currently available in draft form from The Composting Council, as well as standards for suitability of different types of composts for different markets, depending on the content of the compost.

X. Recommendations for Non-Paper Office Products

Part G of the draft RMAN contains EPA's recommendations for non-paper office products. Today, EPA is making recommendations for office recycling containers and office waste receptacles (Section G–1), plastic desktop accessories (Section G–2), remanufactured toner cartridges (Section G–3), binders (Section G–4), and trash bags (Section G–5).

A. Office Recycling Containers and Office Waste Receptacles

1. Preference Program

In today's draft RMAN, EPA recommends that, based on the recovered materials content levels shown in Table G–1, procuring agencies establish minimum content standards for plastic office recycling containers and office waste receptacles. EPA also recommends that when purchasing office recycling containers and waste receptacles made from paper or steel, procuring agencies purchase these items containing recovered paper, as specified in EPA's guideline for paper and paper products (40 CFR part 250), and recovered steel, respectively. EPA currently does not have information on the types and levels of and recovered materials levels contained in steel containers and receptacles and is interested in obtaining this information.

EPA's recommendation for office recycling containers and office waste receptacles containing recovered materials does not preclude procuring agencies from purchasing containers or receptacles manufactured using another material, such as wood. It simply recommends that procuring agencies, when purchasing office recycling containers or office waste receptacles manufactured from plastic or paper, should seek such containers made with recovered materials as recommended in Table G–1. When purchasing these containers made with steel, procuring agencies should seek the highest level of postconsumer recovered materials practicable.

2. Background

EPA knows of at least four manufacturers that produce office recycling containers and office waste receptacles made with recovered materials in the range of 20–100 percent postconsumer recovered plastic, by weight. Containers are available through GSA's Federal Supply Schedule 72 VII B, "Recycling Collection Containers and Specialty Waste Receptacles."

GSA also has fiberboard recycling containers available through its Special Order Program. In addition, EPA's paper procurement guideline (40 CFR part 250) contains recommended postconsumer recovered materials content levels for recycling containers made from fiberboard or other papers. (As previously discussed, EPA's recommendations for paper products will be found in Part A in the final RMAN.)

3. Specifications

According to the information available to EPA, there are no national or Federal specifications that preclude the use of recovered materials content in the manufacture of office recycling containers or waste receptacles. In lieu of referencing national or Federal specifications, EPA recommends that procuring agencies incorporate recovered materials content requirements into solicitation or contract documents when purchasing these products.

B. Plastic Desktop Accessories

1. Preference Program

In today's draft RMAN, EPA recommends that, based on the recovered materials content levels should in Table G–2, procuring agencies establish minimum content standards for plastic desktop accessories.

EPA's recommendation does not preclude procuring agencies from purchasing a desktop accessory manufactured from another material, such as, paper, wood, or steel. It simply recommends that procuring agencies, when purchasing plastic desktop accessories, purchase these accessories made from recovered materials.

2. Background

EPA knows of at least three manufacturers that produce plastic desktop accessories with recovered materials content in the range of 25–80 percent postconsumer recovered plastic, by weight. In addition, several office products distributors carry these accessories as part of their product lines. GSA makes these products available through its Federal Supply Schedule.

Currently, EPA has information on plastic desktop accessories made from postconsumer recovered polystyrene only. EPA requests information on whether desk accessories are being made from other recovered plastic materials and the recovered materials content levels of those items.

3. Specifications

According to the information available to EPA, there are no national or Federal specifications that preclude the use of recovered materials in the manufacture of plastic desktop accessories. In lieu of referencing national or Federal specifications, procuring agencies usually incorporate recovered materials content requirements into their solicitation or contract documents when purchasing these products.

C. Remanufactured Toner Cartridges

1. Preference Program

In today's draft RMAN, EPA recommends that, in lieu of minimum content standards, procuring agencies establish procedures for purchasing remanufactured toner cartridges using the substantially equivalent alternative option, as set forth in RCRA section 6002(i)(3). EPA recommends that procuring agencies adopt one or both of the following approaches: (1) Procure toner cartridge remanufacturing services or (2) procure remanufactured toner cartridges as products. EPA further recommends that procuring agencies establish policies that give priority to remanufacturing the agencies' expended toner cartridges. In other words, under these policies, procuring agencies will first procure toner cartridge remanufacturing services for any accumulated expended cartridges. When such services are unavailable or not practicable, then procuring agencies should obtain remanufactured toner cartridges from vendors of these items.

2. Background

As discussed in section III above, minimum content standards are not

appropriate for remanufactured items because a core part of the item is reused in the new product, rather than ground up and fed into a manufacturing process. This is true in the case of toner cartridge remanufacturing. Therefore, although certain components of a toner cartridge may contain recovered materials, it is inappropriate for EPA to recommend that procuring agencies establish minimum content standards for remanufactured toner cartridges.

Toner cartridge remanufacturing services are available and increasing in usage. Over the past few years, the number of vendors that offer toner cartridge remanufacturing services has increased substantially. As of January 1994, GSA maintained a New Item Introductory Schedule (NIIS) for toner cartridges. In addition, GSA has four vendors that provide remanufactured toner cartridges to its stock program.

3. Specifications

GSA has set forth procedures by which remanufacturers providing remanufactured toner cartridges to its stock program are to disassemble, clean, refill, and reassemble expended cartridges.

D. Binders

1. Preference Program

In today's draft RMAN, EPA recommends that, based on the recovered materials content levels shown in Table G–4, procuring agencies establish minimum content standards for the plastic covering used in plastic-covered binders. The chipboard or paperboard component of a plastic-covered binder or a binder covered with another material, such as cloth, is covered under EPA's procurement guideline for paper and paper products (40 CFR part 250). EPA also recommends that, for chipboard binders, procuring agencies establish minimum content standards consistent with EPA's recommended recovered materials content levels for paperboard (40 CFR part 250).

EPA's recommendation for plastic-covered and chipboard binders does not preclude procuring agencies from purchasing a binder covered with or manufactured using another material, such as cloth. It simply recommends that procuring agencies, when purchasing chipboard or plastic-covered binders, purchase these binders containing recovered materials.

2. Background

EPA is aware of at least three manufacturers that produce plastic-covered binders with recovered plastic content in the covering, and two manufacturers that produce chipboard binders with recovered paper content. The manufacturers of the plastic-covered binders use recovered plastic in a range of 50–60 percent recovered plastic, by weight. At least one of the manufacturers of plastic-covered binders with recovered plastic content sells its binders through GSA's New Item Introductory Schedule.

Several states have also issued solicitations for plastic-covered and chipboard binders containing recovered materials.

In the paper guideline (40 CFR part 250), EPA recommends postconsumer recovered materials content levels for paperboard, which would include chipboard. (As previously discussed, EPA's recommendations for paper products will be found in Part A in the final RMAN.)

3. Specifications

GSA's specification for binders, A–A–2549A, "Binder, Loose-Leaf (Ring)," covers four types of binders, including cloth bound, flexible cover; cloth bound, stiff cover; plastic bound, flexible cover; and plastic bound, stiff cover. In the specification, GSA requires its binders to contain "a minimum of 100% waste paper, including a minimum of 30% postconsumer recovered materials." There are no requirements in this specification that preclude the use of recovered materials in the plastic covering of plastic-covered binders. However, one manufacturer stated that one test method cited in the specification, the Cold Crack test, may prohibit the use of recovered plastic in the covering for plastic-covered binders. EPA is requesting information on the ability of vendors to meet this specification when using recovered plastics.

According to the information available to EPA, there are no national or Federal specifications that preclude the use of recovered paper in the manufacture of chipboard binders.

E. Plastic Trash Bags

1. Preference Program

In today's draft RMAN, EPA recommends that, based on the recovered materials content levels shown in Table G–4, procuring agencies establish minimum content standards for plastic trash bags. EPA's recommendation does not preclude procuring agencies from purchasing trash bags manufactured using another material, such as paper. It merely recommends that a procuring agency, when purchasing plastic trash bags, purchase these items made from recovered materials.

2. Background

EPA knows of at least five manufacturers that produce trash bags with postconsumer recovered materials content ranging from 30–100 percent. The National Association of State Purchasing Officials' Recycled Product Database, which provides detailed information on state purchases of products containing recovered materials, lists 88 different contracts for plastic "liners" with recovered materials content. In addition, trash bags with recovered materials content are available from the GSA "Supply Catalog."

Currently, EPA has information only about trash bags made from postconsumer recovered plastic. EPA is interested in obtaining information on trash bags made from other recovered materials and the recovered materials content levels of those products.

3. Specifications

GSA's Commercial Item Description (CID) for general purpose plastic bags, A–A–2299B, covers plastic trash bags. This CID is based on performance requirements. According to the information available to EPA, CID A–A–2299B does not preclude the use of recovered materials content in the manufacture of plastic trash bags.

In addition, several states, including Michigan, Nebraska, Minnesota, Delaware, and Wisconsin, have their own specifications for plastic trash bags containing recovered materials.

XI. Recommendations for Miscellaneous Products

Part H of the RMAN will contain recommendations for designated items that do not fall within the other product categories. EPA is reserving this section of the RMAN for future recommendations. Because EPA is not proposing to designate any items in the miscellaneous products category in the Comprehensive Procurement Guideline today, EPA is not making any recommendations in this category of the draft RMAN today.

Dated: April 13, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, EPA recommends the following procurement practices and recovered materials content levels for procuring agencies to use when purchasing designated items pursuant to section 6002 of the Resource Conservation and Recovery Act of 1976.

Draft Recovered Materials Advisory Notice

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I. General Recommendations for Affirmative Procurement Programs

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Part C—Construction Products

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Part G—Non-Paper Office Products

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Part H—Miscellaneous Products

I. General Recommendations for Affirmative Procurement Programs

EPA recommends that the Environmental Executive within each major procuring agency take the lead in developing the agency's affirmative procurement program and in implementing the recommendations set forth in this RMAN. The basic responsibilities of an Agency Environmental Executive are described in sections 302 and 402 of Executive Order 12873. In the absence of such an individual, EPA recommends that the head of the implementing agency appoint an individual who will be responsible for ensuring the agency's compliance with RCRA section 6002 and Executive Order 12873.

Affirmative Procurement Program: Although RCRA section 6002 and the Executive Order require procuring agencies to establish affirmative procurement programs for each EPA-designated item, EPA recommends that each agency develop one comprehensive affirmative procurement program with a structure that allows for the integration of new items as they are designated. EPA encourages agencies to implement preference programs for non-guideline items as well, in order to maximize their purchases of recycled products and foster markets for recovered materials.

Preference Program: For most items, EPA recommends that procuring agencies establish minimum content standards based on EPA's recovered materials content level recommendations and the procuring agencies' own research. For other items, the use of minimum content standards is inappropriate, and procuring agencies should establish an alternative program, as recommended by EPA.

Promotion Program: EPA recommends that procuring agencies include both internal and external promotion in their affirmative procurement programs.

There are several methods that procuring agencies can use to educate their employees about their affirmative procurement programs. These methods include preparing and distributing agency affirmative procurement policies, publishing articles in agency newsletters and publications, including affirmative procurement program requirements in agency staff manuals, and conducting workshops and training sessions to educate employees about their responsibilities under agency affirmative procurement programs.

Methods for educating existing contractors and potential bidders of an agency's preference to purchase products containing recovered materials include publishing articles in appropriate trade publications, participating in vendor shows and trade fairs, placing statements in solicitations, and discussing an agency's affirmative procurement program at bidders' conferences.

Monitoring: EPA recommends that procuring agencies monitor their affirmative procurement programs, in accordance with RCRA section 6002(i)(2)(D) and Executive Order 12873, to ensure that they are fulfilling their requirements to purchase items composed of recovered materials to the maximum extent practicable. EPA anticipates that the Federal Environmental Executive and the Office of Federal Procurement Policy will request information from Federal agencies on their affirmative procurement practices. Therefore, EPA recommends that Federal procuring agencies maintain adequate records of procurements that may be affected by the Executive Order and RCRA requirements.

EPA recommends that procuring agencies track their purchases of products made with recovered materials content to establish benchmarks from which progress can be assessed. To maintain adequate records on procurement of products containing recovered materials, EPA recommends that procuring agencies choose to collect data on the following:

- The percentages of recovered materials content in the items procured or offered;
- Comparative price information on competitive procurements;
- The quantity of each item procured over a fiscal year;
- The availability of each item with recovered materials content; and
- Performance information related to recovered materials content of an item.

Certification: Because each product will be different, EPA recommends that procuring agencies discuss certification with product vendors to ascertain the appropriate period for certifying recovered materials content. EPA recommends that, whenever feasible, the recovered materials content of a product be certified on a batch-by-batch basis or as an average over a calendar quarter or some other appropriate averaging period as determined by the procuring agencies.

II. Specific Recommendations for Procurement of Designated Items

Part A—Paper and Paper Products
[Reserved]

Part B—Vehicular Products

Section B–1—Lubricating Oil.
[Reserved]
Section B–2—Retread Tires.
[Reserved]
Section B–3—Engine Coolants.

Preference Program: EPA recommends that procuring agencies whose vehicles are serviced by a motor pool or vehicle maintenance facility establish a program for engine coolant reclamation and reuse, consisting either of reclaiming the engine coolant on-site for use in the agencies' vehicles, or establishing service contracts for engine coolant reclamation for use in the agencies' vehicles.

Procuring agencies should note that engine coolant can contain either ethylene glycol or propylene glycol. Currently, these two types of engine coolant must be reclaimed separately. Therefore, in order to implement an engine coolant reclamation program,

EPA recommends that procuring agencies purchase only one type of engine coolant or establish procedures to prevent commingling of engine coolants containing ethylene glycol and propylene glycol.

Procuring agencies also should note that, in some instances, spent engine coolant can exhibit the toxicity characteristic of hazardous waste by failing EPA's Toxicity Characteristic Leaching Procedure (TCLP). If a procuring agency determines that its spent engine coolant is a hazardous waste, it must manage the engine coolant in accordance with applicable Federal or state hazardous waste management requirements, including the generator requirements found in 40 CFR part 262 and the requirements for recyclable materials found in 40 CFR 261.6 (or the state equivalents). Because state hazardous waste regulations generally apply in lieu of the Federal regulations, procuring agencies should contact their state environmental agency (or, if the state is not authorized, the appropriate EPA Regional Office) for specific information regarding the applicable requirements.

Part C—Construction Products

Note: Refer to Part F—Landscaping Products for additional items that can be used in construction.

Section C–1—Building Insulation.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–1, procuring agencies establish minimum content standards for use in purchasing rock wool and fiberglass insulation products.

TABLE C–1.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR ROCK WOOL AND FIBERGLASS INSULATION

Insulation material	Recovered materials (materials and percentage)
Rock wool	Slag. 75
Fiberglass	Glass cullet. 20–25

Note: The recommended recovered materials content levels are based on the weight (not volume) of materials in the insulating core only.

Specifications: EPA recommends that procuring agencies reference ASTM standard specification D 5359, "Glass Cullet Recovered from Waste for Use in Manufacture of Glass Fiber," in Invitations for Bid and Requests for Proposal.

Section C–2—Structural Fiberboard and Laminated Paperboard.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–2, procuring agencies establish minimum content standards for use in purchasing structural fiberboard or laminated paperboard products for use in either insulating or structural applications.

TABLE C–2.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR STRUCTURAL FIBERBOARD AND LAMINATED PAPERBOARD

Product	Postconsumer recovered paper (percent)	Total recovered materials content (percent)
Structural fiberboards	20	60–100
Laminated paperboards	100	100

Note: The recovered materials content levels are based on the weight (not volume) of materials in the insulating core only.

Specifications: EPA recommends that procuring agencies use ASTM Standard Specification C 208 and ANSI/AHA specification A194.1. EPA further recommends that, when purchasing structural fiberboard products, procuring agencies: (1) Reference the technical requirements of ASTM C 208, "Insulating Board (Cellulosic Fiber), Structural and Decorative," (2) permit structural fiberboard products made from postconsumer and over-issue paper, and (3) permit products such as floor underlayment and roof overlay containing recovered paper.

EPA further recommends that procuring agencies review their specifications for insulating products and revise them as necessary to obtain the appropriate "R"-value without unnecessarily precluding the purchase of products containing recovered materials.

Section C–3—Plastic Pipe and Fittings.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–3, procuring agencies establish minimum content standards for use in purchasing non-pressure plastic pipe and fittings for drainage; sewer; drain, waste, and vent (DWV); and conduit applications.

TABLE C–3.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PLASTIC PIPE AND FITTINGS

Non-pressure application (includes pipe and fittings)	Recovered materials (percent)	Postconsumer recovered materials (percent)
Drainage		40–100
Sewer	40–100	
Drain, Waste and Vent (DWV)	40–100	
Conduit	40–100	

Specifications: EPA recommends that procuring agencies evaluate the applicable ASTM standards and specifications which pertain to pipe applications to determine whether those standards and specifications prohibit the use of recovered resins. If so, EPA encourages procuring agencies to purchase pipe that is certified to meet the applicable ASTM performance requirements, in lieu of pipe that is "ASTM approved."

EPA recommends that procuring agencies review their own construction specifications and revise them as appropriate to reference only the technical provisions of the applicable ASTM standards so as not to preclude pipe containing recovered materials.

Section C–4—Geotextiles and Related Products.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–4, procuring agencies establish minimum content standards for use in purchasing geotextiles.

TABLE C–4.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR GEOTEXTILES AND RELATED PRODUCTS

Product	Resin	Postconsumer recovered materials (percent)
Geotextiles	PP	20–100
	PET	50–100

Note: The geotextile layer of a geocomposite should comply with the applicable standard set forth in this table.

Section C–5—Cement and Concrete.

Preference Program: EPA recommends that procuring agencies revise their procurement programs for cement and concrete or for construction projects involving cement and concrete to allow use of ground granulated blast furnace (GGBF) slag, as appropriate. EPA recommends that procuring

agencies specifically include provisions in all construction contracts to allow for the use, as optional or alternate materials, of cement or concrete which contains GGBF slag, where appropriate.

Due to variations in GGBF slag, cement strength requirements, costs, and construction practices, EPA is not recommending recovered materials content levels for cement or concrete containing GGBF slag. However, EPA is providing the following information about recovered materials content.

• According to ASTM C 595, GGBF slag may replace up to 70 percent of the portland cement in some concrete mixtures. Most GGBF slag concrete mixtures contain between 25 and 50 percent GGBF slag by weight. EPA recommends that procuring agencies refer to ASTM C 595 for the GGBF slag content appropriate for the intended use of the cement and concrete.

Specifications: The following recommendations address guide specifications, materials specifications, contract specifications, and performance standards.

• Guide specifications. EPA recommends that procuring agencies assure that their guide specifications do not unfairly discriminate against the use of GGBF slag in cement and concrete. EPA further recommends that procuring agencies revise their guide specifications to require that contract specifications for individual construction projects or products allow for the use of GGBF slag, unless the use of these materials is technically inappropriate for a particular construction application.

• Materials specifications. EPA recommends that procuring agencies use the existing voluntary consensus specifications referenced in Table C–5 for cement and concrete containing GGBF slag.

TABLE C–5.—RECOMMENDED SPECIFICATIONS FOR CEMENT AND CONCRETE CONTAINING RECOVERED MATERIALS

Cement specifications	Concrete specifications
ASTM C 595, Standard Specification for Blended Hydraulic Cements.	ASTM C 989, Ground Granulated Blast-Furnace Slag for Use in Concrete Mortars.
AASHTO M 240, Blended Hydraulic Cements.	AASHTO M 302, Ground Granulated Blast Furnace Slag for Use in Concrete and Mortars.
	American Concrete Institute Standard Practice ACI 226.R1, Ground Granulated Blast-Furnace Slag as a Cementitious Constituent in Concrete.

• State specifications. The States of Maryland, West Virginia, Pennsylvania, Virginia, Georgia, South Carolina, and Florida have adopted specifications which allow use of GGBF slag. If needed, procuring agencies can obtain these specifications from the respective state transportation departments and adapt them for use in their programs, as appropriate.

• Contract specifications. EPA recommends that procuring agencies which prepare or review "contract" specifications for individual construction projects revise those specifications to allow the use of cement and concrete containing GGBF slag as optional or alternate materials for the project, where appropriate.

• Performance standards. EPA recommends that procuring agencies review and, if necessary, revise performance standards relating to cement or concrete construction projects to insure that they do not arbitrarily restrict the use of GGBF slag, either intentionally or inadvertently, unless the restriction is justified on a job-by-job basis: (1) To meet reasonable performance requirements for the cement or concrete or (2) because the use of GGBF slag would be inappropriate for technical reasons. EPA recommends that this justification be documented based on specific technical performance information. Legitimate documentation of technical infeasibility for GGBF slag can be for certain classes of applications, rather than on a job-by-job basis. Agencies should reference such documentation in individual contract specifications, to avoid extensive repetition of previously documented points. However, procuring agencies should be prepared to submit such documentation to scrutiny by interested persons, and should have a review process available in the event of disagreements.

Section C–6—Polyester Carpet.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–6, procuring agencies establish minimum content standards for use in purchasing polyester carpet for low and medium wear applications.

TABLE C–6.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR POLYESTER CARPET

Product	Resin	Postconsumer materials (percent)
Polyester carpet fiber.	PET	100

Specifications: EPA recommends that Federal procuring agencies use GSA's New Item Introductory Schedule when purchasing polyester carpet containing recovered materials. EPA also recommends that procuring agencies review their specifications and revise them to permit, where suitable, the use of polyester carpet containing recovered materials. In particular, EPA recommends that agencies currently limiting carpet materials to nylon and/or wool consider adding polyester carpet, where appropriate, to enable them to procure carpet containing recovered materials.

Section C–7—Floor Tiles and Patio Blocks.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–7, procuring agencies establish minimum content standards for use in purchasing floor tiles and patio blocks made with rubber or plastic.

TABLE C–7.—RECOMMENDED RECOVERED MATERIALS LEVELS FOR FLOOR TILES AND PATIO BLOCKS

Product	Material	Postconsumer materials (percent)	Total recovered materials (percent)
Patio blocks	Rubber or rubber blends	90–100	
	Plastic or plastic blends		90–100

TABLE C–7.—RECOMMENDED RECOVERED MATERIALS LEVELS FOR FLOOR TILES AND PATIO BLOCKS—Continued

Product	Material	Postconsumer materials (percent)	Total recovered materials (percent)
Floor tiles	Rubber	90–100	
	Plastic		90–100

Note: The recommended recovered materials content levels are based on the dry weight of the raw materials, exclusive of any additives such as adhesives, binders, or coloring agents. EPA's recommendation does not preclude procuring agencies from purchasing floor tiles or patio blocks manufactured from another material. It simply recommends that procuring agencies, when purchasing floor tiles or patio blocks made from rubber or plastic, purchase these items made from recovered materials.

Part D—Transportation Products

Section D–1—Temporary Traffic Control Devices.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table D–1, procuring agencies establish minimum content standards for use in traffic cones and traffic barricades.

TABLE D–1.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR TRAFFIC CONES AND TRAFFIC BARRICADES

Product	Material	Postconsumer materials (percent)	Total recovered materials (percent)
Traffic Cones	PVC, LDPE, Crumb Rubber		50–100
Traffic Barricades	HDPE, LDPE, PET	80–100	100
(Type I & II only)	Fiberglass		100

Note: The recommended recovered materials content levels are based on the dry weight of the raw materials, exclusive of any additives such as adhesives, binders, or coloring agents.

Part E—Park and Recreation Products

Section E–1—Playground Surfaces and Running Tracks.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table E–1, procuring agencies establish minimum content standards for use in purchasing playground surfaces and running tracks made of rubber or plastic.

TABLE E–1.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PLAYGROUND SURFACES AND RUNNING TRACKS

Product	Material	Postconsumer recovered materials (percent)
Playground surfaces	Rubber or plastic	90–100
Running tracks	Rubber or plastic	90–100

Note: EPA's recommendation does not preclude procuring agencies from purchasing playground surfaces or running tracks manufactured from another material. It simply recommends that procuring agencies, when purchasing playground surfaces or running tracks made from rubber or plastic, purchase these items made from recovered materials.

Part F—Landscaping Products

Section F–1—Hydraulic Mulch.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table F–1, procuring agencies establish minimum content standards for paper-based and wood-based hydraulic mulch products.

TABLE F–1.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR HYDRAULIC MULCH PRODUCTS

Hydraulic mulch products	Recovered materials (materials and percent)
Paper-Based Hydraulic Mulch.	Postconsumer recovered paper. 100
Wood-Based Hydraulic Mulch.	Recovered wood and/or paper. 100

Note: The recommended recovered materials content levels are based on the dry weight of the fiber, exclusive of any dyes, wetting agents, seeds, fertilizer, or other non-cellulose additives.

Section F–2—Yard Trimmings Compost.

Preference Program: EPA recommends that procuring agencies purchase or use compost made from yard trimmings, leaves, and/or grass clippings in such applications as landscaping, seeding of grass or other plants on roadsides and embankments, as nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

EPA further recommends that those procuring agencies that have an adequate volume of yard trimmings, leaves, and/or grass clippings, as well as sufficient space for composting, should implement a composting system to produce a mature, high-quality compost

from these materials for use in landscaping and other applications.

Specifications: EPA recommends that procuring agencies ensure that there is no language in their specifications for fertilizers and soil amendments that would preclude or discourage the use of compost. For instance, if specifications address the use of straw or hay in roadside revegetation projects, procuring agencies should assess whether compost could substitute for straw or hay or be used in combination with them.

The State of Maine has developed quality standards for compost products that would be used by its agencies or purchased with state funds. The quality standards have been set for six types of compost products, ranging from topsoil (three classes), to wetland substrate, to mulch (two classes). For each of these types of compost product, standards for maturity, odor, texture, nutrients, pH, salt content, organic content, pathogen reduction, heavy metals, foreign matter, moisture content, and density have been established. EPA recommends that procuring agencies obtain and adapt this or another suitable specification for their use in purchasing compost products.

Part G—Non-Paper Office Products

Section G–1—Office Recycling Containers and Office Waste Receptacles.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table G–1, procuring agencies establish minimum content standards for use in purchasing office recycling containers and office waste receptacles.

TABLE G–1.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR OFFICE RECYCLING CONTAINERS AND OFFICE WASTE RECEPTACLES

Product	Postconsumer recovered materials (materials and percent)
Office Recycling Containers and Office Waste Receptacles.	Plastic. 20–100. Paper. Refer to Paperboard Recommendations in 40 CFR Part 250. Steel.

TABLE G–1.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR OFFICE RECYCLING CONTAINERS AND OFFICE WASTE RECEPTACLES—Continued

Product	Postconsumer recovered materials (materials and percent)
	Highest Amount Practicable.

Note: EPA's recommendation for office recycling containers and office waste receptacles containing recovered plastic does not preclude procuring agencies from purchasing containers or receptacles manufactured using another material, such as wood. It simply recommends that procuring agencies, when purchasing office recycling containers or office waste receptacles manufactured from plastic or paper, seek such containers made with recovered materials. When purchasing these containers made with steel, procuring agencies should seek the highest level of postconsumer recovered materials practicable.

Section G–2—Plastic Desktop Accessories

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table G–2, procuring agencies establish minimum content standards for use in purchasing plastic desktop accessories.

TABLE G–2.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PLASTIC DESKTOP ACCESSORIES

Product	Postconsumer recovered materials (material and percent)
Plastic Desktop Accessories.	Polystyrene. 25–80

Note: EPA's recommendation does not preclude procuring agencies from purchasing a desktop accessory manufactured from another material, such as paper, wood, or steel. It simply recommends that, when purchasing plastic desktop accessories, procuring agencies purchase these items made from recovered materials.

Section G–3—Remanufactured Toner Cartridges.

Preference Program: EPA recommends that procuring agencies establish procedures and policies that give priority to remanufacturing the agencies' expended toner cartridges. EPA recommends that, under such policies and procedures, procuring agencies procure remanufacturing services for expended cartridges and, when such services are unavailable or not practicable, obtain remanufactured toner cartridges from product vendors.

Section G–4—Binders.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table G–3, procuring agencies establish minimum content standards for use in purchasing binders.

Table G–3.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR BINDERS

Product	Recovered materials (materials and percent)
Plastic-Covered Binders (Plastic Covering).	Plastic 50–60
Chipboard Binders	Paper Refer to 40 CFR Part 250.

Note: The chipboard or paperboard component of a plastic-covered binder or a binder covered with another material, such as cloth, is covered under EPA's procurement guideline for paper and paper products (40 CFR Part 250). EPA's recommendation for plastic-covered and chipboard binders does not preclude procuring agencies from purchasing a binder covered with or manufactured using another material, such as cloth. It simply recommends that procuring agencies, when purchasing chipboard or plastic-covered binders, purchase these binders containing recovered materials.

Specifications: GSA's specification for binders, A–A–2549A, covers four types of binders, including cloth bound, flexible cover; cloth bound, stiff cover; plastic bound, flexible cover; and plastic bound, stiff cover. In the specification, GSA requires its binders to contain "a minimum of 100% waste paper, including a minimum of 30% postconsumer recovered materials."

Section G–5—Plastic Trash Bags.

Preference Program: EPA recommends that, based on the content levels shown in Table G–4, procuring agencies establish minimum content standards for use in purchasing plastic trash bags.

TABLE G–4.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PLASTIC TRASH BAGS

Product	Postconsumer recovered materials (material and percent)
Plastic Trash Bags.	Plastic. 30–100

Note: EPA's recommendation does not preclude procuring agencies from purchasing a trash bag manufactured using another material, such as paper. It merely recommends that procuring agencies, when purchasing plastic trash bags, purchase these items made from recovered materials.

Part H—Miscellaneous Products

[Reserved]

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Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

April 1, 1994.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority four this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of 65 rescission proposals and 12 deferrals contained in four special messages for FY 1994. These messages were transmitted to Congress on October 13, November 1, November 19, 1993, and February 7, 1994.

Rescissions (Attachments A and C)

As of April 1, 1994, 65 rescission proposals totaling $3,172.2 million had been transmitted to the Congress. Congress approved 45 of the Administration's rescission proposals in Public Law 103–211. A total of $1,333.5 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1994 rescission proposals.

Deferrals (Attachments B and D)

As of April 1, 1994, $3,200.4 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1994.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

58 FR 54256, Wednesday, October 20, 1993,
58 FR 58517, Tuesday, November 9, 1993,
58 FR 63264, Tuesday, November 30, 1993,
59 FR 7122, Monday, February 14, 1994.

Leon E. Panetta,

Director.

Attachments

BILLING CODE 5110–01–M

ATTACHMENT A

STATUS OF FY 1994 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	3,172.2
Rejected by the Congress.....	-1,838.7
Amounts rescinded by P.L. 103-211, the FY 1994 Emergency Supplemental Appropriations Act.....	-1,333.5
Currentlv before the Congress.....	0.0

ATTACHMENT B

STATUS OF FY 1994 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	8,572.4
Routine Executive releases through April 1, 1994...	-5,372.0
Overturned by the Congress.....	---
Currently before the Congress.....	3,200.4

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of April 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Foreign military financing grants	R94-1		40,000	11-1-93	*			
	R94-1A	25,562		2-7-94	*		65,562	P.L. 103-211
Economic support fund	R94-2		90,000	11-1-93	*		61,350	P.L. 103-211
Military assistance	R94-38	438		2-7-94	*		438	P.L. 103-211
Agency for International Development								
Development assistance fund	R94-3		160,000	11-1-93	*		104,019	P.L. 103-211
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Agricultural Research Service	R94-4		16,233	11-1-93	16,233	3-4-94		
Buildings and facilities	R94-5		8,460	11-1-93	8,460	3-4-94		
Cooperative State Research Service								
Cooperative State Research Service	R94-6		30,002	11-1-93	17,539	3-4-94	12,463	P.L. 103-211
Buildings and facilities	R94-7		34,000	11-1-93	31,103	3-4-94	2,897	P.L. 103-211
Agricultural Stabilization and Conservation Service								
Salaries and expenses	R94-8		12,167	11-1-93	12,167	3-1-94		
Soil Conservation Service								
Conservation operations	R94-9		12,167	11-1-93	12,167	3-1-94		
Farmers Home Administration								
Salaries and expenses	R94-10		12,167	11-1-93			12,167	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of April 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Rural Development Administration and Farmers Home Administration								
Rural housing insurance fund program account	R94-41	15,645		2-7-94			15,645	P.L. 103-211
Agricultural credit insurance fund program account	R94-39	5,094		2-7-94			5,094	P.L. 103-211
Rural Electrification Administration								
Rural electrification and telephone loans program account	R94-11		6,445	11-1-93	6,445	3-1-94		
	R94-40	5,688		2-7-94			3,305	P.L. 103-211
Food and Nutrition Service								
Commodity supplemental food program	R94-12		12,600	11-1-93	2,600	3-1-94	10,000	P.L. 103-211
Foreign Assistance Programs								
Public Law 480 grants - Titles I (OFD), II, and III	R94-42	49,600		2-7-94			29,600	P.L. 103-211
Public Law 480 program account	R94-43	35,400		2-7-94	12,500	3-14-94	22,900	P.L. 103-211
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R94-13		6,000	11-1-93	6,000	3-1-94		
Construction	R94-14		4,000	11-1-93	1,000	3-1-94	3,000	P.L. 103-211
International Trade Administration								
Operations and administration	R94-15		2,000	11-1-93	*		2,000	P.L. 103-211
DEPARTMENT OF DEFENSE								
Procurement								
Missile procurement, Army	R94-44	48,000		2-7-94 *	48,000	3-24-94		
Aircraft procurement, Navy	R94-45	51,700		2-7-94	41,700	3-17-94	10,000	P.L. 103-211

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of April 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Shipbuilding and conversion, Navy	R94-46	50,000		2-7-94	50,000	3-25-94		
Aircraft procurement, Air Force	R94-47	105,600		2-7-94	92,800	3-30-94	12,800	P.L. 103-211
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation, Defense-wide	R94-48	50,000		2-7-94	50,000	2-8-94	50,000	P.L. 103-211
Military Construction								
Military construction, Army	R94-16		116,134	11-1-93	93,815	3-1-94	22,319	P.L. 103-211
Military construction, Air Force	R94-17		85,094	11-1-93	60,307	3-1-94	24,787	P.L. 103-211
Military construction, Army Reserve	R94-18		19,807	11-1-93	17,256	3-1-94	2,551	P.L. 103-211
Military construction, Naval Reserve	R94-19		4,438	11-1-93	3,812	3-1-94	626	P.L. 103-211
Military construction, Air Force Reserve	R94-20		18,759	11-1-93	16,897	3-1-94	1,862	P.L. 103-211
Military construction, Army National Guard	R94-21		251,854	11-1-93	244,286	3-1-94	7,568	P.L. 103-211
Military construction, Air National Guard	R94-22		105,138	11-1-93	105,039	3-1-94	6,187	P.L. 103-211
DEPARTMENT OF THE ARMY-CIVIL								
Army Corps of Engineers								
General investigations	R94-23		24,970	11-1-93	24,970	3-1-94		
Construction, general	R94-24		97,319	11-1-93	97,319	3-1-94		
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R94-25		97,300	11-1-93	97,300	3-1-94		
	R94-49	10,000		2-7-94			10,000	P.L. 103-211
Uranium supply and enrichment activities	R94-25		42,000	11-1-93	42,000	3-1-94	42,000	P.L. 103-211

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of April 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R94-26		180,000	11-1-93	180,000	3-1-94		
Homeownership and opportunity for people everywhere grants (HOPE grants)	R94-50	66,000		2-7-94			66,000	P.L. 103-211
DEPARTMENT OF INTERIOR								
Bureau of Reclamation								
Construction	R94-27		16,000	11-1-93	16,000	3-4-94		
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R94-28		600	11-1-93	600	2-28-94		
Buying power maintenance	R94-51	8,800		2-7-94			8,800	P.L. 103-211
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R94-29		2,750	11-1-93	2,000	3-1-94	750	P.L. 103-211
Facilities and equipment	R94-30		40,257	11-1-93			40,257	P.L. 103-211
Federal Transit Administration								
Discretionary grants	R94-31		52,037	11-1-93	51,228	3-1-94	809	P.L. 103-211
Federal Highway Administration								
Highway demonstration projects	R94-32		187,827	11-1-93	12,858	1-28-94		
	R94-32A	(12,858)		2-7-94	174,969	2-28-94		

* Funds were never withheld from obligation.

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of April 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Federal Railroad Administration								
Railroad research and development	R94-55	17,000		2-7-94			17,000	P.L. 103-211
Federal Aviation Adminstration								
Grants-in-aid for airports (Airport and airway trust fund)	R94-56	488,200		2-7-94			488,200	P.L. 103-211
Coast Guard								
Operating expenses	R94-57	5,000		2-7-94				
Acquisition, construction, and improvements	R94-58	2,000		2-7-94				
Office of the Secretary								
Rental payments	R94-59	1,781		2-7-94			1,781	P.L. 103-211
Payments to air carriers (Airport and airway trust fund)	R94-60	10,067		2-7-94			10,067	P.L. 103-211
DEPARTMENT OF THE TREASURY								
Financial Management Service								
Biomass energy development	R94-61	16,275		2-7-94			16,275	P.L. 103-211
GENERAL SERVICES ADMINISTRATION								
Public Buildings Service								
Federal buildings fund	R94-33		126,022	11-1-93	126,022	3-1-94		
	R94-33A	1,669		2-7-94				
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R94-62	88,000		2-7-94	25,000	2-28-94	63,000	P.L. 103-211
Space flight, control, and data communications	R94-63	32,000		2-7-94			32,000	P.L. 103-211
Construction of facilities	R94-64	25,000		2-7-94			25,000	P.L. 103-211

ATTACHMENT C
Status of FY 1994 Rescission Proposals - As of April 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R94-34		13,100	11-1-93	13,100	3-1-94		
OTHER INDEPENDENT AGENCIES								
Board for International Development								
Israel relay station	R94-65	1,700		2-7-94			1,700	P.L. 103-211
National Science Foundation								
Academic research infrastructure	R94-66	10,000		2-7-94	5,000	3-7-94	5,000	P.L. 103-211
Nuclear Regulatory Commission								
Salaries and expenses	R94-67	12,700		2-7-94			12,700	P.L. 103-211
State Justice Institute								
Salaries and expenses	R94-35		6,775	11-1-93				
United States Information Agency								
Salaries and expenses	R94-36		3,000	11-1-93	1,000	3-1-94	2,000	P.L. 103-211
North/South Center	R94-37		8,700	11-1-93	7,700	3-1-94	1,000	P.L. 103-211
TOTAL RESCISSIONS		**1,226,061**	**1,946,122**		**1,827,192**		**1,333,479**	

* Funds were never withheld from obligation.

ATTACHMENT D
Status of FY 1994 Deferrals - As of April 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 4-1-94
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D94-1	394,175		10-13-93					
	D94-1A		1,164,562	11-19-93					
	D94-1B		23,725	2-7-94	637,665				944,798
Foreign military financing grants	D94-9	3,137,279		11-19-93	1,811,558				1,325,721
Foreign military financing program account	D94-10	46,530		11-19-93					46,530
Agency for International Development									
Demobilization and transition fund	D94-2	8,000		10-13-93					8,000
International disaster assistance, executive	D94-11	118,059		11-19-93	66,885				51,174
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D94-3	461,639		10-13-93					461,639
Expenses, brush disposal	D94-4	40,195		10-13-93					40,195
Timber salvage sales	D94-5	256,897		10-13-93					256,897
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D94-6	1,852		10-13-93					1,852
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D94-7	7,317		10-13-93					7,317

[FR Doc. 94-9445 Filed 4-19-94; 8:45am]
BILLING CODE 5110-01-C

ATTACHMENT D
Status of FY 1994 Deferrals - As of April 1, 1994
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 4-1-94
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D94-8	27,100		10-13-93					
	D94-8A		49,261	11-19-93	20,061				56,300
GENERAL SERVICES ADMINISTRATION									
Public Buildings Service									
Public buildings fund	D94-12	2,835,860		11-19-93	2,835,860				0
TOTAL, DEFERRALS		7,334,903	1,237,548		5,372,029	0		0	3,200,422

federal register

Wednesday
April 20, 1994

Part V

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB81

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and the Federal Consolidation Loan programs. These amendments are needed to implement changes to the Higher Education Act (HEA), made by the Higher Education Amendments of 1992, to define the performance standards and application procedures under which a lender, servicer, or guaranty agency will be designated as an exceptional performer. These regulations authorize the Secretary to recognize lenders, servicers, and guaranty agencies for their exceptional level of performance in collecting delinquent and defaulted FFEL Program loans. These regulations will also encourage lenders, servicers, and guaranty agencies to provide a higher level of expertise in servicing student loan portfolios and to provide strict monitoring of collection activities required on delinquent and defaulted FFEL Program loans.

DATES: Comments must be received on or before May 20, 1994.

ADDRESSES: Comments should be addressed to Patricia Newcombe, Acting Chief, FFEL Program Section, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, Department of Education, 400 Maryland Avenue, SW., (room 4310, ROB–3), Washington, DC 20202–5449.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ron Streets or Doug Laine, Federal Family Education Loan Program Section, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4310, ROB–3), Washington, DC 20202–5449, Telephone Number (202) 708–8242. 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.

SUPPLEMENTARY INFORMATION: The Higher Education Amendments of 1992 (Pub. L. 102–325) (the 1992 Amendments) amended the Higher Education Act of 1965 (the HEA) by adding a new section 428I to require the Secretary to promulgate regulations to identify lenders, servicers, and guaranty agencies that perform at an exceptional level in collecting delinquent and defaulted FFEL Program loans. The Secretary believes that these regulations will significantly reduce the amount of reinsurance and other payments associated with defaults in the FFEL Program by encouraging lenders, servicers, and guaranty agencies to properly collect their student loans while easing the administrative burden on program participants who show an exceptionally high level of compliance with program requirements. A servicer acting for a lender or guaranty agency must meet the definition of a third party servicer under § 682.200 and the compliance requirements under § 682.416.

Lender or Lender Servicer

The HEA provides that a lender or lender servicer that demonstrates a 97 percent compliance performance rating in due diligence in collecting delinquent loans may be designated by the Secretary for exceptional performance and be eligible to receive 100 percent of the unpaid principal balance and interest on default claims. Satisfaction of this qualification must be demonstrated by an annual financial and compliance audit that must be conducted by a qualified independent organization. To receive designation as an exceptional performer, the lender or servicer must submit a written request for designation accompanied by the required audit within 90 days of the end of the audit period.

The Secretary determines a lender's or lender servicer's eligibility for designation based on a 97 percent compliance rating of the performance standards in the collection of delinquent FFEL Program loans in § 682.411(c)-(h), and (m), if applicable, and a 97 percent compliance rate with regard to converting FFEL Program loans to repayment under § 682.209(a), and timely filing of claims under § 682.402(e)(2) and § 682.406(a)(5). The Secretary believes that the lender's due diligence standards in collecting guaranty agency loans listed in § 682.411(c)-(h), and (m) of the FFEL Program regulations and the conversion and timely filing requirements for determining and maintaining eligibility for exceptional performance designation meet the statutory requirement for providing an indication of systems degradation. The Secretary also considers information from any guaranty agency suggesting that the lender's or lender servicer's request for designation should not be approved, and any information in the possession of the Secretary or submitted to the Secretary by any other agency or office of the Federal Government in regard to the lender's or servicer's request for designation. The Secretary notifies the appropriate guaranty agency of the eligible lender's or lender servicer's designation within 60 days after the date the Secretary receives the lender's or lender servicer's request for designation and its annual financial and compliance audit. A lender or lender servicer is designated for a one-year period following the date the guaranty agency receives notification from the Secretary of the lender's or lender servicer's designation, unless the Secretary notifies the guaranty agency that the lender's or lender servicer's designation for exceptional performance has been revoked.

The 97 percent compliance rating is equal to the percent of all due diligence requirements applicable to each loan, on average. In calculating a lender's or lender servicer's compliance rating, the Secretary requires that the universe for the audit consist of all loans in the lender's or lender servicer's FFEL Program portfolio that are serviced during the audit period performed under the Department's regulations in § 682.411. Under the proposed regulations the auditor is required to use statistical sampling and evaluation techniques identified in an audit guide prepared by the Department's Office of Inspector General.

To maintain its status as an exceptional eligible lender or lender servicer, the lender or lender servicer must have a quarterly compliance audit of the due diligence in collection activities in § 682.411(c)-(h), and (m), if applicable. The quarterly audit must be conducted by a qualified independent organization. The quarterly audit must indicate a compliance performance rating of not less than 97 percent for each quarter, or 97 percent for two consecutive months, or 90 percent for one month.

The Secretary may revoke a lender's or lender servicer's designation if the quarterly compliance audit fails to meet the minimum compliance rate mandated by statute, the quarterly audit

is not submitted to the Secretary within 90 days following the end of the quarter, the Secretary determines the lender or lender servicer failed to maintain an overall level of regulatory compliance consistent with the audit, the Secretary has reason to believe the lender or lender servicer may have engaged in fraud in securing its designation, or the lender or lender servicer fails to service loans in accordance with program regulations. The date that the event or condition occurred would be the effective date of revocation.

Guaranty Agency or Guaranty Agency Servicer

The statute provides that a guaranty agency or guaranty agency servicer that demonstrates a 97 percent compliance performance rating in due diligence in collecting defaulted FFEL Program loans through an annual financial and compliance audit including timely claim payment and timely reinsurance filing may be designated by the Secretary for exceptional performance and eligible to receive the applicable reinsurance rate under § 682.404(b) on default claims submitted to the Secretary for reinsurance. The annual financial and compliance audit must be conducted by a qualified independent organization. A written request for designation, and the audit, must be received by the Secretary no later than 90 days after the end of the audit period.

The Secretary determines a guaranty agency's or guaranty agency servicer's eligibility for designation as an exceptional performer based on a 97 percent compliance rating of the performance standards in the collection of defaulted FFEL Program loans in § 682.410(b)(6)(iii)–(xii), § 682.406(a)(8) and (a)(9), or § 682.410(b)(7) and § 682.406(a)(8) and (a)(9), and any information in the possession of the Secretary. The Secretary believes that the guaranty agency due diligence standards listed in § 682.410(b)(6)(iii)–(xii) or § 682.410(b)(7) and the timely claim payment and reinsurance filing requirements for determining and maintaining eligibility for exceptional performance designation meet the statutory requirement for providing an indication of systems degradation. The Secretary notifies the guaranty agency or guaranty agency servicer of its designation within 60 days after the date the Secretary receives the guaranty agency's or guaranty agency servicer's request for designation and its annual financial and compliance audits. A guaranty agency or guaranty agency servicer is designated for a one-year period following the date the guaranty agency or guaranty agency servicer receives notification from the Secretary of its designation as an exceptional performer, unless the Secretary notifies the guaranty agency or guaranty agency servicer that its designation for exceptional performance has been revoked.

The 97 percent compliance rating is equal to the percent of all due diligence requirements applicable to each loan, on average. The proposed regulations provide that, in calculating a guaranty agency's or guaranty agency servicer's compliance rating, the universe used by the auditor must consist of all loans in the guaranty agency or guaranty agency servicer's FFEL Program portfolio that are serviced during the audit period. The proposed regulations would require the auditor to use statistical sampling and evaluation techniques identified in an audit guide prepared by the Department's Office of Inspector General.

To maintain its status as an exceptional eligible guaranty agency or guaranty agency servicer, the guaranty agency or guaranty agency servicer must have a quarterly compliance audit of the due diligence in collection activities in § 682.410(b)(6)(iii)–(xii), § 682.406(a)(8) and (a)(9), or § 682.410(b)(7) and § 682.406(a)(8) and (a)(9). The quarterly audit must be conducted by a qualified independent organization. The quarterly audit must indicate a compliance performance rating of not less than 97 percent for each quarter, or 97 percent for two consecutive months, or 90 percent for one month.

Under the HEA the Secretary shall revoke a guaranty agency's or guaranty agency servicer's designation as an exceptional performer if the quarterly compliance audit fails to meet the minimum compliance rate mandated by statute, the quarterly audit is not submitted to the Secretary within 90 days following the end of the quarter. The Secretary may also revoke the designation as an exceptional performer if the Secretary determines that the guaranty agency or guaranty agency servicer failed to maintain an acceptable overall level of regulatory compliance, or the Secretary has reason to believe the guaranty agency or guaranty agency servicer may have engaged in fraud in securing its designation. The date that the event or condition occurred would be the effective date of revocation.

Summary of Comments From Regional Meetings

In compliance with section 492(a) of the HEA, the Secretary convened regional meetings during September 1992 to obtain public involvement in the development of proposed regulations. The purpose of the meetings was to "provide for a comprehensive discussion and exchange of information concerning the implementation" of certain parts of Public Law 102–325. In addition, attendees of the regional meetings were asked to nominate individuals to act as negotiators in the negotiated rulemaking process required by section 492(b) of the HEA.

The regional meetings were conducted for two days each in San Francisco, California; New York, New York; Atlanta, Georgia; and Kansas City, Missouri. Each participant at the regional meetings was assigned to one of six groups which were asked to discuss particular issue areas identified by the Department. Each group at the regional meetings prepared a report of its discussion and recommendations; those reports were presented to the Department for consideration during the preparation of the proposed regulations.

Organizations and individuals representing lenders, servicers, guarantors, secondary markets, and auditors convened an industry work group, prior to the regional meetings, in an attempt to reach consensus among those groups on major issues related to the exceptional performance regulations. The industry paper developed by the work group was used throughout the four regional meetings as the basis for discussion. Following is a brief synopsis of the major issues discussed at the regional meetings. Unless otherwise noted, the opinions described below were reflected in all four regional meetings.

Application for Designation

The representatives at the regional meetings recommended that the Secretary's decision on whether to designate a lender or servicer be based on the required audit, as well as information provided by the guaranty agencies. In addition, they recommended that the Secretary commit to considering those applications in good faith, and not unreasonably withhold designation. The attendees at the San Francisco meeting also recommended that the Secretary approve applications for exceptional performance on a timely basis, unless the compliance rating does not meet statutory requirements or other information "persuasively rebuts" the audit results, and suggested that the applicant be allowed an opportunity to correct or respond to the information on which a denial is based, prior to issuance of a final decision.

Scope of the Designation

The attendees at the regional meetings recommended that lenders, servicers, and guaranty agencies with regional centers be able to qualify each center separately, or as a corporate entity, for exceptional performance designation. The attendees also recommended that applicants be permitted to separate parts of their portfolio as being excluded from the exceptional performance designation.

Annual Financial and Compliance Audit

The attendees at the regional meetings recommended that the regulations provide that the annual financial and compliance audit required to apply for designation as an exceptional performer review only those activities the applicant was required to perform and not review the loan itself. In addition, the attendees recommended that compliance be evaluated based, whenever possible, on compliance with Federal requirements, rather than compliance with guaranty agency requirements. The attendees also recommended that the financial audit review the portfolio and not the applicant, and that the annual financial audit performed in accordance with the Department's regulations be considered to satisfy the requirements of this section. Finally, the attendees identified particular activities which they recommended be evaluated during the audits.

Quarterly Compliance Audits

The industry representatives at the regional meetings recommended that the regulations to implement the requirement of quarterly compliance audits cover only the lender's activity during that quarter. They also recommended that the regulations allow the lender or servicer to perform the required audit as long as it is certified by an external auditor. The industry representatives also recommended that the quarterly audits be broken down by month to ensure that the lender or servicer continues to satisfy the statutory eligibility requirements. In regard to both annual and quarterly audits, the attendees at the regional meetings recommended that the Secretary define the statistical methodology for sampling the portfolio and the confidence level and error rate qualifications.

Designation of Guaranty Agencies

Many of the recommendations listed above were made in connection with designation of guaranty agencies as exceptional performers. The regional meeting attendees did, however, recommend that the compliance audit of guaranty agencies review the agency's compliance with the requirements in 34 CFR 682.410 regarding phone calls, letters, skip tracing, and litigation. Attendees at the Kansas City meeting recommended that the Department consider changing the due diligence requirements for guaranty agencies to reflect performance requirements rather than specific steps. The meetings in Kansas City and New York also recommended that quarterly compliance audits not be required for guaranty agencies, because guaranty agencies do not have the same opportunity for "dumping" loans that lenders may have.

Negotiated Rulemaking

Section 492(b) of the HEA requires the Secretary to utilize a negotiated rulemaking process to prepare proposed regulations to implement the 1992 Amendments. Upon conclusion of the regional meetings described above, the Secretary invited twenty-five representatives who were nominated by individuals attending the regional meetings to participate in negotiated rulemaking sessions on January 4–8 and February 1–5, 1993. Following is a brief synopsis of the major issues discussed during the two weeks of negotiations.

- The industry suggested that lenders, servicers, and guaranty agencies with regional centers should be able to qualify each center separately, or as a corporate entity, for exceptional performance designation.

The Secretary believes the intent of Congress is to view the applicant as a single entity to accurately determine its overall compliance rating, regardless of the number of sites at which it services loans. Therefore, the entire regulations including § 682.415(a)(1) refer to a lender, servicer or guaranty agency and do not make allowances for separate centers.

- The industry recommended that applicants be permitted to separate parts of their portfolio as being excluded from the exceptional performance designation. The industry representatives argued that this would allow applicants to separate their portfolio into segments which had previously not been serviced with the same quality to qualify as an exceptional performer.

As reflected in § 682.415(a)(2)(iii)(A), the Secretary does not believe that Congress intended lenders, servicers or guaranty agencies to be able to exclude portions of their loan portfolio for purposes of determining the 97 percent compliance rating. The Secretary believes the entire loan portfolio should be available for review to accurately determine the applicable compliance rate for possible designation as an exceptional performer. Moreover, the Secretary believes that implementation of this suggestion would increase administrative complexity and confusion.

- In meeting the 97 percent compliance rate with the due diligence requirements in § 682.411 (c)–(h), and (m), if applicable, for determining a lender's or lender servicer's eligibility to participate as an exceptional performer, the industry also recommended requiring a 97 percent compliance with timely repayment conversions and timely filing requirements.

The Secretary agrees with the industry and has included that change in proposed § 682.415(b)(1)(iv).

- Guaranty agency representatives recommended clarifying that insurance payment on a claim may not be denied based solely on a violation of repayment conversion, due diligence requirements, and timely filing requirements.

Section 682.415 (b)(5) was drafted to reflect that proposal. However, a guaranty agency or the Secretary may require the lender or lender servicer to repurchase a loan if the agency determines the loan should not have been submitted as a claim. For example, repurchase of a claim could be required if the loan was not delinquent for 180 days for installments due monthly, or 240 days for installments due less frequently than monthly, at the time the claim was submitted.

- The Secretary proposed to require that in the case of an exceptional lender or lender servicer purchasing or acquiring another lender's or lender servicer's portfolio, both entities must hold an exceptional performance designation in order for the purchasing or acquiring entity to retain its status as an exceptional performer. The industry argued that acquiring loans is a normal part of doing business and that the holder should not be responsible for activities performed by prior holders. The industry proposed that the regulations permit the holder to submit a loan under exceptional performer designation if the holder has performed the last 180 days of due diligence on that loan.

The Secretary incorporated the recommendation in § 682.415(b)(5)(i), believing it would ensure that portfolios that are purchased and converted to a new lender's or lender servicer's operation are serviced properly prior to submission as an exceptional performer claim.

- The industry recommended that the proposed regulations permit the annual

and quarterly audits to be submitted within 90 days of the end of the audit period, rather than 60 days as suggested by the Secretary.

The Secretary agrees with this proposal, and § 682.415(a)(2), (b)(6)(i) and (c)(6)(i) have been amended to reflect the change.

• Some of the industry representatives argued that if the Secretary denies the lender's or lender servicer's request for designation based on information provided to the Secretary by a guaranty agency under § 682.415(b)(1)(ii), the lender or lender servicer should be given the opportunity to review the information and refute it, if it has additional information not provided by the guaranty agency.

The statute does not require the Secretary to allow a lender an opportunity to challenge a decision denying designation for exceptional performance. However, if the Secretary believes it is appropriate pursuant § 682.415(b)(1)(ii), the Secretary will give the lender or servicer an opportunity to submit additional information to support its application.

• Some negotiators pointed out that §§ 682.406 and 682.413 state that if a claim is paid on an account and there are servicing errors, the guarantor could be denied reinsurance.

A lender or lender servicer that is designated as an exceptional performer must meet a 97 percent compliance rate. This means that a lender or lender servicer may have no more than a 3 percent error rate in its entire loan portfolio to maintain its status as an exceptional performer.

• The industry negotiators stated that designation for exceptional performance should be expanded to authorize a servicer to apply for designation as an exceptional performer on behalf of itself, as well as for several or all of its lender clients.

The Secretary proposes to provide in § 682.415(a)(4) that a lender may be designated as an exceptional performer based on loans that it services itself. A lender servicer may be designated as an exceptional performer only for loans that it services. This means that a lender or lender servicer may apply for designation for exceptional performance only for loans that it services itself.

• The negotiators recommended that the 12-month designation period for exceptional performance should begin on the date the guaranty agency "receives" (rather than the date the Department mails) notification of the Secretary's decision regarding the agency's, lender's, or servicer's exceptional performance status.

The Secretary proposes to revise § 682.415(a)(1) to reflect that the effective date of an exceptional performer designation is the date the lender, servicer, or guarantee agency receives notification from the Secretary. These regulations also would provide that the Secretary considers receipt of notification of exceptional performance by the lender, servicer, or guaranty agency to be no later than 3 days after the date the notice is mailed by the Secretary, unless the lender, servicer, or guaranty agency is able to prove otherwise.

• The industry negotiators recommended that the regulations permit a lender's, servicer's, and guaranty agency's exceptional performance status to continue until the Secretary denies a renewal application. Industry participants argued that this process will permit an on-going status rather than an on-and-off status.

Section 682.415(a)(5) of the proposed regulations would permit a lender, servicer, and guaranty agency to retain its exceptional performance status until the Secretary approves or denies its request for redesignation.

• Several lender and servicer representatives recommended that the Secretary advise the lender, servicer, and applicable guaranty agency of the Secretary's decision to approve or deny its request to participate as an exceptional performer and, if applicable, the reason for denial.

The proposed regulations provide that the Secretary notify the lender, servicer, and applicable guaranty agency of his decision to approve or deny an applicant's request for designation and, if applicable, the reason for denial. The regulatory provisions are found in § 684.415(b)(2) for lenders and § 682.415(c)(3) for guaranty agencies.

• Several negotiators recommended that the Secretary eliminate the need for a quarterly independent third-party audit. As an alternative, the industry suggested that a lender, servicer, or guaranty agency that has been designated for exceptional performance for at least 15 months be permitted to petition the Secretary for permission to have its internal auditors perform subsequent quarterly compliance audits. The annual audit would assess the reliability of the procedures used by the lender's, servicer's, or guaranty agency's internal auditor in performing the quarterly audits.

The proposed regulations under § 682.415(b)(6)(ii) and (c)(6)(ii) reflect the consensus of the negotiators to permit the Secretary to approve the use of internal auditors in certain cases. However, the Secretary reserves the right to deny any lender's, servicer's, or guaranty agency's petition to use its internal auditors if necessary to protect the Federal fiscal interest.

• Many industry negotiators suggested that the effective date of revocation of the designation should be the date the Secretary notifies the lender, servicer, or guaranty agency that its designation as an exceptional performer is terminated.

As reflected in § 682.415(a)(8)(iii) of the regulations, the Secretary believes a lender, servicer, or guaranty agency that loses exceptional performance status should not be entitled to receive the benefits of such status beyond the date the event or condition causing the revocation occurred.

• Guaranty agency representatives argued that the Secretary should permit guaranty agency servicers to apply for designation for exceptional performance. Prohibiting guaranty agency servicers from applying could prevent some agencies from qualifying as exceptional performers.

The proposed regulations under § 682.415(c)(1)(iii) permit guaranty agency servicers to apply for designation as an exceptional performer. This revision reflects the consensus of the negotiators and permits guaranty agency servicers to apply for designation for exceptional performance. The proposed regulations are consistent with the provisions of the statute that authorize lender servicers to apply for exceptional performance designation. However, a guaranty agency servicer may be designated for exceptional performance only for loans it services.

• Guaranty agency representatives suggested that the proposed regulations should recognize the alternative guarantor due diligence procedures included in the Department's regulations (34 CFR 682.410(b)(7) as published in the **Federal Register** on December 18, 1992, 57 FR 60280). Agency representatives stated that if the alternative procedures are not recognized, an agency could lose the opportunity to apply for exceptional performance designation, or lose the option to use alternative collection methods.

Section 682.415(d)(1) of the proposed regulations reflects the consensus of the negotiators and defines "due diligence requirements" incorporating the guaranty agency alternative due diligence requirements in § 682.410(b)(7).

• Many industry negotiators stated that the statutory language regarding the Federal False Claims Act would unnecessarily penalize designated

lenders, servicers, and guaranty agencies for failing to service loans or otherwise comply with applicable regulations beyond what would normally be provided for under program regulations. The negotiators believed that this would discourage eligible entities from applying for exceptional designation.

During the negotiations, the Secretary advised the negotiators to seek a technical amendment if they wished to do so. However, because the recent technical amendments to the HEA enacted on December 20, 1993, did not repeal this provision from the law, the Secretary has decided to reflect the statutory provision in the regulations under § 682.415(b)(7) and (c)(7).

• Several negotiators recommended that the calculation of the 97 percent compliance rate be based upon all collection activities correctly performed divided by all collection activities required to be performed.

The Secretary agrees with the negotiators and has incorporated language in the regulations under § 682.415(b)(3) and (c)(4) for lenders and guaranty agencies respectively. This language previously appeared in earlier drafts of the regulations and was subsequently deleted. However, the Secretary believes that the elements for determining the 97 percent compliance rate should be published in the regulations. The Secretary and negotiators agreed that the methodology for determining statistical sampling and evaluation techniques will be identified in an audit guide prepared by the Department's Office of Inspector General.

• The negotiators requested that the Secretary recognize that conditions may occur that are beyond the designee's control and therefore should not have its designation for exceptional performance revoked under these circumstances.

The Secretary agrees with the negotiators and therefore has incorporated the phrase "serious and material violations" into the conditions for revocation under § 682.415(b)(8)(ii)(C) at the request of the negotiators. The Secretary recognizes that minor due diligence violations or temporary systems failure (e.g., loss of power that delays required letters) may occur which are beyond the designee's control and should not result in the immediate revocation for conditions applicable to the quarterly audit process.

The Secretary has incorporated the preceding provisions in the regulatory document. The following provides a general guide to the structural layout of the regulatory provisions pertaining to lenders under § 682.415(b) and guaranty agencies under § 682.415(c) of these regulations.

Section 682.415(b)(1), (b)(2) and (b)(3) incorporate eligibility criteria for qualifying for exceptional performance; § 682.415(b)(4) pertains to notification by the Secretary of approval or denial of request for designation; § 682.415(b)(5) discusses insurance payments to lenders and lender servicers on defaulted loans; § 682.415(b)(6) contains requirements regarding maintenance of designation through quarterly audits; § 682.415 (b)(7) pertains to submission of claims by a lender to a guaranty agency; § 682.415(b)(8) provides conditions for revocation of designation for exceptional performance; and § 682.415(b)(9) pertains to qualified independent organizations that may complete the annual and quarterly audits.

Section 682.415(c)(1), (c)(2), (c)(3), and (c)(4) incorporate eligibility criteria for qualifying for exceptional performance; § 682.415(c)(5) pertains to notification by the Secretary of approval or denial of the request for designation; § 682.415(c)(6) contains requirements regarding maintenance of designation through quarterly audits; § 682.415(c)(7) pertains to submission of claims; § 682.415(c)(8) provides conditions for revocation of designation for exceptional performance; and § 682.415(c)(9) pertains to qualified independent organizations for completing the annual and quarterly audits.

The Secretary particularly invites comments on two issues: (1) How the regulations should be implemented in light of the change made by the Student Loan Reform Act (Pub. L. 103–66) that reduced the amount of insurance paid to lenders under a guaranty agency program from 100 percent to 98 percent and which is not currently reflected in the regulations; and

(2) whether the standards established to designate a guaranty agency as an exceptional performer should be revised in light of other changes impacting guaranty agencies that were made by Public Law 103–66.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Certain compliance requirements are imposed on guaranty agencies, lenders, and servicers by the regulations. These requirements, however, would not have a significant impact, because they would not impose excessive regulatory burdens or require unnecessary federal supervision.

Paperwork Reduction Act of 1980

Section 682.415 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Lenders, servicers, and guaranty agencies may apply for designation as an exceptional performer in collecting delinquent and defaulted Federal Family Education Loans under these regulations. The Department needs and uses the information to determine an applicant's eligibility to receive federal benefits as an exceptional performer and to increase the accountability of recipients.

Annual reporting burden associated with the quarterly audits required to maintain the status as an exceptional lender, servicer, or guaranty agency is estimated to average 100 hours per lender, and 960 hours respectively per guaranty agency and servicer. There are a total of 8,060 respondents. Therefore, the net total burden hours applicable to all respondents is approximately 975,680. This includes the time for gathering and maintaining the data needed, reviewing the collection of information, and preparing a final document. Also, the average time it takes a guaranty agency to process a default claim is 45 minutes. However, the administrative burden required of guaranty agencies designated for exceptional performance in processing default claims is reduced by approximately 50 percent because of its exceptional status in collecting defaulted loans.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4310, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

These regulations do not impose any undue burden on lenders, servicers, and guaranty agencies. These regulations are needed to define the performance standards and application procedures under which a lender, servicer, or guaranty agency will be designated as an exceptional performer in student loan collection. To a great extent, the regulatory context was taken directly from the HEA. As reflected earlier in the preamble, several alternatives and interpretations pertaining to the statute were suggested during the regional meetings discussions and subsequent negotiations. However, for the most part, the language left very little room for interpretation on substantive issues. These regulations meet the statutory mandate by allowing the Secretary to determine an applicant's ability to collect delinquent and defaulted FFEL Program loans at an acceptable level of 97 percent compliance.

The requirements of these regulations will not significantly increase the costs associated with loan servicing and collection for applicants participating as exceptional performers. The Secretary also believes that the costs of maintaining the high standard of at least a 97 percent compliance rate required by statute to participate as an exceptional performer will be incurred instead of the costs normally associated with guaranty agencies' review of default claims. These savings would result from a significant reduction in the administrative burden currently imposed on guaranty agencies in the claim review process.

Because it is a new program in the law, there are no data available to effectively evaluate the costs and benefits of the exceptional performers program. Therefore, to determine the expected benefits of implementing these regulations, the Secretary has examined the delinquency rate of the largest 100 lenders participating in the FFEL Program. These participants held approximately 82 percent of all outstanding FFEL Program loans as of September 30, 1991. For purposes of this analysis, the Secretary identified a median rate for the largest 100 holders of 13 percent of all FFEL Program loans 30 days past-due in relation to all FFEL Program loans in repayment. The median represents the 50th percentile of the ranked order of the largest 100 lenders' delinquency rates. In other words, one-half of the largest 100 lenders were above the median or acceptable rate, and one half were below the median. Currently, the combined dollar amount of loans past-due for the largest 100 lenders above the median delinquency rate totals $3,728,686,506 and represents 15 percent of all FFEL loans in repayment. The combined dollar amount of loans past-due for these lenders that are below the median delinquency rate totals $842,388,045 and represents 10 percent of FFEL loans in repayment. The Secretary believes that efforts by program participants made to improve servicing and collection to meet the exceptional performer standards will result in an overall reduction in delinquency rates and resulting default claims submitted for reinsurance payment, resulting in a substantial financial benefit over an approximate three-year period.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed regulations clearly stated?

(2) Do the regulations contain technical terms or other wording that interferes with their clarity?

(3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 682.415 Special insurance and reinsurance rules.)

(4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand?

(5) What else could the Department do to make the regulations easier to understand?

List of Subjects in 34 CFR Part 682

Administrative practice or procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program)

Dated: January 26, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by amending part 682 as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. A new § 682.415 is added to read as follows:

§ 682.415 Special insurance and reinsurance rules.

(a) (1) A lender or lender servicer (as an agent for an eligible lender) designated for exceptional performance under paragraph (b) of this section may receive 100 percent reimbursement on all default claims submitted for insurance during the 12-month period following the date the appropriate guaranty agencies receive notification of the designation of the eligible lenders or lender servicers under paragraph (b) of this section. A guaranty agency or a guaranty agency servicer (as an agent for a guaranty agency) designated for exceptional performance under paragraph (c) of this section may receive the applicable reinsurance rate under section 428(c)(1) of the Higher Education Act of 1965, as amended by the Omnibus Budget Reconciliation Act (Pub. L. 103–66) on all default claims submitted for reinsurance payments by the guaranty agency or guaranty agency servicer during the 12-month period following the date the guaranty agency

receives notification of its designation, or its servicer's designation, under paragraph (c) of this section. A notice of designation for exceptional performance under this section is deemed to have been received by the lender, servicer or guaranty agency no later than 3 days after the date the notice is mailed, unless the lender, servicer or guaranty agency is able to prove otherwise.

(2) To receive a designation for exceptional performance under paragraph (a)(1) of this section, a lender, servicer, or guaranty agency must submit to the Secretary—

(i) A written request for designation for exceptional performance that includes—

(A) The applicant's name and address;

(B) A contact person;

(C) Its ED identification number, if applicable;

(D) The name and address of applicable guarantors; and

(E) A copy of an annual financial audit performed in accordance with the Audit Guide developed by the U.S. Department of Education, Office of Inspector General, or one of the following as appropriate:

(1) A lender may submit a copy of an annual audit required under § 682.305(c), if the audit period ends no more than 90 days prior to the date the lender submits its request for designation.

(2) A servicer may submit a copy of the annual financial audit, as defined, completed and submitted under part G, if the audit period ends no more than 90 days prior to the date the servicer submits its request for designation.

(3) A guaranty agency may submit a copy of an annual audit required under section 428(b)(2)(D) of the Higher Education Act of 1965, as amended, if the audit period ends no more than 90 days prior to the date the guaranty agency submits its request for designation;

(ii) If the applicant is a servicer, a statement signed by the owner or chief executive officer of the applicant certifying that the applicant meets the definition of a servicer contained in paragraph (d)(3) of this section; and

(iii) (A) A compliance audit of its loan portfolio, conducted by a qualified independent organization meeting the criteria in paragraph (b)(9) of this section, that yields a compliance performance rating of 97 percent or higher of all due diligence requirements applicable to each loan, on average, with respect to the collection of delinquent loans ending no more than 90 days before the date the lender, servicer or guaranty agency submits its request for designation.

(B) To satisfy the requirement of paragraph (a)(2)(iii) of this section, a servicer may submit its annual compliance audit under part G if the servicer includes in its report a measure of its compliance performance rating required under paragraph (a)(2)(iii)(A) of this section, if this report is performed in accordance with the Audit Guide developed by the U.S. Department of Education, Office of Inspector General.

(3) The cost of audits for determining eligibility and continued compliance under this section are the responsibility of the lender, servicer, or guaranty agency.

(4) A lender or servicer shall also submit the information in paragraph (a)(2) (i), (ii), or (iii) of this section to each appropriate guaranty agency.

(5) A lender may be designated for exceptional performance for loans that it services itself. A lender servicer may be designated for exceptional performance only for all loans it services.

(6) (i) To prevent a lapse of a lender's, servicer's, or guaranty agency's exceptional performance status after the end of the 12-month period, the lender, servicer, or guaranty agency shall submit updated information required under paragraph (a)(2) of this section to the Secretary no later than 90 days after the end of the audit period.

(ii) Upon the Secretary's determination that the lender, servicer or guaranty agency maintained at least a 97 percent compliance performance rate and satisfies the other requirements for designation, the Secretary notifies the lender, servicer or guaranty agency that its redesignation for exceptional performance begins on the date following the last day of the previous 12-month period for which it received designation for exceptional performance. However, a lender's, servicer's, or guaranty agency's designation for exceptional performance continues until it receives notification from the Secretary that its request for redesignation is approved, or its designation is revoked, under the provisions of paragraph (b)(8)(iii) of this section.

(iii) A notice under paragraph (a)(6) of this section is determined to have been received by the lender, servicer or guaranty agency no later than 3 days after the notice is mailed, unless the lender, servicer or guaranty agency is able to prove otherwise.

(b) *Determination of eligibility.* (1) The Secretary determines whether to designate a lender or lender servicer for exceptional performance based upon—

(i) The annual compliance audit of collection activities required for delinquent FFEL Program loans in § 682.411(c) through (h), and (m), if applicable, submitted under this section;

(ii) Information from any guaranty agency regarding an eligible lender or lender servicer desiring designation, including, but not limited to, any information suggesting that the lender's or lender servicer's request for designation should not be approved;

(iii) Any other information in the possession of the Secretary, or submitted to the Secretary by any other agency or office of the Federal Government; and

(iv) Evidence indicating that the lender or lender servicer has complied with the requirements for converting FFEL Program loans to repayment under § 682.209(a), and the timely filing requirements under §§ 682.402(e)(2) and 682.406(a)(5), in accordance with the audit guide as published by the U.S. Department of Education, Office of Inspector General. The audit submitted under paragraph (b)(1)(i) of this section may satisfy this requirement, if a separate sample of loans is used.

(2) The Secretary informs the eligible lender or lender servicer, and the appropriate guaranty agency, that the lender or lender servicer's request for designation as an exceptional lender or lender servicer has been approved, unless the results of the audit are persuasively rebutted by information in paragraph (b)(1) (ii) or (iii) of this section. If the request for designation is not approved, the Secretary informs the lender or lender servicer and the appropriate guaranty agency(s) of the reason the application is not approved.

(3) In calculating a lender's or lender servicer's compliance rating, as referenced in paragraph (a)(2)(ii) of this section, the universe for the audit must include all loans in the lender's or lender servicer's FFEL Program portfolio that are serviced during the audit period performed under the Department's regulations in § 682.411. The numerator must include the total number of collection activities successfully completed, in accordance with program regulations, that are serviced during the audit period. The denominator must include the total number of collection activities required to be performed, in compliance with program regulations, that are serviced during the audit period. Using statistical sampling and evaluation techniques identified in an audit guide prepared by the Department's Office of Inspector General, a random sample of loans must be selected and evaluated.

(4) The Secretary notifies a guaranty agency within 60 days after the date the

Secretary receives the information, listed in paragraph (a)(2) of this section, from the eligible lender or lender servicer, that the lender's or lender servicer's application for designation for exceptional performance has been approved or denied.

(5) (i) Except as provided under paragraph (b)(8) of this section, a guaranty agency may not refuse, solely on the basis of a violation of repayment conversion, due diligence requirements or timely filing requirements, to pay an eligible lender or lender servicer, designated for exceptional performance, 100 percent of the unpaid principal and interest of all loans for which default claims are submitted for insurance payment by that eligible lender or lender servicer. The designation of a lender or lender servicer for exceptional performance applies to loans that have been serviced by the lender or lender servicer for the last 180 days prior to default.

(ii) A guaranty agency or the Secretary may require the lender or lender servicer to repurchase a loan if the agency determines the loan should not have been submitted as a claim. The guaranty agency must pay default claims to a lender or lender servicer designated for exceptional performance in accordance with this subsection for the one-year period following the date the guaranty agency receives notification of the lender's or lender servicer's designation under paragraph (b)(2) of this section, unless the Secretary notifies the guaranty agency that the lender's or lender servicer's designation for exceptional performance has been revoked.

(6) (i) To maintain its designation for exceptional performance, the lender or lender servicer must have a quarterly compliance audit of the due diligence in collection activities required for delinquent FFEL Program loans in § 682.411(c) through (h), and (m), if applicable, conducted by a qualified independent organization meeting the criteria in paragraph (b)(9) of this section that results in a compliance rating for the quarter of not less than 97 percent. The audit must indicate a compliance performance rating of not less than 97 percent for two consecutive months or 90 percent for one month. The quarterly audit may not include any period covered by the annual financial and compliance audit under paragraph (a)(2) of this section. The results of the quarterly compliance audit must be submitted to the Secretary and to the appropriate guaranty agencies within 90 days following the end of each quarter.

(ii) If a lender or lender servicer has been designated for exceptional performance for at least 15 months, a lender or lender servicer may petition the Secretary for permission to have its internal auditors perform the subsequent quarterly compliance audits required by paragraph (b)(6)(i) of this section. If the Secretary approves the request, the lender's or lender servicer's annual audit must assess the reliability of the procedures used by the lender's or lender servicer's internal auditor in performing the quarterly audits.

(iii) The lender or lender servicer shall perform three quarterly audits and one annual audit that includes a representative sample of fourth quarter collection activities to satisfy the requirements in paragraph (b)(6)(i) of this section.

(7) (i) Insurance payments made on default claims submitted by a lender or lender servicer designated for exceptional performance are not subject to additional review of repayment conversion, due diligence and timely filing requirements, or to required repurchase by the lender or lender servicer, unless the Secretary determines that the eligible lender or lender servicer engaged in fraud or other purposeful misconduct in obtaining designation for exceptional performance. Notwithstanding the payment requirements in paragraph (b)(7)(i) of this section, nothing prohibits the guaranty agency or the Secretary from reviewing the lender's or lender servicer's activities in regard to the loans paid under paragraph (b)(7)(i) of this section as part of program oversight responsibilities, or for requiring the lender to repurchase a loan if the agency determines the loan should not have been submitted as a claim. The lender shall file, and the guaranty agency shall maintain, the documentation the guaranty agency normally requires its lenders to file with respect to the collection history of each loan.

(ii) A lender or lender servicer designated under this section that fails to service loans or otherwise comply with applicable program regulations is considered in violation of the Federal False Claims Act.

(8) (i) The Secretary revokes the designation of a lender or lender servicer for exceptional performance if—

(A) The quarterly compliance audit required under paragraph (b)(6) of this section is submitted to the Secretary and indicates that the lender or lender servicer failed to maintain not less than 97 percent compliance with due diligence standards for the quarter, or not less than 97 percent compliance for 2 consecutive months, or 90 percent for 1 month; or

(B) Any quarterly audit required in paragraph (b)(6) of this section is not received by the Secretary within 90 days following the end of each quarter.

(ii) The Secretary may revoke the designation of an exceptional lender or lender servicer if—

(A) The Secretary determines the eligible lender or lender servicer failed to maintain an overall level of regulatory compliance consistent with the audit submitted by the lender or lender servicer;

(B) The Secretary has reason to believe the lender or lender servicer may have engaged in fraud in securing its designation for exceptional performance; or

(C) The lender or lender servicer fails to service loans in accordance with program regulations. For purposes of paragraph (b)(8)(ii)(C) of this section, a lender or lender servicer fails to service loans in accordance with program regulations if the Secretary determines that the lender or lender servicer has committed serious and material violations of the regulations.

(iii) The date that which the event or condition occurred is the effective date of the revocation, except for revocation under paragraph (a)(5) of this section, which is effective at the close of the 12-month period for which the lender or lender servicer received designation for exceptional performance.

(9) Public accountants, public accounting firms, and external government audit organizations that meet the qualification and independence standards contained in Government Auditing Standards published by the Comptroller General of the United States are acceptable entities to perform the audits required under paragraphs (b)(3) and (b)(6) of this section.

(c)(1) (i) Except as provided under paragraph (c)(8) of this section, the Secretary pays the applicable reinsurance rate under § 682.404(b) on the unpaid principal balance and interest of all default claims submitted for reinsurance by a guaranty agency or guaranty agency servicer that has been designated for exceptional performance.

(ii) A guaranty agency may be designated for exceptional performance for loans that it services itself.

(iii) A guaranty agency servicer may be designated for exceptional performance only for all loans it services.

(iv) A guaranty agency or guaranty agency servicer is designated for exceptional performance for a 12-month period following the receipt, by the

guaranty agency or guaranty agency servicer, of the Secretary's notification of designation.

(v) A notice under paragraph (c)(1)(v) of this section is determined to have been received no later than 3 days after the date the notice is mailed, unless the guaranty agency or guaranty agency servicer is able to prove otherwise.

(2) The Secretary determines whether to designate a guaranty agency or guaranty agency servicer for exceptional performance based upon—

(i) The annual financial audit and a compliance audit of collection activities, including timely claim payment and timely reinsurance filing required for defaulted FFEL Program loans in § 682.410(b)(6)(iii) through (xii), § 682.406 (a)(8) and (a)(9), or § 682.410(b)(7) and, § 682.406 (a)(8) and (a)(9); and

(ii) Any other information in the possession of the Secretary.

(3) The Secretary informs the guaranty agency or guaranty agency servicer that its request for designation for exceptional performance has been approved, unless the results of the audit are persuasively rebutted by information in paragraph (c)(2)(ii) of this section. If the Secretary does not approve the guaranty agency's or guaranty agency servicer's request for designation, the Secretary informs the guaranty agency or guaranty agency servicer of the reason the application was not approved.

(4) In calculating a guaranty agency's or guaranty agency servicer's compliance rating, as referenced in paragraph (a)(2)(ii) of this section, the Secretary requires that the universe of loans in the audit sample must consist of all loans in the guaranty agency's or guaranty agency servicer's FFEL Program portfolio that are serviced during the audit period performed under the Department's regulations in § 682.410(b)(6)(iii) through (xii) and § 682.406 (a)(8) and (a)(9) or § 682.410(b)(7), and § 682.406 (a)(8) and (a)(9). The numerator must include the total number of collection activities successfully completed, in accordance with program regulations, that are serviced during the audit period. The denominator must include the total number of collection activities required to be performed, in compliance with program regulations, that are serviced during the audit period. Using statistical sampling and evaluation techniques identified in an audit guide prepared by the Department's Office of Inspector General, a random sample of loans must be selected and evaluated.

(5) The Secretary notifies a guaranty agency or guaranty agency servicer, within 60 days after the date the Secretary receives the information, listed in paragraph (a)(2) of this section from the guaranty agency's or guaranty agency servicer's application for designation for exceptional performance has been approved or denied.

(6) (i) To maintain its status as an exceptional guaranty agency or guaranty agency servicer, the guaranty agency or guaranty agency servicer must have a quarterly compliance audit of the due diligence in collection activities of defaulted FFEL Program loans in § 682.410(b)(6)(iii) through (xii) and § 682.406 (a)(8) and (a)(9) or § 682.410(b)(7), and § 682.406 (a)(8) and (a)(9) conducted by a qualified independent organization meeting the criteria in paragraph (c)(9) of this section. The audit must yield a compliance performance rating of not less than 97 percent. The quarterly audit may not include any period covered by the annual financial and compliance audit required under paragraph (a)(2) of this section. The results of the quarterly compliance audit must be submitted to the Secretary within 90 days following the end of each quarter.

(ii) If the guaranty agency or guaranty agency servicer has been designated for exceptional performance for at least 15 months, the guaranty agency or a guaranty agency servicer may petition the Secretary for permission to have its internal auditors perform subsequent quarterly compliance audits required by paragraph (c)(6)(i) of this section. If the Secretary approves the request, the guaranty agency's or guaranty agency servicer's annual audit must assess the reliability of the procedures used by the guaranty agency's or the guaranty agency servicer's internal auditor in performing the quarterly audits.

(7) (i) Payments of reinsurance made on defaulted FFEL Program loans submitted by an eligible guaranty agency or guaranty agency servicer designated for exceptional performance are not subject to repayment based on additional review of due diligence activities, including timely claim payment, or timely filing for reinsurance covering a period for which the guaranty agency or guaranty agency servicer was designated for any reason other than a determination by the Secretary that the eligible guaranty agency or guaranty agency servicer engaged in fraud or other purposeful misconduct in obtaining designation for exceptional performance.

(ii) A guaranty agency designated under this section that fails to service loans or otherwise comply with applicable program regulations is considered in violation of the Federal False Claims Act.

(8) (i) The Secretary may revoke the designation of a guaranty agency or guaranty agency servicer for exceptional performance if the Secretary has reason to believe the guaranty agency or guaranty agency servicer fraudulently obtained its designation for exceptional performance.

(ii) The Secretary may revoke the designation for exceptional performance upon 30 days' notice, and an opportunity for a hearing before the Secretary, if the Secretary finds that the guaranty agency or guaranty agency servicer failed to maintain an acceptable overall level of regulatory compliance.

(9) A qualified independent organization is an organization that meets the criteria in paragraph (b)(9) of this section.

(d) *Definitions.* For purposes of this section—

(1) *Due diligence requirements* means the activities required to be performed by lenders or guaranty agencies on delinquent or defaulted loans pursuant to § 682.411 (c) through (h), and (m), if applicable and § 682.410 (b)(6) (iii) through (xii) and § 682.406 (a)(8) and (a)(9) or § 682.410 (b)(7) and, 682.406 (a)(8) and (a)(9);

(2) *Eligible loan* means a loan made, insured, or guaranteed under Part B of Title IV of the Act; and

(3) *Servicer* means an entity that services and collects student loans and that—

(i) Has substantial experience in servicing and collecting consumer loans or student loans;

(ii) Has an annual independent financial audit that is furnished to the Secretary and any other parties designated by the Secretary;

(iii) Has business systems capable of meeting the requirements of part B of Title IV of the Act and applicable regulations;

(iv) Has adequate personnel knowledgeable about the student loan programs authorized by part B of Title IV of the Act; and

(v) Does not knowingly have any owner, majority shareholder, director, or officer of the entity who has been convicted of a felony.

(Authority: 20 U.S.C. 1078–9)

[FR Doc. 94–9464 Filed 4–19–94; 8:45 am]

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federal register

Wednesday
April 20, 1994

Part VI

Department of Agriculture

Cooperative State Research Service

Special Research Grants Program, Water Quality for Fiscal Year 1994; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program, Water Quality for Fiscal Year 1994; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants Program, Water Quality for Fiscal Year 1994.

Authority and Funding

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law No. 89–106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624 (7 U.S.C. 450i(c)(1)(A)). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below. Proposals may be submitted by State agriculture experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support.

A total of approximately $1,500,000 will be available for this program for Fiscal Year 1994. Funds will be awarded to support research seeking solutions to water quality problems that are within the scope of the Research Problem Areas listed below. Maximum total funding will not exceed $400,000 per proposal for a maximum proposed funding period of three years. Four or five proposals are expected to be funded.

Pursuant to section 719 of Public Law No. 103–111, (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994), funds available in Fiscal Year 1994 to pay indirect costs on research grants awarded competitively by CSRS may not exceed 14 per centum of the total Federal funds provided under each award.

In addition, pursuant to Section 727(b) of Public Law No. 103–111, in case any equipment or products may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations

Regulations applicable to this program include the following: (a) The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, as amended (56 FR 58146, November 15, 1991) which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; (d) the Audits of Institutions of Higher Education and Other Nonprofit Institutions, 7 CFR part 3051 (58 FR 41410, August 3, 1993); (e) the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; and (f) New Restrictions on Lobbying, 7 CFR part 3018.

Program Description

Program-related questions should be directed to either of the following:

Dr. Maurice L. Horton, Dr. Berlie L. Schmidt, Phone No. (202) 401–4504, Fax No. (202) 401–1706.

The scope of research includes developing principles to better understand the effects and interactions of processes on soil and/or water quality degradation resulting from agricultural practices involving the use of certain pesticides, fertilizers and wastes

The focus of the Fiscal Year 1994 research is to develop new and innovative agricultural management strategies for use by farmers and public officials to reduce or prevent pollution of water sources. The research should include development, evaluation, and/or implementation of practices integrated into agricultural management strategies designed to reduce pollution on a watershed scale. The proposed strategies for reducing pollution should be developed in partnership with Federal, State and local agencies, private industry, commodity groups, public interest groups or other stakeholders. Economic and environmental impacts upon water quality are to be considered. The final product of the research should be one or more agricultural management strategies that would be effective in reducing pollution, economical to implement, sustainable, acceptable to producers, and in compliance with policy guidelines.

In the water quality program, the term "Agriculture" encompasses the production of food, feed, fiber, and industrial crops, trees and livestock, and includes rural residences and rural communities, forests and wooded areas. Proposals on health risk problems are excluded.

Research Problem Areas (RPA) to be Supported under this Solicitation in Fiscal Year 1994:

The proposal may include one or more of the RPAs as described below. This list of suggested strategies is not intended to be all inclusive. Proposed strategies should be designed for integration at a watershed scale.

A. Nutrient Management

The goal of nutrient management is to provide a sufficient supply of nutrients for the crop to be produced while limiting or preventing contamination of the surface or ground waters.

Nutrient management strategies developed under this RPA may include integration of nutrient management into water quality plans for watersheds, development of guidelines for making nutrient application recommendations, development of environmentally safe nutrient application methods and assessment of the impact of nutrient management practices upon ecosystems.

B. Pest Management

The goal of pest management research is to reduce the risks to human health and the environment while providing agriculture with effective and economical pest management technologies.

Many of the current pest management practices depend heavily upon use of pesticides which may offer risks to human health and the environment.

Proposed pest management strategies may include: development and adoption of alternative approaches, the combination of integrated pest management (IPM) with other management practices, and the development and use of new or unique pest control practices that reduce risks to human health and the environment.

C. Waste Management

Management of organic wastes (biosolids) to prevent soil and water contamination is a major problem facing society. Land disposal of biosolids from animal, municipal and industrial sources has the potential to contaminate soil, water and the air. Odors, excess nutrients, heavy metals accumulation and waste stoppage practices pose problems for waste management.

Strategies to consider in waste management include development of guidelines for land disposal practices, development of simple cost-effective quality control and quality assurance procedures, development of odor control procedures and development of beneficial uses for waste as a resource.

D. Decision Support Systems

Strategies for reducing contamination of water supplies frequently lack the necessary database and support system for making reasonable management decisions. The focus of this research is to develop decision making systems which permit beneficial use of the land while preventing pollution of the land, air or water. Employment of new technologies, such as geographical information systems, remote sensing and model development, is encouraged.

The decision support systems should aid producers, consultants or applicators in making decisions regarding management of nutrients, pesticides or wastes. The systems must reduce the potential for pollution of land, air or water.

Format for Research Grant Proposals

The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, set forth instructions for the preparation of grant proposals. The following proposal format requirements are in addition to or deviate from those contained in 7 CFR 3400.4(c). In accordance with 7 CFR 3400.4(c), to the extent that any of the following additional requirements are inconsistent or in conflict with the instructions at 7 CFR 3400.4(c), the provisions of this solicitation shall apply.

The sections of the proposal shall be assembled in the following order: (1) Application for Funding, (2) Title of Project, (3) Abstract, (4) Key Words, (5) Justification, (6) Objectives, (7) Procedures, (8) Research Timetable, (9) Literature Review, (10) Current Research, (11) Facilities and Equipment, (12) Collaborative Arrangements, (13) Curriculum Vitae of Investigators, (14) Budget, (15) Assurance Statement(s), if applicable, (16) Current and Pending Support, and (17) NEPA statement.

Application for Funding. Attach a completed and signed Application for Funding, Form CSRS–661, to the front of the proposal. Be certain to list in Block 8 the letter(s) assigned to the Research Problem Area(s) (RPA) listed above that best describe the greatest emphasis of the proposed research, then the second and third greatest emphasis, if applicable (e.g., A, B, C). This will be the basis of grouping proposals and for determining training and experience needed by the peer review panelists who will evaluate each proposal.

One copy of Form CSRS–661, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. Form CSRS–661 and other required forms and certifications are contained in the Application Kit.

Type and Paper Size. Type should be no smaller than 12 characters per inch, single-spaced on one side of 8½"×11" paper. Total length of the proposal shall not exceed 20 pages, excluding forms (i.e., cover page, budget form, assurance statement(s), and current and pending support) and the NEPA statement with its supporting documentation. Reduction by photocopying or other means for the purpose of meeting above-stated page limits is not permitted. Attachment of appendices is not permitted. Proposals which do not fall within the guidelines of this solicitation will be eliminated from the competition and will be returned to the applicant as stated in Section 3400.14(a) of the Administrative Provisions governing the Special Research Grants Program.

Abstract and Key Words. The body of the proposal should be prefaced by an abstract and key words which are used to classify the proposal.

Abstract. Include factual, concise, and clear statements of proposed research as phrases or sentences. Limit the length of the abstract to five lines.

Key Words. Select two double words or four single words that describe the research emphasis, such as water quality, conservation tillage, nitrates, tillage, models, or contaminants.

Justification. Describe the water quality problems, or potential problems, including: where they occur; relevance to site-specific, watershed, regional, State, and national size scales. The expected application or use of resulting information should be explained, for example: value to the economy, methods of chemical analyses, need for specific model, basis of recommendations, understanding of processes, or relevancy to a specific water quality research program.

Multi-Institutions/Organizations. Multi-disciplinary and multi-institution collaboration is encouraged and must demonstrate significant contributions to the planning and conduct of the research by the collaborators. Collaborative or cooperative arrangements with other institutions, organizations, or agencies could include the Agricultural Research Service, Soil Conservation Service, Extension Service, Economic Research Service, U.S. Geological Survey, and the Environmental Protection Agency through projects, such as Hydrologic Unit Area, Management Systems Evaluation Areas (MSEA), Demonstration Sites, Farmstead Assessment, and Area Studies.

Budget, Form CSRS–55. A copy of Form CSRS–55, along with instructions for completing it, is included in the Application Kit. Applicants should note the special instructions shown below when completing Form CSRS–55.

Item D., "Nonexpendable Equipment." Requested items of equipment must be itemized (by description and cost) on a separate sheet of paper attached to Form CSRS–55, or in the body of the proposal. The need for all requested equipment must be fully justified in the proposal.

Item F., "Travel." The type and extent of travel and its relationship to project objectives should be described and justified. It should be noted that the terms and conditions of any grant awarded under this program will require Principal Investigators, as defined at 7 CFR 3400.2(c), to participate in at least one annual regional or national research reporting, evaluation, and planning workshop or conference, for the purpose of interstate, interagency, and interdisciplinary coordination in this water quality program. Funds may be requested under this budget category for these workshop/conference costs.

Item I., "All Other Direct Costs." Subawards are to be shown on each budget sheet of the primary budget. Subawardee budgets should be provided on separate forms in the same detail.

Item K., "Indirect Costs." The recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14% of total Federal funds awarded. This limitation also applies to the recovery of indirect costs by any subawardee or subcontractor, and should be reflected in the subrecipient budget.

Compliance With the National Environmental Policy Act

As outlined in 7 CFR part 3407 (CSRS's implementing regulations of the National Environmental Policy Act of 1969 (NEPA)), environmental data or documentation for the proposed project is to be provided to CSRS in order to assist CSRS in carrying out its responsibilities under NEPA, which include determining whether the proposed project requires an Environmental Assessment or an Environmental Impact Statement or

whether it can be excluded from this requirement on the basis of several categorical exclusions. To assist CSRS in this determination, the applicant should review the categories defined for exclusion listed below to ascertain whether the proposed project may fall within one of the exclusions.

A separate statement, indicating the applicant's opinion of whether or not the project falls within a categorical exclusion, and the reasons and supporting documentation therefor, must be included in the proposal. If the applicant is of the opinion that the proposed project may fall within a categorical exclusion, the specific exclusion must be identified. The information submitted in association with NEPA compliance should be identified as "NEPA Considerations" and the narrative statement and supporting documentation should be placed at the back of the proposal.

The following Categorical Exclusions apply:

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSRS Categorical Exclusions (7 CFR 3407.6(a)(2))

Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSRS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

Review Criteria

Proposals will be evaluated by a peer review group of qualified scientists selected in accord with Section 3400.11 of the administrative provisions governing the Special Research Grants Program. The composition of the group will be based upon the Research Problem Areas of the proposals as identified by the applicants. Pursuant to 7 CFR 3400.5(a), the following selection criteria for proposals will be used in lieu of those which appear in Section 3400.15 of the administrative provisions:

Selection criteria and maximum score:

Overall Scientific and Technical Quality—40

—Creative and innovative scientific approach
—Clear, concise, and achievable objectives
—Technical soundness of procedures
—Feasibility of attaining objectives

Justification, Review of Literature and Current Research—15

—Importance of the problem
—Relevance of proposed research to the problem
—Literature focused on specific research approach and objective

Budget, Resources, and Personnel—15

—Necessary facilities, resources, and personnel available
—Budget appropriate for proposed research
—Demonstrated scientific capability of investigators

Collaboration—20

—Evidence of significant contributions by collaborators
—Evidence and justification of multi-disciplinary and/or multi-institutional collaboration

Application of Research Results—10

—Planned application and implementation of research results
—Extension, transferability, and publication of results
—Potential for results to enhance agricultural sustainability

Total—100

How to Obtain Application Materials

Copies of this solicitation, the Application Kit, and the administrative provisions governing this program, 7 CFR Part 3400, many be obtained by writing to the address or calling the telephone number which follows: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; Ag Box 2245; Washington, D.C. 20250–2245; Telephone: (202) 401–5048.

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@csrs.esusda.gov. which states that you want a copy of the application materials for the Fiscal Year 1994 Special Research Grants Program, Water Quality. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Applicants should note that separate but complementary programs in water resources assessment and protection, soils and soil biology, and agricultural systems exist within the CSRS National Research Initiative Competitive Grants Program. For further information on that program, contact the Proposal Services Branch at the address listed above. Proposals should be submitted to the most appropriate program—submission of duplicate proposals or proposals with substantial overlap to both programs is discouraged.

What to Submit

An original and twelve copies of each proposal, prepared in accordance with the instructions found above, must be submitted. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

All copies of a proposal must be mailed in one package and each copy must be stapled securely in the upper

left-hand corner. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Where and When to Submit Applications

To be considered for funding during Fiscal Year 1994, proposals must be submitted by June 10, 1994.

Proposals submitted through the regular mail must be postmarked by June 10, 1994, and should be sent to the following address: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; Ag Box 2245; Washington, D.C. 20250–2245. The telephone number is: (202) 401–5048.

Hand-delivered proposals must be submitted to an express mail or courier service by June 10, 1994, or brought to the following address by 4:30 P.M. on June 10, 1994: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. The telephone number is: (202) 401–5048.

Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 14th day of April 1994.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

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S. 1206/P.L. 103–234

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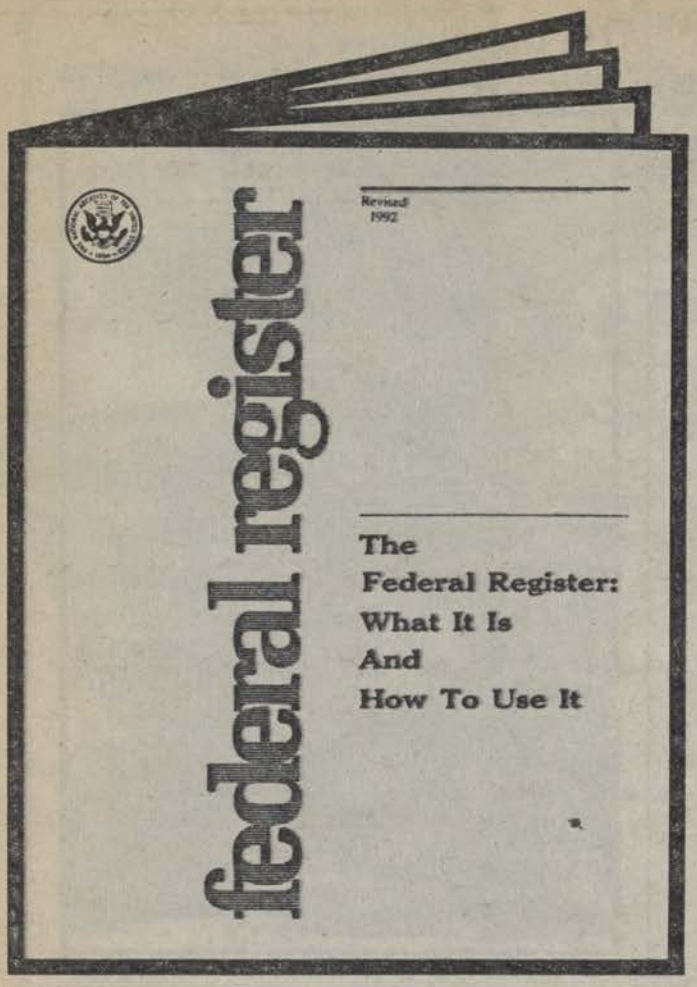

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