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Presidential Documents

Title 3—

The President

Presidential Determination No. 95–10 of December 15, 1994.

Presidential Determination To Authorize Transportation for Certain Unaccompanied Minors, Elderly, and Ill Individuals

Memorandum for the Secretary of Defense [and] the Attorney General

It is hereby determined that the Secretary of Defense shall assist the Attorney General under section 501(c) of the Refugee Education Assistance Act of 1980 (Public Law 96–422) by providing transportation for certain unaccompanied minors, elderly, and ill individuals. The Secretary of Defense may agree to expand the range of services and category of individuals as he determines.

The Secretary of Defense is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 15, 1994.

[FR Doc. 94–31652
Filed 12–20–94; 4:03 pm]
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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket 87-005-2]

RIN 0579-AA21

Importation of Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 300 to 399, revised as of January 1, 1994, on page 177, the table headings of § 319.37–2(a) should read as follows:

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article

9 CFR Part 92

[Docket No. 93–006–3]

Importation of Certain Cattle From Mexico; Identification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations to require that certain spayed heifers imported into the United States from Mexico be marked with a permanent, legible "M_x" on the right hip, and that certain steers imported into the United States from Mexico be marked with a permanent, legible "M" on the right hip, rather than on the jaw. These marking requirements are necessary to ensure that all steers and spayed heifers imported into the United States from Mexico, except those imported directly to slaughter or in-bond for feeding and return to Mexico, are clearly identifiable as being of Mexican origin. These marking requirements will facilitate the disease surveillance and traceback activities conducted in the United States under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

EFFECTIVE DATE: January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Import-Export Animals Staff, Veterinary Services, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during January 1995. Telephone: (301) 436–8170 (Hyattsville); (301) 734–8170 (Riverdale).

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 92 (§§ 92.400 through 92.435), referred to below as the regulations, pertains to the importation of ruminants. Sections 92.424 through 92.429 of the regulations contain specific provisions regarding the importation of ruminants, including cattle, from Mexico.

One of the diseases addressed by the regulations is bovine tuberculosis (referred to below as tuberculosis). Tuberculosis is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Tuberculosis in animals causes weight loss, general debilitation, and sometimes death.

Each year, approximately 1 million cattle are imported into the United States from Mexico. The vast majority of those cattle—about 99 percent—are young steers; the remaining 1 percent consists of spayed heifers and intact cattle (i.e., calves, bulls, and unspayed females). The steers and spayed heifers are, with few exceptions, consigned to pastures or feedlots for finish feeding prior to slaughter. Most intact cattle are integrated into herds in the United States for breeding purposes.

The period between 1982 and 1992 saw a significant increase in the number of Mexican-origin cattle found at slaughter in the United States to be infected with tuberculosis. In 1982, 78 samples submitted from slaughtered Mexican-origin cattle showed evidence of tuberculosis; that number rose to 613 in 1992. In 1982, 33 percent of the tuberculosis investigations at slaughter involved Mexican origin cattle; in 1992, that number rose to 81 percent.

That increase in the incidence of tuberculosis in Mexican-origin cattle led the Animal and Plant Health Inspection Service (APHIS) to publish in the **Federal Register** on November 12, 1993 (58 FR 59963–59965, Docket No. 93–006–1), a proposed rule to amend the regulations to require that spayed heifers and intact cattle (i.e., calves, bulls, and unspayed female cattle) imported into the United States from Mexico be branded with an "M" on the jaw using a hot iron, which was the same requirement that applied to most steers imported from Mexico. Based on the comments we received from individuals and organizations opposed to that proposal, as well as public concern that branding on the jaw caused unnecessary distress to cattle, we withdrew the November 12, 1993, proposed rule referenced above and replaced it with an alternative proposal.

In the alternative proposal, which was published in the **Federal Register** on August 24, 1994 (59 FR 43506–43508, Docket No. 93–006–2), we proposed to amend the regulations to require that certain spayed heifers imported into the United States from Mexico be marked with a permanent, legible "M_x" on the right hip, and that certain steers imported into the United States from Mexico be marked with a permanent, legible "M" on the right hip, rather than on the jaw.

We solicited comments concerning our alternative proposal for a 60-day period ending October 24, 1994. We received more than 12,000 comments by that date. They were from private citizens, animal rights organizations, a member of Congress, cattle industry associations, ranchers, representatives of State governments, and a veterinary medical association. We carefully considered all of the comments we received. They are discussed below.

Many commenters did not address the specific provisions of the proposed rule; rather, they either demanded that APHIS discontinue face branding or stated that they supported APHIS' proposal to discontinue face branding of steers. We have, therefore, taken such comments to support that aspect of the proposal that would change the location of the "M" brand on steers from the jaw to the right hip.

A few commenters objected to the proposed rule in its entirety because they felt that APHIS should conduct its disease surveillance activities as it sees fit and should not capitulate to outside pressure to change its methods. We have made no changes in this final rule based on such comments because we believe that the provisions of the proposed rule and this final rule do not negatively affect APHIS' ability to conduct its disease surveillance activities.

Several commenters felt that moving the brand from the face to the hip was no improvement, and that all M-branding should be discontinued. We have made no changes in this final rule based on such comments because we continue to believe, for the reasons discussed below, that some type of permanent marking is necessary to identify cattle imported into the United States from Mexico.

One commenter urged APHIS to keep the location of the brand on the jaw because branding on other locations can markedly reduce the value of the hide. While it is true that marking methods such as hot-iron branding and freeze branding do damage the hides of cattle and would likely result in some loss of value, many private entities such as cattle owners and feedlots routinely brand cattle on areas of the hide that would have trimmed to produce a "clean" hide. Moreover, we do not believe that the economic considerations associated with the placement of the brand on the hip are significant enough to warrant such a change in this final rule, especially given the degree of public support for our proposal to relocate the brand from the jaw to the hip.

Two commenters stated that the location of the brand should remain on the jaw, which has been set aside by some State livestock agencies for "government" brands. They argued that brands on the hip would be less visible and could be easily confused with registered ownership brands—a number of which are similar to the "M" or "M_x" mark—or feedlot brands. The same location specified for the "M" or "M_x" mark has been used by APHIS for the placement of "S" brands under the brucellosis regulations in 9 CFR part 78 since 1983, and we are unaware of any identification problems resulting from that requirement. In terms of the visibility of the "M" or "M_x" mark, the mark will be predictably located on each animal, so we believe that State and Federal animal health personnel will be able to readily discern the mark when necessary. Therefore, we have made no changes in this final rule as a result of those comments.

One commenter stated that the anatomical reference point specified for location of the brand on the hip—between the fourth to seventh coccygeal vertebrae—is on the moveable part of the tail and could not accommodate a 2- to 3-inch brand. Although the regulatory text of the proposed rule called for the placement of the "M" or "M_x" mark on the "right hip, high on the tailhead," the anatomical reference point specified for the placement of the mark was, as pointed out by the commenter, incorrect. To remedy that error, we have changed the specific anatomical reference point to "over the junction of the sacral and first coccygeal vertebrae" in the regulatory text of this final rule. Another commenter stated that the specified area is concave on thin cattle, which would result in incomplete, unreadable brands on such cattle. We do not believe that the concavity of the area near the tailhead on most cattle would be pronounced enough to result in an appreciable number of unreadable brands. Additionally, if an animal were to be offered for importation with an unreadable "M" or "M_x" mark, that animal would be refused entry.

One commenter stated that the placement of the brand on the hip would make it possible for a person to modify the brand by, for example, branding an additional line or symbol close to the "M" or "M_x"; having done that, the person could attempt to portray the modified brand as an ownership brand in order to disguise the animal's Mexican origin. Certainly an "M" or "M_x" mark could be altered, just as any private or regulatory brand could be altered. However, because we are requiring that the "M" or "M_x" mark be placed in a specific location that is not likely to be used for marking by private entities, we do not believe that the commenter's concerns will be a problem. As mentioned above, the "S" brands applied to brucellosis-exposed cattle under the regulations in 9 CFR part 78 are placed in the same location near the tailhead as the "M" and "M_x" marks are to be placed, and we are

unaware of any attempts to modify those "S" brands during the 11 years they have been used. Additionally, we believe that State brand registries and State animal identification regulations will help to discourage persons from taking the actions envisioned by the commenter. We have, therefore, made no changes in this final rule as a result of that comment.

One commenter urged APHIS to expand the scope of the marking requirements to include intact Mexican cattle because such cattle are often integrated into domestic herds for breeding purposes, thus heightening the potential for the Mexican-origin cattle to expose domestic cattle to disease. As we explained in the proposed rule, we believe that the small number of intact cattle imported into the United States from Mexico each year, plus the fact that the interstate movement of intact cattle is regulated under the brucellosis regulations in 9 CFR part 78, make it significantly easier for APHIS to trace the movement of Mexican-origin intact cattle following their entry into the United States. Therefore, we do not believe that it is necessary to permanently identify such cattle as being of Mexican origin.

One commenter urged APHIS to expand the scope of the marking requirements to include cattle imported from Mexico in bond for feeding and return to Mexico under § 92.427(e) of the regulations because such cattle are not always returned to Mexico since the U.S. Customs Service stopped collecting the bond as a result of the North American Free Trade Agreement. We are aware of the potential problems with the in-bond program and are currently reconsidering the regulations governing the program. We do not, however, believe that expanding the marking requirements to include in-bond cattle is necessary at this time. If, at some point, we determine that such a change is necessary, the change would be proposed as part of a separate rulemaking.

Two commenters pointed out that APHIS currently has two proposed rules that have not yet been finalized that would render most M-branding unnecessary. The first proposed rule, published in the **Federal Register** on May 9, 1994 (59 FR 23810–23817, Docket No. 93–014–1), would establish comprehensive quarantine and surveillance requirements for Mexican cattle offered for importation into the United States. The second proposed rule, published in the **Federal Register** on November 12, 1993 (58 FR 59959–59962, Docket No. 93–084–1), would require the individual identification on a health certificate of imported Mexican-origin cattle being moved interstate. The commenters noted that the quarantine measures, movement restrictions, and documentation requirements contained in those proposed rules are similar to the restrictions currently placed on cattle imported from Mexico for slaughter in accordance with § 92.429 of the regulations or in bond for temporary entry in accordance with § 92.427(e) of the regulations. The commenters argued that if APHIS believes that it is not necessary to brand in-bond and immediate slaughter cattle, then it should not be necessary to brand Mexican cattle affected by the two proposed rules. Both of the proposed rules mentioned by the commenter are still being considered by APHIS and have not been finalized. Because the provisions of those two proposals have not been promulgated in final regulations, they have no regulatory effect; we cannot make any changes in this final rule that are based on the provisions of other proposed regulations. However, a similar comment was received in response to the May 1994 proposed rule mentioned above (Docket No. 93–014–1), so the suggestion of exemptions from the branding requirement for cattle affected by the provisions of that proposed rule will be considered and discussed in any final rulemaking related to that proposed rule.

One commenter stated that branding is unnecessary because the official Mexican Ministry of Agriculture and Water Resources (SARH) blue eartag required by the regulations in § 92.427(d) can be used to identify Mexican-origin cattle. We agree that the blue SARH eartag is an important identification tool, but we remain concerned that eartags can be lost or removed. With the an "M" or "M_x" mark present, we could still determine an animal's country of origin if its eartag were lost or removed. Additionally, we believe that it is less likely that someone would remove the SARH tag from an "M" or "M_x" marked animal in an attempt to conceal the animal's Mexican origin, so the SARH tag, with its value as a traceback tool, is more likely to remain on the animal.

Some commenters stated that because APHIS has acknowledged that freeze branding can be used to identify cattle imported from Mexico, APHIS should respond to the public opposition to hot-iron branding by prohibiting hot-iron branding and requiring the use of freeze branding. Similarly, another commenter felt that freeze branding should be the standard identification method and hot-iron branding should be allowed only if the exporter has submitted a written justification for using hot-iron branding. Although we acknowledge that freeze branding can work as a means of identifying cattle imported from Mexico, we also recognize that freeze branding has its limitations. First, a freeze brand takes 18 to 21 days to become visible, and there may be some exporters of cattle for whom branding that far in advance of offering their cattle for entry into the United States is not a viable option. Second, freeze brands are not visible on white or light-colored hair, and there will certainly be cattle offered for importation that have white or light-colored hair at the location specified for the placement of the "M" or "M_x" mark. Because APHIS will not allow cattle with unreadable brands into the United States, requiring the use of freeze branding would have the effect of prohibiting the importation of certain cattle based on their coloring. Therefore, we believe that hot-iron branding should remain an option for exporters of cattle from Mexico.

Another commenter stated that freeze branding will not be an effective means of identifying Mexican-origin cattle because so many of those cattle have light-colored hair or white spots. As discussed above, we acknowledge that freeze branding is not going to be an option for all cattle in all cases. The regulations require a distinct, permanent, and legible "M" or "M_x" mark on certain cattle offered for entry; we believe that it is reasonable to expect that the exporter of the cattle will keep that requirement, as well as the advantages and limitations of hot-iron branding and freeze branding, in mind when selecting a marking method.

Many commenters stated that APHIS should discontinue branding in favor of using microchips to individually identify Mexican-origin cattle. Some of the commenters pointed to studies that indicated that microchip technology would be well-suited to APHIS' stated goals of disease surveillance and traceback. We agree that microchips are useful, but several factors prevent us from changing the regulations to require their use. We continue to believe that an identification method must be distinct, permanent, and legible; microchips fail to fully satisfy those three criteria. In terms of distinctness, we believe that the identification should be readily visible, which microchips, clearly, are not. In terms of permanence, a microchip implanted in an animal could be removed or could migrate to other parts of the body. In terms of legibility, information can be readily stored on and retrieved from microchips, but there

is no universal chip reader that can access the information stored on chips produced by different manufacturers.

In addition to the many suggestions that APHIS use microchips to identify Mexican-origin cattle, numerous commenters offered other alternatives to M-branding. Those commenters suggested that APHIS use: Stickers, bells, ribbons, tail cropping, ear notching, tags, ear tags, magic markers, paint, indelible dye, stamps on the tails, and rings on the tails. As is the case with microchips, none of these suggested identification meets our criteria for distinctness, permanence, and legibility. Paints, dyes, stamps, and markers can fade or be obscured; stickers, bells, ribbons, and rings can be lost or removed; and notching or cropping, although permanent, are not readily and distinctly visible or legible.

One commenter noted that the proposed new text of § 92.427(c)(2) makes no mention of freeze branding, even though it eliminates the requirement for hot-iron branding. The commenter asked that freeze branding be mentioned, even encouraged, in the revised regulatory text of § 92.427(c)(2) in order to inform persons who have read only the regulations, and not the supplementary information provided in the proposed rule and this final rule, that freeze branding may be used to identify cattle imported into the United States from Mexico. We agree that the marking methods acceptable to APHIS should be set forth in the regulations and have changed the regulatory text in this final rule to explicitly state that the "M" or "M_x" mark may be applied with a freeze brand or hot iron.

One commenter noted that although the proposed rule would allow the use of freeze branding or hot-iron branding to mark spayed heifers, an unpublished APHIS ovariectomy protocol that requires the M-branding of certain spayed heifers—even though that requirement is not published in the regulations—appears to require that a hot iron be used to apply the brand. The protocol states that the "M_x" mark on spayed heifers must be a "distinct, permanent mark which is legible on the right side of the tailhead as defined in Title 9, Code of Federal Regulations, Part 78." The commenter stated that there is no definition of "distinct," "permanent," or "mark" in those regulations, but there are definitions of different types of brands associated with the APHIS brucellosis eradication program that describe the brands exclusively, or predominantly, as being applied with a hot iron. The commenter felt that the protocol should be reworded to make it clear that freeze branding and other methods may be used to apply the "M_x" mark on spayed heifers. The protocol to which the commenter is referring is part of the cooperative services agreement between APHIS and a private sector veterinarian that provides for APHIS veterinary medical officers to monitor ovariectomies performed on heifers located in Mexico prior to their importation into the United States. The protocol does not state that hot-iron branding must be used or that freeze branding may not be used; the "distinct, permanent mark" language was meant to allow both methods without specifying either. The revised text of § 92.427(c)(2) now clearly states that either freeze branding or hot-iron branding may be used, so even if the protocol were construed to prohibit freeze branding, the regulations would preempt the protocol and freeze branding would be allowed.

Some commenters stated that APHIS should develop faster, more accurate tests for the diagnosis of tuberculosis and work to eradicate tuberculosis in Mexico, which would eliminate the need to brand cattle from Mexico. We agree that eradicating tuberculosis in Mexico would eliminate the need for branding cattle from Mexico, but that goal has not yet been attained. Researchers from APHIS, other Federal agencies, and private entities are constantly working to develop better ways to diagnose and prevent the spread of diseases, including tuberculosis. Additionally, APHIS and the Mexican Government, along with the livestock industries in the United States and Mexico, are cooperating in a joint effort to eradicate tuberculosis in Mexico.

Some commenters felt that since APHIS proposed to end the face branding of cattle from Mexico, it should also change the provisions of its regulations in 9 CFR parts 50, 51, 77, 78, and 80 that allow or require face branding. We have received similar requests and are giving them serious consideration. However, any changes to those regulations would have to be part of a separate rulemaking proceeding.

Some commenters had the impression that APHIS knowingly allowed tuberculosis-infected cattle to be imported from Mexico and was using the M-brand to identify and track those cattle. Those commenters felt that APHIS should test all cattle offered for importation into the United States from Mexico for tuberculosis before allowing the cattle into this country. Other commenters understood that APHIS does indeed require cattle offered for importation from Mexico to be tested or, in the case of cattle imported for immediate slaughter under § 92.429, accompanied by a certificate stating that they have been examined and found free from evidence of communicable disease, before allowing the cattle into this country. Those commenters did, however, state that APHIS should do a better job of testing or alter its methods to include a 60-day pre-entry quarantine followed by a tuberculosis test for cattle offered for importation into the United States from Mexico. As mentioned above, we are considering rulemaking that would establish additional quarantine and testing requirements similar to those mentioned by the commenter. Until such time as additional quarantine and testing requirements are put in place, we will continue to utilize the available tools and methods in our efforts to prevent the entry into the United States of tuberculosis from Mexico.

One commenter stated that while APHIS has said that M-branding is necessary to facilitate the disease eradication and surveillance objectives of the National Cooperative State/Federal Tuberculosis Eradication Program, it has failed to establish how M-branding actually serves those objectives. Because of that failure, it follows that there is no rational basis to support the expansion of M-branding to spayed heifers and those provisions of the proposed rule dealing with the branding of spayed heifers should be withdrawn. We believe that we have established the need for M-branding in previous rulemakings. The permanence of branding is perhaps the key factor in our reliance on M-branding; other identification methods can be lost, removed, or obscured. As we have stated before, M-branding is the only permanent, readily visible means we have to identify cattle imported into the United States from Mexico. We believe that the higher incidence of tuberculosis in Mexico makes it necessary for us to be able to identify such cattle when searching for the origin of a tuberculosis-infected animal. If we can determine that a diseased animal originated in Mexico, we will not waste time and effort searching for its herd of origin in the United States. Conversely, if the animal is not M-branded, we can concentrate our disease traceback efforts to those cattle that are more likely to be of U.S. origin. We continue to believe that M-branding serves the needs of our tuberculosis eradication efforts.

In addition to the comments discussed above, some of the commenters raised issues that are not within the scope of the proposed rule and, in some cases, are not within APHIS' regulatory purview. Those

issues related to: The treatment of calves by veal producers, the treatment of geese by fois gras producers, the treatment of chickens by poultry producers, horse roping for sport in Mexico, rodeos in Mexico and the United States, the use of bovine growth hormone in dairy herds, banning shetitah (the slaughtering of animals for food in the manner prescribed by Jewish law), conditions at zoos in the United States, government spending to promote fur exports, the transportation of farm animals and the care of animals injured during movement, "factory farming," and the welfare of laboratory animals. Because such comments are outside the scope of the proposed rule, no changes have been made in this final rule as a result of those comments. Any regulatory changes related to those issues within APHIS' regulatory purview would have to be proposed as part of a separate proposed rule.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Cattle imported from Mexico account for about 1 percent of the total U.S. cattle population, which in 1991 stood at 99.4 million head. The average price per head for cattle from Mexico in 1991 was $350, with the total value of imported Mexican cattle exceeding $361 million for the year. During 1991, approximately 1 million live cattle were imported into the United States from Mexico.

We are amending the animal importation regulations to require that certain spayed heifers imported into the United States from Mexico be marked with a permanent, legible "M_x" on the right hip, and that certain steers imported into the United States from Mexico be marked with a permanent, legible "M" on the right hip, rather than on the jaw.

Three primary considerations led APHIS to conclude that the marking requirements contained in this rule will not have an economic impact on any U.S. entities, large or small. First, all steers imported into the United States from Mexico, except those steers imported for immediate slaughter or in-bond for feeding and return to Mexico, were already required to be identified with an M-brand. For these steers, which represent 99 percent of the cattle imported into the United States from Mexico, only the location of the "M" has changed.

The second consideration follows from the first: That is, although there had been no provisions in the regulations requiring spayed heifers to be permanently identified as being of Mexican origin, spayed heifers represent less than 1 percent of the cattle imported into the United States from Mexico. Thus, requiring certain spayed heifers to be marked with an "M_x" prior to arriving at the U.S. port of entry will have an insignificant effect on exporters or importers of spayed heifers from Mexico.

The third consideration is that the cost of marking the cattle, which is negligible, will be borne by the Mexican exporter of the cattle.

Therefore, we expect this rule will have no significant economic impact on any large or small entities because its provisions will not significantly increase or decrease their cost of doing business.

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

Executive Order 12778

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 92

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

Accordingly, 9 CFR part 92 is amended as follows:

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

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

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

2. In § 92.427, paragraph (c)(2) is revised to read as follows:

§ 92.427 Cattle from Mexico.

* * * * *

(c) * * *

(2) Each steer imported into the United States from Mexico shall be identified with a distinct, permanent, and legible "M" mark applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry, unless the steer is imported for slaughter in accordance with § 92.429 or in bond for temporary entry in accordance with § 92.427(e). Each spayed heifer imported into the United States from Mexico shall be identified with a distinct, permanent, and legible "M_x" mark applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry, unless the spayed heifer is imported for slaughter in accordance with § 92.429 or in bond for temporary entry in accordance with § 92.427(e). The "M" or "M_x" mark shall be not less than 2 inches nor more than 3 inches high, and shall be applied to each animal's right hip, high on the tailhead (over the junction of the sacral and first coccygeal vertebrae).

* * * * *

Done in Washington, DC, this 16th day of December 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–31464 Filed 12–21–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 94–083–2]

Change in Disease Status of Portugal Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding

Portugal to the list of countries where bovine spongiform encephalopathy (BSE) exists, because the disease has been detected in native cattle in that country. The interim rule prohibited or restricted the importation of certain fresh, chilled, and frozen meat, and certain other animal products and animal byproducts from ruminants which have been in Portugal. The interim rule was necessary to reduce the risk that BSE could be introduced into the United States.

EFFECTIVE DATE: January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen Akin, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7830.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective September 9, 1994, and published in the **Federal Register** on September 15, 1994 (59 FR 47235–47236, Docket No. 94–083–1), we amended the regulations in 9 CFR part 94 by adding Portugal to the list of countries where BSE exists in § 94.18.

Comments on the interim rule were required to be received on or before November 14, 1994. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 94.18 and that was published at 59 FR 47235–47236 on September 15, 1994.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 16th day of December 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–31465 Filed 12–21–94; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AF02

List of Approved Spent Fuel Storage Casks: Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add the Standardized NUHOMS Horizontal Modular System to the List of Approved Spent Fuel Storage Casks. This amendment allows the holders of power reactor operating licenses to store spent fuel in this approved cask under a general license.

EFFECTIVE DATE: January 23, 1995.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact, as well as, the public comments received on the proposed rule are available for inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from the individuals listed under the next heading below.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6195, or Dr. Edward Y. S. Shum, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7903.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982 (NWPA) includes the following directive: "The Secretary [of the Department of Energy (DOE)] shall establish a demonstration program in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear reactor power sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." After subsequent DOE technical evaluations and based on a full review of all available data, the Commission approved dry storage of spent nuclear fuel in a final rule published in the **Federal Register** on July 18, 1990 (55 FR 29181). The final rule established a new Subpart K within 10 CFR Part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites."

Irradiated reactor fuel has been handled under dry conditions since the mid-1940s when irradiated fuel examinations began in hot cells. Light-water reactor fuel has been examined dry in hot cells, since approximately 1960. Irradiated reactor fuel has been stored continuously at hot cells under dry conditions for approximately two decades. The NRC's experience with storage of spent fuel in dry casks is extensive as described in the proposed rule to establish 10 CFR Part 72, Subpart K (May 5, 1989; 54 FR 19379). Further, the United States has extensive experience in the licensing and safe operation of independent spent fuel storage installations (ISFSIs). By the end of 1994, six site-specific licenses for dry cask storage will have been issued: Virginia Power's Surry Station, issued July 2, 1986; Carolina Power and Light's (CP&L) HB Robinson Station, issued August 13, 1986; Duke Power's Oconee Station, issued January 29, 1990; Public Service of Colorado's Fort St. Vrain facility, issued November 4, 1991; Baltimore Gas and Electric's (BG&E) Calvert Cliffs Station, issued November 25, 1992; and Northern States Power's (NSP) Prairie Island Nuclear Generating Plant, issued October 19, 1993. All except NSP have commenced operation and loaded fuel. At the end of 1994, dry storage spent fuel inventories of these utilities are as follows: 500 assemblies at Virginia Power, 60 assemblies at CP&L, 530 assemblies at Duke Power, 1480 fuel elements at Public Service of Colorado, and 190 assemblies at BG&E. NSP plans to begin storing fuel soon. In May 1993, Consumers Power's Palisades Station commenced operation and loaded fuel under the provisions of the general license in 10 CFR Part 72, Subpart K. At

the end of 1994, approximately 168 assemblies are stored at Palisades.

As a result of the growing use of dry storage technology, the NRC has gained over 35 staff years of experience in the review and licensing of dry spent fuel storage systems. In addition, the NRC draws upon the knowledge and experience of outside scientists and engineers recognized as experts within their respective fields in the performance of the independent safety analysis of the system and component designs submitted by applicants for dry cask licenses or certification. Reviews of numerous applications seeking site-specific licenses, certificates of compliance, or approvals of topical reports, have been conducted over the past eight years. More recently, the NRC published a notice of proposed rulemaking in the **Federal Register** on June 2, 1994 (59 FR 28496), which proposed to amend 10 CFR 72.214 to include one additional spent fuel storage cask (i.e., the VECTRA Technologies, Inc., Standardized NUHOMS Horizontal Modular Storage System) on the list of approved spent fuel storage casks that power reactor licensees may use under the provisions of a general license issued by NRC in accordance with 10 CFR Part 72, Subpart K. The Standardized NUHOMS consists of two systems: (1) The NUHOMS–24P holds 24 specified pressurized-water reactor spent fuel assemblies and (2) The NUHOMS–52B holds 52 specified boiling-water reactor spent fuel assemblies.

Subsequent to the expiration of the 75-day public comment period on August 16, 1994, NRC received a request, dated August 11, 1994, for a 6-week extension of the comment period from Connie Kline of the Sierra Club on behalf of 12 citizen groups. The extension request asserted that several proprietary documents related to this rulemaking were not available to the public for approximately 2 weeks at the beginning of the comment period. The NRC granted the request on August 29, 1994 (59 FR 44381) by extending the public comment period to September 30, 1994.

VECTRA Technologies, Inc. (formerly Pacific Nuclear Fuel Services, Inc.) submitted to the NRC a Safety Analysis Report (SAR) entitled "Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel," NUH–003, Revision 2, dated November 1993. Subsequently, VECTRA Technologies, Inc. provided additional information to the NRC related to the SAR. In March 1994, the NRC issued a draft Safety Evaluation Report (SER) entitled "Safety Evaluation Report of Pacific Nuclear Fuel Services, Inc. Safety Analysis Report for the Standardized NUHOMS Horizontal Storage System for Irradiated Nuclear Fuel" approving the SAR. The NRC issued a draft Certificate of Compliance by letter to Mr. Robert D. Quinn from Mr. Frederick C. Sturz dated April 28, 1994. These documents are part of the docket and record that support the proposed rule published in the **Federal Register** on June 2, 1994 (59 FR 28496).

The objective of 10 CFR Part 72 is to protect the public health and safety by providing for the safe confinement of the stored fuel and preventing the degradation of the fuel cladding. The review criteria used by the NRC for review and approval of dry cask storage under 10 CFR Part 72 consider the following factors: siting, design, quality assurance, emergency planning, training, and physical protection of the fuel. Phenomena such as earthquakes, high winds, tornados, tornado driven missiles, lightning, and floods are included in the review of a specific system, either for a certificate of compliance or a site-specific license. In addition, applicants must demonstrate to NRC's satisfaction that their proposed dry cask system will resist man-made events such as explosions, fire, and drop or tipover accidents.[1]

Based on further NRC review and analysis of public comments, both the SER and Certificate of Compliance for the Standardized NUHOMS were modified. Section M contains a description of changes to the SER and Certificate of Compliance in response to public comments. The NRC finds that the Standardized NUHOMS, as designed and when fabricated and used in accordance with the conditions specified in its Certificate of Compliance, meets the requirements of 10 CFR Part 72. Thus, use of the Standardized NUHOMS, as approved by the NRC, will provide adequate protection of the public health and safety and the environment. With this final rule, the NRC is approving the use of the Standardized NUHOMS under the general license in 10 CFR Part 72, Subpart K, by holders of power reactor operating licenses under 10 CFR Part 50. Simultaneously, the NRC is issuing a final Certificate of Compliance to be effective on January 23, 1995. A copy of the Certificate of Compliance is available for public inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

[1] The design bases for these events and accidents are contained within 10 CFR Part 72.

Public Responses

In response to the proposed addition of the Standardized NUHOMS, 239 comments in 27 letters with one supplement were received from individuals, public interest groups, an environmental group, an association, industry representatives, a city, states, and one Federal agency. One commenter withdrew his comments. Many of these letters contained similar comments that have been grouped together and addressed as a single issue. All comments have been grouped into 15 broad issues designated A through O. A summary of the comments and an NRC analysis and response to those comments is included for each broad issue. The NRC has identified and responded to 89 separate issues that include the significant points raised by each commenter.

A number of comments were related to the disposal of high-level waste and the use of dry cask storage technology in general, rather than to the acceptability of this particular cask. Examples of these comments include:

—The Federal Government's failure to resolve questions about the permanent storage of nuclear waste leaves both the plant and public with limited options: additional storage in pools, additional storage in dry casks, or plant shutdown. The Federal Government has an obligation to resolve the issue of permanent or interim storage. It would be difficult to overstate the need for dispatch in doing so, as hundreds of American communities will eventually face this problem.

—It is not fair to the public of Ohio to link Toledo Edison Company's attempts to continue the safe storage of its nuclear fuel with insistence by others that the NRC shut down Davis-Besse and every other nuclear plant in the country.

—Only dry storage casks that are compatible with future DOE interim or permanent storage operation, including transportation, should be approved for use under the general license and listed in 10 CFR 72.214.

These comments deal with broad policy and program issues relating to the storage and disposal of high-level radioactive waste, including the DOE's repository program and as such are beyond the scope of this rule. However, there is a summary of relevant information on many of these broad issues in Group G. Many comments were directed at the Standardized NUHOMS–24P with only a few comments being specific to the Standardized NUHOMS–52B.

Many commenters discussed topics that were not the subject of this rulemaking and thus were not specifically addressed by the NRC staff as a part of this final rule action. These comments express opposition to the use of dry cask storage and included the following suggestions and topics:

(1) Nuclear plants generating radioactive waste should be shut down.

(2) The production of radioactive waste should be stopped when the existing spent fuel pool (and off-load-reactor capacity) is full.

(3) A formal hearing should be required at each site using dry storage casks.

(4) The Davis-Besse plant should be shut down.

(5) The use of nuclear power should be stopped and existing sites cleaned up.

(6) Palisades experienced problems in using the VSC–24 cask.

(7) Alternative forms of power should be used.

Finally, many commenters expressed concern over the ability of dry cask storage designs, presumably including the Standardized NUHOMS, to store spent fuel safely. The following responses to these comments reflect a small but important portion of the NRC's review of health, safety, and environmental aspects of the Standardized NUHOMS to ensure that the cask is designed to provide protection of the public health and safety and environment under both normal conditions and severe, unlikely but credible, accident conditions. Dry cask storage systems are massive devices, designed and analyzed to provide shielding from direct exposure to radiation, to confine the spent fuel in a safe storage condition, and to prevent releases of radiation to the environment. They are designed to perform these tasks by relying on passive heat removal and confinement systems without moving parts and with minimal reliance on human intervention to safely fulfill their function for the term of storage. The NRC staff has concluded that the methods of analysis are conservative and assure that the design has appropriate margins of safety under both normal and accident conditions.

Analysis of Public Comment

A. A number of commenters raised issues relating to cask handling and the ability of the cask to withstand drop and tipover accidents.

A.1. *Comment.* Several commenters wanted the transfer cask containing the Dry Storage Canister (DSC) to be analyzed for the maximum possible drop, regardless of whether that drop can occur inside or outside the spent fuel building. One commenter alleged that a drop of the transfer cask into the spent fuel pool would damage fuel assemblies in the pool. Another commenter was concerned about jamming the transfer cask in the spent fuel pool. What would happen to the cask if jammed fuel could not be extricated? Would the entire 40 ton transfer cask be left in the fuel pool?

Response. Use of the Standardized NUHOMS inside the fuel handling building would be conducted in accordance with the 10 CFR Part 50 reactor operating license. These cask handling operations, including loading, retrieval, and training, must be evaluated by the general licensee as required by 10 CFR 72.212(b)(4) to ensure that procedures are clear and can be conducted safely. Load handling activities and possible load drop events with structural and radiological consequences related to transfer cask drops inside the spent fuel building are subject to the provisions of 10 CFR 50.59. Thus, the licensee must determine whether the activities involve any unreviewed facility safety question or any change in facility technical specifications. The transfer cask and DSC designs were evaluated by the NRC against the criteria for controlling heavy loads that are found in NRC's NUREG–0612,[2] "Control of Heavy Loads at Nuclear Power Plants," and American National Standards Institute (ANSI) N14.6, "Special Lifting Devices for Shipping Containers Weighing 10,000 Pounds or More." The lifting yoke associated with the transfer cask is a special purpose device designed to ANSI N14.6 criteria to ensure that the yoke can safely lift the wet transfer cask containing the DSC out of the spent fuel pool and can safely lift the dry transfer cask and DSC to the transport trailer. Pursuant to 10 CFR 50.59, for those reactor plants with a shipping cask drop analysis, the licensee must verify that the shipping cask drop analysis adequately describes the consequences of a postulated transfer cask drop and that no unreviewed safety question exists. For those reactor plants that may lack a shipping cask drop analysis, each licensee must perform a transfer cask drop analysis pursuant to 10 CFR 50.59.

Specific requirements for lifting the transfer cask are contained in the Certificate of Compliance and SER. However, movement of the transfer cask in the spent fuel pool building must, as required by 10 CFR 72.212(b)(4), be evaluated by the licensee pursuant to 10 CFR 50.59. The possibility of jamming a transfer cask while in the spent fuel pool is one of many issues to be evaluated under 10 CFR 50.59.

A.2. *Comment.* One commenter asked why the transfer cask with the DSC can be lifted to 80 inches outside the spent fuel pool building when it has to be unloaded and inspected for damage if it drops from above 15 inches. Why not limit the height to 15 inches?

Response. The transfer cask with the DSC rides on the transport trailer at a height of greater than 15 inches and therefore was analyzed for a drop from that height (80 inches). A drop from a height between 15 and 80 inches does not pose a public health and safety hazard. However, to ensure safety the NRC requires the DSC to be unloaded and inspected for damage.

A.3. *Comment.* One commenter asked about the tipover analysis or drop analysis result.

Response. The tipover, end drops, and horizontal drop analyses form part of the structural design basis for the Standardized NUHOMS design. The designer, VECTRA, described these drop and tipover analyses in SAR, Section 8.2.5. The NRC's evaluation of the vendor's analyses is described in SER, Section 3.2.2.3E. The NRC found the results of these analyses to be satisfactory, because the calculated stresses were all within the allowable criteria of the American Society of Mechanical Engineers (ASME) Code.

A.4. *Comment.* Several commenters, citing Section 1.1.1 of the draft Certificate of Compliance, requested that the postulated cask drop accident in the plant fuel handling area be included in the list of parameters and analyses that will need verification by the system user (for the 10 CFR 50.59 safety evaluation).

Response. As stated in Section 1.1.1 of the draft Certificate of Compliance, a holder of a 10 CFR Part 50 license before use of the general license under 10 CFR Part 72, must determine whether activities related to storage of spent fuel involve any unreviewed facility safety issues or changes in facility technical specifications as provided under 10 CFR 50.59. Fuel handling including the possible drop of a spent fuel cask is among the activities that are required to be verified. Fuel handling operations, including spent fuels and fresh fuels, are routine within the nuclear power

[2] Copies of NUREG–0612 and NUREG/CR 1815 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001.

plant and are subject to NRC regulation under 10 CFR Part 50. A holder of a 10 CFR Part 50 license is required to establish operating procedures for spent fuel handling and to provide emergency planning to address a potential cask drop accident in the reactor's fuel handling area (Certificate of Compliance, Section 1.1.4). Therefore the NRC considers it clear that the spent fuel operation in the nuclear power plant should be evaluated to verify that the possible drop of a spent fuel cask does not raise an unreviewed safety issue or require a facility technical specification change appropriately regulated under 10 CFR Part 50.

A.5. *Comment.* One commenter stated that there is no place to unload the spent fuel in the event of a canister breach. There is no indication that the canister, the canister lifting mechanism, or the transport mechanism to move the canister into the cask, are nuclear grade equipment or have been designed to prevent a single failure from breaching the canister and circumventing the protection provided by the sole barrier provided by the canister wall itself.

Response. According to 10 CFR 72.122(1), storage systems must be designed to allow ready retrieval of the spent fuel in storage. A general licensee using an NRC-approved cask must maintain the capability to unload a cask. Typically, this will be done by maintaining the capability to unload a cask in the reactor fuel pool. Other options are under consideration that would permit unloading a cask outside the reactor pool.

With respect to canister equipment and design, the DSC or canister is designed to the ASME Boiler and Pressure Vessel Code (BPVC), Section III, Subsection NB. The DSC provides a containment boundary for the radioactive material and the cladding of the fuel rods provides confinement of fuel pellets. Only intact fuel assemblies (rods) with no known cladding defects greater than pin holes and hairline cracks are permitted to be stored. This approach assures the structural integrity of the fuel to confine the fuel pellets and its retrivability. In the unlikely event of a breach that required the canister to be unloaded, the canister can be returned to the reactor spent fuel pool. Therefore, it is incorrect to assert that there is no place to unload a canister. The Horizontal Storage Module (HSM) is designed to American Concrete Institute (ACI) 349, which is the required code for nuclear structures made of reinforced concrete. The transfer cask is designed according to the ASME BPVC, Section III, Subsection NC; ANSI-N14.6 for heavy loads; ANSI–50.9 for load combinations; and NUREG/CR 1815 for impact testing. Because the cask itself is required to meet such exacting standards of construction, the transport mechanism and the trailer that move the canister into the HSM are not considered to be important to safety. Therefore, the design that meets industry standards is sufficient.

B. A number of commenters raised issues relating to releases of radioactivity from surface contamination and leakage from the casks under normal and accident conditions.

B.1. *Comment.* One commenter pointed out that the Certificate of Compliance Surveillance Requirement 1.2.12 does not have a section stating the action that is to be taken when the contamination level in the transfer cask exceeds limits after the DSC has been transferred to the concrete HSM.

Response. The Certificate of Compliance Surveillance Requirement in Section 1.2.12 has been modified to clarify that decontamination of the transfer cask is required if the surface contamination limit is exceeded.

B.2. *Comment.* One commenter, who was concerned with the seismic events at the Davis-Besse Nuclear Power Station, stated that a displacement pulse of 60 cm, as observed in the Lander's quake in the Mojave Desert northeast of Los Angeles, would completely destroy the HSM and allow a substantial release of radioactivity from the fuel within.

Response. The potential for a seismic event is not the same at every reactor site in the United States. For Davis-Besse, the maximum ground displacement has been calculated to be 3.33 inches (8.46 cm), corresponding to a 0.15g maximum ground acceleration. This is substantially less than the displacement observed in the Lander's quake and appears to be well within the design of the Standardized NUHOMS. Each general licensee using the Standardized NUHOMS, including Davis-Besse is required to document their evaluations to determine that the reactor site parameters, including seismic events, envelope the cask design basis, as specified in its SAR and SER.

B.3. *Comment.* One commenter, citing a Wisconsin Public Service Commission draft environmental impact statement (EIS) for Point Beach, asked for an explanation of why NUHOMS and metal casks have a greater potential to spread contamination than the Pacific Sierra Nuclear Associates ventilated storage cask (VSC) system, VSC–24 cask.

Response. The specific rationale that forms the basis of the statement in the Wisconsin Public Service Commission's draft EIS for Point Beach was not documented. The decontamination requirements for the two designs are comparable. The VSC–24 DSC is loaded into the ventilated concrete cask (VCC) forming the VSC. The VSC is then transported from inside the reactor auxiliary building to the storage pad. During moving and storage of the VCC, the exterior surface remains clean because it has not been exposed to contamination in the spent fuel pool. The NUHOMS DSC is moved in the transfer cask from the reactor building to the horizontal storage module in the field. Because the transfer cask has been in the spent fuel pool, it may have small amounts of external contamination that have the potential to spread during transit. However, any potential contamination of this type could not be significant. The NRC requires that the limits for surface contamination, workers' dose, and environmental dose must all be met for the operation of the ISFSI, including during any transfer operations. Each 10 CFR Part 50 licensee must have a radiation protection program to monitor operations to ensure that surface contamination and worker and public exposure to radiation are below acceptable levels and as low as is reasonably achievable (ALARA). Past operation of the NUHOMS shows that the doses are well below all NRC limits.

B.4. *Comment.* One commenter "is concerned that heat generated by fission product decay may provide the driving force, the presence of free moisture in water-logged fuel may, in a non-mechanistic way, provide a transport mechanism for fission product release and the ambient air circulating through the cask concrete structure may provide (an unmonitored) pathway to the biosphere." One commenter remained concerned about the possibility of insufficient drying of the fuel before placement in the DSC. Another commenter, citing the Battelle Pacific Northwest Laboratory Report PNL–5987 on the removal of moisture from degraded fuel during vacuum drying, contends that the mechanism for free moisture and radionuclide release that pertain in normal or upset conditions, such as conditions caused by sabotage, have not been simulated adequately.

Response. The DSC is a closed vessel. There is no path available for release of fission products from inside the DSC to the atmosphere. During normal operation, the circulating air, as it passes through the HSM and around the outside of the DSC to remove the heat, never comes in contact with fission products and therefore, could not remove these products from the cavity of the DSC. Moreover, design basis

accidents under upset conditions were postulated and analyzed in the SAR and SER. These analyses show that the heat generated from fission product decay is not capable of breaching the DSC and could not provide the driving force for a release of radioactivity. Further, it is not expected that any significant amount of moisture will remain in the fuel after it is loaded into the DSC. The fuel is dried after it has been loaded into the DSC and the topcover plate seal welded to the DSC shell. The Certificate of Compliance requires two pump-downs to a vacuum pressure of less than 3 mm Hg each with a holding time of greater than 30 minutes. A stable vacuum pressure of less than 3 mm Hg further assures that all liquid water has evaporated in the DSC cavity.

The safeguards issue of radiological sabotage of storage casks has been reviewed previously and assessed in the 1989 proposed rule to add Subparts K and L to 10 CFR Part 72 (54 FR 19379). The NRC has determined that the Standardized NUHOMS is sufficiently robust such that the effects of a successful attack would have low health consequences and are similar to the results presented in the 1989 proposed rule. (see also response to comment N.1)

C. A number of comments were received that focused on monitoring, surveillance, and inspection activities associated with dry cask storage of spent fuel, particularly as they relate to the Standardized NUHOMS.

C.1. *Comment.* One commenter stated that there are neither active nor passive systems in place to mitigate barrier breaches, nor are there active radiation monitors that would indicate a breach has occurred. There are no monitored drains and sumps nor are there retention basins. The commenter stated that the cask is insufficient to be relied upon for the health and safety of Ohioans.

Response The Certificate of Compliance (Section 1.3) for the Standardized NUHOMS includes surveillance and monitoring requirements that are more than sufficient to detect cask degradation in time to ensure that adequate corrective actions can and will be taken. In addition, radiation monitoring and environmental monitoring programs would detect any radiation leak in excess of NRC limits from an NRC-approved cask.

In some instances, the NRC has required continuous monitoring where it is needed to determine when corrective action needs to be taken. Under a general license, to date, the NRC has accepted continuous pressure monitoring of the inert helium atmosphere as an indicator of acceptable performance of mechanical closure seals for dry spent fuel storage casks.

However, the NRC does not consider continuous monitoring for the Standardized NUHOMS double-weld seals to be necessary because:

(1) There are no known long-term degradation mechanisms which would cause the seal to fail within the design life of the DSC; and

(2) The possibility of corrosion has been included in the design (see SER Section 3.2.2.5).

These conditions ensure that the internal helium atmosphere will remain stable. Therefore, an individual continuous monitoring device for each HSM is not necessary. However, the NRC considers that other forms of monitoring, including periodic surveillance, inspection and survey requirements, and application of preexisting radiological environmental monitoring programs of 10 CFR Part 50 during the use of the canisters with seal weld closures can adequately satisfy NRC requirements.

With respect to the use of instrumentation and control systems to monitor systems that are important to safety, the user of the Standardized NUHOMS will, as provided in Chapter 14 of the SER and in Section 1.3.2 of the Certificate of Compliance, be required to verify, the cask thermal performance on a daily basis by a temperature measurement, to identify conditions that threaten to approach cask design temperature criteria. The cask user will also be required to conduct a daily visual surveillance of the cask air inlets and outlets as required by Chapter 12 of the SER and Section 1.3.1 of the Certificate of Compliance.

While the HSM and DSC are considered components important to safety, they are not considered operating systems in the same sense as spent fuel pool cooling water systems or ventilation systems that may require other instrumentation and control systems to ensure proper functioning. Due to this passive design, temperature monitoring and surveillance activities are appropriate and sufficient to assure adequate protection of the public health and safety for this design.

Because the Standardized NUHOMS DSC is welded closed and has been decontaminated before being placed in a HSM, there is no routine radioactive liquid generation that would require a retention basin or sump. Water entering the storage area has no mechanism of becoming contaminated because the DSC is enclosed within the HSM and is expected to be dried by the heat generated during storage.

C.2. *Comment.* One commenter expressed concern over the possible external corrosion of the stainless steel DSC because of exposure to water over decades. Another commenter expressed concern about corrosion of stainless steel under conditions of indefinite duration, stating that while stainless steel corrodes less rapidly than carbon steel, even the plumbing fixture industry is finding unexpected stainless steel pitting and corrosion under conditions far less intense than those in a DSC. Another commenter stated that the system is not designed for remote inspection of the DSC for corrosion while it is in the HSM and that the only way to inspect the DSC is to return it to the spent fuel pool. Periodic inspection of the DSC is needed to preclude or identify gradual canister deterioration by unknown mechanisms. Another commenter inquired about a checking system for the NUHOMS in the future. How will corrosion be evaluated on the canister (DSC) and the support rails inside the HSM? Is it possible for them to accumulate moisture and corrode together over possibly many years of storage? What check is required on the possibility that the canister couldn't be removed at the end of cask life?

Response. The DSC is enclosed within the HSM and is not exposed to external water. Laboratory experiments have indicated a general corrosion rate of less than 0.00001 inches per year for similar stainless steels. The NRC believes these experiments more accurately bound DSC corrosion than experiences in unrelated industries. For the 50-year design life of the DSC, the expected corrosion would therefore not result in exceeding a corrosion depth of 0.0005 inches. This will not affect the DSC performing its intended safety functions. Because of the low corrosion rates expected for stainless steel, periodic inspections for deterioration of the DSC are not considered necessary Therefore, inspections are not required The support rails for the DSC have an extremely hard-alloy steel applied to the sliding surface, are ground to a smooth finish, and are coated with a dry film lubricant to prevent corrosion and to reduce the coefficient of friction Furthermore, the environment inside the HSM is protected from rain and it is kept dry by the heat load from the DSC. Therefore, it is highly unlikely that corrosion between the stainless steel and the hard alloy steel surface of the support rail will occur to any significant extent. These conclusions and analyses regarding the very small likelihood of corrosion indicate that there is reasonable assurance that the DSC can

be removed from the HSM when required.

C.3. *Comment.* One commenter questioned whether the screens between the casks, which are essential to cooling, will remain clear of debris and how they can be cleaned if they become partially clogged. Another commenter was concerned about how the roof screen was inspected, stating that it seems likely that insects, animals, and birds will be attracted to the warm air coming from the outlet vents. Several commenters remained concerned about vent blockage that can completely cover and block screening and vents particularly from insects such as paper wasps, that build huge nests, and swarms of midges that are common to the Great Lakes. How are the screens attached?

Response. As stated in the Certificate of Compliance, a licensee using the Standardized NUHOMS must conduct a daily visual surveillance of the exterior of air inlets and outlets (front wall and roof bird screen). In addition, the licensee must perform a daily close-up inspection to ensure that no material accumulates between the modules to block the air flow. If the surveillance shows blockage of air vents, the licensee is required to clear the vent blockage by following procedures developed by each user of the Standardized NUHOMS. If the screen is damaged, the licensee must replace the screen. The required daily surveillance and temperature measurements should readily detect blockage of the vents or screens by insects, animals, or birds in a timely manner, leading to the removal of the obstruction before damage occurs from high temperatures. The bird screen is made of stainless steel wire cloth tack-welded to stainless steel strips, which are attached to the HSM with stainless steel wedge anchors.

C.4. *Comment.* One commenter expressed concern about the presence of burrowing and other nuisance animals that have posed problems at other waste sites.

Response. Burrowing and other nuisance animals are not expected to pose problems for the Standardized NUHOMS. Because of the robust system design, animals will not be able to get to the radioactive material or cause damage such that water could cause movement of the radioactive material. Burrowing under the concrete pad would not cause damage to safety-related components. Further, large-scale burrowing would likely be detected by the daily surveillance or other activities related to the operation of the storage area.

C.5. *Comment.* One commenter wanted additional radiation monitoring because of the calculated higher dose rates over previous NUHOMS designs. The commenter stated that these higher dose rates are not consistent with the objective of maintaining occupational exposures ALARA, and that site-specific applications should provide detailed procedures and plans to meet ALARA guidelines and 10 CFR Part 20 requirements with respect to operation and maintenance.

Response. No additional radiation monitoring has been specifically identified or required for the Standardized NUHOMS. However, 10 CFR Parts 20, 50, and 72 require that licensees comply with ALARA. In addition, 10 CFR 72.212(b)(6) requires each licensee to review its radiation protection program to determine that their effectiveness is not decreased by use of the Standardized NUHOMS. Further, 10 CFR 72.212 (b)(9) requires each licensee to conduct storage activities in accordance with appropriate written procedures. If the results of these licensee activities indicate that additional procedures are required then the licensee is required to implement the procedures.

C.6. *Comment.* One commenter was concerned about the optical survey equipment used to align the transfer cask with the HSM before transfer. What checks are made on this optical equipment and what regulations apply?

Response. The optical equipment used to align the transfer cask with the HSM is optional and is an operational convenience. However, the licensee must meet Technical Specifications 1.2.9 in the Certificate of Compliance. Therefore, only appropriate calibrations or checks to assure compliance with this technical specification are appropriate.

C.7. *Comment.* One commenter wants to know who evaluates the insertion or retrieval of the DSC for excessive vibration and what is the result of excessive vibration. Would this allow crud to be released?

Response. The NRC Certificate of Compliance, Section 1.2.9 provides that the cask user observe the transfer system during DSC insertion or retrieval to ensure that motion or excessive vibration does not occur. It also prescribes certain follow-up actions to be taken by the cask user in the event that alignment tolerances are exceeded and excessive vibration occurs. It is possible that excessive vibration could dislodge crud. However, the crud would be contained within the DSC and would not be released to the atmosphere because the DSC is a sealed vessel. Any opening of the DSC will be under controlled conditions that should safely contain the crud and prevent its release to the environment.

C.8. *Comment.* Several commenters wanted the NRC to set definite methods for the required surveillance and monitoring of NUHOMS, including the daily temperature measurements, so that data are uniform and standardized for future reference on different modules at different reactor locations.

Response. The NRC Certificate of Compliance for the Standardized NUHOMS has required temperature measurements. However, the licensee or vendor has latitude in determining how the performance-based temperature requirements will be met. The NRC is not convinced that the possible benefits of a uniform, but prescriptive, surveillance and monitoring system or technique would outweigh the costs of curtailing the freedom of cask users to design an implementation scheme suited to their individual needs. The collection of uniform data for possible future use, but without a specific regulatory need could lead to additional exposure to workers, or adversely affect safety without any offsetting benefit.

C.9. *Comment.* One commenter asked about the design life of this NUHOMS module and on how this is documented. Will the canister be removed from the concrete module at a specific time and be opened?

Response. The design life of the Standardized NUHOMS is 50 years as described in the SAR. The Certificate of Compliance has a 20-year approval period that can be renewed by NRC for another 20 years following a safety reevaluation. It is expected, that at the end of operation, the canister will be removed from the concrete module and will be opened in the spent fuel pool facility or an adequate dry environment alternative. The fuel will be transferred to an NRC-approved shipping cask for off-site transportation and ultimate disposal by the DOE.

C.10. *Comment.* One commenter believed it prudent to monitor temperature and air flow to ensure that temperature excursions are not experienced.

Response. NRC believes the required temperature measurement stated in Specification 1.3.2 of the Certificate of Compliance, plus the daily visual inspection of HSM air inlets and outlets, are adequate to ensure that temperature excursions exceeding the design basis are not experienced and to determine when corrective action needs to be taken to maintain safe storage conditions. Therefore, air flow measurements are not required to assure safety.

D. A number of commenters raised technical issues related to the thermal analysis of the Standardized NUHOMS and thermal performance of the system under normal, off-normal, and accident conditions.

D.1. *Comment.* Several commenters wanted, in the interest of ALARA principles, the capacity for approximately 24 kW heat removal to be verified by using an artificial heat load. One commenter suggested that the NUHOMS be tested with a full heat load at a testing site such as Idaho National Engineering Laboratory (INEL), and not at each reactor site that may load it with a higher heat generation rate fuel. Another commenter cited the ALARA philosophy of loading the oldest fuel first even though design basis fuel is on site. Several commenters wanted deletion of the requirement (a literal interpretation of draft Certificate of Compliance) to calculate the temperature rise for each HSM loaded with canisters producing less than the design limit of 24 kW for the following reasons:

(1) Users are not normally provided the vendor's analytical models for this calculation,

(2) The 100 °F rise calculated for the design basis maximum heat load ensures that all safety limits are met for concrete and fuel,

(3) Because 24 kW is the limit, virtually all the HSMs will be affected, which places an undue burden on the user to "baseline" the predicted delta-T by calculation considering the inherent safety margins of the system, and

(4) Technical Specification 1.3.1 ensures that air flow is not blocked so a false measurement of low temperature rise cannot occur.

Response A licensee is not required by NRC to load the oldest fuel first but, in the interest of ALARA, it may do so. However, each time hotter fuel is loaded up to the maximum allowed in a DSC, the licensee would need to verify the heat removal performance of the system. For fuel producing less heat than the design limits of the system, the heat removal capacity of the system determined by calculation must be verified by temperature measurements. This process must be repeated each time a DSC is loaded with hotter fuel until the maximum-system designed heat load is reached. When loaded with spent fuel producing 24 kW heat, the system may not have an ambient and vent outlet temperature difference of more than 100 °F for fuel cooled equal to or more than 5 years. This verification process is required to confirm that the as-built system of each licensee is performing as designed. A licensee could use an artificial heat source to test an initial cask at a bounding heat load of 24 kW before loading fuel. However, this test would only verify the spent fuel heat removal capacity of the system. It would not verify as-built performance. Experience has shown that adequate verification testing can be performed at the reactor site. Therefore, performing the verification at a testing site like INEL would not provide additional safety margins.

D.2. *Comment.* Several commenters pointed out possible conflicting statements about temperature measurements in the surveillance requirements. In discussions about the heat-removal capacity test, temperatures are determined only during the test period. Daily temperature measurements on each HSM are required to verify thermal performance.

Response. These two temperature measurement programs have different objectives. Temperature measurements by licensees to verify the heat capacity calculations need only be done until equilibrium is reached. The daily temperature measurements by licensees are intended to demonstrate continued safe operation within specified limits over the life of the HSM and may not be the same type of measurement done in the initial period to verify heat removal capacity.

D.3. *Comment.* One commenter was concerned about the adequacy of cooling under all atmospheric conditions in the country. The commenter cited conditions such as humidity over 90 percent, temperature over 100 °F, and no wind.

Response. Regulatory requirements for general licensee users of dry storage casks are contained in 10 CFR 72.212(b). Each user must verify that the following conditions are not exceeded at their reactor site for the Standardized NUHOMS: the maximum average yearly temperature with solar incidence is 70 °F; the average daily temperature is 100 °F; and the maximum temperature is 125 °F with incident solar radiation. If the power reactor site high temperature parameters fall within these criteria, the Standardized NUHOMS can be safely used at the site.

D.4. *Comment.* One commenter wants the NRC to establish procedures to measure temperature performance, especially the thermal performance of an individual module and not the combined performance of adjacent modules as stated on page A–23 of the draft Certificate of Compliance.

Response. As required by the regulations, the licensees are required to develop detailed procedures. NRC in its regulatory oversite role has the opportunity to review the adequacy of the procedures. The requirement cited by the commenter is a requirement for the licensee to verify a temperature measurement of the thermal performance for each HSM, not the combined performance of adjacent modules. A cautionary statement is included in the basis of the specification to ensure that licensee measurements of air temperatures reflect only the thermal performance of an individual module and not the combined performance of adjacent modules.

D.5. *Comment.* One commenter wanted to know how the temperature differences in the roof, side wall, and floor areas are incorporated into the daily temperature measurement.

Response. For the first HSM to be emplaced, the user is required to measure the air inlet and air outlet temperature difference of the system at equilibrium. This measurement is to ensure that the heat capacity of the system will not be exceeded and that the concrete temperature criteria will not be exceeded. For the Standardized NUHOMS, this maximum heat capacity is 24 kW. The 24 kW heat load is the design maximum and is the basis for the thermal hydraulic calculations for the cask. The temperature distribution for various parts of the HSM have been calculated (i.e., the roof, walls, and floor) by the cask vendor. Temperature differences causing thermal stresses in the concrete were evaluated and are duly reported in both the SAR and SER. These calculations were reviewed by NRC as a part of the overall process for this design approval.

D.6. *Comment.* One commenter stated that daily temperature measurements are not necessary to ensure convective air flow, given the requirement to verify that the inlets and outlets are not obstructed. Site-specific NUHOMS require temperature measurements when the DSC is placed into the HSM, 24 hours later, and again at 1 week after loading to ensure adequate thermal performance.

Response. The NRC disagrees with this comment. The HSM and DSC are considered components important to safety in the Standardized NUHOMS. Daily temperature measurements of the thermal performance by the licensee are required to provide additional assurance that thermal limits are not exceeded under the general license. This requirement was imposed on the first cask of this type approved by the NRC and listed in 10 CFR 72.214 for use by a general licensee, the VSC–24 cask (58 FR 17967; April 7, 1994) and is now applied to the Standardized NUHOMS.

E. A number of commenters expressed concern about emergency planning and response contingencies.

E.1. *Comment.* Several commenters expressed concern that in the event of problems and the need to off-load fuel (as in the recent situation at Palisades), a transfer cask may not be available in a timely manner because of inclement weather or because the transfer cask itself has experienced problems or is being used elsewhere. One commenter expressed concern at having to have a transfer cask on site within 40 hours of vent blockage to prevent concrete damage. If the transfer cask is leased from VECTRA and is not at the licensee's site, who is liable if something happens that would require the use of a transfer cask?

Response. The NRC has analyzed all design basis accidents from the operation of an ISFSI and concluded that there will be no release of radioactive material to the environment. The 40-hour limit on vent blockage is intended to prevent concrete degradation that might occur over a long period of storage. A vent blockage accident would not result in the release of radioactive material because the DSC would not be breached. Therefore, the NRC believes that the potential risk to the public health and safety is extremely small during the time needed to obtain the use of a transfer cask. Thus, there is no requirement that a transfer cask be at an ISFSI site all the time.

E.2. *Comment.* One commenter expressed concern that the effects of tornado winds and missiles during movement of the fuel in a transfer cask or in a storage cask on a transporter were not analyzed.

Response. Both the vendor's SAR and NRC staff's SER address the effects of tornado winds and missiles during movement of the transfer cask with a loaded canister. These analyses show that, for tornado winds, there is a safety factor of 1.5 against overturning when subjected to Design Basis Tornado winds (a safety factor greater than 1 will generally be adequate for public protection). The transfer cask stability, tornado missile penetration resistance, and shell and end plate stresses were calculated and shown to be below the allowable stresses for ASME BPVC Service Level D (accident) stresses.

E.3. *Comment.* One commenter described an October 1972 storm that flooded the entire Davis-Besse plant site, including the (pre-operational) reactor building. There has been subsequent flooding of the site, particularly during spring thaws.

Response. Safety analyses by NRC and the cask vendor show the Standardized NUHOMS can withstand floods and will continue to perform acceptably. With regard to the Davis-Besse site, the licensee changed site topography during plant construction. Specifically, the area was built up and some dikes were added. The plant structure's ground floor elevation is 585 feet International Great Lakes Datum (IGLD), which is also the elevation of the pad. The licensing design basis for maximum probable static water level on the site is 583.7 feet IGLD. As noted, the HSM and DSC were evaluated for flood conditions as required by 10 CFR 72.122(b). The HSM can withstand a maximum water velocity of 15 feet per second and a static head of 50 feet of water. The DSC can withstand a static head of 50 feet of water. Any site that intends to use a Standardized NUHOMS design must evaluate the conditions at their site to verify compatibility with the design specifications of the system.

F. A number of commenters raised issues relating to the design, evaluation, and operation of the Standardized NUHOMS.

F.1 *Comment.* Several comments related to the fuel to be stored in the Standardized NUHOMS. One commenter wanted control components contained in assemblies addressed in the SAR and SER citing DOE acceptance criteria. One commenter questioned how 55,000 MWD/MTU burnup fuel now being used in pressurized water reactors will be handled since the Standardized NUHOMS–24 is rated to handle only 40,000 MWD/MTU burnup fuel. Another commenter, citing provisions of current site-specific licensees for other NUHOMS designs, stated that higher burnup should be allowed if the decay heat and radiological source terms are within limits. Another commenter asserted that increased fission products from higher enriched fuel may potentially increase embrittlement of the fuel cladding and that this needs to be evaluated in the SER. This commenter further alleged that this would increase the probability of more defective fuel being loaded into dry casks.

Response. The vendor designed the cask system for storage of pressurized water or boiling water reactor fuel assemblies meeting certain specifications. By limiting the use of the cask system to assemblies meeting these specifications, the vendor made a decision that may partially restrict the use of the cask. However, the NRC does not require that a cask be universal for all types of fuel or be usable at every reactor site. For example, none of the casks previously listed in 10 CFR 72.214 is usable for boiling water reactor spent fuel.

Currently, the 55,000 MWD/MTU burnup fuel and fuel with initial enrichments of greater than 4% will have to remain in the spent fuel pool because dry spent fuel cask designs to store fuel with this higher burnup and initial enrichment or related to DOE acceptance criteria have not yet been reviewed and evaluated by the NRC.

F.2 *Comment.* Several comments were related to criticality safety analysis. One commenter questioned the conservatism of using 7.5-year cooled spent fuel when 5-year-cooled fuel is the minimum specified and when older fuel may also be stored in the cask. Another inquired about criticality safety if the original basket geometry were compromised, as might be the case for brittle failure of a spacer disk. In the compromised basket geometry case, the commenter also asked about the difference in criticality safety for a helium atmosphere rather than a borated water medium. The commenter, referring to July 24, 1992, meeting minutes, inquired why all parties agreed not to spend any resources to make these criticality safety calculations.

Response. The Standardized NUHOMS nuclear criticality safety analysis is based on the following: (1) Babcock and Wilcox 15 × 15/208 pin fuel assemblies with initial enrichments up to 4.0 wt% of U-235 and (2) General Electric 7 × 7 fuel assemblies with initial enrichments up to 4.0 wt% of U-235, for the Standardized NUHOMS–24P and NUHOMS–52B designs respectively. The age of the fuel that will actually be stored is not relevant in criticality safety analysis because the analysis assumes storage of unirradiated fresh fuel that is more reactive than cooled spent fuel. The Standardized NUHOMS–24P system has administrative controls that limit the irradiated fuel reactivity to less than or equal to 1.45 wt% of U-235 equivalent unirradiated fuel (Certificate of Compliance Section 1.2.1).

The possibility of a criticality accident caused by the brittle failure of the basket should not be a significant concern. No lifting or handling of the DSC outside the spent fuel pool building is permitted if the basket temperature is lower than 0°F. If the user does not determine the actual basket temperature, the ambient temperature must be used conservatively. Under these temperature restrictions, the basket materials will not behave in a brittle fashion. Consequently, the basket geometry would not be compromised by brittle failure. As for the criticality safety

consideration related to a helium atmosphere versus a borated water medium, the k_{eff} of the fuel in a helium atmosphere is much less than the k_{eff} in borated water. Therefore, criticality calculations for the borated water are sufficient because they are more conservative and therefore would bound calculations using a helium atmosphere.

F.3 *Comment.* Two commenters were concerned with shielding and dose assessments for the Standardized NUHOMS. One commenter believed that using 10-year-cooled fuel for the dose assessment was nonconservative when 5-year-cooled fuel is needed to load the DSC to produce 24 kW of heat. Another, referring to an NRC meeting with Pacific Nuclear Fuel Services, Inc. (PNFSI), wanted clarification of an NRC request to delete a clause allowing the utility to perform site-specific shielding calculations.

Response. The cask vendor presented dose assessment results in the SAR for both 5- and 10-year-cooled fuel. However, for this rulemaking, NRC used the dose assessment for 5-year-cooled fuel for the shielding analysis radiation source term and for accidental releases of radionuclide material. NRC's use of the 5-year-cooled fuel assessment is conservative and bounding.

To ensure safe storage of spent nuclear fuel in NRC-approved casks, the NRC specifies, in Section 1.2.1 of the Certificate of Compliance a number of fuel acceptance parameters. These parameters, which may include burnup, initial enrichment, heat load, cooling time, and radiological source term, define the properties of those assemblies that can be stored in a cask. One such parameter of interest for the Standardized NUHOMS is the radiological source term that forms the basis of the shielding analyses. For this parameter, the vendor proposed an alternative approach. Specifically, for fuel assemblies that fall outside the specified source term parameters but satisfy all other parameters, the vendor proposed to allow licensees to do individual cask shielding calculations to show compliance with the design basis dose rates. This could result in more assemblies in a licensee's inventory that would be eligible for dry storage In the instance noted in the comment, the NRC did not agree with the vendor proposal. The Certificate of Compliance dose rate specifications provide a simple check to ensure that DSCs are not inadvertently loaded with the wrong fuel. The dose rate specifications are based on the shielding analyses provided by the vendor in its SAR. Because of differences in non-fuel components in the ends of some assemblies, dose rates higher than those evaluated by NRC in the SER may occur at the ends of casks than were assumed in the shielding analysis. The Certificate of Compliance specifications allow for this possibility and permit the licensee to store such fuel provided the licensee verifies proper cask fabrication, conformance with all other fuel parameters, and compliance with radiation protection requirements. The site-specific calculations referred to in the comment are not shielding calculations, but rather are the licensee's written evaluations (or dose assessments) required by 10 CFR 72.212(b)(2)(iii) to establish that the radiation criteria for ISFSI in 10 CFR 72.104 have been met. The Certificate of Compliance also requires that the licensee submit a letter report to the NRC summarizing its actions in this type of case.

F.4. *Comment* Several commenters were concerned with fuel clad integrity issues. Particularly, they were concerned with potential problems that may arise because of differences between vertical and horizontal storage. One commenter noted that it was essential to inspect the cladding carefully for the minute hairline cracks which would allow the radioactivity inside to escape. Another commenter wanted it made clear that for fuel to be eligible for storage it doesn't need to be specifically inspected nor require special handling or storage provisions within the spent fuel pool. The commenter also asserted that pinhole leaks in fuel rod cladding do not constitute gross breaches. The commenter wanted fuel cladding integrity clarified. Another commenter claimed that horizontal storage of fuel rods will lead to cladding deterioration that would challenge the technical specifications of the NUHOMS cask. Another commenter was concerned about the possibility of fuel rod bowing that could result in weighted contact between the fuel cladding/crud and the DSC guide sleeve, with the potential for eventual bonding of the materials over the duration of the storage period. One commenter, noting that some of the fuel in the spent fuel pools could be nearly 20 years old, was concerned that the fuel will not be tested for leaks using specific techniques such as penetrating dyes, eddy current, sipping, or ultrasound before canister loading. A commenter wanted all fuel with known defects and all water-logged fuel retained in the spent fuel pool until the cask integrity under operating conditions is fully demonstrated. Another wanted to know how "grossly breached" fuel will be ultimately handled and shipped off site.

Response. In the Standardized NUHOMS, PWR fuel rods are stored in a horizontal orientation and do not normally deflect in the middle of any span so that the rods contact the DSC guide sleeve. However, the possibility exists that a bowed rod may come in contact with the guide sleeve.

With respect to storage of BWR fuel, the fuel channel that surrounds the fuel bundle (rods) provides a barrier to separate coolant flow paths, to guide the control rod, and to provide rigidity and protection for the fuel bundle during handling. Therefore, the BWR fuel rods inside the channel do not come in contact with the guide sleeves. Even if there were contact with either PWR or BWR fuel rods, the interaction would not present a significant concern because the guide sleeve material is stainless steel, which has a very low rate of corrosion, and the DSC cavity is evacuated and back-filled with inert helium, which further reduces the likelihood of any corrosion or bonding involving the guide sleeve and fuel rods

The Certificate of Compliance requires that the fuel have no known or suspected gross cladding breaches to ensure the structural integrity of the fuel. Known or suspected failed fuel assemblies (rods) and fuel with cladding defects greater than pin holes and hairline cracks are not authorized in the Standardized NUHOMS. Fuel meeting this specification will be safely stored and will remain intact in storage because the dry inert atmosphere and relatively low temperature will prevent deterioration of the cladding. Grossly breached fuel will be handled in site-specific license applications.

F.5 *Comment* Quite a few comments related to the structural stability of the HSM, particularly its response to earthquakes. Commenters questioned the possibility of vertical storage of the Standardized NUHOMS and suggested that it would be very difficult to restrain the HSM if the DSC were in a vertical position. One commenter wanted dry storage casks constructed to Building Officials Code Administrators (BOCA) National Building Code (and Ohio Administrative Code) for structures in use group H–4, high hazard use, which includes radioactive materials. Commenters questioned whether ground acceleration as used by the NRC in its evaluation could adequately describe all potential earthquakes east of the Rocky Mountain Front and suggested that a ground acceleration of 2.5g would not be realistic for all sites, despite proximity to fault lines. Another commenter alleged a number of seismic

events in the midwest which had some effect in the Ohio area could cause a complete failure of the cask and requested that the NRC insist that the cask, containment structure, and foundation pad be designed to substantially exceed all earthquakes with a potential for 0.60g. One commenter wanted to know if the module had been analyzed for earthquake events at all United States reactor sites, according to Laurand Findmun Seismic Hazard Curves. Other commenters expressed various concerns about the integrity and reaction of the Standardized NUHOMS components under earthquake conditions and asked the following questions:

Could the casks crash against each other as the ground moves beneath them?

Could the module shift, crack, or move off the pad?

How are the rail support holdings evaluated?

Could the DSC be knocked off the rails? and

Could the module roof crack and fall on the canister?

Response. The Standardized NUHOMS design described in the vendor's applications for approval and the SAR does not address vertical storage. Consequently, NRC neither evaluated nor approved vertical storage for the system. Therefore, it may not be stored vertically.

The NRC reviewed the Standardized NUHOMS for compliance with design criteria that are more stringent than those of the BOCA National Building Code (NBC) (see response to Comment A.5). These more stringent criteria are included in national standards that more closely represent the use of the Standardized NUHOMS.

Part 72 specifies a design basis maximum ground acceleration of 0.25g for areas east of the Rocky Mountain Front that are not in areas of known seismic activity. All HSMs and DSCs are designed to withstand a 0.25g earthquake. Any reactor licensee who intends to use the Standardized NUHOMS must verify that the maximum displacements at the cask's location on the reactor site are within the design criteria for the system. The Standardized NUHOMS is free standing and not dependent on the pad for safety. Failure of the pad caused by seismic events will not cause the Standardized NUHOMS to fail. Therefore, cask safety does not require the pad to be designed to withstand a seismic event.

F.6. *Comment.* One commenter stated that the SAR did not include consideration of the accident events such as: aircraft crashes, turbine missiles, external fires, explosions, and sabotage.

Response. Before using the Standardized NUHOMS, the general licensee must evaluate them to ensure the site is encompassed by the design bases of the approved cask. The events listed in the comment are among the site-specific considerations that must be evaluated.

The site evaluation for a nuclear plant considers the effects of nearby transportation and military activities. It is incumbent upon the user of the cask to determine if the SER for the facility encompasses the design basis analysis performed for the Standardized NUHOMS or any certified cask. The great majority of the aircraft are single-engine propeller airplanes which typically weigh on the order of 1,500 to 2,000 pounds. The cask's inherent design will withstand tornado missiles and other design loads and also provides protection from the collision forces imposed by these light general aviation aircraft without adverse consequences. NUREG–800, Section 3.5.1.6 "Standard Review Plan for Light Water Reactors," contains methods and acceptance criteria for determining if the probability of an accident involving larger aircraft (both Military and civilian) exceeds the acceptable criterion. It is incumbent upon the licensee to determine whether or not the reactor site parameters are enveloped by the cask design basis as required by 10 CFR 72.212(b)(3). These would include an evaluation demonstrating that the requirements of 10 CFR 72.106 have been met.

Turbine missile analyses typically show a very low probability of a turbine missile breaking the turbine casing. The site's turbine missile analyses must be considered as part of the facility's analysis of the suitability of the storage location. External fires are handled by established fire control programs. Explosions are prevented by control of combustibles under the licensee's fire protection program. Sabotage is considered under the criteria for security programs that each licensee must implement. (See also response to comment N.1).

F.7 *Comment* Several commenters raised issues about the pad and foundation for the Standardized NUHOMS. One commenter referred to a previous rulemaking that stated that the NUHOMS casks required site-specific approvals because they are constructed in place. Other commenters, concerned with seismic events at the Davis-Besse Nuclear Power Station and soil stability issues similar to cask use at the Palisades Plant, asserted that there was a necessary relationship of the Standardized NUHOMS cask or module to the pad at a specific site and that evaluation of it could not be based on the reactor site seismic analysis. Each site required singular seismic and soil analysis for dynamic loads and not just static loads.

Response. The NUHOMS design referred to in the July 18, 1990, 55 FR 29181, rulemaking includes the site-specific pad as an integral part of the concrete HSM and therefore it is important to safety. The Standardized NUHOMS considered in this rulemaking have the HSMs as free-standing units; that is, they have no structural connections to the pad. The Standardized NUHOMS does not rely on the pad to perform a safety function to protect public health and safety. The vendor analyzed the HSM containing the DSC for peak ground accelerations of 0.25g caused by earthquakes and found that it would neither slide nor overturn. NRC evaluated the Standardized NUHOMS under a wide range of site conditions that could diminish cask safety. Further, under the NRC general license, before using the Standardized NUHOMS a licensee must verify that reactor site parameters are within the envelope of conditions reviewed by NRC for the cask approval. If potential conditions exist at the reactor site (including potential erosion, soil instability, or earthquakes) that could unacceptably diminish cask safety by any credible means, the licensee's analysis must include an evaluation of the potential conditions to verify that impairment of cask safety is highly unlikely.

The NRC's regulations do not explicitly require a licensee using a cask under a general license to evaluate the cask storage pad and foundation under such site conditions for erosion or earthquakes. If conditions at the reactor site could unacceptably diminish cask safety by affecting the stability of the supporting foundation so as to put the cask in an unsafe condition, the cask may not be used unless the foundation is appropriately modified or a suitable location at the reactor site is found. Implicitly, therefore, the pad and the underlying foundation materials must be analyzed under site conditions that include erosion, soil instability, and earthquakes, even though the pad has no direct safety function and the cask is designed to retain its integrity even assuming the occurrence of a range of site conditions.

The licensee has the responsibility under the general license to evaluate the match between reactor site parameters and the range of site conditions (i.e the

envelope) reviewed by NRC for an approved cask. Typically, the licensee will have a substantial amount of information already assembled in the Final Safety Analysis Report (FSAR) for the nuclear reactor. In addition, the envelope for the approved cask is identified in the NRC SER and Certificate of Compliance and in the cask vendor's SAR for the cask. Of course, the licensee should consider whether the envelope evaluated by NRC adequately encompasses the actual location of the cask at the reactor site. The licensee should also consider whether there are any site conditions associated with the actual cask location that could affect cask design and that were not evaluated in the NRC safety evaluation for the cask.

The vendor analyzed the DSC and the HSM for rigid body response (i.e., sliding and overturning) to seismic accelerations. The resultant peak horizontal ground acceleration is 0.37g and the peak vertical acceleration is 0.17g. The margin of safety against sliding is 1.35. Similarly, the design seismic force will not cause the HSM to tip over because the stabilizing moment of the HSM is greater than the seismic overturning moment. The margin of safety against overturning is 1.26. Thus, no sliding or overturning of the HSM or DSC will occur from the design earthquake.

Because the pad is not considered a safety-related item, a specific pad design is not being approved in this rulemaking for the Standardized NUHOMS.

F.8. *Comment.* A few commenters had questions pertaining to the operation of and procedures for the Standardized NUHOMS. One commenter inquired whether just one module of the Standardized NUHOMS could be purchased by a utility, or whatever number of modules desired could be procured and easily added like singular casks. One commenter expressed concern about snow removal procedures to prevent blockage of the bottom vents by drifting snow Another commenter wanted NRC to establish a procedure and criteria for dose rates discussed on pages A–15 and A–16 in the draft Certificate of Compliance. Several commenters noted that a procedure for opening a storage cask and removing the fuel has not been tried before nor documented in the rulemaking. They were also concerned that unloading of a cask would place workers at higher risk.

Response. The NRC Certificate of Compliance does not permit or limit the number of NUHOMS modules that may be purchased by a general license. The NRC does not regulate the commercial arrangements between the cask vendor and the users including any provisions on the number of casks that can be purchased or added to the Standardized NUHOMS.

Under the Certificate of Compliance, Section 1.3, the user of the Standardized NUHOMS (general licensee) is required to conduct a visual surveillance of the exterior of air inlets and outlets. If the surveillance shows blockage of air vents, they must be cleaned in accordance with proper procedures. These procedures will minimize the potential impact to the health and safety of workers. The daily temperature measurements indicate proper thermal performance.

The Certificate of Compliance requires each licensee to develop procedures to implement the dose criteria prescribed on pages A–15 and A–16. On page A–15 of the Certificate of Compliance, Section 1.26, the dose rate criteria to be met is equal to or less than: (a) 200 mrem/hr. at the top shield plug surface at centerline with water in the cavity; and (b) 400 mrem/hr. at the top cover plate surface at centerline without water in the cavity. On page A–16 of the Certificate of Compliance the dose rate criteria is less than or equal to: (a) 400 mrem/hr. at 3 feet from the HSM surface; (b) 100 mrem/hr. outside of the HSM door on center line of the DSC; and (c) 20 mrem/hr. at the end shield wall exterior. Each licensee is required to develop its own procedures to implement these criteria. In addition, each licensee must develop operational procedures for the ISFSI for workers' radiation exposure to be ALARA.

For the Standardized NUHOMS, removal of spent fuel from the DSC is addressed in Chapter 5 of the SAR and in Chapter 11 of the SER. The process is essentially the reverse of loading operations and would be performed under the reactor license radiation protection program. The Certificate of Compliance requires each user to develop written procedures for these operations and includes precautions to be considered for unloading. ALARA is required to be addressed by 10 CFR Part 20. Specification 1 1.6 of the Certificate of Compliance requires that pre-operational testing and training exercises include the opening of a DSC and returning the DSC and transfer cask to the spent fuel pool. The Certificate of Compliance also requires the training program to include off-normal events.

F.9. *Comment.* One commenter, citing the May 1993 study prepared for the NRC by the Center for Nuclear Waste Regulatory Analyses of San Antonio, Texas, questioned the relatively higher temperature consequences of dry storage on fuel cladding. The report states that, "the dry environment has the potential of producing such problems as further fuel cladding oxidation, increased cladding stresses, and creep deformation as a result of rod internal pressure * * *. These possible spent fuel and cladding alteration modes could be quite accelerated under dry storage conditions, since temperatures are much higher than in wet storage." The commenter does not believe that NRC is fulfilling its obligation in 10 CFR 72.122(h) to see that "spent fuel cladding must be protected during storage against degradation that leads to gross rupture."

Response. The May 1993 study addresses the long-term geological disposal of high-level waste (spent fuel) and is not directed to the short-term interim storage of spent fuel at nuclear power plants. The report evaluates processes over 10,000 years of repository performance for geological disposal. The conclusions of the report are not applicable for the interim storage period of a 20-year cask certificate during which spent fuels stored in the DSC have to meet the NRC's criteria to ensure that cladding is protected. Under normal operation of the ISFSI, leakage of radionuclides is not expected to occur. The design and the double-seal welding of the DSC covers are checked and tested to provide structural integrity throughout the approved storage period During normal storage conditions, the licensee is required to conduct a radiation monitoring program to ensure protection of workers and the safety of the general public.

G. A number of comments were related to broad policy and program issues in connection with the storage and disposal of high-level radioactive waste, including the DOE repository program. Some commenters questioned the use of dry cask storage and technology in general. Some commenters stated that only dry storage casks that would be compatible with DOE interim or final repository operations, including transportation should be approved for use under a general license.

G.1. *Comment.* One commenter does not want any more casks approved until a permanent Federal repository is opened. The wet fuel pool is a proven technology that has been successful in containing radioactivity. Another commenter stated that dry storage is dangerous.

Response. The NRC, in implementing the Nuclear Waste Policy Act of 1982, has an obligation to review dry storage technologies and to determine whether to approve the use of these technologies for the storage of spent fuel if they meet

applicable safety requirements. The July 18, 1990, 55 FR 29181, rulemaking found that spent fuel stored in dry storage casks designed to meet the NRC regulatory requirements can safely contain radioactivity. This rulemaking adds one cask design that meets the safety requirements previously developed to the list of approved casks. The previous responses to comments, as well as the detailed safety and environmental analyses underlying this rulemaking (and described elsewhere in this notice), all reveal that the Standardized NUHOMS will conform to the NRC requirements and that its use should not pose the potential for significant environmental impacts.

DOE is required by the Nuclear Waste Policy Act of 1982 to accept spent fuel for ultimate disposal. Moreover, the Commission made a generic determination in its waste Compliance Decisions (September 18, 1990, 55 FR 38474 and August 31, 1994, 49 FR 34658) that safe disposal is technically feasible and will be available within the first quarter of the 21st century.

Dry cask storage has significant advantages over wet storage in that the system is passive and requires minimal human intervention. No pumps, filters, or water quality monitoring are needed to maintain the conditions necessary for wet storage. The only monitoring required for the Standardized NUHOMS is daily temperature monitoring and visually checking inlet and outlet vents.

G.2. *Comment.* A number of commenters wanted a full formal trial-type public hearing on the use of the NUHOMS cask.

Response. Consistent with the applicable procedure, the NRC does not intend to hold formal trial-type public hearings on the Standardized NUHOMS rule or separate hearings at each reactor site before the use of the dry cask technology approved by the Commission in this rulemaking. Rulemaking procedures, used by the NRC for generic approval of the Standardized NUHOMS, including the underlying NRC staff technical reviews and the opportunity for public input, are more than adequate to obtain public input and assure protection of the public health and safety and the environment. In this rulemaking, the NRC has taken additional steps to elicit and fully consider public comments on the Standardized NUHOMS technology. These steps included NRC participation in public meetings near Davis-Besse and extension of the public comment period by 45 days in response to public requests. This extension provided a total public comment period of almost 4 months.

Section 133 of the Nuclear Waste Policy Act of 1982 authorizes the NRC to approve spent fuel storage technologies by rulemaking. When it adopted the generic process in 1990 for the review and approval of dry cask storage technologies, the Commission stated that "casks * * * [are to] be approved *by rulemaking* and any safety issues that are connected with the casks are properly addressed in that rulemaking rather than in a hearing procedure" (July 18, 1990; 55 FR 29181). Rulemaking under NRC rules of practice, described in 10 CFR 2.804 and 2.805, provides full opportunity for expression of public views but does not use formal trial-type hearings of the kind requested by commenters.

In this proceeding, rulemaking clearly provided adequate avenues for members of the public to provide their views regarding NRC's proposed approval of the Standardized NUHOMS, including the opportunity to participate through the submission of statements, information, data, opinions and arguments. In this connection, technical evaluations for Standardized NUHOMS and detailed documented findings of compliance with NRC safety, security, and environmental requirements were prepared by the NRC staff for public examination. In November 1993, the NRC staff reviewed the Standardized NUHOMS and approved the design for the purpose of initiating this rulemaking to grant a generic approval of the design. In addition, the NRC staff conducted a second review in response to the public comments on the Standardized NUHOMS in this rulemaking, again finding compliance with NRC requirements as discussed in this document.

In addition to reviewing systematically and in depth the technical issues important to protecting public health and safety, and the environment, the NRC has taken extra steps to obtain and fully consider public views on the Standardized NUHOMS technology and has made every effort to respond to public concerns and questions about the Standardized NUHOMS compliance with NRC safety, security, and environmental requirements. The initial public comment period opened on June 2, 1994, and was scheduled to close on August 16, 1994. On August 29, 1994, the public comment period was extended to September 30, 1994. The NRC also participated in an earlier meeting near the Davis-Besse site.

Under these circumstances, formal hearings would not appreciably add to NRC's efforts to ensure adequate protection of public health, safety, and the environment and they are unnecessary to NRC's full understanding and consideration of public views on the Standardized NUHOMS.

G.3. *Comment.* One commenter stated that because there is not now and there may not be a permanent high-level radioactive waste (HLWR) repository for commercial reactor fuel, and since the NUHOMS 24P and 52B casks are non-transportable, any distinction between so called "temporary storage" and "permanent disposal" of this waste is moot. Because of the lack of a permanent repository or Monitored Retrievable Storage (MRS) in the foreseeable future, a case of a serious spill and the resultant contamination at an environmentally unsuitable site like Davis-Besse where "short and long-term adverse impacts associated with the occupancy and modification of (a) floodplain * * * potential release of radioactive material during the lifetime of the ISFSI * * * (and location) over an aquifer which is a major water resource" have been inadequately dealt with.

Response. This rulemaking to certify the Standardized NUHOMS is for interim storage of spent fuel in an approved cask for 20 years. It does not authorize or approve the ultimate disposal in a permanent HLRW repository, which is under the responsibility of the DOE. During interim storage, the user (holder of a Part 50 license) must protect the spent fuel against design basis threats, and against environmental conditions and natural phenomena such as tornadoes, tornado missiles, earthquakes, and floods. In regard to flooding, the Certificate of Compliance has a provision (see A–2 of Certificate of Compliance) for flood condition analysis to ensure that there is no release of radioactive material from flooding.

G.4. *Comment.* One commenter stated that projected future uses of land and water within the region are impossible to make given the unknown length of time this waste may remain on site and the options for both cask and reactor license renewal beyond 20 and 40 years, respectively, and the fact that no known man-made structure can last for the length of time that this waste must be isolated from humans and the environment. If an MRS or repository ever become available, this waste may have to be repacked. Each handling of this waste increases the likelihood of an accident, spill, contamination, and worker and public exposures.

Response Projected future land and water use can be made based on the

continued safe operation of a reactor and its associated dry cask storage facility. The continued operation of these facilities should have no greater impact on land and water use in the future than they do today. As previously noted, the NRC Waste Confidence decisions concluded there is reasonable assurance that safe disposal of spent fuel by the Federal Government will be available by the year 2025. Therefore, the spent fuel will not remain at a reactor site for the length of time it must be isolated from humans and the environment.

It should be noted that the absence of significant environmental impacts from dry cask storage at a reactor site is the conclusion of NRC's environmental assessment for the Standardized NUHOMS and for previously approved dry casks analyzed in earlier rulemakings addressing 10 CFR Part 72, as well as in the Commission's Waste Confidence decisions in 1984 (August 31, 1984; 49 FR 34658) and 1989 (September 29, 1989; 54 FR 39765). In the 1984 Waste Confidence decision, the Commission concluded there was reasonable assurance that spent fuel can be safely stored at reactor sites, without significant environmental impacts, for at least 30 years beyond expiration of NRC reactor operating licenses. The 1989 Waste Confidence decision review reaffirmed earlier Commission conclusions on the absence of significant environmental impacts.

G.5. *Comment.* One commenter questioned whether the NUHOMS canister will fit the conceptual design for the DOE multi-purpose canister (MPC). If DOE chooses to use vertical casks (like the VSC) at the MRS, will the NUHOMS inner canister fit into the vertical outer concrete shell in the MPC design? If local reactors choose the VSC–24 or the NUHOMS, will either inner metal canister fit into the overpacks for DOE, or will they have to be opened after storage, returned to the pool, the fuel put in a new canister, and the old one discarded as radioactive waste?

Response. The Certificate of Compliance for the Standardized NUHOMS is intended for the interim storage of spent fuels and is not required to conform to, and has not been evaluated by NRC for conformance with, the conceptual design for the DOE MPC. DOE has not yet made final decisions regarding design or deployment of the MPC. Therefore, it is not possible to speculate on conformance of the Standardized NUHOMS to the MPC.

G.6. *Comment.* One commenter asked what are the criteria for 20-year renewal of this cask design? How will this be checked? If the design is not renewed, what is the plan?

Response. The 1989 proposed rule (May 5, 1989; 54 FR 19379) to add Subparts K and L to Part 72 indicated that the 20-year period represents what the Commission believes to be an appropriate increment for cask design approvals. The application for design reapproval would have to demonstrate the cask's ability to perform the necessary safety functions for the reapproval period. The application would be evaluated by NRC against the Commission's regulatory requirements. If a cask design is not reapproved, the licensee would have to remove casks from service as the 20-year approved storage life expired. This could mean removal of the spent fuel and storing it elsewhere.

G.7. *Comment.* One commenter wanted to discuss the need for an additional cask design, including how it would better meet the need of the interim dry cask storage of high-level waste.

Response. Section 218(a) of the Nuclear Waste Policy Act of 1982 (NWPA) provides the following directive: "The Secretary [of DOE] shall establish a demonstration program in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear reactor power sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." After subsequent DOE technical evaluations and based on a full review of all available data, the Commission approved dry storage of spent nuclear fuel in a final rule published in the **Federal Register** on July 18, 1990 (55 FR 29181). The final rule established a new Subpart K within 10 CFR Part 72, entitled "General License for Storage of Spent Fuel at Power Reactor Sites." Therefore, there is a need for casks to be approved by NRC to implement the NWPA to meet the demand of the interim dry cask storage of spent fuels in the nuclear power plants. However, the variety of cask designs submitted by vendors for NRC review and approval is mostly dictated by economic reasons that do not involve NRC.

H. A number of commenters wanted site-specific analyses done for each use of the Standardized NUHOMS despite the fact that each licensee must determine that the site parameters are enveloped by the cask design specified in the SAR, SER, and Certificate of Compliance. The intent of Subpart K of 10 CFR Part 72 was to grant a general license to licensees of power reactors to use NRC-approved dry storage casks listed in 10 CFR 72.214 without additional licensing review by NRC.

H.1. *Comment.* A number of commenters wanted site-specific Environmental Impact Statements (EIS). Several commenters stated that an EIS should be required on any waste facility that may be permanent along the Great Lakes fresh water system. To say that this will have no adverse effect on public health and safety is a prediction most of the public does not accept. The commenter believes that the generic ruling to use a dry cask storage design at any reactor site is impossible and should be discarded. By relying on environmental evaluations done in the 1970s before Davis-Besse construction, the NRC was remiss in its responsibility to protect the people of Ohio from harm by its licensee. Another commenter wants the NRC to prepare, at a minimum, an Environmental Assessment (EA) for each site, including information on sensitive ecosystems, wildlife, demography, meteorology, and geology. The EA should discuss the cask's capability to withstand weather conditions and potential catastrophic events.

Response The potential environmental impacts of utilities using the Standardized NUHOMS (or any of the other spent fuel casks approved by NRC (10 CFR 72.214)) have been fully considered and are documented in a published Environmental Assessment (EA) covering this rulemaking. Further as described below, the EA indicates that use of the casks would not have significant environmental impacts. Specifically, the EA notes the 30-plus years of experience with dry storage of spent fuel have shown that the previous extensive NRC analyses and findings that the environmental impacts of dry storage are small and succinctly describes the impacts, including the non-radiological impacts of cask fabrication (the impacts associated with the relatively small amounts of steel, concrete, and plastic used in the casks are expected to be insignificant), the radiological impacts of cask operations (the incremental offsite doses are expected to be a small fraction of and well within the 25 mrem/yr limits in NRC regulations), the potential impacts of a possible dry cask accident (the impacts are expected to be no greater than the impacts of an accident involving the spent fuel storage basin) and the potential impacts from possible sabotage (the offsite dose is calculated t be about one rem). All of the NRC

analyses collectively yield the singular conclusion that the environmental impacts and risks are expected to be extremely small.

NRC EA's for previously approved dry casks also concluded there was an absence of significant environmental impacts from dry cask storage at a reactor site when they were analyzed in earlier rulemakings addressing 10 CFR Part 72 as well as in the Commission's Waste Confidence decisions in 1984 (August 31, 1984; 49 FR 34658) and 1989 (September 29, 1989; 54 FR 39765). In the 1984 Waste Confidence decision, the Commission concluded there was reasonable assurance spent fuel can be safely stored at reactor sites, without significant environmental impacts for at least 30 years beyond expiration of NRC reactor operating licenses. The 1989 Waste Confidence decision review reaffirmed earlier Commission conclusions on the absence of significant environmental impacts.

Given the Commission's specific consideration of environmental impacts of dry storage and the absence of any new information casting doubt on the conclusion that these impacts are expected to be extremely small and not environmentally significant, the NRC is not convinced that meaningful new environmental insights would be gained from either a new site-specific EIS or EA for each site using dry storage methods.

The EA covering the proposed rule, as well as the finding of no significant impact (FONSI) prepared and published for this rulemaking, fully comply with the NRC environmental regulations in 10 CFR Part 51. The Commission's environmental regulations in Part 51 implement the National Environmental Policy Act (NEPA) and give proper consideration to the guidelines of the Council of Environmental Quality (CEQ). The EA and FONSI prepared as required by 10 CFR Part 51 conform to NEPA procedural requirements. Further analyses are not legally required.

The regulation 10 CFR Part 72, Subpart K, already authorizes dry cask storage and approves dry casks for use by utilities to store spent fuel at reactor sites. See 10 CFR 72.214 for a listing of information on Cask Certificate Nos. 1000 through 1003, 1005, and 1007 The purpose of this final rule is to add one more cask to the list of casks already approved by NRC. The cask added to the list in § 72.214 by this final rule complies with all applicable NRC safety requirements.

Finally, this final rulemaking applies to the use of this cask by any power reactor within the United States.

H.2. *Comment* One commenter stated that the January 30, 1994, reply from NRC's Robert Bernero to Mr. Adamkus, EPA, is completely inadequate, as is the March 1994 "Draft Environment Assessment and Finding of No Significant Impact" because no consideration is given to the site's unsuitability even for LLRW per NRC's own admission, and "new information which could alter the original site evaluation findings" is ignored.

Response. This final rule does not provide any site-specific NRC approval or address site-specific parameters that are peculiar to a particular reactor site. The rule only adds one cask design, the Standardized NUHOMS, to the list of approved casks available for use by a power plant licensee in accordance with the conditions of the general license in Part 72. Pursuant to those conditions, each licensee must determine whether or not the reactor site parameters (including earthquake intensity and tornado missiles) are encompassed by the cask design bases considered in the cask SAR and SER. The EA and FONSI for this rule are limited in scope to the Standardized NUHOMS in a generic setting.

Unlike interim storage prescribed in 10 CFR Part 72, the in-ground disposal of radioactive material, whether high-level or low-level waste (HLW or LLW), must take into account the geologic, hydrologic, and geochemical characteristics of the site or region to isolate the radioactive waste from the accessible environment. Site criteria for in-ground disposal of radioactive wastes enable an applicant to choose an appropriate site, one with a combination of favorable conditions that will be a natural barrier to retard or attenuate the migration of any leaked radioactive material over a long period to control releases within acceptable limits. The disposal period for LLW is on the order of 500 years, and for HLW it is greater than 10,000 years. Therefore, site characteristics are investigated and assessed for interim spent fuel storage under Part 72, not to determine their suitability as a barrier to release of radioactive material, but rather to determine the frequency and the severity of external natural and artificial events that could affect the safety of an ISFSI. Unlikely, but credible, severe events are considered to determine the safety of the storage cask design.

H.3. *Comment* One commenter stated that the NRC has not approved technologies for the use of spent fuel at the sites of * * * without the need for additional site reviews. If that were so, no additional site review would have been necessary at Palisades, nor would an SAR revision or a Certificate of Compliance amendment be called for right after the VSC–24 was certified.

Response. The approval and use of dry storage technologies under the provisions of the general license are relatively new. Questions were raised by members of the public about the possible effects of earthquakes and erosion at the Palisades site on the safe storage of spent fuel in the VSC–24 dry casks. As the agency which is responsible for questions about compliance with regulatory requirements, which oversees such matters as the "cop on the beat," the NRC began an independent assessment to more closely examine the behavior of the pad at Palisades under normal conditions, under the long-term effects of erosion, and under conditions of a postulated earthquake that might cause the sand below or around the pad to move. The results of NRC's assessment were documented in the NRC Final Safety Assessment of Independent Spent Fuel Storage Installation (ISFSI) Support Pad (TAC No. M88875). As is the case at all sites, NRC requires the cask user to determine if the design basis for the storage technology being considered encompasses the site parameters at the location where the fuel is to be stored. The review at Palisades confirmed this to be the case. As experience with use of this new design is gained, modifications to the design described in the SAR are expected and allowed under the provisions of 10 CFR 72.48.

H.4. *Comment.* One commenter wanted the environmental impacts of alternatives, such as: renewable energy sources, conservation of energy, shutting down the nuclear power plants, and wind and solar power evaluated.

Response. Energy production is not the subject of this rulemaking and alternative sources of energy are, therefore, not reasonable alternatives requiring evaluation. This rulemaking is limited to the addition of the Standardized NUHOMS to the list of approved casks in 10 CFR 72.214.

H.5. *Comment.* One commenter stated that the NRC is ignoring the regulatory requirements of a site-specific license as to the feasibility of using the cask or of modifying its design.

Response. This rulemaking does not cover site-specific NRC licensees; however, the NRC is not ignoring them. Under NRC regulations, the utility has two options in using dry cask storage of spent fuel: (1) The licensee may apply for a site-specific license from NRC; or (2) the licensee may use an NRC-approved cask under the general license provisions of Subpart K of 10 CFR Part 72. However, not all licensees may be

able to use the general license provisions, either because the fuel type they possess is not storable in any cask listed in 10 CFR 72.214 or because none of the cask designs envelope the reactor site parameters. The NRC is also not ignoring site-specific license considerations relating to modifying cask designs. Quite the contrary, the criteria that apply to modifications of an NRC-approved cask such as the Standardized NUHOMS are the same as the criteria that apply to modifications of site-specific ISFSIs.

H.6. *Comment.* Because the populations of several states and provinces, including two-thirds of the population of Quebec, are based along the St. Lawrence Seaway, one commenter wanted an Economic Impact Statement conducted with a cost/benefit analysis citing possible adverse impact on tourism and sport fishing.

Response. A regulatory analysis, which considers both benefits and impacts of adding the Standardized NUHOMS to the list of NRC-approved casks under Subpart K of 10 CFR Part 72, was prepared in support of this rulemaking action. It was included as a part of the notice of proposed rulemaking and is also included in this final rulemaking notice. However, this regulatory analysis reflects the limited scope of this rulemaking. Because the rulemaking does not provide any site-specific NRC approvals, NRC did not evaluate site-specific economic impacts.

H.7. *Comment.* One commenter wanted to restrict the use of the cask to reactor sites that have responded on schedule to NRC Generic Letter 88–20, Supplement 4, "Individual Plant Examination of External Events (IPEEE)."

Response. IPEEE response submittals will not address dry cask storage and are not necessary for Standardized NUHOMS use.

H.8 *Comment.* One commenter stated that NUHOMS must not receive generic approval because site-specific characteristics must be considered. The commenter stated that placing this cask on the shores of Lake Erie is potential ecocide and the cask is not terrorist-proof. Another commenter stated that the potential engineering problems of storing high-level nuclear waste in a variety of climatic and geologic regions of the United States are not considered.

Response. A utility's use of the Standardized NUHOMS, for the storage of spent fuel in casks at a reactor site, would not have a significant impact on the environment. This finding is supported by the NRC safety and environmental evaluations for the Standardized NUHOMS, including the applicant's demonstration of compliance of the cask with NRC requirements, as well as by the 1990 rulemaking on dry cask storage and the 1984 and 1989 waste confidence proceedings. Because the Standardized NUHOMS can only be used by a licensee if the site parameters are enveloped by the cask design basis, as specified in the SAR and SER, cask storage of spent fuel near the shore of Lake Erie within the specified parameters would not have a significant impact on the environment.

I. The following comments relate to the transportability of dry storage casks to an off-site location.

I.1. *Comment.* One commenter questioned how the cask transport methods used at both on-site and off-site locations are related.

Response. In this rulemaking, the NRC reviewed the cask vendor's proposed means for transporting the Standardized NUHOMS canister and transfer cask outside the reactor buildings to the on-site storage pad under the storage requirements of 10 CFR Part 72. This on-site movement occurs within an owner-controlled area where access can be limited and where operations would be safely managed by the general licensee. The NRC did not review the Standardized NUHOMS for transport off-site, for example to a DOE MRS or repository. Generally, off-site transport of spent fuel occurs in public places where the shipper has fewer access restrictions and limited control of the surroundings. Off-site spent nuclear fuel shipments must be made in a transportation cask approved by the NRC pursuant to NRC's regulations found in 10 CFR Part 71, "Packaging and Transportation of Radioactive Material," and must also comply with pertinent Department of Transportation (DOT) regulations. At this time, the NRC is approving the Standardized NUHOMS for storage only.

I.2. *Comment.* One commenter, citing a Wisconsin Public Service Commission EIS for Point Beach, questioned the statement, "The baskets' heavier weight and larger diameter make the transportability of an intact NUHOMS canister to an MRS site or repository questionable."

Response. The NRC has not reviewed the Standardized NUHOMS in this rulemaking for off-site transportation.

I.3. *Comment.* One commenter wanted to know the relationship between the Standardized NUHOMS and the NUHOMS MP187 now applying for a Certificate of Compliance. Is the MP187 transportable? Will the canister of all models fit into the transport overpack? Wouldn't a utility be better off waiting for the transportable cask rather than choosing a storage only cask that may have compatibility problems with an MPC system?

Response. The MP–187 transportation overpack uses a canister similar to the Standardized NUHOMS. However, it is the subject of a separate NRC review as part of a site-specific licensing application. Both the Standardized NUHOMS and the MP–187 share many common design features. However, they are separate applications, and the NRC has not been asked by the cask vendor to review whether the Standardized NUHOMS can be transported in the NUHOMS MP187 transportation overpack.

The issue of whether a utility should consider the transportability of dry storage casks is beyond the scope of this rulemaking.

I.4. *Comment.* One commenter cited a report given at the HLW Conference at Las Vegas, in 1990, "Integrated Spent Fuel Storage and Transportation Systems using NUHOMS," by PNFSI (page 671): "While subsequent transfer of an intact DSC from a NUHOMS on-site transfer cask directly to an OCRWM rail/barge is feasible, this method of transfer is not preferred since the assemblies would be oriented top down and the DSC bottom shield plug and grapple ring assembly would be orientated top up, thus complicating the canister opening and fuel handling process at the MRS or geologic repository following shipment." Has NRC evaluated this situation? Has it been rectified?

Response. Because the cask vendor applied for certification of the Standardized NUHOMS only as a storage cask under 10 CFR Part 72, transportation of this cask is not a subject of this rulemaking. Therefore, the NRC review of the standardized NUHOMS did not consider the particular transportation problem described in the comment.

J. Several commenters supported the rule stating that it is beneficial to the NRC and licensees, and it is consistent with NRC's direction to avoid unnecessary site-specific licensing reviews. Others disagreed and asked specific questions about NRC's approval and oversight process.

J.1. *Comment.* One commenter stated that the NRC statement, "The proposed rule will not have adverse effect on public health and safety," cannot be guaranteed and, therefore, even though it may be convenient for the nuclear industry and the NRC to avoid site-specific approvals, in this case these are essential for maintaining public safety Another commenter following the same

theme questioned how the following determination was made: "this cask, when used in accordance with the conditions specified in the Certificate of Compliance and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of the public health and safety would be ensured."

Response. Dry storage casks approved by the NRC for use under the general license are of a robust design that relies on generic cask features to ensure protection of the public health and safety. Additional NRC site-specific approvals are unnecessary. NRC oversight and inspections are sufficient to ensure that general licensees implement NRC conditions on cask use. If specific concerns are raised, the NRC also has the authority to look into them and respond as necessary to protect public health and safety. The NRC has established specific requirements in 10 CFR Part 72 that must be met in order to obtain a Certificate of Compliance for a cask. The details of the review and the bases for the NRC concluding that the cask meets the requirements of 10 CFR Part 72 are provided in the SER. The goal of dry cask storage technology is to store spent fuel safely. That goal, and the effectiveness of the technology, have been demonstrated empirically and experimentally. Different cask designs may require different types of analysis to demonstrate their safety. Therefore, different review methods may be appropriate to reach that conclusion. In each case, the level of review performed is that needed to provide assurance of adequate protection of the public health and safety.

J.2. *Comment.* Several commenters expressed concern over the exemption to 10 CFR 72.234(c) granted to VECTRA to begin transfer cask fabrication (but not use) "to have the necessary equipment available for use by Davis-Besse Nuclear Power Station (DBNPS) in mid-1995, and thus enable DBNPS to maintain complete full-core off-load capability in its spent fuel pool following the refueling outage scheduled for early 1996." One commenter said that seeking public comment and providing comments is an exercise in futility because cask approval seems to be a fait accompli. Another commenter wants no exemptions for fabrication before certification to be allowed, stating that problems have developed when all these exemptions are allowed.

Response. The NRC granted VECTRA's request for an exemption to fabricate the transfer cask before issuance of the Certificate of Compliance under its NRC-approved quality assurance program. NRC's exemption decision made a special effort to clarify that fabrication was entirely at VECTRA's financial risk and did not ensure favorable consideration of VECTRA's application. The NRC's finding, based on the SAR for the Standardized NUHOMS and the NRC's SER, concluded that beginning fabrication before the issuance of the Certificate of Compliance would pose no undue risk to public health and safety. Use of the transfer cask is dependent on satisfactory completion of NRC's certification process.

The NRC staff carefully considers the public comments received in rulemakings to determine whether changes are needed to the proposed rule. As noted elsewhere in this notice, several public comments received in this and other cask-approval rulemakings have resulted in changes to the SER and the Certificate of Compliance. For this reason, the public comments provide useful inputs to the NRC's safety approval process.

J.3. *Comment.* One commenter wanted a Regulatory Guide outlining the requirements of an SAR for cask certification (CSAR). Requirements for a CSAR have not been clarified. Specific criteria for a TR (TSAR) by a vendor for a generic Certificate of Compliance need to be set.

Response. Regulatory Guide 3.61, "Standard Format and Content for a Topical Safety Analysis Report for a Spent Fuel Dry Storage Cask," dated February 1989, provides guidance for the preparation of a TSAR. Regulatory Guide 3.62, "Standard Format and Content for the Safety Analysis Report for Onsite Storage of Spent Fuel Storage Casks," dated February 1989, provides guidance in preparing an SAR locating an ISFSI at a reactor site. Both Regulatory Guides identify similar information that can be potentially useful to prospective applicants for cask certification.

J.4. *Comment.* One commenter wanted to know why Pacific Nuclear divested itself of any ownership or relationship to the VSC design in January 1992. How does this affect proprietary material shared in these two closely related designs? How does it affect their relationship to the DOE MPC system?

Response. The key individual involved in the design and development of the VSC–24, who was also involved in the design and development of the NUHOMS design, left Pacific Nuclear and formed a new company, Pacific Sierra Nuclear, for the commercial manufacture and marketing of the VSC–24 storage system. The NRC has experienced no difficulty obtaining the required safety information, including proprietary information or answers to its questions from either firm, either before or after divestiture. The NRC is not aware of any relationship between the vendors. In addition, the NRC fully reviewed the health and safety aspects of each vendor's cask design independently. The NRC did not rely on any assumed relationship between the two vendors. Concerning their relationship to the DOE MPC system, each vendor has to establish its own relationship with DOE.

J.5. *Comment.* One commenter wanted to know how long any model of NUHOMS has been used and if fuel has been taken out and evaluated. Has the 24P or 52B ever been used anywhere and for how long? If not, this is a test of a new cask at a reactor site.

Response. The NUHOMS–24P is being used at Duke Power Company, Oconee Nuclear Station, under a site-specific license issued January 29, 1990, and at Baltimore Gas and Electric Company, Calvert Cliffs Nuclear Station, under a site-specific license issued November 25, 1992. Monitoring and surveillance of the system is being performed under the conditions of the site-specific license. However, there has been no need for fuel to be removed for evaluation.

The NUHOMS–52B has not been used yet. Pre-operational testing of the first cask system put in place under the general license is to be performed in accordance with Certificate of Compliance, Attachment A, "Conditions for Systems Use." Monitoring and surveillance of the system will be performed under the conditions of the Certificate of Compliance.

The first use of the Standardized NUHOMS–52B will not place plant workers, the public, or the environment at risk. Conditions of use for the Standardized NUHOMS–52B ensure adequate safety of the workers, the public, and the environment. The Standardized NUHOMS–52B has been designed and will be fabricated to well established criteria of the ASME B&PV and ACI codes. It uses construction materials that have well known and documented properties to provide the necessary structural strength and radiation shielding to meet regulatory requirements. While the Standardized NUHOMS–52B is not identical to the NUHOMS–24P, many parallels in design and function can be drawn to demonstrate that the Standardized NUHOMS–52B will perform as intended.

J.6. *Comment.* One commenter stated that even though dry cask storage passes

all NRC rules and is one of the least expensive methods, it would seem that a different location or more expensive storage method is worth lives, resources, and property.

Response. Based on numerous NRC reviews and growing experience with dry cask storage technologies, the NRC has concluded that spent fuel can be safely stored in dry casks without significant risk to the public health and safety. More expensive storage techniques or alternative storage locations would not provide any significant additional public protection. Further, the storage location is a matter of Congressional policy as reflected in Section 218(a) of the Nuclear Waste Policy Act of 1982, which includes the following directive: "The Secretary [of DOE] shall establish a demonstration program in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section III(a) also finds that the generators of the spent fuel have the primary responsibility to provide for the interim storage of the spent fuel until it is accepted by the DOE.

The type of spent fuel stored in the dry cask storage systems is one factor that allows the cost of the systems to be lower. Because the fuel has cooled a number of years, passive cooling can be used rather than active cooling as is required for fuel just removed from the reactor. Passive cooling reduces the cost by not having active components such as pumps, heat exchanger, water filters, and the maintenance required for these components.

J.7 *Comment.* One commenter opposed licensing any dry cask storage system other than the DOE multi-purpose canister (MPC) because it minimizes handling individual fuel assemblies, standardizes compatibility between storage sites and DOE, and reduces cost. Multiple cask designs lead to less expertise in production, operation, and accident management. Federal regulations need to be amended to mandate only the use of the MPC.

Response. The DOE MPC system will not be available for general use until well after 1997. In the meantime, additional storage capacity is needed now at several reactor sites. Once the MPC is available for general use, most utilities might use it. However, given the demonstrated and immediate need of some reactors for an additional storage capacity, and given NRC's responsibility to implement dry cask storage under a general license pursuant to NWPA of 1982, it would not be prudent for NRC now to require use of MPC designs that not even DOE has yet approved.

The NRC does not agree that the number of cask designs has a significant effect on the level of expertise available because standard engineering and scientific skills such as mechanical and civil engineers and health safety specialists can be hired as needed.

K. Several commenters had concerns about decommissioning issues.

K.1. *Comment.* One commenter, citing the draft SER, stated that decommissioning and decontamination of reactors and reactor sites remain uncertain at best. "At this time, it is not known whether demolition and removal of the HSM can be performed by conventional methods * * *. The reinforced structure of the HSM, for example, will require considerable effort to demolish." The commenter continues by indicating that in its typical fashion of putting off until tomorrow what it cannot deal with today, the NRC considers "ease of decommissioning (a) secondary consideration."

Response. The demolition of the HSM will be more difficult than a typical building because of the large amount of reinforced steel it contains. However, it is technically feasible and represents a likely level of effort similar to that required to demolish a bank vault. Bank vaults are routinely demolished without extraordinary effort. The HSM may become slightly radioactive from being exposed to a neutron radiation field during the spent fuel storage period, which would require some containment during demolition to prevent the spread of contamination. Recognizing this, the NRC considers decommissioning a secondary consideration compared to the safety afforded by storage of spent fuel in dry casks.

K.2. *Comment.* One commenter questioned how, where to, and when the spent fuel and casks will go? How does the decommissioning of NUHOMS affect the reactor decommissioning plan if no repository is sited and the pool must remain open? Another commenter expressed concern that after the operating facility has been decommissioned, the spent fuel pool may not be available for use in recovery of a breached DSC.

Response. The Commission determined in the Waste Confidence decisions that sufficient repository capacity will be available, in the first quarter of the 21st century, to accept spent fuel that is already in storage or that will be generated during the lifetime of the reactor licensed by NRC. In addition, the Commission determined that spent fuel can be safely stored at reactors until it is disposed. The bases for these determinations are extensively discussed in the Waste Confidence decisions (54 FR 39765; September 28, 1989 and 49 FR 34658; August 31, 1984) and remain applicable today.

To operate the dry spent fuel storage area under the provisions of the general license, a license to possess or operate a nuclear power reactor under 10 CFR Part 50 is required. If the reactors were decommissioned and the license terminated, and if the spent fuel were to remain on site, a specific license issued under 10 CFR 72.40 would be required. At the time of application for a specific license and before the Part 50 license was terminated, the licensee would have to address the subject of how the fuel will be repackaged for shipment to an MRS or repository. (None of the casks now listed in 10 CFR 72.214 are approved for transportation). Decommissioning and termination of a Part 50 license for a given reactor site must take into account the proper disposal of any spent fuel.

L. A number of positive and negative comments were received about the application of 10 CFR 72.48 or Item 9 of the Certificate of Compliance to general licensees.

L.1. *Comment.* Several commenters questioned the application of 10 CFR 72.48 to Certificate of Compliance holders for use by a general licensee. Some commenters believe that this regulation is being inappropriately applied to general licensees and cask vendors. These commenters believe that the regulation was intended to apply to site-specific licenses issued under 10 CFR 72.40 only. One commenter cited the parallel application of 10 CFR 50.59 to 10 CFR Part 50 licensees. Any changes to the Certificate of Compliance and the supporting SAR and SER need public input using the rulemaking process. Who would make the decisions in using the terms "unreviewed safety questions," "significant increase," and "significant environmental impact"? Other commenters liked this addition, stating that non-safety-significant changes can be made in a timely and cost effective manner. Several commenters supported the incorporation of item number 9 (in 72.48 type language) in the draft Certificate of Compliance. One commenter wanted similar provisions made for general license holders with recordkeeping requirements applicable to the general license rather than the

certificate holder. Changes requiring an amendment to the certificate should be initiated by the certificate holder only.

Response. The NRC will not allow changes in the Certificate of Compliance under 10 CFR 72.48. However, the general licensee may make changes in the SAR under 10 CFR 72.48, unless it involves an unreviewed safety question, a significant increase in occupational exposure, or a significant unreviewed environmental impact. The general licensee must make the determinations, in the first instance, that are necessary for application of 10 CFR 72.48. The licensee must also retain its evaluations on its records (which are subject to NRC review).

Supporting this application of 10 CFR 72.48 to the general license are the words of 10 CFR 72.48(a)(1) which provides as follows: "The holder of a license issued under this part may: (i) Make changes in the ISFSI * * * described in the Safety Analysis Report, * * * (iii) * * * without prior Commission approval, unless the proposed change, test or experiment involves a change in the license conditions incorporated in the license, an unreviewed safety question, a significant increase in occupational exposure, or a significant unreviewed environmental impact." Also supporting the interpretation is 10 CFR 72.210 which provides as follows: "A general license is hereby issued for the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under Part 50 of this chapter." The NRC staff is considering a rulemaking to amend NRC regulations to explicitly state that 10 CFR 72.48 applies to general licensees.

L.2. *Comment.* One commenter stated that the CFR is silent on how a vendor can change a cask SAR and certificate after the final rule. It should be made clear for the vendor that this cask SAR (CSAR) is generic for all United States sites. All seismic, control component, distance, changes in length and weight, changes in transfer devices, etc., need to be clearly defined in the proposed rulemaking for the cask and the CSAR before public comment. Who would be liable if a utility requested the vendor to change a certified cask design?

Response. The cask vendor can apply to the NRC for a change to the cask certificate and SAR after the final rule is published in the **Federal Register**. The vendor must propose the generic revisions to the certificate and SAR and request NRC review of the proposed revision. The NRC will evaluate the proposed revision in an SER, and if appropriate, prepare a draft revised Certificate of Compliance. These documents would then be placed in the NRC Public Document Room and a proposed rule would be published requesting public comments on the proposed revised Certificate of Compliance. After consideration of public comments (and assuming an appropriate basis exists), a final rule would be published incorporating the revision in the revised Certificate of Compliance.

The SAR (CSAR) is not necessarily generic for all United States operating reactor sites as the comment appears to suggest. The SAR is pertinent for those sites that have parameters that are incorporated by the cask design bases analyzed in the SAR. From a practical standpoint, it is difficult for a cask vendor to foresee all possible combinations of seismic, control component, distance, changes in length and weight, changes in transfer devices, etc. Revisions are expected when the vendor submits its initial application for approval. The vendor is responsible for the certified cask design.

L.3. *Comment.* One commenter wanted an explanation for not allowing buyer substitution of material for a Certificate of Compliance and that these references should be deleted from fabrication specifications and drawings. Does this mean that no changes in any materials are allowed once the design is certified? If so, explain this in reference to new models of the VSC–24 as far as materials, coatings, etc.?

Response. Under 10 CFR Part 72, the licensee is permitted to make changes in the ISFSI as described in the SAR provided the changes do not involve an unreviewed safety question. The licensee and cask certificate holder must have a quality assurance (QA) program that provides control over activities affecting quality of the identified structures, systems, and components to an extent commensurate with the importance to safety and to ensure conformance with the approved design. The NRC does not want buyers (who may not be the licensee or certificate holder) of cask materials to automatically be able to substitute material without the necessary safety evaluations. Rather, the licensee, through the cask certificate holder, has the ultimate responsibility for approving any changes to ensure conformance with the approved design. For structures, systems, and components identified as important to safety, if alternative materials are desired to be used and those specific materials form the basis of the safety evaluation, it would be appropriate to identify those materials in the cask application. Alternatively, the certificate holder may seek an amendment to the SAR and, if necessary, a change to the Certificate of Compliance. For other structures, systems, or components that are needed for the design to be used or are otherwise prudent, but do not perform a safety function and were not relied upon in the basis for design approval, appropriate changes may be permitted provided the licensee and the Certificate of Compliance holder document the appropriate evaluations and use their quality assurance programs to implement the change. New models of the VSC–24 casks are not the subject of this rulemaking.

L.4. *Comment.* One commenter questioned how the draft Environmental Assessment and Finding of No Significant Impact would remain valid if changes to cask design and procedures can be made. Tests or experiments could be conducted under draft Certificate of Compliance Item No. 9 (see also 10 CFR 72.48) leading to the use of a cask that does not meet the conditions specified in the Certificate of Compliance. These changes may adversely impact site-specific public health, safety, and the environment.

Response. Given the limiting criteria of 10 CFR 72.48, it is unlikely that any change would materially change the environmental analysis. The licensee's authority under 10 CFR 72.48 does not permit any changes that involve unresolved safety issues, changes to the conditions for cask use in the Certificate of Compliance, significant increase in occupational exposure, or significant environmental impact. In the Environmental Assessment supporting this rulemaking to approve the Standardized NUHOMS, the NRC staff evaluated various types of accidents that could happen to the ISFSI facility. The NRC staff's evaluation encompassed design basis accidents and concluded that no radioactive material will be released to the environment. The NRC staff also evaluated a worst-case accident and found that the environmental impact is insignificant. Therefore, it is unlikely that the potential impact from changes to cask design or tests or experiments under the control of the licensee would introduce new environmental considerations or impacts that differ from or exceed those as analyzed in the Environmental Assessment. Changes in environmental impacts, as a result of changes to the cask design or procedures, must be evaluated by the licensee. The licensee's evaluations are available for inspection by the NRC.

M. A number of technical clarifications and editorial issues were raised.

M.1. *Comment.* One commenter stated that both the SAR and SER on which the Certificate of Compliance is based should be dated, as was the case for the VSC–24 Certificate of Compliance. If not, the public will be commenting on an unfinished document that can be endlessly revised.

Response. Both the draft SER and the SAR are dated November 1993. These documents were revised based on public comments.

M.2. *Comment.* One commenter wanted page one of the Certificate of Compliance revised to change the name "Pacific Nuclear" to "VECTRA".

Response. The Certificate of Compliance has been revised to reflect this.

M.3. *Comment.* One commenter pointed out a typographical error on page A–19 of the draft Certificate of Compliance. In the Basis paragraph, the sentence starting, "Acceptable damage may occur * * *" should read "Unacceptable damage may occur * * *"

Response. The Certificate of Compliance has been revised to correct this.

M.4. *Comment.* One commenter requested clarification of Technical Specification 1.2.16 on page A–25 of the draft Certificate of Compliance, as to whether the Yearly Average Ambient Temperature is a surveillance requirement or an action statement. It is unclear what action should be taken if either of the two specified limits (Yearly average temperature <70 °F or average daily ambient temperature <100 °F) is exceeded.

Response. The Yearly Average Ambient Temperature specification is a site-specific parameter that the user must verify in accordance with the requirement of 10 CFR 72.212(b)(3) in order to use the system under the general license. There is no surveillance requirement or further action to be taken.

Certificate of Compliance Section 1.1.1, "Regulatory Requirements for General License," also includes verification of some of the same site-specific temperature parameters and has been amended to include the 100 °F or less average daily ambient temperature parameter. Therefore, this specification mentioned in the comment (draft Certificate of Compliance Section 1.2.16) was deleted.

M.5. *Comment* Apparently in reference to a December 4, 1991, letter from PNFSI that stated "The NUHOMS Certification Safety Analysis Report (CSAR) was * * *," one commenter believed that the use of the term CSAR was a good idea and should have been used by the NRC. The utility SAR should be called SAR as it was and the vendor SAR should be called CSAR just as NUHOMS did in 1990. Also, the acronyms topical report (TR), TSAR, and SAR are being used interchangeably and they need clear definition. This would eliminate confusion on the issue by those involved.

Response The NRC staff generally agrees with the comment. However, the required documents that form the basis of the NRC staff's safety review are clearly identified in the SER and Certificate of Compliance.

M.6. *Comment.* One commenter wanted the term "certificate holder" eliminated because it is ambiguous and misleading.

Response. The term "certificate holder" has been changed to "holder of a Certificate of Compliance" to be consistent with the regulations.

M.7. *Comment.* One commenter wanted the draft Certificate of Compliance clarified as to who is responsible for the use of seismic restraints at each reactor site, the vendor or the utility, citing the ambiguous term "certificate holder."

Response. The utility is responsible for determining the need for seismic restraints in the spent fuel building based on seismic conditions at the site (Certificate of Compliance, Section 1.2.17).

M.8. *Comment.* Several commenters stated that the limits on both neutron and gamma emission rates as well as neutron and gamma spectra (Attachment A, Section 1.2.1 of draft Certificate of Compliance) result in excluding some fuel assemblies that would actually produce lower dose rates. The problem for fuel qualification stems from the fact that the neutron dose rate does not decrease as rapidly as the gamma dose rate during cooling because of the longer lived isotopes. Thus, a high burned fuel assembly excluded on the basis of high neutron source term may remain excluded, even though with extra cooling time the combined neutron/gamma dose rate could be less than the design basis case. Some fuel may not qualify because it exceeds the spectra requirements, even though the energy groups exceeding the limits may not be significant contributors to the dose rates. Combined neutron/gamma dose rates are the real concern; it is recommended that the limits on source term be replaced by limits based on dose equivalence. The fuel specification should allow other combinations of fuel enrichment, burnup, and cooling time that would not result in exceeding the fuel cladding temperature or dose rates.

Response. The NRC staff agrees that alternative fuel specifications could be beneficial. However, this commenter did not provide a specific alternative, and the NRC staff has not evaluated any other alternative at this time because VECTRA did not include this approach in the SAR. Therefore, no other approach is considered for this rulemaking.

M.9. *Comment.* One commenter suggested wording changes to the draft Certificate of Compliance in Attachment A, Section 1.2.6, Action b, as follows: "Visually inspect placement of top shield plug. Re-install or adjust position of top shield plug if it is not properly seated." The commenter also proposed wording changes to Action c of the same section as follows: "Install additional temporary shielding or implement other ALARA actions, as appropriate."

Response. The NRC staff agrees with the first comment and has added the suggested words to the Certificate of Compliance, Section A.1.2.6, Action b. It is not necessary to change Action c because 10 CFR Part 20 ALARA already applies to these activities.

M.10. *Comment.* One commenter wanted draft Certificate of Compliance, Attachment A, Section 1.2.6, Action d deleted. The user should be permitted to analyze and document higher dose rates under 10 CFR 72.48, which is available for NRC review. Another commenter wanted the complete Section 1.2.6 of Attachment A to the draft Certificate of Compliance deleted. Given that HSM dose rates are specified, a specification for DSC dose rates is not necessary because only the workers involved in the canister closure operations are affected by them and they are already covered by the reactor radiation protection program. One commenter wanted draft Certificate of Compliance, Attachment A, Section 1.2.11 deleted. Given that HSM dose rates are specified, a specification for transfer cask dose rates is not necessary because only the workers involved are affected, not the general public. The commenter also stated that if Section 1.2.11 cannot be deleted the action statement should be revised to read as follows: "If specified dose rates are exceeded, place temporary shielding around the affected areas of the transfer cask or implement other ALARA actions, as appropriate. Review the plant records of the fuel assemblies which have been placed in the DSC to ensure they conform to the fuel specifications of Section 1.2.1. The report to the NRC should be deleted with the user being able to analyze and

document the higher dose rates under 10 CFR 72.48, which is available for NRC review."

Response. The dose rate limits are for design purposes. The dose rate is limited to ensure that the DSC has not inadvertently been loaded with fuel not meeting the vendor/applicant spent fuel specifications. The NRC will require reporting if the specified dose limits are exceeded. For these reasons, the NRC will not grant the above requests.

M.11. *Comment.* One commenter stated that the requirement for a dissolved boron concentration in the DSC of 2000 ppm is in excess of the 1810 ppm site-specific license. The 1810 ppm dissolved boron is sufficient to ensure reactivity below 0.95 K-eff (95/95 tolerance level with uncertainties) assuming 24 fresh fuel assemblies. For the unlikely worst case with water density of 0.2 to 0.7 gm/cc (a condition not achievable for fresh fuel), reactivity remains below 0.98 K-eff. The pool dissolved-boron verification- measurement frequency should be changed from not to exceed 48 hours to once per month to be consistent with 10 CFR Part 50 requirements.

Another commenter stated that the NUHOMS–24P canister was designed using burnup credit, the basis for licensing is "credit for soluble boron." The burnup-enrichment curve requirement (Figure 1–1, draft Certificate of Compliance) should be removed until the NRC accepts burnup credit and the pool boron specification (Section 1.2.15, draft Certificate of Compliance) is removed.

The NRC has not yet approved the use of burnup credit in criticality analyses for spent fuel storage and transportation casks. The applicant did, however, analyze credit for burnup as an alternative design acceptance basis for the NUHOMS–24P DSC, pending further consideration of burnup credit by NRC. As discussed in the SER, the NUHOMS–24P DSC criticality safety is approved based on, among others, the key assumptions of loading with irradiated fuel assemblies with equivalent enrichment <1.45 wt% U–235, misloading unirradiated fuel with maximum enrichment of 4.0 wt% U–235, and soluble boron in water for wet loading and unloading. The NRC considered the use of the burnup-enrichment curve, Certificate of Compliance, Figure 1–1, as a fuel selection criteria, to be prudent. Its use adds additional unanalyzed conservatism in the criticality safety margin. It is comparable to previous NUHOMS–24P approvals. Its use would also be consistent with the requirement that storage cask designs be, to the extent practicable, compatible with removal of the stored spent fuel from the reactor site, transportation, and ultimate disposition by DOE. Therefore, the NRC disagreed with the commenter's request to allow Standardized NUHOMS–24P users the option of using these burnup-enrichment curve.

Response. The comment appears to refer to the use of a NUHOMS 24P associated with a site-specific license. The "standardized NUHOMS 24P and 52B" are the subject of this general rulemaking and should not be confused with a site license. The SER for this rulemaking is clear about conditions for use, i.e., 2000 ppm boron concentration is required to ensure that the k_{eff} remains below 0.95. The SAR for this rulemaking does not request, nor does the SER grant, exemption from the requirement of $k_{eff} = 0.95$ for all accident conditions, including misloading of 24 unirradiated fuel assemblies and optimum moderation density.

The NRC has not yet approved the use of burnup credit in criticality analyses for spent fuel storage and transportation casks. The applicant did, however, analyze credit for burnup as an alternative design acceptance basis for the NUHOMS–24P DSC, pending future acceptance of burnup credit by NRC. As discussed in the SER, the NUHOMS–24P DSC criticality safety is approved based on, among other assumptions, the key assumptions of loading with irradiated fuel assemblies with equivalent enrichment <1.45 wt% U-235, misloading unirradiated fuel with maximum enrichment of 4.0 wt% U-235, and soluble boron in water for wet loading and unloading. The NRC still considers the use of the burnup-enrichment curve, Certificate of Compliance Figure 1–1, as a fuel selection criteria, to be prudent. Its use adds additional unanalyzed conservatism in the criticality safety margin. It is comparable to previous NUHOMS–24P approvals. Its use would also be consistent with the requirement that storage cask designs be, to the extent practicable, compatible with removal of the stored spent fuel from the reactor site, transportation, and ultimate disposition by DOE. Therefore, the NRC disagrees with the commenters request to allow Standardized NUHOMS–24P users the option of using the burnup-enrichment curve.

M.12. *Comment.* Several commenters stated that the listing of specific fuel types in the draft Certificate of Compliance is overly restrictive. Allowance should be made for very similar fuel types or a "fuel qualification table" as proposed by the vendor should replace the listing.

Response. The NRC agrees that allowance should be made for very similar types of fuel to be stored. The Certificate of Compliance provides this flexibility. The "fuel qualification table" consideration at this time is not subject to this rulemaking.

M.13. *Comment.* One commenter citing the first paragraph of page A–27 of the draft Certificate of Compliance states that the postulated adiabatic heatup would result in concrete temperatures being exceeded in approximately 40 hours. As a result, it is appropriate and conservative to perform the visual surveillance to verify no vent blockage on a daily basis to ensure that a blockage existed for less than 40 hours. The last sentence in the first paragraph should reflect that the module needs to be removed from service if it cannot be established that the blockage is less than 40 hours, not 24 hours. A 24-hour surveillance interval will adequately verify this. One commenter cited an inconsistency in Section 3 of the draft Certificate of Compliance. Section 3.1 indicates that a module must be removed from service if a vent blockage is in existence for longer than 24 hours. Surveillance Section 1.3.2 indicates that a module must be removed from service if the concrete accident temperature criterion has been exceeded for more than 24 hours. A vent blockage of less than 24 hours would not cause the temperature limit to be exceeded, as explained in Section 1.3 and the objective for the 24-hour frequency required by surveillance 1.3.1. The apparent conflict between Section 1.3 and the action for Surveillance Requirement 1.3.2 should be resolved. It appears that Surveillance Requirement 1.3.2 actions are appropriate.

Response. The Certificate of Compliance has been clarified to reflect the comment.

M.14. *Comment.* One commenter stated that Section 1.2.14 to Attachment A of the draft Certificate of Compliance is unnecessary because the time to transfer the DSC from the transfer cask to the HSM would normally require less than 8 hours. During this time, even with temperatures above 100 °F without the solar shield, any increase in fuel clad temperature and neutron shield temperature would be small and therefore not detrimental. Additionally the transfer cask is open to the atmosphere and would not pressurize.

Response The vendor, VECTRA, has proposed this limiting condition of operation in lieu of showing what

detrimental effect might occur on the cladding or neutron shield, should the ambient conditions involve temperatures above 100 °F. The NRC concurs with this condition as cited in Attachment A, Section 1.2.14 of the Certificate of Compliance.

N. Several commenters raised safeguards/sabotage issues.

N.1. *Comment.* One commenter cited the World Trade Center bombing and the ease with which a disturbed individual recently breached security and remained undetected at a U.S. reactor. Explosive technology has become very sophisticated in the last 15 years since the NRC and Sandia Laboratories studied the effect of sabotage on shipping casks in the March 1979, NUREG–0459, "Generic Adversary Characteristics Summary Report." Another commenter made reference to an experiment with balloons which failed. Yet another commenter questioned the degree of protection in the spent fuel pool versus dry cask storage. Will the cask be in a vital area? Will safeguards be reviewed as part of the security plan? What is the effect on the security of these casks?

Response. The NRC reviewed potential issues related to possible radiological sabotage of storage casks at reactor site ISFSIs in the 1990 rulemaking that added Subparts K and L to 10 CFR Part 72 (55 FR 29181; July 18, 1990). NRC regulations in 10 CFR Part 72 establish physical protection and security requirements for an ISFSI located within the owner controlled area of a licensed power reactor site. Spent fuel in the ISFSI is required by 10 CFR 72.212(b)(5) to be protected against the design basis threat for radiological sabotage using provisions and requirements as specified in 72.212(b)(5). Each utility licensed to have an ISFSI at its reactor site is required to develop security plans and install a security system that provides high assurance against unauthorized activities that could constitute an unreasonable risk to the public health and safety. The security systems at an ISFSI and its associated reactor are similar in design features to ensure the detection and assessment of unauthorized activities. Alarm annunciations at the ISFSI are monitored by the security alarm stations at the reactor site. Response to intrusion is required. Each ISFSI is periodically inspected by NRC and annually audited by the licensee to ensure that the security systems are operating within their design limits. The validity of the threat is continually reviewed, with a formal evaluation every six months by the NRC.

The NRC is currently conducting a study into the consequences of a vehicle bomb detonated in the vicinity of an ISFSI. Following completion of this study the NRC will make a determination as to whether additional physical protection is warranted. In the interim, the NRC staff believes that the inherent nature of the fuel, along with the degree of protection provided by the approved storage means for spent fuel, provides adequate protection against a vehicle bomb.

N.2. *Comment.* One commenter wanted the emergency plan updated to include initiating events caused by unnatural occurrences, such as sabotage, particularly for this fuel storage option. The commenter believes that the NRC should determine if upgraded or new security barriers are necessary for the David-Besse site.

Response. Under 10 CFR 72.212 requirements, each general licensee must protect the spent fuel against the design basis threat of radiological sabotage. Also, 10 CFR 72.212 requires each general licensee to review the reactor emergency plan to determine whether its effectiveness is decreased, and if so, to prepare the necessary changes and obtain the necessary approvals. Therefore, the comment is already essentially incorporated into NRC regulations.

O. Several commenters had fabrication, quality assurance, and inspection concerns.

O.1. *Comment.* One commenter raised questions about NRC oversight and requirements for proper cask fabrication by licensees. This is based on tests of the faulty welds at the Palisades plant conducted in July 1994 just before the cask was filled, but the test was not reviewed.

Response The ultimate responsibility to ensure proper cask fabrication belongs to the user of the cask. Each Part 50 licensee (general licensee) must have its own quality assurance (QA) program in place to oversee vendor activities. The QA requirements apply to design, purchase, fabrication, handling, inspection, testing, operation, maintenance, repair, modifications of structures, systems and components, and decommissioning that are important to safety. In addition, certified cask vendors have NRC-approved QA programs that control the implementation of these quality activities in a manner appropriate to the safety significance of these activities. In turn, the general licensee reviews, approves, and oversees its vendor's QA programs and activities. The NRC inspects both the general licensee and the subtiered vendors for compliance with the respective QA program requirements and for the adequacy of the activities performed.

The faulty welds at Palisades in a loaded cask happened because the radiographs were not read initially. If the radiographs were read in a timely manner, the cask should not have been loaded without corrective action first being taken. NRC oversight and involvement in the process contributed to timely detection of the defective cask weld.

O.2. *Comment.* One commenter wants clarification of the quality assurance program. NRC should have a regulatory guide for vendors with strong criteria for audits and subcontractors, and NRC inspection reports of fabricating facilities need to be put in the PDR. How will a subcontractor of NUHOMS vendor be checked by NRC in the future? If a vendor is going to continuously change subcontractors, the NRC should inspect each cask and carefully inspect the vendor QA manual.

Response. Chapters 11 or 13 of Regulatory Guides 3.62 and 3.61, respectively, provide guidance on acceptable quality assurance programs. These chapters state that a QA program meeting the requirements of Appendix B of 10 CFR Part 50 or Subpart G of 10 CFR Part 72 will be accepted by NRC. Both Parts 50 and 72 require an audit program. An NRC Branch Technical Position titled "Quality Assurance Programs for an Independent Spent Fuel Storage Installation (ISFSI) 10 CFR 72," implements the NRC review of quality assurance programs submitted by applicants. NRC inspection reports are routinely placed in the PDR except for reports containing sensitive information. Inspection reports of NUHOMS fabrication are available in the PDR.

O.3. *Comment.* One commenter wanted to know if any nonconformances have been discovered in inspection reports of any fabrication of the NUHOMS canister If so, what? How was this resolved? How has the QA program for NUHOMS been reviewed? Is there a manual? How will contractors and subcontractors be checked?

Response. A notice of nonconformance is documented in NRC Inspection Report No. 721004/93–07 dated August 23, 1993. The NRC staff conducted inspections in three phases at Duke Power Company, its contractor (Pacific Nuclear Fuel Services, Inc.) and subcontractor (Rancor, Inc.), concerning the QA activities with regard to the NUHOMS–24P dry spent fuel storage canisters. The NRC staff found that implementation of Duke Power

Company QA Program was satisfactory, in general. However, certain NRC requirements under Subpart G of 10 CFR Part 72 were not met. QA activities cited in the inspection report were documentation of nonconforming materials, parts, or components; quality assurance records; control of purchased material, equipment, and services; control of measuring and test equipment; instructions, procedures, and drawings; licensee inspection; and audits. Nonconformance corrective actions were taken and documented by Duke Power Company. The NRC staff found these corrective actions acceptable and so stated in letters dated January 13, 1994, and April 4, 1994. The corrective actions taken and the implementation of the QA Program are reviewed in periodic inspections by the NRC staff.

The latest version of the QA manual is "VECTRA Technologies, Inc., Quality Assurance Manual," Revision 1, transmitted July 25, 1994, which reflects the corporation's new name and organization and includes additional changes to update the manual and clarify QA recordkeeping commitments. The NRC staff found Revision 1 acceptable and so stated in its letter dated August 23, 1994. In its review, the NRC staff compared Revision 1 of the VECTRA QA Manual with Revision 3, Edition 2, of the PNSI QA manual, which the NRC staff found acceptable by letter dated January 28, 1993.

Contractors and subcontractors of cask vendors (or licensees) are subject to periodic QA inspections performed by the NRC staff.

O.4. *Comment.* One commenter wanted to know if there is a possible problem, and if there was, how it was resolved, with a material defect in Swagelok tube fittings for NUHOMS?

Response. The NRC is not aware of any material defect problem with Swagelok tube fittings on NUHOMS designs. There is no reliance on the Swagelok fittings as part of the confinement boundary for the NUHOMS canister. The fittings are covered by a metal plate that is welded on after the canister is vacuum dried. Therefore, if there is a failure in the fitting it would be the responsibility of the licensee to repair or replace it so that the DSC can be loaded properly, but its failure would not cause a public health and safety concern.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. This final rule adds an additional cask to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the Commission. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC, 20555, telephone (301) 415–6195.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0132.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mr Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC, 20555, telephone (301) 415–6195

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only licensees owning and operating nuclear power reactors and cask vendors. The owners of nuclear power plants do not fall within the scope of the definition of "small entities" set forth in Section 601(3) of the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121

Backfit Analysis

The NRC has determined that the backfit rules 10 CFR 50.109 and 10 CFR 72.62 do not apply to this final rule. A backfit analysis is not required for this final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1) or 72.62(a).

List of Subjects in 10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 552 and 553 the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat 929, 930, 932, 933, 934, 935, 948, 953, 954 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274 Pub L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206 88 Stat 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat 3123, (42 U.S.C. 5851); sec 102, Pub. L. 91–190, 83 Stat 853 (42 U.S.C 4332); secs 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec 148, Pub. L. 100–203, 101 Stat 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157 10161, 10168).

Section 72 44(g) also issued under secs 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec 189, 68 Stat. 955 (42 U.S.C 2239); sec 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C 10154). Section 72.96(d) also issued under sec 145(g), Pub. L. 100–203 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19) 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h) Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec 218(a), 96 Stat. 2252 (42 U.S.C. 10198)

2. In § 72.214, Certificate of Compliance 1004 is added in numerical order to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004
SAR Submitted by: VECTRA Technologies, Inc.
SAR Title: Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel, Revision 2
Docket Number: 72–1004
Certification Expiration Date: (20 years after final rule effective date)
Model Numbers: NUHOMS–24P for Pressurized Water Reactor fuel; NUHOMS–52B for Boiling Water Reactor fuel.

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Dated at Rockville, Maryland this 15th day of December, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

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FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0795]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) is revising its capital adequacy guidelines for state member banks and bank holding companies to establish a limitation on the amount of certain deferred tax assets that may be included in (that is, not deducted from) Tier 1 capital for risk-based and leverage capital purposes. The capital rule was developed in response to the Financial Accounting Standards Board's (FASB) issuance of Statement No. 109, "Accounting for Income Taxes" (FAS 109). Under the final rule, deferred tax assets that can only be realized if an institution earns taxable income in the future are limited for regulatory capital purposes to the amount that the institution expects to realize within one year of the quarter-end report date—based on its projection of taxable income—or 10 percent of Tier 1 capital, whichever is less.

EFFECTIVE DATE: April 1, 1995.

FOR FURTHER INFORMATION CONTACT: Charles H. Holm, Project Manager, (202) 452–3502; Nancy J. Rawlings, Senior Financial Analyst, (202) 452–3059, Regulatory Reporting and Accounting Issues Section; Barbara J. Bouchard, Supervisory Financial Analyst, (202) 452–3072, Policy Development Section, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

A Characteristics of Deferred Tax Assets

Deferred tax assets are assets that reflect, for financial reporting purposes, benefits of certain aspects of tax laws and rules. Deferred tax assets may arise because of specific limitations under tax laws of different tax jurisdictions that require that certain net operating losses (e.g., when, for tax purposes, expenses exceed revenues) or tax credits be carried forward if they cannot be used to recover taxes previously paid. These "carryforwards" are realized only if the institution generates sufficient future taxable income during the carryforward period.

Deferred tax assets may also arise from the tax effects of certain events that have been recognized in one period for financial statement purposes but will result in deductible amounts in a future period for tax purposes, i.e., the tax effects of "deductible temporary differences." For example, many depository institutions and bank holding companies may report higher income to taxing authorities than they reflect in their regulatory reports [1] because their loan loss provisions are expensed for reporting purposes but are not deducted for tax purposes until the loans are charged off.

Deferred tax assets arising from an organization's deductible temporary differences may or may not exceed the amount of taxes previously paid that the organization could recover if the organization's temporary differences fully reversed at the report date. Some of these deferred tax assets may theoretically be "carried back" and recovered from taxes previously paid. On the other hand, when deferred tax assets arising from deductible temporary differences exceed such previously paid tax amounts, they will be realized only if there is sufficient future taxable income during the carryforward period. Such deferred tax assets, and deferred tax assets arising from net operating loss and tax credit carryforwards, are hereafter referred to as "deferred tax assets that are dependent upon future taxable income."

B. Summary of FAS 109

In February 1992, the FASB issued Statement No. 109, "*Accounting for Income Taxes*" which supersedes Accounting Principles Board Opinion No. 11 and FASB Statement No. 96. FAS 109 provides guidance on many aspects of accounting for income taxes, including the accounting for deferred tax assets. FAS 109 potentially allows some state member banks and bank holding companies to record significantly higher deferred tax assets than previously permitted under generally accepted accounting principles (GAAP) and the federal banking agencies' prior reporting policies.[2] Unlike the general practice under previous standards, FAS 109 permits the reporting of deferred tax assets that are dependent upon future taxable income. However, FAS 109 requires the establishment of a valuation allowance to reduce the net deferred tax asset to an amount that is more likely than not (i.e., a greater than 50 percent likelihood) to be realized.

FAS 109 became effective for fiscal years beginning on or after December 15, 1992. The adoption of this standard has resulted in the reporting of additional deferred tax assets in Call Reports and FR Y–9C reports that directly increase institutions' undivided profits (retained earnings) and Tier 1 capital.

C. Concerns Regarding Deferred Tax Assets That Are Dependent Upon Future Taxable Income

The Federal Reserve has certain concerns about including in capital deferred tax assets that are dependent upon future taxable income. Realization of such assets depends on whether a banking organization has sufficient future taxable income during the carryforward period. Since a banking organization that is in a net operating loss carryforward position is often experiencing financial difficulties, its prospects for generating sufficient taxable income in the future are uncertain. In addition, the condition of and future prospects for an organization

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[1] State member banks are required to file quarterly Consolidated Reports of Condition and Income (Call Reports) with the Federal Reserve. Bank holding companies with total consolidated assets of $150 million or more file quarterly Consolidated Financial Statements for Bank Holding Companies (FR Y–9C reports) with the Federal Reserve

[2] The federal banking agencies consist of the Federal Reserve Board (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) (hereafter the "agencies")

often can and do change very rapidly in the banking environment. This raises concerns about the realizability of deferred tax assets that are dependent upon future taxable income, even when an organization may be sound and well-managed. Thus, for many organizations such deferred tax assets may not be realized, and for other organizations there is a high degree of subjectivity in determining the realizability of this asset. Furthermore, while many organizations may be able to make reasonable projections of taxable income for relatively short periods and actually realize this income, beyond a short time period, the reliability of the projections tends to decrease significantly. In addition, unlike many other assets, banking organizations generally cannot obtain the value of deferred tax assets by selling them.

Moreover, as an organization's condition deteriorates, it is less likely that deferred tax assets that are dependent upon future taxable income will be realized. Therefore, the organization is required under FAS 109 to reduce its deferred tax assets through increases to the asset's valuation allowance. Additions to this allowance would reduce the organization's regulatory capital at precisely the time it needs capital support the most. Thus, the inclusion in capital of deferred tax assets that are dependent upon future taxable income raises supervisory concerns.

Because of these concerns, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), considered whether it would be appropriate to adopt FAS 109 for regulatory reporting purposes. On August 3, 1992, the FFIEC requested public comment on this matter, and on December 23, 1992, after consideration of the comments received, the FFIEC decided that banks and savings associations should adopt FAS 109 for reporting purposes in Call Reports and Thrift Financial Reports (TFRs) beginning in the first quarter of 1993 (or the beginning of their first fiscal year thereafter, if later). Furthermore, the Board decided that bank holding companies should adopt FAS 109 in FR Y-9C Reports at the same time.

D. Proposal for the Treatment of Deferred Tax Assets

The FFIEC, in reaching its decision on regulatory reporting, also recommended that each of the agencies amend its regulatory capital standards to limit the amount of deferred tax assets that can be included in regulatory capital. In response to the FFIEC's recommendation, on February 11, 1993, the Board issued for public comment a proposal to adopt the recommendation of the FFIEC in full, as summarized below (54 FR 8007, February 11, 1993). The FFIEC recommended that the agencies limit the amount of deferred tax assets that are dependent upon future taxable income that can be included in regulatory capital to the lesser of:

i. the amount of such deferred tax assets that the institution expects to realize within one year of the quarter-end report date, based on its projection of taxable income (exclusive of net operating loss or tax credit carryforwards and reversals of existing temporary differences), or

ii. 10 percent of Tier 1 capital, net of goodwill and all identifiable intangible assets other than purchased mortgage servicing rights and purchased credit card relationships (and before any disallowed deferred tax assets are deducted). Deferred tax assets that can be realized from taxes paid in prior carryback years and from future reversals of existing taxable temporary differences would generally not be limited under the proposal.

II. Public Comments on the Proposal

The comment period for the Board's proposal ended on March 15, 1993. The Board received nineteen comment letters including ten from multinational and large regional banking organizations, and three community banks. In addition, the Board received four comment letters from bank trade associations and two from finance companies. Sixteen commenters offered support for the Board's proposal to require banking organizations to *report*, for regulatory purposes, deferred tax assets in accordance with FAS 109. In addition, fifteen commenters indicated that it would be preferable for the Board to place no limit on the amount of deferred tax assets allowable in capital. These commenters indicated that, in their view, embracing FAS 109 in its entirety would achieve consistency between regulatory standards and GAAP as well as maintain consistency with the intent of Section 121 of the Federal Deposit Insurance Corporation Improvement Act (FDICIA) of 1991. Commenters asserted that the criteria set forth in FAS 109 to recognize and value deferred tax assets is sufficiently conservative to limit any exposure to the bank insurance fund and that an arbitrary or mechanical formula, such as the ones proposed, would not provide a more accurate or reliable result.

While preferring no capital limit on deferred tax assets, some commenters noted that the proposal represented a compromise and a step forward from prior regulatory policies that permitted little or no inclusion in regulatory reports or capital of deferred tax assets that are dependent upon future taxable income. Two commenters generally supported the proposal or expressed their understanding of the regulator's concern regarding the realizability of deferred tax assets and one commenter indicated the capital treatment should be consistent with the capital treatment for identifiable intangible assets.

A. Responses to the Board's Questions

Question 1: (Gross-up of Intangible Assets) Nine commenters responded to the Board's first question regarding whether certain identifiable intangible assets acquired in a nontaxable business combination accounted for as a purchase should be adjusted for the tax effect of the difference between the market or appraised value of the asset and its tax basis. Under FAS 109, this tax effect is recorded separately in a deferred tax liability account, whereas under preexisting GAAP, this tax effect reduced the amount of the intangible asset. This change in treatment could cause a large increase (i.e., gross-up) in the reported amount of certain identifiable intangible assets, such as core deposit intangibles, which are deducted for purposes of computing regulatory capital.

Seven commenters indicated that banking organizations should be permitted to deduct the net after-tax amount of the intangible asset from capital, not the gross amount of the intangible asset. These commenters argued that FAS 109 will create artificially high values for intangible assets and the related deferred tax liability when a banking organization acquires the assets with a carryover basis for tax purposes but revalues the asset for financial reporting purposes. The commenters generally indicated that, under FAS 109, the balance sheet will not accurately reflect the value paid for the intangibles. Furthermore, commenters indicated that the increased value of the intangible posed no risk to institutions, because a reduction in the value of the asset would effectively extinguish the related deferred tax liability.

On the other hand, two commenters indicated that the pretax (gross) value of intangible assets should be deducted for regulatory capital purposes in this situation. This organization contended that intangible assets should be treated similarly to other assets, which are not reduced by any related liability.

Question 2: The Board's second question inquired about (i) the potential burden associated with the proposal and whether a limitation based on projections of taxable income would be difficult to implement, and (ii) the appropriateness of the separate entity method for deferred tax assets and tax sharing agreements in general.

i. *Methodology Based on Income Projections.* The Board received eleven letters from commenters who responded directly to this aspect of the question. Four commenters supported using income projections and stated that calculating deferred tax asset limitations for capital purposes based on projected taxable income would not be difficult to implement and would not impose an additional burden because many banking organizations already forecast taxable income in order to recognize their deferred tax assets. One commenter added that these calculations should not pose any problems, provided they are done on a consolidated basis. In addition, one commenter suggested that the Board clarify the term "realized within one year" so that readers understand that the phrase means the amount of deferred tax assets that could be used to offset income taxes generated in the next 12 months, and not the amount of deferred tax assets that actually will be used.

Four commenters specifically opposed an income approach, citing the additional burden that would be created by the detailed calculations. One commenter specifically favored implementing the percentage of capital method since it is certain and exact and does not involve as many estimations or fluctuations as the income approach.

Five commenters supported an approach based on the financial condition of the institution, some of whom also offered support or opposition to the income or percentage of capital approach. One commenter suggested that "healthy" institutions be permitted to include deferred tax assets in regulatory capital in an amount based on a specified percentage of Tier 1 capital. Another commenter supported an approach that excluded "well capitalized" banks from the limitation. On the other hand, one commenter did not support using an approach for calculating the capital limitation based upon the perceived "health" of the institution, stating that this method could lead to arbitrary and inconsistent measures of capital adequacy.

ii. *Separate Entity Approach.* Twelve commenters specifically addressed this part of the question. Under the Board's proposal, the capital limit for deferred tax assets would be determined on a separate entity basis for each state member bank so that a bank that is a subsidiary of a holding company would be treated as a separate taxpayer rather than as part of the consolidated entity. All of the commenters opposed the separate entity approach. They argued that the separate entity approach is artificial and that tax-sharing agreements between financially capable bank holding companies and bank subsidiaries should be considered when evaluating the recognition of deferred tax assets for regulatory capital purposes. Commenters also stated that the separate entity method is unnecessarily restrictive and that any systematic and rational method should be permitted for the calculation of the limitation for each bank.

One commenter based its opposition for the separate entity approach on the view that the limitation is not consistent with the Board's 1987 "Policy Statement on the Responsibility of Bank Holding Companies to Act as Sources of Strength to Their Subsidiary Banks" which, in some respects, treats a controlled group as one entity. Another commenter contended that the effect of a separate entity calculation would be to reduce bank capital which is needed for future lending which would be inconsistent with the March 10, 1993, "Interagency Policy Statement on Credit Availability". The same commenter also noted that the regulatory burden and cost of calculating the deferred tax asset on a separate entity basis would be substantial for both bankers and regulators.

Question 3: The Board's third question addressed three specific provisions of the proposal. These provisions included (i) requiring tax planning strategies to be part of an institution's projection of taxable income for the next year, (ii) requiring organizations to assume that all temporary differences fully reverse at the report date, and (iii) permitting the grandfathering of amounts previously reported if they were in excess of the proposed limitation.

i. *Inclusion of Tax Planning Strategies.* Two commenters addressed this issue. Both commenters stated that they support including tax planning strategies in an institution's projection of taxable income. One commenter stated that the proposal should be modified to permit institutions to consider strategies that would ensure realization of deferred tax assets within the one-year time frame. The proposal provided that organizations should consider tax planning strategies that would realize tax carryforwards or net operating losses that would otherwise expire during that time frame.

ii. *Temporary Differences.* Four commenters specifically addressed this aspect of the question, and all agreed that it is appropriate to require the assumption that all temporary differences fully reverse as of the report date. One commenter noted that this assumption would eliminate the burden of scheduling the "turnaround" of temporary differences.

iii. *Grandfathering.* Five commenters discussed the proposal's provision on grandfathering which would allow the amount of any deferred tax assets reported as of September 1992 in excess of the limit to be phased out over a two year period ending in 1994. Four commenters offered support for grandfathering but argued that excess deferred tax assets should be grandfathered until the underlying temporary differences reversed, rather than be phased out over two years. The other commenter disagreed with the grandfathering proposal and stated that such provisions would be inconsistent with the proposal's capital adequacy objectives.

III. Final Amendment to the Capital Adequacy Guidelines

A. Limitation on Deferred Tax Assets

Consistent with the FFIEC's recommendation and the Board's proposal, the Board is limiting in regulatory capital deferred tax assets that are dependent on future taxable income to the lesser of:

i. The amount of such deferred tax assets that the institution expects to realize within one year of the quarter-end report date, based on its projection of taxable income (exclusive of net operating loss or tax credit carryforwards and reversals of existing temporary differences), or

ii. 10 percent of Tier 1 capital, net of goodwill and all identifiable intangible assets other than purchased mortgage servicing rights and purchased credit card relationships (and before any disallowed deferred tax assets are deducted).

Deferred tax assets that can be realized from taxes paid in prior carryback years and from future reversals of existing taxable temporary differences are generally not limited under the final rule. The reported amount of deferred tax assets, net of its valuation allowance, in excess of the limitation would be deducted from Tier 1 capital for purposes of calculating both the risk-based and leverage capital ratios. Banking organizations should not include the amount of disallowed

deferred tax assets in weighted-risk assets in the risk-based capital ratio and should deduct the amount of disallowed deferred tax assets from average total assets in the leverage capital ratio. Deferred tax assets included in capital continue to be assigned a risk weight of 100 percent.

To determine the limit, a banking organization should assume that all existing temporary differences fully reverse as of the report date. Also, estimates of taxable income for the next year should include the effect of tax planning strategies the organization is planning to implement to realize net operating losses or tax credit carryforwards that will otherwise expire during the year. Consistent with FAS 109, the Board believes tax planning strategies are carried out to prevent the expiration of such carryforwards. Both of these requirements are consistent with the proposal.

The capital limitation is intended to balance the Board's continued concerns about deferred tax assets that are dependent upon future taxable income against the fact that such assets will, in many cases, be realized. This approach generally permits full inclusion of deferred tax assets potentially recoverable from carrybacks, since these amounts will generally be realized. This approach also includes those deferred tax assets that are dependent upon future taxable income, if they can be recovered from projected taxable income during the next year. The Board is limiting projections of future taxable income to one year because, in general, the Board believes that organizations are generally capable of making projections of taxable income for the following twelve month period that have a reasonably good probability of being achieved. However, the reliability of projections tends to decrease significantly beyond that time period. Deferred tax assets that are dependent upon future taxable income are further limited to 10 percent of Tier 1 capital, since the Board believes such assets should not comprise a large portion of an organization's capital base given the uncertainty of realization associated with these assets and the difficulty in selling these assets apart from the organization. Furthermore, a 10% capital limit also reduces the risk that an overly optimistic estimate of future taxable income will cause the bank to significantly overstate the value of deferred tax assets.

Banking organizations already follow FAS 109 for regulatory reports and accordingly, are making projections of taxable income. Banking organizations already report in regulatory reports the amount of deferred tax assets that would be disallowed under the proposal. In addition, the 10 percent calculation of Tier 1 capital is straightforward. Therefore, the Board believes that banking organizations will have little difficulty implementing this final rule.

B. Guidance on Specific Implementation Issues

In response to the comments received and after discussions with the other agencies, the Board is providing the following guidance.

Originating Temporary Differences—Consistent with the Board's proposal, the final rule does not specify how the provision for loan and lease losses and other originating temporary differences should be treated for purposes of projecting taxable income for the next year. Banking organizations routinely prepare income forecasts for future periods and, in theory, income forecasts for book income should be adjusted for originating temporary differences in arriving at a projection of taxable income. On the other hand, requiring such adjustments adds complexity to the final rule. Furthermore, deductible originating temporary differences, such as the provision for loan and lease losses, generally would lead to additional deferred tax assets. Thus, arguably, such temporary differences should not be added back to book income in determining the amount of deferred tax assets that will be realized. Accordingly, the Board is permitting each institution to decide whether or not to adjust projected book income for originating temporary differences. While the Board is not specifying a single treatment on originating temporary differences in the final rule, institutions should follow a reasonable and consistent approach.

Gross-up of Intangibles—As noted above, FAS 109 could lead to a large increase (i.e., gross-up) in the reported amount of certain intangible assets, such as core deposit intangibles, which are deducted for purposes of computing regulatory capital. Commenters stated that the increased value of an intangible posed no risk to institutions, because a reduction in the value of the asset would effectively extinguish the related deferred tax liability. The Board concurs with this position and, consequently, will permit, for capital adequacy purposes, netting of deferred tax liabilities arising from this gross-up effect against related intangible assets. To ensure this benefit is not double counted, a deferred tax liability netted in this manner could not also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income. Netting will not be permitted against purchased mortgage servicing rights (PMSRs) and purchased credit card relationships (PCCRs), since only the portion of these assets that exceed specified capital limits are deducted for capital adequacy purposes.

Leveraged Leases—While not expected to significantly affect many banking organizations, one commenter stated that future net tax liabilities related to leveraged leases acquired in a purchase business combination are included in the valuation of the leveraged lease and are not shown on the balance sheet as deferred tax liabilities. This artificially increases the amount of deferred tax assets for those institutions that acquire a leveraged lease portfolio. Thus, this commenter continued, the future taxes payable included in the valuation of a leveraged lease portfolio in a purchase business combination should be treated as a taxable temporary difference whose reversal would support the recognition of deferred tax assets, if applicable. The Board agrees with this commenter and, therefore, banking organizations may use the deferred tax liabilities that are embedded in the carrying value of a leveraged lease to reduce the amount of deferred tax assets subject to the capital limit.

Tax Jurisdictions—Unlike the proposal, the final rule does not require an institution to determine its limitation on deferred tax assets on a jurisdiction by-jurisdiction basis. While such an approach may theoretically be more accurate, the Board does not believe the greater precision that would be achieved in mandating such an approach outweighs the complexities involved and its inherent cost to institutions. Thus, banking organizations may make projections of their taxable income on an organization-wide basis and use a combined tax rate for purposes of calculating the one-year limitation.

Timing—Institutions may use the future taxable income projections for their current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) when applying the capital limit at an interim report date rather than preparing a new projection each quarter. Several commenters requested this treatment because it reduces the frequency with which banking organizations are required to revise their estimate of future taxable income.

Available for Sale Securities—Under FASB Statement No. 115, "Accounting for Certain Investments in Debt and Equity Securities" (FAS 115), "available-for-sale" securities are

reported in regulatory reports at market value, and unrealized gains and losses on such securities are included, net of tax effects, in a separate component of stockholders equity. These tax effects may increase or decrease the amount of deferred tax assets an institution reports.

The Board has recently decided to exclude from regulatory capital the amount of net unrealized gains and losses on available for sale securities (except net unrealized losses of available-for-sale equity securities with readily determinable fair values) (59 FR 63241, December 8, 1994). Thus, excluding for capital adequacy purposes deferred tax effects arising from reporting unrealized holding gains and losses on available-for-sale securities is consistent with the regulatory capital treatment for such gains and losses. On the other hand, requiring the exclusion of such deferred tax effects would add significant complexity to the capital guidelines and in most cases would not have a significant impact on regulatory capital ratios.

Therefore, when determining the capital limit for deferred tax assets, the Board has decided to permit, but not require, institutions to adjust the reported amount of deferred tax assets for any deferred tax assets and liabilities arising from marking-to-market available-for-sale debt securities for regulatory reporting purposes. This choice will reduce implementation burden for institutions not wanting to contend with the complexity arising from such adjustments, while permitting those institutions that want to achieve greater precision to make such adjustments. Institutions must follow a consistent approach with respect to such adjustments.

Separate Entity Method—The proposed capital limit was to be determined on a separate entity basis for each state member bank. Use of a separate entity approach on income tax sharing agreements (including intercompany tax payments and current and deferred taxes) is generally required by the Board's 1978 Policy Statement on Intercorporate Income Tax Accounting Transactions of Bank Holding Companies and State Member Banks, and similar policies are followed by the other banking agencies. Thus, any change to the separate entity approach for deferred tax assets would also need to consider changes to this policy statement, which is outside the scope of this rulemaking. The Board notes that regulatory reports of banks are generally required to be filed using a separate entity approach and consistency between the reports would be reduced if the Board permitted institutions to use other methods for calculating deferred tax assets in addition to a separate entity approach. Thus, while a number of the commenters suggested that the Board consider permitting other approaches, the Board will generally require the separate entity approach.[3]

As proposed, the final rule contains an exception to the separate entity approach when a state member bank's parent holding company does not have the financial capability to reimburse the bank for tax benefits derived from the bank's carryback of net operating losses or tax credits. In these cases, the amount of carryback potential the bank may consider in calculating the capital limit on deferred tax assets is limited to the lesser amount which it could reasonably expect to have refunded by its parent.

Grandfathering—The proposal would grandfather any deferred tax assets reported as of September 1992 in excess of the proposed limit, but would require that such excess amounts be phased out over a two year period ending in 1994. Since all grandfathered amounts are now fully amortized, the Board's final rule does not include any grandfathering provision.

IV. Regulatory Flexibility Act Analysis

The Board does not believe that the adoption of this final rule will have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). In this regard, the vast majority of small banking organizations currently have very limited amounts of net deferred tax assets, which are the subject of this proposal, as a component of their capital structures. In addition, this final rule, in combination with the adoption by the Board of FAS 109 for regulatory reporting purposes, allows many organizations to increase the amount of deferred tax assets they include in regulatory capital. Moreover, because the risk-based and leverage capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies. The Board did not receive any comment letters specifically addressing regulatory flexibility concerns, and therefore, no alternatives to the proposal were considered to address regulatory flexibility.

V. Paperwork Reduction Act and Regulatory Burden

The Board has determined that this final rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulation that impose additional requirements on insured depository institutions. Section 302 also requires such a rule to take effect on the first day of the calendar quarter following final publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board is amending 12 CFR parts 208 and 225 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351 and 3906–3909; 15 U S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c) (5), 78q, 78q–l, and 78w; 31 U.S.C. 5318.

2. Appendix A to part 208 is amended by adding a new paragraph (iv) to the introductory text of Section II.B. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

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[3] State member banks should project taxable income for the bank, generally on a consolidated basis including subsidiaries of the bank. Bank holding companies should project taxable income for the holding company, generally on a consolidated basis including bank and non-bank subsidiaries of the holding company.

II. * * *

B. * * *

(iv) Deferred tax assets—portions are deducted from the sum of core capital elements in accordance with section II.B.4. of this Appendix A.

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3. Appendix A to Part 208 is amended by:

a. Revising footnote 19 in section II.B.3.;

b. Removing footnote 20 from the end of section II.B.3.; and

c. Adding section II.B.4.

The additions and revisions read as follows:

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II. * * *

B. * * *

3. * * *[19] * * *

4. *Deferred tax assets.* The amount of deferred tax assets that are dependent upon future taxable income, net of the valuation allowance for deferred tax assets, that may be included in, that is, not deducted from, a bank's capital may not exceed the lesser of: (i) the amount of these deferred tax assets that the bank is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year,[20] or (ii) 10 percent of tier 1 capital. For purposes of calculating this limitation, Tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than purchased mortgage servicing rights and purchased credit card relationships (and before any disallowed deferred tax assets are deducted). The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from future reversals of existing taxable temporary differences and that do not exceed the amount which the bank could reasonably expect to have refunded by its parent (if applicable) generally are not limited. The reported amount of deferred tax assets, net of any valuation allowance for deferred tax assets, in excess of these amounts is to be deducted from a bank's core capital elements in determining tier 1 capital.

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4. Appendix B to part 208 is revised to read as follows:

Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure

I. Overview

a. The Board of Governors of the Federal Reserve System has adopted a minimum ratio of tier 1 capital to total assets to assist in the assessment of the capital adequacy of state member banks.[1] The principal objective of this measure is to place a constraint on the maximum degree to which a state member bank can leverage its equity capital base. It is intended to be used as a supplement to the risk-based capital measure.

b. The guidelines apply to all state member banks on a consolidated basis and are to be used in the examination and supervisory process as well as in the analysis of applications acted upon by the Federal Reserve. The Board will review the guidelines from time to time and will consider the need for possible adjustments in light of any significant changes in the economy, financial markets, and banking practices.

II. The Tier 1 Leverage Ratio

a. The Board has established a *minimum* level of tier 1 capital to total assets of 3 percent. An institution operating at or near these levels is expected to have well-diversified risk, including no undue interest-rate risk exposure; excellent asset quality; high liquidity; and good earnings; and in general be considered a strong banking organization, rated composite 1 under CAMEL rating system of banks. Institutions not meeting these characteristics, as well as institutions with supervisory, financial, or operational weaknesses, are expected to operate well above minimum capital standards. Institutions experiencing or anticipating significant growth also are expected to maintain capital ratios, including tangible capital positions, well above the minimum levels. For example, most such banks generally have operated at capital levels ranging from 100 to 200 basis points above the stated minimums. Higher capital ratios could be required if warranted by the particular circumstances or risk profiles of individual banks. Thus for all but the most highly rated banks meeting the conditions set forth above, the minimum tier 1 leverage ratio is to be 3 percent plus an additional cushion of a least 100 to 200 basis points. In all cases, banking institutions should hold capital commensurate with the level and nature of all risks, including the volume and severity of problem loans, to which they are exposed.

b. A bank's tier 1 leverage ratio is calculated by dividing its tier 1 capital (the numerator of the ratio) by its average total consolidated assets (the denominator of the ratio). The ratio will also be calculated using period-end assets whenever necessary, on a case-by-case basis. For the purpose of this leverage ratio, the definition of tier 1 capital for year-end 1992 as set forth in the risk-based capital guidelines contained in Appendix A of this part will be used.[2] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the bank's Reports of Condition and Income (Call Report), less goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, are in excess of 50 percent of tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of tier 1 capital; all other intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4 of this Appendix A.[3]

c. Whenever appropriate, including when a bank is undertaking expansion, seeking to engage in new activities or otherwise facing unusual or abnormal risks, the Board will continue to consider the level of an individual bank's tangible tier 1 leverage ratio (after deducting all intangibles) in making an overall assessment of capital adequacy. This is consistent with the Federal Reserve's risk-based capital guidelines an long-standing Board policy and practice with regard to leverage guidelines. Banks experiencing growth, whether internally or by acquisition, are expected to maintain strong capital position substantially above minimum supervisory levels, without significant reliance on intangible assets.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

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

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(i),

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[19] Deductions of holdings of capital securities also would not be made in the case of interstate "stake out" investments that comply with the Board's Policy Statement on Nonvoting Equity Investments, 12 CFR 225.143 (Federal Reserve Regulatory Service 4–172.1; 68 Federal Reserve Bulletin 413 (1982)). In addition, holdings of capital instruments issued by other banking organizations but taken in satisfaction of debts previously contracted would be exempt from any deduction from capital. The Board intends to monitor nonreciprocal holdings of other banking organizations' capital instruments and to provide information on such holdings to the Basle Supervisors' Committee as called for under the Basle capital framework.

[20] Projected future taxable income should not include net operating loss carryforwards to be used during that year or the amount of existing temporary differences a bank expects to reverse within the year. Such projections should include the estimated effect of tax planning strategies that the organization expects to implement to realize net operating losses or tax credit carryforwards that would otherwise expire during the year. Institutions may use the future taxable income projections for their current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) when applying the capital limit at an interim report date rather than preparing a new projection each quarter. To determine the limit, an institution should assume that all existing temporary differences fully reverse as of the report date.

[1] Supervisory risk-based capital ratios that related capital to weighted-risk assets for state member banks are outlined in Appendix A to this part.

[2] At the end of 1992, Tier 1 capital for state member banks includes common equity, minority interest in the equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, exceed 50 percent of Tier 1 capital; amounts of purchased credit card relationships that exceed 25 percent of Tier 1 capital; all other intangible assets; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

[3] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B in Appendix A of this part.

3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Appendix A to part 225 is amended by adding a new paragraph (iv) to the introductory text of section II.B. to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

B. * * *

(iv) Deferred tax assets—portions are deducted from the sum of core capital elements in accordance with section II.B.4. of this Appendix A.

* * * * *

3. Appendix A to part 225 is amended by:

a. Revising footnote 22 in section II.B.3.;

b. Removing footnote 23 from the end of section II.B.3. and;

c. Adding section II.B.4.

The revisions and additions read as follows:

* * * * *

II. * * *

B. * * *

3. * * *[22] * * *

4. *Deferred tax assets.* The amount of deferred tax assets that are dependent upon future taxable income, net of the valuation allowance for deferred tax assets, that may be included in, that is, not deducted from, a banking organization's capital may not exceed the lesser of: (i) the amount of these deferred tax assets that the banking organization is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year,[23] or (ii) 10 percent of tier 1 capital. For purposes of calculating this limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than purchased mortgage servicing rights and purchased credit card relationships (and before any disallowed deferred tax assets are deducted). The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from future reversals of existing taxable temporary differences generally are not limited. The reported amount of deferred tax assets, net of any valuation allowance for deferred tax assets, in excess of these amounts is to be deducted from a banking organization's core capital elements in determining tier 1 capital.

* * * * *

4. Appendix D to part 225 is revised to read as follows:

Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

I. Overview

a. The Board of Governors of the Federal Reserve System has adopted a minimum ratio of tier 1 capital to total assets to assist in the assessment of the capital adequacy of bank holding companies (banking organizations).[1] The principal objectives of this measure is to place a constraint on the maximum degree to which a banking organization can leverage its equity capital base. It is intended to be used as a supplement to the risk-based capital measure.

b. The guidelines apply to consolidated basis to banking holding companies with consolidated assets of $150 million or more. For bank holding companies with less that $150 million in consolidated assets, the guidelines will be applied on a bank-only basis unless (i) the parent bank holding company is engaged in nonbank activity involving significant leverage[2] or (ii) the parent company has a significant amount of outstanding debt that is held by the general public.

c. The tier 1 leverage guidelines are to be used in the inspection and supervisory process as well as in the analysis of applications acted upon by the Federal Reserve. The Board will review the guidelines from time to time and will consider the need for possible adjustments in light of any significant changes in the economy, financial markets, and banking practices.

II. The Tier 1 Leverage Ratio

a. The Board has established a *minimum* level of tier 1 capital to total assets of 3 percent. A banking organization operating at or near these levels is expected to have well-diversified risk, including no undue interest-rate risk exposure; excellent asset quality; high liquidity; and good earnings; and in general be considered a strong banking organization, rated composite 1 under BOPEC rating system of bank holding companies. Organizations not meeting these characteristics, as well as institutions with supervisory, financial, or operational weaknesses, are expected to operate well above minimum capital standards. Organizations experiencing or anticipating significant growth also are expected to maintain capital ratios, including tangible capital positions, well above the minimum levels. For example, most such banks generally have operated at capital levels ranging from 100 to 200 basis points above the stated minimums. Higher capital ratios could be required if warranted by the particular circumstances or risk profiles of individual banking organizations. Thus for all but the most highly rated banks meeting the conditions set forth above, the minimum tier 1 leverage ratio is to be 3 percent plus an additional cushion of a least 100 to 200 basis points. In all cases, banking organizations should hold capital commensurate with the level and nature of all risks, including the volume and severity of problem loans, to which they are exposed.

b. A banking organization's tier 1 leverage ratio is calculated by dividing its tier 1 capital (the numerator of the ratio) by its average total consolidated assets (the denominator of the ratio). The ratio will also be calculated using period-end assets whenever necessary, on a case-by-case basis. For the purpose of this leverage ratio, the definition of tier 1 capital for year-end 1992 as set forth in the risk-based capital guidelines contained in Appendix A of this part will be used.[3] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the organization's Consolidated Financial Statements (FR Y–9C Report), less goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, are in excess of 50 percent of tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of tier 1 capital; all other intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in

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[22] Deductions of holdings of capital securities also would not be made in the case of interstate "stake out" investments that comply with the Board's Policy Statement on Nonvoting Equity Investments, 12 CFR 225.143 (Federal Reserve Regulatory Service 4–172.1; 68 Federal Reserve Bulletin 413 (1982)). In addition, holdings of capital instruments issued by other banking organizations but taken in satisfaction of debts previously contracted would be exempt from any deduction from capital. The Board intends to monitor nonreciprocal holdings of other banking organizations' capital instruments and to provide information on such holdings to the Basle Supervisors' Committee as called for under the Basle capital framework.

[23] Projected future taxable income should not include net operating loss carryforwards to be used during that year or the amount of existing temporary differences a bank holding company expects to reverse within the year. Such projections should include the estimated effect of tax planning strategies that the organization expects to implement to realize net operating loss or tax credit carryforwards that will otherwise expire during the year. Banking organizations may use the future taxable income projections for their current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) when applying the capital limit at an interim report date rather than preparing a new projection each quarter. To determine the limit, a banking organization should assume that all existing temporary differences fully reverse as of the report date.

[1] Supervisory ratios that related capital to total assets for state member banks are outlined in Appendix B of this part.

[2] A parent company that is engaged is significant off balance sheet activities would generally be deemed to be engaged in activities that involve significant leverage.

[3] At the end of 1992, Tier 1 capital for state member banks includes common equity, minority interest in the equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of purchased mortgage servicing rights and purchased credit card relationships that, in the aggregate, exceed 50 percent of Tier 1 capital; amounts of purchased credit card relationships that exceed 25 percent of Tier 1 capital; all other intangible assets; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

excess of the limitation set forth in section II.B.4 of this Appendix A.[4]

c. Whenever appropriate, including when an organization is undertaking expansion, seeking to engage in new activities or otherwise facing unusual or abnormal risks, the Board will continue to consider the level of an individual organization's tangible tier 1 leverage ratio (after deducting all intangibles) in making an overall assessment of capital adequacy. This is consistent with the Federal Reserve's risk-based capital guidelines an long-standing Board policy and practice with regard to leverage guidelines. Organizations experiencing growth, whether internally or by acquisition, are expected to maintain strong capital position substantially above minimum supervisory levels, without significant reliance on intangible assets.

By order of the Board of Governors of the Federal Reserve System, December 16, 1994.

William W. Wiles,

Secretary of the Board

[FR Doc. 94–31441 Filed 12–21–94; 8:45 am]

BILLING CODE 6210–01–P

[4] Deductions from Tier 1 capital and other adjustments are discussed more fully in section II.B. in Appendix A of this part.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–227–AD; Amendment 39–9101; AD 94–26–05]

Airworthiness Directives; Airbus Industrie Model A300, A300–600, A310, and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A300–600, A310, and A320 series airplanes, that requires inspection of certain landing gear brakes for wear and replacement if the wear limits prescribed in this AD are not met, and incorporation of the specified wear limits 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: January 23, 1995.

ADDRESSES: Information pertaining to this rulemaking action 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 (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300, A300–600, A310, and A320 series airplanes was published in the **Federal Register** on February 15, 1994 (59 FR 7228). That action proposed to require inspection of certain landing gear brakes for wear and replacement if the wear limits prescribed in this AD are not met, and incorporation of the specified wear limits 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 comments received.

One commenter supports the proposed rule.

One commenter, BFGoodrich, requests that the tables contained in the proposal that list maximum brake wear limits for the affected airplanes be revised. BFGoodrich indicates that the airplane model/series listed for BFGoodrich series 2–1526 brake part numbers should be "A320," instead of "A320–220" and "A320–200." The commenter also indicates that three additional part numbers for BFGoodrich brakes should be listed in the tables for Model A320 series airplanes: Part numbers 2–1526, 2–1526–5 (both with maximum wear limits of 1.97″), and 2–1572 (with a maximum wear limit of 2.68″).

While the FAA agrees with the commenter's remarks, inclusion of the three additional part numbers specified by the commenter would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule; the time required for that procedure may be as long as four additional months. In the interest of issuing this final rule, and in consideration of the amount of time that has already elapsed since issuance of the original notice, the FAA has determined that further delay of this final rule action is not appropriate. However, the FAA may consider further rulemaking on this issue to address the three additional part numbers discussed by the commenter.

The Air Transport Association (ATA) of America, on behalf of one of its members, suggests that measuring the maximum length of the wear pin may not be as effective as measuring the total length of the wear pin or controlling the carbon thickness of the brake. The commenter points out that, due to human error, it is possible to have a thinner disc with the same amount of wear pin length showing.

The FAA does not concur. The FAA infers from the commenter's remarks that it is referring to controlling the carbon thickness of the brakes by direct measurement of the thickness of the brake stack. The FAA finds that measuring the thickness of the brake stack would only be useful when specifying the brake assembly configuration and the thicknesses of new, refurbished, or overhauled individual discs. Otherwise, a brake disc that is too thin also could be installed in a brake stack having a wear limit that is controlled by measuring the stack thickness. Further, it would not be practical to routinely measure the brake stack on the airplane as all of the wheels attached to the brakes would have to be removed to allow access to accomplish the measurement. The FAA considers that this would pose an unwarranted burden on operators. Currently, only the wear pin must be monitored while the brake is installed on the airplane. If an operator reduces the wear limit, the pin could be shortened or the operator could devise a method of accounting for the reduced wear using the existing wear pin as opposed to removing the wheel and measuring the brake stack. (Thus, the wheels would not have to be removed from the airplane since the wear pin can still be used to monitor brake wear.)

The wear limits specified in this AD, which are used to establish wear pin lengths, are interdependent with the brake configuration and minimum disc and stack thicknesses. The stack and disc thicknesses are specified for new, refurbished, or overhauled brakes in the airplane maintenance manual (AMM), the component maintenance manual (CMM), a service bulletin, or the brake manufacturer's assembly drawings. These minimum brake stack and disc thicknesses have been established by tests and in-service wear data and analysis such that monitoring a wear

pin should not allow the stack or disc minimum limits to be exceeded.

The ATA also questions the need for the proposed AD, and requests that a provision be included in paragraph (a)(2) of the AD to state that the AD would no longer be applicable to operators that have acceptably revised their maintenance programs, and that operators choosing this provision could use an alternative recordkeeping method in lieu of that required by §§ 91.417 or 121.380 of the Federal Aviation Regulations (14 CFR 91.417 or 121.380). The FAA would be defined as the cognizant Principal Maintenance Inspector (PMI) for operators electing this alternative.

The ATA states that if its suggested provision is not included, confusion will always exist as to what records should be maintained for the duration A300/A320 operations. The ATA maintains that once an operator incorporates the criteria (brake wear limits) specified in the proposal into the maintenance program, the AD should be signed off as complete, since such incorporation is the stated purpose of the AD. The ATA is aware of an FAA concern that the proposed type of rule must continue indefinitely because operators may otherwise escalate intervals through their reliability programs. The ATA states that adjustments to operators' programs are accomplished with substantiation and with the approval of FAA Flight Standards District Offices (FSDO). The ATA maintains that FAA FSDO's have sufficient authority to ensure that operators maintain the brakes on their Model A300/A320 series airplanes once the proposed criteria (brake wear limits) have been incorporated into an operator's maintenance program.

The FAA does not concur. The intent of this AD is that operators incorporate maximum brake wear limits into the FAA-approved maintenance inspection program, and that all brakes be inspected once for wear and replaced, if necessary. Once an operator has complied with the requirements of this AD, the FAA does not intend that operators subsequently record the accomplishment of this AD each time a brake is inspected or overhauled in accordance with that operator's FAA-approved maintenance inspection program. "NOTE 2" has been added to paragraph (a) of the final rule to clarify this intent. Operators should coordinate recordkeeping for accomplishment of the actions required by this AD with the cognizant Principal Maintenance Inspector (PMI).

One ATA member requests that carbon brakes be excluded from the applicability of the proposed rule. Airbus adds its concurrence with the ATA member's request, and has advised the ATA that all carbon brakes installed on airplanes manufactured by Airbus are capable of sustaining a maximum energy rejected takeoff (RTO) in a 100 percent worn brake configuration. Airbus also states that no unsafe condition has been identified for airplanes having carbon brakes.

Airbus also indicates that issuance of an AD to require implementation of existing CMM limits would impose unnecessary inspections (with associated costs) and would create an unnecessary paperwork burden on operators. Airbus states that, if the proposed rule is adopted, then an inspection would be required for all airplanes, not just the 28 airplanes specified in the economic impact information of the proposal.

The FAA does not concur. As discussed in the preamble of the proposal, this AD, as well as other previously issued AD's to mandate specific maximum brake wear limits on transport category airplanes, was prompted by an accident in 1988 involving worn brakes on a McDonnell Douglas Model DC-10 series airplane. During the process of promulgating those AD's, the FAA became aware that not all operators were following the manufacturer's recommended brake wear limits. The FAA acknowledges that the wear limits for carbon brakes have not changed. However, the purpose of this AD is simply to establish the correct brake wear limits for the affected airplanes, including those on which carbon brakes having unchanged brake wear limits, are installed.

The FAA acknowledges that operators of airplanes having carbon brakes will be required to confirm that inspections are being accomplished and to record compliance with this AD. However, if an operator already operates in accordance with the wear limits specified in this AD, as implied by ATA and Airbus, then only the costs associated with confirming compliance with the AD and recording such compliance are necessary. The economic impact information specified below addresses 46 airplanes that will be required to accomplish the inspection specified in this AD. (This number, 46, has been revised from the 28 airplanes specified in the proposal; the FAA's latest information is that 46 airplanes will be affected by the inspection requirement.) However, carbon brakes may be installed on some of those airplanes; therefore, some of the 46 airplanes addressed in this AD already may be operated in accordance with its provisions. Therefore, the actual total cost impact of this AD on U.S. operators may be less than the cost reflected in the cost estimate information, below.

One commenter requests that the brake wear limit specified in the proposed rule for brake part numbers 2-1526-3 and 2-1526-4 should be revised to read 2.68" (68 mm), rather than 1.97" (50 mm). The commenter indicates that the maximum brake wear limit of 1.97" (50 mm) is already standard for brake part numbers 2-1526-1 and 2-1526-2, whereas a wear limit of 2.68" (68 mm) is specified in the CMM for brake part numbers 2-1526-3 and 2-1526-4 due to a different configuration that allows greater wear pin length and still maintains RTO performance at the maximum wear limit.

The FAA finds that no change to the final rule is necessary in this regard. The proposed rule, as published in the **Federal Register** on February 15, 1994, specified the correct brake wear limit of 2.68" (68 mm) for brake part numbers 2-1526-3 and 2-1526-4. That same brake wear limit is contained in this final rule.

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.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate. In addition to the number of affected airplanes of U.S. registry that will be required to accomplish the inspection (as discussed previously), the FAA has updated the total number of airplanes of U.S. registry and the number of affected U.S. operators to reflect the latest information available.

The FAA estimates that 165 Model A300, A300-600, A310, and A320 series airplanes of U.S. registry and 7 U.S. operators will be affected by this AD, that it will take approximately 20 work hours per operator, at an average labor rate of $60 per work hour, for each operator to incorporate the revision of its FAA-approved maintenance

inspection program. Based on these figures, the total cost impact of that requirement on U.S. operators is estimated to be $8,400, or $1,200 per operator.

The FAA also estimates that it will take 15 work hours per airplane, at an average labor rate of $60 per work hour, to accomplish the required inspection. The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) will be approximately $2,236 per airplane. The FAA estimates that 46 of the 165 affected airplanes of U.S. registry will be required to accomplish the inspection. Based on these figures, the total cost impact of that requirement on U.S. operators of these airplanes is estimated to be $144,256, or $3,136 per airplane.

The total cost impact figure discussed above is based on assumptions that no affected operator has accomplished all of the requirements of this AD action, and that no affected operator would accomplish all of 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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:

94-26-05 Airbus Industrie: Amendment 39-9101. Docket 93-NM-227-AD.

Applicability: Model A300, A300-600, A310, and A320 series airplanes equipped with Messier-Bugatti, BFGoodrich, Allied Signal (ALS) Aerospace Company (Bendix), or Aircraft Braking Systems (ABS) brakes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of brake effectiveness during a high energy rejected takeoff (RTO), accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Inspect main landing gear brakes having the brake part numbers listed below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within that limit.

AIRBUS INDUSTRIE MODEL A300, A300-600, A310, AND A320 SERIES AIRPLANES EQUIPPED WITH MESSIER-BUGATTI, BFGOODRICH, ALLIED SIGNAL (ALS) AEROSPACE COMPANY (BENDIX), OR AIRCRAFT BRAKING SYSTEMS (ABS) BRAKES

Airplane model/series	Brake manufacturer	Brake part No.	Maximum brake wear limit (inch/mm)
A300-B2-100	Messier-Bugatti	286349-115	0.98" (25.0 mm)
A300-B2-100	Messier-Bugatti	286349-116	0.98" (25.0 mm)
A300-B2-100	BFGoodrich	2-1449	1.4" (35.6 mm)
A300-B2-100	BFGoodrich	2-1449	1.1" (27.9 mm) S.C.*
A300-B4-100	Messier-Bugatti	A21329-41-7	1.1" (28.0 mm)
A300-B4-100	Messier-Bugatti	A21329-41-17	1.1" (28.0 mm)
A300-B4-100	ALS (Bendix)	2606802-3/-4/-5	0.9" (22.9 mm)
A300-B4-100	ALS (Bendix)	2606802-3/-4/-5	1.48" (37.6 mm) S.C.*
A300-B4-100	BFGoodrich	2-1449	1.4" (35.6 mm)
A300-B4-100	BFGoodrich	2-1449	1.1" (27.9 mm) S.C.*
A300-B4-200 & A300-600	Messier-Bugatti	C20060-100	1.1" (28.0 mm)
A300-B4-200 & A300-600	ALS (Bendix)	2607932-1	0.9" (22.9 mm)
A300-B4-200 & A300-600	ALS (Bendix)	2607932-1	1.48" (37.6 mm) S.C.*
A300-B4-600R	Messier-Bugatti	C20210000	1.97" (50.0 mm)
A300-B4-600R	Messier-Bugatti	C20210200	1.97" (50.0 mm)
A310-200	Messier-Bugatti	C20089000	1.1" (28.0 mm)
A310-200	ALS (Bendix)	2606822-1	1.26" (32.0 mm)
A310-200	ALS (Bendix)	2606822-1	1.5" (38.2 mm) S.C.*
A310-300	Messier-Bugatti	C20194000	1.97" (50.0 mm)
A310-300	Messier-Bugatti	C20194200	1.97" (50.0 mm)
A310-300	ABS	5010995	1.97" (50.0 mm
A320	Messier-Bugatti	C20225000	1.97" (50.0 mm)
A320	Messier-Bugatti	C20225200	1.97" (50.0 mm)
A320	BFGoodrich	2-1526-2	1.97" (50.0 mm)
A320	BFGoodrich	2-1526-3/-4	2.68" (68.0 mm)

* S.C. represents "Service Configured" brakes, which are marked according to the instructions provided in the brake manufacturer's Component Maintenance Manual.

Note 1: Measuring instructions that must be revised to accommodate the new brake wear limits specified above can be found in Chapter 32-42-27 of the Airplane Maintenance Manual (AMM), in Chapter 32-32-( ) or 32-44-( ) of the brake manufacturer's Component Maintenance Manual (CMM), or in certain service bulletins (SB), as listed below:

Brake manufacturer	Part No.	Document/chapter	Date/Revision (or later revisions)
For Model A300-B2-100 Series Airplanes:			
Messier-Bugatti	286349-115	CMM 32-42-27	Apr. 1991.
Messier-Bugatti	286349-116	CMM 32-42-27	Apr. 1991.
BFGoodrich	2-1449 & S.C.	CMM 32-44-37 SB 567 (2-1449-32-4)	Jan. 1993. Jan. 30, 1993.
For Model A300-B4-100 Series Airplanes:			
ALS (Bendix)	2606802-3 2606802-4 2606802-5 & S.C.	CMM 32-42-02 SB 2606802-32-003	Sept. 1993. Mar. 31, 1993.
BFGoodrich	2-1449 & S.C.	CMM 32-44-37 SB 567 (2-1449-32-4)	Jan. 1993. Jan. 30, 1993.
For Model A300-B4-200 and A300-600 Series Airplanes:			
ALS (Bendix)	2607932-1 & S.C.	CMM 32-42-27 SB 2607932-32-002	Sept. 1993. Mar. 31, 1993 & Revision 1, dated. Oct. 1, 1993.
For Model A300-B4-600R Series Airplanes:			
Messier-Bugatti	C20210000 & C20210200	Airbus SB 470-32-675	Apr. 6, 1990.
For Model A310-200 Series Airplanes:			
ALS (Bendix)	2606822-1 & S.B.	CMM 32-42-03 SB 2606822-32-002	Sept. 1993. Mar. 31, 1993.
For Model A310-300 Series Airplanes:			
Messier-Bugatti	C20225000& C20225200	Airbus SB470-32-675	Apr. 6, 1990.

(2) Incorporate into the FAA-approved maintenance inspection program the maximum brake wear limits specified in paragraph (a)(1) of this AD.

Note 2: Once an operator has complied with the requirements of this AD, paragraphs (a)(1) and (a)(2) of this AD do not require that operators subsequently record accomplishment of this AD each time a brake is inspected or overhauled in accordance with that operator's FAA-approved maintenance inspection program.

(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 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.

(c) Special flight permits may be issued in accordance with §§ 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.

(d) This amendment becomes effective on January 23, 1995.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-31179 Filed 12-21-94; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35

[Docket No. PL95-1-000]

Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates

Issued December 15, 1994

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Policy Statement; Interim Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting a policy statement setting forth the elements of what generally constitutes appropriate ratemaking treatment of sulfur dioxide emissions allowances in coordination transactions under the Federal Power Act. The Clean Air Act Amendments of 1990, Pub. L. No. 101-549, Title IV, 104 Stat. 2399, 2584 (1990), require issuance of emissions allowances as a means to reduce sulfur dioxide emissions levels. The Commission also is issuing an interim rule that implements the guidelines set forth in the policy statement.

DATES: The policy statement and interim rule are effective January 1, 1995. Comments on the interim rule are due January 23, 1995.

ADDRESSES: Comments can be mailed to: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Wayne W. Miller (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, Telephone: (202) 208-0466

Moira Notargiacomo (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, Telephone: (202) 208-1079

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, N.E., Washington, D.C. 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) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and WordPerfect 5.1 format. After 60 days the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Issued December 15, 1994.

I. Introduction

On October 14, 1994, the Edison Electric Institute (EEI) [1] filed a petition under section 207 of the Commission's Rules of Practice and Procedure [2] requesting issuance of a Policy Statement regarding the ratemaking treatment of emissions allowances in coordination transactions under the Federal Power Act. The acid rain control title (Title IV) of the Clean Air Act Amendments of 1990, Pub. L. No. 101–549, Title IV, 104 Stat. 2399, 2584 (1990) (CAAA), provides for the issuance of emissions allowances as a means to reduce sulfur dioxide emissions levels. EEI proposes that emission allowances be included in rates at the allowance's incremental cost [3] with customers having the choice of two options to compensate the seller of allowances. Either the customer may return, or transfer, emissions allowances in kind or it may compensate the seller for its incremental cost of emissions allowances. EEI proposes that the seller be allowed to use a particular price index selected by the seller or an average of several price indices to determine the current cost to replace an allowance. EEI requests issuance of the Policy Statement by January 1, 1995, when Phase I of the CAAA becomes effective.

The Commission agrees with EEI that issuance of a Policy Statement on the ratemaking treatment of emissions allowances in coordination transactions is necessary at this time. The primary goal of the allowance trading program is to encourage utilities to implement the lowest overall cost actions to comply with the cap on sulfur dioxide emissions contained in the CAAA. The development of a national and open allowance trading market, the Commission believes, depends in part upon regulators sending public utilities a clear signal on how allowance trades and CAAA compliance costs will be treated for ratemaking purposes. Accordingly, the Commission hereby issues a Policy Statement adopting EEI's proposal, with various modifications discussed below. The Commission also hereby issues an Interim Rule implementing the guidelines set forth in this Policy Statement.[4]

II. Public Reporting Burden

The Policy Statement and Interim Rule would clarify how existing filing requirements apply to utilities filing amendments to coordination rate schedules to provide for the recovery of emissions allowance costs and to recover them in a timely fashion. Because this Policy Statement and Interim Rule only clarify how existing requirements are to be implemented, the public reporting burden for these information collections (including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information) is not estimated to increase the number of hours per response for each utility currently involved in the filing of rate schedule amendments. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE, Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission), FAX: (202) 395–5167.

III. Background

The CAAA and Allowance Trading

The acid rain control title of the CAAA sets forth a comprehensive regulatory mechanism designed to control acid rain by limiting sulfur dioxide emissions by electric utilities. The CAAA require reductions in sulfur dioxide emissions in two phases. Phase I begins on January 1, 1995, and applies to 110 mostly coal-fired utility plants containing about 260 generating units specifically listed in the statute. These plants are owned by about 40 jurisdictional utility systems that are expected to reduce annual sulfur dioxide emissions by as much as 4.5 million tons. Phase II begins on January 1, 2000, and applies to virtually all existing steam-electric generating utility units with capacity exceeding 25 megawatts and to new generating utility units (generally those commencing operation after November 15, 1990) of any size. Phase II permanently caps sulfur dioxide emissions at 9 million tons annually. The Environmental Protection Agency (EPA) issues to the owners of generating units allowances (defined as an authorization to emit, during or after a specified calendar year, one ton of sulfur dioxide) [5] equal to the number of tons of sulfur dioxide emissions authorized by the CAAA. EPA does not assess a charge for the allowances it awards.

The allowances are not unit-specific and can be sold or traded. Utilities have incentives to reduce sulfur dioxide emissions so that they can use allowances to cover load growth, to make additional off-system sales or to sell or trade allowances on the open market, offsetting the costs of compliance. Utilities that reduce the amount of sulfur dioxide emitted below their authorized level (*e.g.*, by switching to a lower sulfur coal, switching to a new fuel, installing scrubbers, repowering a unit, or using demand side management (DSM)) may bank their allowances (*i.e.*, hold and use them in another year) or sell or trade them to other utilities that expect to exceed their authorized emission level or other allowance market participants such as marketers.

Congress created the allowance trading system in Title IV of the CAAA to enable sulfur dioxide emissions reductions to occur at the lowest cost, by creating a national market for

[1] EEI states that its member companies generate approximately 79 percent of all electric power produced in the United States, serve some 76 percent of all ultimate consumers of electricity, and own a large majority of the generating units which will be affected by the Clean Air Act Amendments of 1990 when Phase I commences on January 1, 1995.

[2] 18 CFR 385.207 (1994).

[3] According to EEI, the "incremental cost" of an emissions allowance in a coordination sale is the spot market price at the time of the power sale, as opposed to the inventory value on the company's books.

[4] The Commission addresses certain jurisdictional issues raised by EEI in a separate order issued concurrently.

[5] 42 U.S.C. § 7651a(3).

emissions allowances. Basically, the emissions allowance trading system works in the following manner. Title IV of the CAAA established guidelines for the EPA to implement a system for issuing, recording and tracking allowances.[6] Allowance usage at each affected unit is recorded by EPA quarterly. There is a national cap on the total number of allowances issued by EPA each year.[7] After the end of each year, EPA determines whether companies have the right number of emissions allowances of appropriate vintage on hand for each ton of sulfur dioxide emitted during the year. The penalty for not having the requisite number of allowances on hand is $2,000 per ton plus surrender of an emissions allowance equivalent in the following year, plus other possible punishments depending on the degree of violation.[8] The CAAA also require EPA to withhold for direct sale and auction 2.8 percent of the annual allowance allocations.[9] The allowances are not property rights,[10] and are not unit-specific.[11]

Whatever steps a utility takes to comply with the CAAA will affect the cost of electric service, *e.g.*, if a utility installs new equipment, its capital costs will change; if a utility purchases low sulfur fuel, its energy costs will change; and if a utility buys emission allowances, its operating expenses will change.

In Docket No. RM92–1–000, *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1–F and 2–A*, Order No. 552, III FERC Statutes and Regulations, Regulations Preambles ¶ 30,967, 58 FR 17982 (April 7, 1993), the Commission amended its Uniform Systems of Accounts for public utilities, licensees and natural gas companies to establish uniform accounting requirements for allowances for the emission of sulfur dioxide under the CAAA, and to establish generic accounts to record assets and liabilities created through the ratemaking actions of regulatory agencies. While acknowledging the need for the eventual development of a ratemaking framework for allowances, the Commission declined to expand the scope of the accounting rule to address rate issues.[12]

The EEI Petition

EEI requests that the Commission now provide guidance on the ratemaking treatment of emissions allowances in coordination transactions so that the CAAA emissions allowance program will work as Congress intended. EEI states that such guidance is urgently needed in view of the imminent onset of Phase I. EEI states that the allowance market is rapidly evolving,[13] and EEI expects this market to become even more active when utilities operating the Phase I generating units begin to use emissions allowances.

EEI requests the Commission to: (1) Provide for costing emissions allowances at their incremental cost in coordination rates, determined on the basis of a leading index or combination of indices of the current price of emissions allowances, such index or combination of indices to be selected by the seller of the power; (2) compensate coordination sellers by permitting power purchasers at their option either: (a) To transfer or return emission allowances in kind [14] or (b) compensate the seller for its incremental cost of emission allowances, and (c) declare that purchasers who provide emissions allowances do not need to make filings with the Commission; (3) find that the cost of emissions allowances may be recovered under provisions in coordination rate schedules as "out-of-pocket" costs; (4) give utilities up to 45 days after the Commission issues a policy statement to file amendments to rate schedules to allow recovery of emissions allowance costs beginning January 1, 1995, provided that each utility gives its customers notice of the emission allowance recovery methodology it will be using when energy is scheduled (the Commission would reserve the ability, as a condition of making the policy effective January 1, 1995, to order refunds); (5) clarify that the transfer of emission allowances is not subject to a Section 205 filing and determine that sales of emissions allowances are not jurisdictional under Section 203 or 205 of the FPA; [15] and (6) declare that the ratemaking treatment of emissions allowances endorsed in this Policy Statement does not preclude other approaches proposed by individual utilities on a case-by-case basis.

EEI notes that use of incremental costs as a basis for emission allowance costing is consistent with the cost basis used for other variable expenses (*e.g.*, fuel) related to coordination transactions and dispatch decisions. According to EEI, many utilities operate under existing rate schedules that include specific provisions allowing the tracking of incremental costs.[16] EEI requests that utilities with these types of rate schedules not be required to amend their agreements, but only be required to supplement their rate schedules with specific details regarding the recovery of the incremental cost of emissions allowances in their rates.[17]

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[6] 42 U.S.C. §§ 7651b(b) and (d).

[7] The CAAA require EPA to allocate annual allowances to electric utilities based upon an average 1985–1987 plant-specific energy use and other factors. 42 U.S.C. § 7651b(a). Various CAAA provisions require EPA to give additional allowances to utilities which used certain specified compliance options, some of which may require some investment or expenditure by the utility. *E.g.*, 42 U.S.C. § 7651c(d) (installation of technological reduction system to achieve a 90 percent emissions reduction); 42 U.S.C. § 7651h (repowering with a clean coal technology); 42 U.S.C. § 7651c(f) (energy conservation and renewable energy).

[8] 42 U.S.C. § 7651j

[9] 42 U.S.C. § 7651o(b).

[10] 42 U.S.C. § 7651b(f).

[11] The CAAA do not require a change of any kind in state law regarding electric utility rates. 42 U.S.C. § 7651b(f). The CAAA also do not modify the Federal Power Act (FPA) or affect the Commission's authority under the FPA. *Id.* Additionally, the CAAA exempt the acquisition or disposition of allowances from the provisions of the Public Utility Holding Company Act of 1935 (PUHCA). 42 U.S.C. § 7651b(j).

[12] The Commission stated that the accounting rules were intended to be "rate neutral," *i.e.*, they were not intended to prescribe ratemaking treatment for allowances and would not bar regulatory commissions (including this Commission) from adopting any particular ratemaking treatment. The Commission observed that the bulk of the cost of allowances and compliance will be within the ratemaking jurisdiction of the various States and not this Commission, and found that there was not likely to be a single ratemaking framework appropriate in each and every ratemaking jurisdiction for utilities subject to this Commission's accounting jurisdiction. III FERC Statutes and Regulations, Regulations Preambles ¶ 30,967 at 30,794–96.

[13] EEI Petition, Appendix A.

[14] EEI argues that such option will: (a) Allow a power purchaser to optimize its economic position if it can purchase allowances at a price below the seller's declared price; (b) prevent a seller from dictating the allowance price; (c) reward a power purchaser who seeks the lowest cost emissions allowances; and (d) promote an active allowance market that enhances the savings in compliance costs envisioned by the CAAA and also promotes the FPA's purpose to provide for reasonable rates. None of the intervenors and commenters oppose this proposal.

[15] In particular, EEI asks the Commission to find that emissions allowances are not "facilities" under Section 203, and, therefore, the sale or transfer of such allowances does not require the Commission's authorization. We address EEI's request for a jurisdictional determination in a separate order.

[16] For example, Indiana Michigan Power Company has an interconnection agreement with Public Service Company of Indiana, Inc. (Rate Schedule FERC No. 24), which provides for the sale of limited term power with an energy charge of 110% of the out-of-pocket costs of supplying energy, with out-of-pocket cost defined as all operating, maintenance, tax, transmission losses and other expenses incurred that would not have been incurred if the energy had not been supplied.

[17] EEI does not explain what procedure would be followed by utilities that have coordination rates on file that do not expressly provide for the recovery of all incremental costs, *e.g.*, a coordination rate schedule that provides for recovery of incremental fuel, but is silent with respect to other types of variable costs; coordination rate schedules that

Since there may be different ways of determining the incremental cost of emissions allowances, EEI proposes that utilities be required to submit the following company-specific details. First, EEI suggests that utilities should be required to choose a leading national index or combination of indices to determine the incremental cost of emission allowances at the time of the allowance's consumption and be required to use that index until they identify some other acceptable index in a filing with the Commission. Second, EEI suggests that each utility be required to explain the method of calculating its emission allowance dispatch value. EEI indicates that the use of incremental costing for emissions allowances should be consistent with the use of incremental costing for economic dispatch decisions. EEI proposes that any differences between the incremental costing for coordination sales of emissions allowances and dispatch decisions regarding emissions allowances be explained and reconciled. Third, EEI suggests that utilities be required to explain how they will quantify the amount of emission allowances attributable to each transaction. Fourth, EEI suggests that, with respect to longer-term transactions, utilities be required to specify the timing of opportunities for buyers to stipulate whether they will purchase or provide the emissions allowances.[18] Fifth, EEI suggests that utilities be required to identify any other factors that could impact pricing, such as rates tied to units other than the incremental unit used for the sale.

Interventions and Comments

Notice of the EEI filing was published in the **Federal Register**,[19] with comments due on or before November 14, 1994. Tellus Institute for Resource and Environmental Strategies (Tellus), Wisconsin Electric Power Company (Wisconsin Electric), the Office of the Consumers' Counsel, State of Ohio (Consumers' Counsel), Potomac Electric Power Company (PEPCO), Cincinnati Gas and Electric Company (CG&E) and PSI Energy, Inc. (PSI), Entergy Services, Inc. (Entergy Services), EPA, the Independent Petroleum Association of America (IPAA), the City of Cleveland, Ohio (Cleveland), Florida Power & Light Company (Florida Power), and the American Public Power Association (APPA)[20] filed timely motions to intervene and/or comments. Washington Utilities and Transportation Commission (Washington Commission), the Public Utilities Commission of the State of California (California Commission) and the Indiana Utility Regulatory Commission (Indiana Commission) filed notices of intervention and/or timely comments. On November 21, 23, 25 and 30, 1994, Clean Air Capital Markets (Clean Air), Emissions Exchange Corporation (Emissions Exchange), Cantor Fitzgerald Brokerage, L.P. (Cantor Fitzgerald), and Southern Company Services, Inc. (Southern) filed untimely motions to intervene and comments. On November 28, 1994, EEI filed reply comments. EEI does not oppose any of the motions to intervene and welcomes comments on the issues raised in this proceeding.

Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, the timely, unopposed motions to intervene of Tellus, Wisconsin Electric, the Consumers' Counsel, PEPCO, CG&E, PSI, Entergy Services, IPAA, Cleveland, Florida Power, EPA and APPA and the notices of intervention of the Washington Commission, the California Commission and the Indiana Commission serve to make them parties to this proceeding. Furthermore, we find that good cause exists to grant the untimely interventions of Clean Air, Emissions Exchange, Cantor Fitzgerald and Southern, given the interests they represent, the early stage of this proceeding, and the apparent absence of undue prejudice or delay.

Finally, we will accept EEI's reply comments. While responses to protests or answers normally are not permitted under the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2), responses to intervention requests are permitted.[21] Moreover, these reply comments are necessary in order to clarify issues in this proceeding,[22] provide a more complete record on which the Commission can base its decision,[23] and assist in the understanding of the parties' positions with respect to certain factual and legal matters.[24]

IV. Rate Issues

Positions of Intervenors and Commenters

CG&E, PSI, Entergy Services, IPAA and Cleveland take no position on the merits of EEI's proposal. The Washington Commission, the Indiana Commission, PEPCO, and Southern generally express support for the proposal. The remainder of the intervenors and commenters indicate concerns with various aspects of the proposal, as discussed below.

The California Commission supports EEI's request that alternative proposals for emissions allowance ratemaking treatment not be precluded and that such proposals be considered on a case-by-case basis.

EPA supports EEI's request for incremental pricing for allowances and use of an index to establish the incremental price. However, EPA requests the Commission to address ratemaking for all wholesale transactions at this time. EPA also seeks a uniform approach for costing and rate treatment of allowances. Thus, EPA requests that the Commission adopt one index option for use by all public utilities. EPA suggests that its auction presently provides the most reliable price index. EPA also raises concerns about EEI's proposal to allow alternate ratemaking proposals on a case-by-case basis. EPA states that utilities should bear the burden of showing that any different approach is justified and will not result in an unfair competitive advantage in electric power markets.

Emissions Exchange, Clean Air and Cantor Fitzgerald state that EPA auction prices have consistently been artificially low and that the EPA auction price is not representative of the open market because the auction is held just once a year and does not track the current price and availability of allowances. Emissions Exchange asks that the Commission refrain from dictating use of any particular price index. Instead, Emissions Exchange proposes that this Commission permit each utility to choose its market price index from a list

include stated rates; or coordination rate schedules that do not adopt incremental cost pricing.

[18] While EEI's argument on this point is unclear, we believe EEI's position is that, for longer-term transactions, buyers of emissions allowances should have the same timing opportunities as allowance sellers. Because sellers do not have to have the required emissions allowances until January 30 of the year subsequent to the calendar year, or the first business day subsequent to January 30 if January 30 is not a business day (hereinafter EPA reporting date), 40 CFR 72.2 and 73.35(a)(2) (1994), they are able to delay purchasing allowances in order to possibly obtain a less expensive allowance price. By providing flexibility as to the time within which buyers can transfer allowances, buyers might be able to save money as well.

[19] 59 FR 53156 (October 21, 1994).

[20] APPA is a national service organization representing approximately 1,750 publicly-owned electric utilities throughout the United States.

[21] We will not attempt to separate intervenors' filings into those portions which pertain solely to the request for intervention and those portions which contain objections to the original application. *See, e.g.*, Robbins Resource Recovery Partners, L.P., 69 FERC ¶ 61,178 (1994).

[22] *See* Buckeye Pipeline Company, L.P., 45 FERC ¶ 61,046 at 61,160 (1988).

[23] *See* BES Hydro Company, 45 FERC ¶ 61,478 at 62,490 & n.2 (1988); and New York Irrigation District, 46 FERC ¶ 61,379 at 62,180 & n.2 (1989).

[24] *See* Kansas City Power & Light Company, 53 FERC ¶ 61,097 at 61,282 (1990).

which includes, but is not limited to, the allowance price indicators published by Cantor Fitzgerald.[25]

In addition to the problems it sees with the EPA auction, Clean Air maintains that commercial bulletin board services are also unreliable sources for allowance price information. It argues that bulletin board bid/ask prices may not reflect actual allowance transactions and could subject market participants to inaccurate price signals, gaming and manipulation. Clean Air opposes allowing the selling utility to cost emissions allowances at a market index of its own choosing because this presents the danger of the selling utility picking a price based on the highest-cost index, with no demonstration that this price reflects the realities of the market. Clean Air also opposes the selection of a single index by the Commission, stating that the Commission would risk sending misleading price signals. Clean Air suggests that, in addition to requiring sellers of allowances to inform buyers of the price of allowances and the number of allowances to be provided, the seller should notify the buyer that there is a third party who will provide the allowances at a stated price. Clean Air also proposes that the Commission require sellers to report the volume of allowances transferred, their price and the name of any third parties supplying the allowances. Clean Air states that this Commission should publish these reports to provide buyers with greater market information.

The Consumers' Counsel and Tellus state that this Commission should expand the scope of this proceeding to include the ratemaking treatment of allowances for all wholesale transactions. The Consumers' Counsel also states that it would be more efficient for a policy statement to recognize other valuation methods in addition to incremental costs, such as a cost-of-compliance approach, and to specify when that method would be more appropriate.[26] Additionally, the Consumers' Counsel suggests that the Commission should establish a single monthly market price for allowances and should develop a standard method of allocation of EPA-granted allowances between wholesale and retail customers and between affiliates.

Wisconsin Electric argues that EEI's pricing policy is contrary to the CAAA because it will cause generation to shift from Phase I units to non-Phase I units. This is because a requirement that utilities charge the full incremental cost of allowances will result in an increase in the operating cost of Phase I units and result in those units being underutilized. It is possible, Wisconsin Electric argues, that if a Phase I unit is not utilized at "baseline" (1985–1987) levels, the utility may be required by the CAAA to forfeit allowances.[27] For these reasons, Wisconsin Electric suggests, the Commission, in its Policy Statement, should allow utilities with Phase I units the flexibility to charge "up to" the incremental cost of a Phase I allowance. Wisconsin Electric argues that achieving least cost dispatch, in light of complexities such as reduced utilization of Phase I units, may require use of a dispatch emissions value that differs from incremental cost.

Florida Power seeks to ensure that the Policy Statement not predetermine the issues raised in *Southern Company Services, Inc.*, Docket No. ER95–59–000, now pending before this Commission. Florida Power also seeks clarification that only Phase I utilities need to file the details of their emission allowance recovery method within 45 days, because it would be premature for Phase II utilities to make such filings now.

APPA argues that the proposed policy statement would grant excessive discretion to utilities and would open the door to inconsistent ratemaking treatment. APPA complains that EEI's proposal contains no clear requirement that the selling utility be consistent in its ratemaking treatment on simultaneous transactions and does not require a utility to adhere to any particular methodology once adopted. Further, APPA argues, EEI's petition does not define how the revenues from emissions allowances included in rates will be credited to various customer classes. Moreover, APPA argues, EEI's proposal that this Commission allow utilities with existing incremental cost rate provisions to file emission allowance pricing information without revising their rate schedules will authorize utilities to redefine contract terms unilaterally. APPA contends that EEI's proposal does not clearly define the scope of transactions to which the Policy Statement will apply. APPA maintains that the Commission should afford affected parties the opportunity to challenge application of whatever policy is adopted in this Policy Statement on a case-by-case basis. APPA also believes that this Commission should establish a standard market price for allowances or provide a forum for review to ensure the justness and reasonableness of indices or methodologies to be used by a selling utility.

Tellus also states that since several utilities recently have filed differing proposals for emissions allowance cost recovery in affiliated transactions, this Commission must act promptly to establish generic ratemaking policies for each type of wholesale arrangement. Tellus further urges the Commission, either in this or in a separate proceeding, to address the ratemaking treatment of costs of compliance with the CAAA, in addition to allowance costs. Tellus suggests that this Commission establish its own monthly market index price for emissions allowances, determine how the profits should be credited to and among wholesale and retail customers, develop a standard method for allocating allowances obtained from EPA at no cost between wholesale and retail customers, and establish generic policies regarding the adequacy and appropriateness of current wholesale rate designs for passing CAAA costs through to wholesale customers. Tellus suggests that average inventory costs might be a valid basis for determining the cost of emissions allowances.

EEI, in reply, again urges issuance of a policy statement by January 1, 1995. EEI argues that the policy guidance requested is appropriately limited to coordination transactions. EEI argues that coordination transactions are a distinct category of voluntary transactions and that the treatment it proposes is consistent with Commission precedent for other out-of-pocket costs incurred in such transactions. EEI submits that the guidance it requests here, while appropriate for coordination transactions, cannot accommodate the varying circumstances and cost allocation issues involved in wholesale requirements service or transactions among affiliated companies. EEI also notes, in reply, that the Commission, in Regulation of Electricity Sales for Resale and Transmission Service, Notice of Inquiry, IV FERC Stats. and Regs. ¶ 35,518 at 35,628 (1985), order terminating docket, 61 FERC ¶ 61,371 (1992), defined the term "coordination transactions," and distinguished coordination transactions from requirements transactions.[28]

[25] Utility Environment Report, Cantor Fitzgerald, Compliance Strategies Review and Emission Exchange.

[26] The suggested cost of compliance approach would value emissions allowances at the cost the seller would incur to reduce emissions rather than using the allowance.

[27] According to Wisconsin Electric, it cannot be assumed that an allowance on a Phase I unit that is underutilized (thereby subjecting the allowance to possible surrender under the CAAA) has an opportunity cost equal to incremental costs since an allowance that is surrendered may not be consumed or traded by the utility.

[28] The Commission therein defined coordination transactions as "sales or exchanges of specialized

EEI opposes case-by-case treatment of rate recovery of emissions allowances in coordination transactions. It argues that a case-by-case approach would unduly burden the Commission with hundreds of virtually identical proceedings that can be more efficiently addressed through the policy statement approach it advocates here. EEI maintains that it is not seeking to expand the meaning of defined contract terms, but simply to include in existing contract terms costs that are reasonable and contractually permissible. EEI recognizes the need for special treatment of generating units subject to the requirements of reduced utilization in the CAAA, and that exceptions to the use of the full incremental costs of emissions allowances associated with those generating units may take place. However, EEI believes that its proposal adequately responds to Wisconsin Electric's concerns in this area because it allows exceptions to full incremental costs as long as dispatch criteria and the coordination rates are consistent.

EEI further states that the Commission should not designate any specific index because such action would hinder market competition in allowance trading. It characterizes as unnecessary and burdensome Clean Air's proposals that energy sellers certify an unaffiliated third party to provide allowances to a power purchaser, and that utilities be required to report the volume and price of allowance trades for publication by this Commission. Finally, EEI argues that this is not the appropriate proceeding to specify particular revenue credit treatment of allowance-related revenues. EEI submits that revenue credits with respect to coordination transactions are specified either in agreements between retail and wholesale customer groups and utility companies or are required under the retail and wholesale practices of state commissions or this Commission. Thus, EEI argues, revenue credits are appropriately dealt with in rate cases, rather than in a policy proceeding.

Discussion

Use of Incremental Costs

We will allow the recovery of incremental costs of emission allowances in coordination rates whenever the coordination rate also provides for recovery of other variable costs on an incremental basis. EEI's proposal that the incremental cost of emissions allowances be recovered in coordination rates will ensure, under many coordination rate schedules, consistency with the way in which other costs (*e.g.*, fuel) are recovered and with dispatch decisions. In response to APPA's concern that the scope of the transactions affected by the Policy Statement is not clearly defined in EEI's proposal, the Commission wishes to make clear that the policy adopted here will apply only when a coordination rate expressly provides for the recovery of incremental costs or if stated rates are designed to recover incremental costs. If a coordination rate does not reflect incremental cost pricing for other costs (*e.g.*, coordination transactions that are designed as unit sales where the rates track the costs of a particular unit or coordination rates that are designed to recover average costs), the Commission will require the seller to propose an alternative costing method for emissions allowances, or demonstrate that any inconsistency between the proposed costing method and the coordination rate does not produce unreasonable results. The Commission finds that the cost to replace an allowance is an appropriate basis to establish incremental cost.[29]

Use of Indices

We will adopt EEI's proposal that sellers be permitted to choose their own index or a combination of indices. Because the emission allowance markets are still developing, the Commission cannot, at this time, conclude that any particular index should be utilized. Our primary concern in allowing the selling utility to choose the index or indices is that, if there are variations in the available indices, the seller will select the one with the highest price at the time of the transaction, rather than the index that best reflects the incremental cost. EEI's proposal guards against this practice because it provides the customer with the option to supply its own allowances rather than purchase allowances from a selling utility.

Dispatch

EEI's proposal is based on sellers' use of the same index for pricing coordination sales and making dispatch decisions. If the seller does not use the same index for both purposes, EEI proposes that the seller be required to reconcile the differences.

The Commission will adopt this proposal. The purpose of any dispatch criterion is to meet each increment of load from the increment of generation with the lowest running costs (fuel, other variable operating expenses and, now, emissions allowances). If the seller is not using the same cost index in its dispatch decisions as it is proposing for pricing its coordination sales, we cannot rely upon the index to reflect incremental cost.[30] Accordingly, sellers must explain and justify any differences in their use of different incremental cost references for dispatch and pricing.[31]

Calculation of Amount of Emissions Allowances Associated With a Transaction

The Commission will also adopt EEI's proposal that sellers explain how they will compute the amount of emissions allowances that will be attributed to each coordination transaction. The amount of emissions allowances related to a coordination sale will vary based on the unit used for pricing, the amount of energy generated and the type of fuel used. The Commission expects that the generating unit used to compute the emission allowance amount would be the same unit that is used to price the incremental fuel component of the coordination rate. Also, the seller should explain how fractional amounts will be handled. While a customer choosing the cash compensation method could pay for part of an allowance, the customer cannot choose to return part of an allowance. To resolve this problem, utilities could adopt a "rounding" approach, *i.e.*, rounding up to the next whole number if the fraction is greater than one half, or down if the fraction is

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electricity services that allow buyers to realize cost savings or reliability gains that are not attainable if they rely solely on their own resources. For sellers, these transactions provide opportunities to earn additional revenue, and to lower customer rates, from capacity that is temporarily in excess to native load capacity requirements. Transactions are voluntary and the seller's obligation is limited."

Requirements service was defined as "a long-term supply of firm power to meet all or part of the buyer's load requirements, including load-growth. Sellers undertake a relatively open-ended commitment to provide service. Utilities must plan and build generation and transmission capacity to meet this commitment. From the seller's perspective, requirements service is essentially the same as retail service with the primary difference being that delivery is typically made at transmission voltages. Requirements customers are considered part of the seller's native load. Buyers are typically municipally or cooperatively owned distributors that resell the power to end-use customers."

IV FERC Stats. and Regs. at 35,628 (footnote omitted).

The Commission believes that the definition of coordination transactions employed in the Notice of Inquiry will generally be acceptable. Objections that a transaction is not a coordination transaction can be pursued on a case-by-case basis.

[29] This is generally the method used to determine the incremental fuel cost for dispatching and pricing for coordination rates. Pennsylvania Power Company, Opinion No. 34, 6 FERC ¶ 61,036 (1979) (*Pennsylvania*).

[30] *See Pennsylvania, supra* n. 28.

[31] In addition, Wisconsin Electric states that it needs to be able to charge and dispatch at less than the incremental cost of emissions allowances. Wisconsin Electric could comprehensively support its method in an individual rate filing.

less than one-half. If a rounding approach is used for the return of allowances in kind, it should also be used for cash settlements so that there is no bias for or against the return in kind option.

Timing

The Commission also adopts EEI's proposal that utilities provide details on the timing of opportunities to return allowances or stipulate whether they will purchase or return allowances. Customers should be able to take advantage of possible cost savings resulting from the timing of allowance settlements.[32] This can be accomplished by allowing customers that choose to provide allowances in kind to do so by the appropriate EPA reporting date[33] rather than at the time of the transaction, *i.e.*, a "timing option." Thus, allowance customers will have the same opportunities as allowance sellers and face the same consequences, *i.e.*, possible cost savings or additional costs.[34]

We note, however, that EEI's proposal addresses timing options only with respect to longer-term transactions. In our opinion, timing options should be available for all transactions since the seller's timing flexibility is the same regardless of the length of the transaction.

Other Factors That Impact Rates

The Commission adopts EEI's proposal that sellers specify any other factors that may affect pricing. For example, many utilities have coordination rates that allow a reservation charge based on a unit other than the unit used to generate energy as long as the total revenues do not exceed the fixed and variable costs of the unit used for pricing.[35] Utilities which operate under this type of ceiling will have to clarify that the variable cost component includes the emissions allowance amount associated with the unit used to establish the ceiling.

Other Rate Issues Raised by Intervenors

The Commission will not expand the scope of this Policy Statement beyond what EEI has proposed. The ratemaking treatment for coordination, requirements and affiliated pooling arrangements must recognize the differences in the character of the service arrangements. Furthermore, the timing of any ratemaking implementation will, of necessity, be different. For instance, because in requirements service the cost of emissions allowances will be a very small percentage of a utility's overall costs, a utility may choose not to address emissions allowance costs in requirements rates until it files its next general rate case.

Also, since requirements customers typically pay a *pro rata* share of all of a utility's prudently incurred costs and utilities may choose various methods to comply with the CAAA, it would be difficult, if not impossible, to establish a generic policy that would be appropriate for all requirements service. Likewise, since operating agreements between affiliate utilities are not uniform, it would be difficult to establish a generic ratemaking policy for affiliated pooling arrangements. Affiliate agreements also may reflect compromises to satisfy the concerns of state regulators.[36]

Conversely, the pricing of coordination transactions is fairly standardized, generally reflecting an energy charge equal to incremental costs and a reservation charge providing a contribution to the fixed costs of the units used to price the energy. Thus, the treatment of emissions allowances in coordination rates can be readily addressed in a generic fashion.

In accordance with Florida Power's request, we state that Phase II utilities are not now required to make rate filings detailing their emission allowance treatment for coordination transactions that will not be affected until the year 2000. Such filings would be due no more than 120 or less than 60 days prior to Phase II.

The intervenors have raised concerns regarding the crediting of allowance related revenues to requirements rates or the allocation of emissions allowances between retail and wholesale requirements jurisdictions. It will be our policy to treat the revenues from allowances sold as part of coordination sales the same way we treat other revenues from coordination sales. In other words, to the extent, and in the same way that, the latter revenues are credited to jurisdictional customers, so should the former revenues. However, we will address implementation of this policy in the context of individual requirements rate proceedings, or, if appropriate, complaint proceedings. In section 205 proceedings, utilities will be expected to fully support their test year projections for emission allowances associated with coordination sales.

We reject Clean Air's requests that the Commission require sellers to report the volume and price of allowances transferred and publish this information, and that sellers certify unaffiliated third parties to provide allowances to a customer. Sellers must, of course, be prepared to document the calculation of all aspects of their rates, including the emissions allowance component. However, an extensive reporting requirement and third-party certification would be costly and time consuming, and there is no basis to conclude that imposition of this burden on utilities would enhance the development of the emission allowance trading markets.

Use of Alternate Rate Treatments

Finally, the Commission notes that this Policy Statement contains general guidelines on ratemaking treatment in coordination rates for the cost of emissions allowances. It is not intended to preclude utilities or other interested parties, such as state commissions, from proposing alternate rate treatments for consideration on a case-by-case basis.[37]

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[32] This issue is significant because utilities in effect settle their allowance position with EPA at the EPA reporting date and the cost of obtaining an allowance may be different at that time than it is at the time that the transaction occurs. Indeed, there may be significant differences in allowance costs at different times of the year

[33] *See supra* n. 18. If a transaction begins and ends in different calendar years, the customer, exercising the in kind option, would be required to provide sufficient allowances to cover electric energy purchased in each calendar year by the immediately following EPA reporting date for such calendar year.

[34] Customers would continue to have the option of a cash settlement based on a current index

[35] An example is Indiana Michigan Power Company's coordination rate schedule, supra n 16, which consist of an energy charge based on system incremental fuel and operating costs and a reservation charge based on the cost of its Rockport generating unit. Because Indiana Michigan has negotiated favorable coal contracts for the Rockport unit, that unit is not likely to be available for coordination sales. As a result, there is an inconsistency between Indiana Michigan's demand charge (based on its Rockport unit) and its energy charge (based on system incremental fuel cost which is higher than Rockport's fuel cost). To conform this rate to the Commission's requirement that energy and demand charges be designed on a consistent basis, the rate is subject to a ceiling reflecting the fixed and variable costs of the Rockport unit. *See* Indiana & Michigan Electric Company, 10 FERC ¶ 61,295 (1980) (in which the Commission explained that energy and demand charges must be designed consistently to reflect the fixed and variable costs of the same units).

[36] Indeed, several affiliated pooling groups have already made filings and their proposals reflect these types of significant distinctions.

[37] Florida Power requests that the Policy Statement not prejudge every contractual relationship Florida Power is primarily concerned about its existing arrangements with Southern Companies which are at issue in Docket No. ER95-59-000 This Policy Statement will not preclude Florida Power from proposing different treatments with respect to those arrangements at issue in Docket No ER95-59-000

APPA is concerned about the lack of specifics concerning possible alternatives to EEI's proposal However, we will not address alternate proposals in this Policy Statement, other than to state that they

V. Implementation Procedures

In the Interim Rule accompanying the Policy Statement, the Commission also adopts EEI's proposal that if utilities have rate schedules on file that expressly provide for the recovery of all incremental or out-of-pocket costs, these utilities should be allowed to make abbreviated rate filings, limited to detailing how they would recover emissions allowance costs. These filings should include the following: the index or combination of indices to be used, the method by which the emission allowance amounts will be calculated, timing procedures, how inconsistencies, if any, with dispatch criteria will be reconciled, and how any other rate impacts will be addressed. These filings would constitute rate schedule amendments under FPA section 205 since they would describe how the rates are computed. Utilities making such abbreviated filings should: (1) clearly identify the filing as being limited to amendments to coordination rates to reflect the costs of emissions allowances, in the first paragraph of the letter of transmittal accompanying the filing, (2) submit a document that can be inserted into each rate schedule and (3) identify each rate schedule to which the amendment applies. Finally, the abbreviated filing should apply consistent treatment to all coordination rate schedules or the filing utility should justify its failure to do so.

Regarding coordination rates that do not provide for the recovery of all incremental costs,[38] we conclude that the seller may include rate schedule amendments together with the abbreviated filing discussed above if the customer agrees to the rate change. If the customer does not agree to revise such rates, the utility should tender its emission allowance proposal in a separate section 205 rate filing, fully justifying its proposal. This will ensure that the processing of uncontested rate filings is not delayed by disputes over individual agreements.

Finally, APPA expresses concern that affected parties be afforded an opportunity to challenge application of the policy announced herein on a case-by-case basis. APPA's concerns are satisfied because, in all cases, the filings would be noticed and customers provided an opportunity to comment.

45-Day Amendment Period

The Commission adopts EEI's proposal that utilities be allowed to implement the policy announced herein on January 1, 1995, but make the filings discussed above within 45 days after the Commission issues an order in this proceeding. In return for granting waiver of notice, the utilities must agree that revenues will be collected subject to refund pending Commission action. Utilities making such filings should include a statement in the first paragraph of their transmittal letter agreeing to the refund condition with respect to allowance-related charges assessed between January 1, 1995, and the date the Commission issues an order accepting the filing without investigation or hearing.

VI. Information Collection Statement

The Office of Management and Budget's (OMB's) regulations at 5 CFR 1320.13 require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this policy statement are contained in FERC–516 "Electric Rate Schedule Filings" (1902–0096).

The Commission is issuing this Policy Statement and Interim Rule with the information requirements to carry out its regulatory responsibilities under the Federal Power Act to determine the appropriate ratemaking treatment of sulfur dioxide emissions allowances in coordination transactions.

The Policy Statement and Interim Rule provide guidance to public utilities on the ratemaking treatment of emissions allowances in coordination transactions in order that the CAAA emissions allowance program will be implemented in accordance with the Congressional mandate. The Commission's Office of Electric Power Regulation uses the data for determination for the reasonableness and justness of costs for emissions allowances when a public utility seeks to pass through its costs in wholesale rates. These collections of information are intended to be the minimum elements needed for utilities to file amendments to their rate schedules.

The Commission is submitting to the Office of Management and Budget a notification of these proposed collections of information. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE, Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503, (Attention: Desk Officer for Federal Energy Regulatory Commission) FAX: (202) 395–5167.

VII. Public Comment Procedures

The Commission invites interested persons to submit additional written comments on the matters addressed in this Interim Rule. An original and 14 copies of the comments must be filed with the Commission no later than January 23, 1995. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should refer to Docket No. PL95–1–000.

All other written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Public Reference Room at 941 North Capitol Street, N.E. Washington, D.C. 20426, during regular business hours.

VIII. Effective Date

This Policy Statement and Interim Rule are effective January 1, 1995. Because Phase I of the CAAA begins January 1, 1995, public utilities subject to the Commission's jurisdiction need to have in place as of that date a method of recovery in rates of the cost of emissions allowances used in coordination transactions. For that reason the Commission finds good cause to make the Interim Rule effective without prior notice and comment, and finds good cause to make the Interim Rule effective on less than 30 days' notice.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, electric power, natural gas, pipelines, reporting and recordkeeping requirements.

18 CFR Part 35

Electric power rates, electric utilities, reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 2 and Part 35

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are permitted to be presented to the Commission and will be considered on a case-by-case basis. The Commission will ensure that any alternate proposal adopted is just and reasonable, and in so doing will consider fully the concerns of affected parties who intervene in individual rate proceedings, abbreviated or otherwise, involving emissions allowances.

[38] Some coordination rates provide only for the recovery of incremental fuel costs, and contain no provisions for recovery of other incremental costs. Also, some coordination transactions, while premised upon incremental costs, take place under stated rates.

of Title 18 of the Code of Federal Regulations as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

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

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2 is amended by adding § 2.25, to read as follows:

§ 2.25 Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Transactions.

(a) *General Policy.* This Statement of Policy is adopted in furtherance of the goals of Title IV of the Clean Air Act Amendments of 1990, Pub. L. 101–549, Title IV, 104 Stat. 2399, 2584 (1990).

(b) *Costing Emissions Allowances in Coordination Sales.* If a public utility's coordination rate on file with the Commission provides for recovery of variable costs on an incremental basis, the Commission will allow recovery of the incremental costs of emissions allowances associated with a coordination sale. If a coordination rate does not reflect incremental costs, the public utility should propose alternative allowance costing methods or demonstrate that the coordination rate does not produce unreasonable results. The Commission finds that the cost to replace an allowance is an appropriate basis to establish the incremental cost.

(c) *Use of Indices.* The Commission will allow public utilities to determine emissions allowance costs on the basis of an index or combination of indices of the current price of emissions allowances, provided that the public utility affords purchasing utilities the option of providing emissions allowances. Public utilities should explain and justify any use of different incremental cost indices for pricing coordination sales and making dispatch decisions.

(d) *Calculation of Amount of Emissions Allowances Associated With Coordination Transactions.* Public utilities should explain the methods used to compute the amount of emissions allowances included in coordination transactions.

(e) *Timing.* Public utilities should provide information to purchasing utilities regarding the timing of opportunities for purchasers to stipulate whether they will purchase or return emissions allowances.

(f) *Other Costing Methods Not Precluded.* The ratemaking treatment of emissions allowance costs endorsed in this Policy Statement does not preclude other approaches proposed by individual utilities on a case-by-case basis.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 35 is amended by adding Section 35.23, to read as follows:

§ 35.23 General Provisions.

(a) *Applicability.* This subpart applies to any wholesale sale of electric energy in a coordination transaction by a public utility if that sale requires the use of an emissions allowance.

(b) *Implementation Procedures.* (1) If a public utility has a coordination rate schedule on file that expressly provides for the recovery of all incremental or out-of-pocket costs, such utility may make an abbreviated rate filing detailing how it will recover emissions allowance costs. Such filing must include the following: the index or combination of indices to be used; the method by which the emission allowance amounts will be calculated; timing procedures; how inconsistencies, if any, with dispatch criteria will be reconciled; and how any other rate impacts will be addressed. In addition, a utility making an abbreviated filing must:

(i) clearly identify the filing as being limited to an amendment to a coordination rate to reflect the cost of emissions allowances, in the first paragraph of the letter of transmittal accompanying the filing;

(ii) submit revised pages that can be inserted into each rate schedule; and

(iii) identify each rate schedule to which the amendment applies.

(2) The abbreviated filing must apply consistent treatment to all coordination rate schedules. If the filing does not apply consistent rate treatment, the public utility must explain why it does not do so.

(3) If a public utility wants to charge incremental costs for emissions allowances, but its rate schedule on file with the Commission does not provide for the recovery of all incremental costs, the selling public utility may submit an abbreviated filing if all customers agree to the rate change. If customers do not agree, the selling public utility must tender its emissions allowance proposal in a separate section 205 rate filing, fully justifying its proposal.

[FR Doc. 94–31324 Filed 12–21–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 182

[Docket No. 81N–0314]

Sulfiting Agents; Withdrawal of Regulation Revoking Gras Status for Use on "Fresh" Potatoes Served or Sold Unpackaged and Unlabeled to Consumers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a final rule that revoked the generally recognized as safe (GRAS) listing of sulfiting agents (i.e., sulfur dioxide, sodium sulfite, sodium and potassium bisulfite, and sodium and potassium metabisulfite) on "fresh" potatoes that are intended to be served or sold unpackaged and unlabeled to the consumer. The agency is revising its regulations in accordance with the withdrawal. This action is being taken in response to a court ruling.

EFFECTIVE DATE: December 22, 1994. Insofar as it prohibits the use of sulfiting agents on "fresh" potatoes that are intended to be served or sold unpackaged and unlabeled to consumers, the final rule being withdrawn has been null and void since a court ruling to that effect on August 3, 1990.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3116

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 15, 1990 (55 FR 9826), FDA published a final rule that amended the GRAS regulations to revoke GRAS status for the use of sulfiting agents on "fresh" potatoes. The rule was challenged by the "fresh' potato industry and invalidated by the U.S. District Court for the Middle District of Pennsylvania on procedural grounds; subsequently, the U.S. Court of Appeals for the Third Circuit, sitting en banc, i.e., the full court, heard the case and, by an equally divided vote, let the district court's decision stand. In accordance with the court's ruling, the agency is withdrawing the revocation of GRAS status for the use of sulfiting agents on "fresh" potatoes and is revising §§ 182.3616, 182.3637, 182.3739, 182.3766, 182.3798, and 182.3862 (21 U.S.C. 182.3616, 182.3637

182.3639, 182.3766, 182.3798, and 182.3862) accordingly.

Because the issuance of this document is in response to a court order, FDA finds that providing notice and public comment prior to the publication of this final rule is unnecessary and may therefore be dispensed with for good cause under 5 U.S.C. 553(b)(3)(B). Therefore, publication of this rule withdrawing the revocation of GRAS status for use of sulfiting agents on "fresh" potatoes constitutes final action. The agency advises, however, that it has continuing concerns about the safety of this use of sulfiting agents and is considering further action.

List of Subjects in 21 CFR Part 182

Food ingredients, Food packaging, Spices and flavorings.

Therefore, under the Federal Food, Drug, and Cosmetic Act, part 182 is amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 182 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. In § 182.3616, by revising paragraph (c) to read as follows:

§ 182.3616 Potassium bisulfite.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits and vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to consumers as fresh.

3. In § 182.3637, by revising paragraph (c) to read as follows:

§ 182.3637 Potassium metabisulfite.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits and vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to consumers as fresh.

4. In § 182.3739, by revising paragraph (c) to read as follows:

§ 182.3739 Sodium bisulfite.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to the consumer as fresh.

5. In § 182.3766, by revising paragraph (c) to read as follows:

§ 182.3766 Sodium metabisulfite.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to consumers as fresh.

6. In § 182.3798, by revising paragraph (c) to read as follows:

§ 182.3798 Sodium sulfite.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to consumers as fresh.

7. In § 182.3862, by revising paragraph (c) to read as follows:

§ 182.3862 Sulfur dioxide.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to consumers as fresh.

Dated: December 15, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94-31510 Filed 12-21-94; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 8574]

RIN 1545-AT12

Withholding on Distributions of Indian Gaming Profits to Tribal Members

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the income tax withholding requirement on distributions of profits from certain gaming activities made to members of Indian tribes under section 3402(r) of the Internal Revenue Code of 1986. The regulations reflect changes to the law made by section 701 of the Uruguay Round Agreements Act. Those affected by the regulations are persons, including Indian tribes, making payments to members of Indian tribes from net revenues of certain gaming activities conducted or licensed by the tribes. Also affected are members of Indian tribes who receive the payments. The text of these temporary regulations also serves as the 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**.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Rebecca Wilson (202) 622-4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Employment Tax Regulations (26 CFR part 31) under section 3402(r). Section 3402(r) was added by section 701 of the Uruguay Round Agreements Act, which approved the trade agreements resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) and the Statement of Administrative Action to implement the Agreements.

Section 3402(r) requires that persons, including Indian tribes, making payments to members of Indian tribes from the net revenues of certain gaming activities conducted or licensed by the tribes deduct and withhold income taxes from those payments. These regulations provide guidance on how to comply with the new withholding requirement.

Explanation of Provisions

Net revenue from certain gaming activities conducted or licensed by an Indian tribe may be used to make taxable distributions to members of the Indian tribe. The tribe must notify its members of the tax liability at the time the payments are made. 25 U.S.C. 2710(b)(3) and (d)(1). Under prior law, the tribe was not required to withhold on such payments except to the extent backup withholding rules applied under section 3406.

Distributions of net revenues from gaming activity by an Indian tribe may result in significant tax liability to the tribe's members. Withholding on such payments is intended to approximate ultimate tax liability. For some tribal members, this withholding may eliminate the need to make quarterly estimated tax payments. For others, it will reduce the likelihood that they will face penalties for underpayment of tax.

Section 3402(r) generally requires that, for payments made after December 31, 1994, persons, including Indian tribes, making payments to members of Indian tribes from the net revenues of certain gaming activities conducted or licensed by the tribes deduct and withhold income taxes from those payments.

This regulation provides for the amounts to be withheld to be determined under the applicable table. Upon publication of this regulation, the IRS will make available tables for withholding on distributions to tribal members in 1995.

Section 3402(r)(5) requires that payments be placed on an annualized basis under regulations prescribed by the Secretary. While these regulations provide a method for placing payments on an annualized basis, it will ordinarily not be necessary to annualize the payments, because the tables provided by the IRS reflect the annualized payment in prescribing the amount to be withheld.

Section 3402(r)(6) provides that, at the election of an Indian tribe, the tax imposed by section 3402(r) on any payment made by such tribe shall be determined in accordance with such tables or computational procedures as may be specified in regulations. This regulation allows withholding under section 3402(r) pursuant to any tables or procedures, provided that the amount of tax withheld is substantially the same as it would be using the tables provided by the IRS pursuant to section 3402(r). No written election is required.

Section 3402(p)(2) authorizes the Secretary to provide in regulations for withholding from payments other than wages if the person making the payment and the person receiving the payment agree to the withholding. This regulation provides that additional withholding is permitted where a tribal member and a tribe enter into a voluntary withholding agreement.

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 author of the regulations is Rebecca Wilson, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding an entry in numerical order to read as follows:

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

Section 31.3402(r)–1T also issued under 26 U.S.C. 3402 (p)(2) and (r). * * *

Par. 2. Section 31.3402(r)–1T is added to read as follows: *§ 31.3402(r)–1T Withholding on distributions of Indian gaming profits to tribal members (temporary).*

(a)(1) *General rule.* Section 3402(r)(1) requires every person, including an Indian tribe, making a payment to a member of an Indian tribe from the net revenues of any class II or class III gaming activity, as defined in 25 U.S.C. 2703, conducted or licensed by such tribe to deduct and withhold from such payment a tax in an amount equal to such payment's proportionate share of the annualized tax, as that term is defined in section 3402(r)(3).

(2) *Withholding tables.* Except as provided in paragraph (a)(4) of this section, the amount of a payment's proportionate share of the annualized tax shall be determined under the applicable table provided by the Commissioner.

(3) *Annualized amount of payment.* Section 3402(r)(5) provides that payments shall be placed on an annualized basis under regulations prescribed by the Secretary. A payment may be placed on an annualized basis by multiplying the amount of the payment by the total number of payments to be made in a calendar year For example, a monthly payment may be annualized by multiplying the amount of the payment by 12. Similarly a quarterly payment may be annualized by multiplying the amount of the payment by 4.

(4) *Alternate withholding procedures*—(i) *In general.* Any procedure for determining the amount to be deducted and withheld under section 3402(r) may be used, provided that the amount of tax deducted and withheld is substantially the same as it would be using the tables provided by the Commissioner under paragraph (a)(2) of this section. At the election of an Indian tribe, the tax imposed by section 3402(r) shall be determined in accordance with this alternate procedure.

(ii) *Method of election.* It is sufficient for purposes of making an election under this paragraph (a)(4) that an Indian tribe evidence the election in any reasonable way, including use of a particular method. Thus, no written election is required.

(5) *Additional withholding permitted.* Consistent with the provisions of section 3402(p)(2), a tribal member and a tribe may enter into an agreement to provide for the deduction and withholding of additional amounts from payments in order to satisfy the anticipated tax liability of the tribal member. The agreement may be made in a manner similar to that described in § 31.3402(p)–1 (with respect to voluntary withholding agreements between employees and employers)

(b) *Effective date.* This section applies to payments made after December 31, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94-31283 Filed 12-21-94; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Salient Factor Scoring

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is clarifying its paroling policy guidelines on using a prior conviction for determining a prisoner's salient factor score, when the prisoner claims the conviction was obtained in violation of his right to counsel, and the records of the conviction are not available. This amendment of the salient factor score instructions was published as an interim rule on March 10, 1994, 59 FR 11185-86. The final version of the rule is almost identical to the interim rule. The rule provides that the prisoner must demonstrate that the allegedly invalid conviction must have occurred prior to Supreme Court decisions establishing the right to counsel for felony and misdemeanor/petty offense convictions. Otherwise, the Commission will presume that the prior conviction was validly obtained and will count the conviction even if records of the conviction are no longer available.

EFFECTIVE DATE: January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: The rationale for this revision of the salient factor scoring manual is provided in the supplementary information for the interim rule, 59 FR 11185-86. Several comments were received in response to the publication of the interim rule. One federal defender argued that the interim rule was unfair because if the records of the prior conviction are not available, the limited information the Commission had about the prior conviction was presumptively unreliable. But the mere fact that the records of the conviction are no longer available should not lead to the inference that the conviction did not occur or was obtained using invalid procedures. More likely, the absence of the records would be caused by their destruction or retirement according to a practice of purging court files on a regular schedule. Another person asked the Commission to postpone action on the new rule until it assessed to what extent tribal courts have implemented a defendant's right to counsel. The Commission decided that the promulgation of this rule—which was intended to promptly clarify its salient factor scoring instruction at Item A, paragraph A.8—should not be deferred for the task of re-examining tribal court procedures and determining whether a change in a separate instruction at paragraph A.10 should also be made.

Several editorial changes were made in the interim rule. Also, in the final rule the Commission clarifies that the prisoner would have to claim that he served a jail term for a non-felony, pre-1973 conviction before the Commission would decline to count such a conviction in salient factor scoring. If the prisoner had not served a jail term for such a conviction, the conviction would be constitutionally valid even if obtained in violation of his right to counsel. *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972).

Implementation

This rule will be applied at all hearings and record reviews (including reviews of appeals to the National Appeals Board), conducted on or after the effective date.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

The Amendment

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.20 is amended by revising the second and sixth sentences of the Salient Factor Scoring Manual, Item A, paragraph A.7, to read as follows:

§ 2.20 Paroling policy guidelines: Statement of general policy.

* * * * *

Salient Factor Scoring Manual

* * * * *

Item A. Prior Convictions/Adjudications (Adult or Juvenile)

* * * * *

A.7 Convictions Reversed or Vacated on Grounds of Constitutional or Procedural Error. * * * It is the Commission's presumption that a conviction/adjudication is valid, except under the limited circumstances described in the first note below. * * *

Similarly, do not count a conviction if: (1) the offender has petitioned the appropriate court to overturn a felony conviction that occurred prior to 1964, or a misdemeanor/petty offense conviction that occurred prior to 1973 (and the offender claims he served a jail sentence for the non-felony conviction); (2) the offender asserts he was denied his right to counsel in the prior conviction; and (3) the offender provides evidence (*e.g.*, a letter from the court clerk) that the records of the prior conviction are unavailable.

* * * * *

Dated: December 16, 1994.

Edward F. Reilly, Jr.,

Chairman, Parole Commission

[FR Doc. 94-31483 Filed 12-21-94, 8:45 am]

BILLING CODE 4410-01-P

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28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Sex Offenses Against Minors Age 12 and Older

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is adding to its guidelines, under the heading of "Carnal Knowledge or Sodomy Involving Minors" a provision increasing the offense severity rating from Category Four to Category Seven for any crime involving an adult

offender who has abused a position of trust (*e.g.*, teacher, counselor, or physician), or who has engaged in predatory sexual behavior. The purpose of this guideline amendment is to clarify the aggravated nature of such crimes in relation to all other offenses that involve non-forcible sexual relations between an adult and a minor age 12 or older. This item was published as a proposed rule on May 20, 1994. 59 FR 26466. The guideline increase follows a Congressional directive that, when the Commission frequently exceeds the guidelines in a particular type of case, the guidelines should be amended to provide for consistency in such decisions.

EFFECTIVE DATE: January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Federal parole laws remain in effect until November 1, 1997, for prisoners and parolees who committed their crimes prior to November 1, 1987, and whose sentences place them under the jurisdiction of the U.S. Parole Commission. See Section 235(b) of the Sentencing Reform Act of 1987, Public Law 98–473 (as amended) and 18 U.S.C. 4201 through 4218. The Paroling Policy Guidelines at 28 CFR 2.20 provide consistency in Parole Commission decision-making for such offenders.

The proposed rule would increase the prison time to be served in cases where the adult has committed such an offense through an abuse of a position of trust, or through predatory behavior. Whereas ordinary offenses involving non-forcible sexual relations between adults and minors age 12 or older are rated Category Four on the guidelines, offenses involving abuse of trust or predatory behavior were proposed for a Category Seven rating. One public comment was received on this proposal from the U.S. Probation Office for the Eastern District of North Carolina supporting the proposal.

After a careful review of its decision-making practices, the Commission has decided that the proposal merits adoption as a final rule. The increase to Category Seven reflects optimum Commission decision-making practice, which is to order an upward departure from the guideline range for a Category Four offense if the offender has abused a significant position of trust or has behaved in a predatory manner toward multiple victims. Such circumstances would constitute good cause to exceed the guidelines pursuant to 18 U.S.C. 4206(c). An abuse of trust would be exemplified by a child psychiatrist who engages in sodomy with youthful patients under his care, a high school teacher who seduces a student in his classroom, or a religious counselor who has sexual relations with teenage members of his congregation. Predatory behavior is defined as the repeated use of tricks or other devices to lure unsuspecting youthful victims into sexual relations with an adult offender.

Implementation

This rule will be applied at all initial and revocation hearings held on or after the effective date.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866, and the rule has therefore not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Final Rule

Accordingly, the U.S. Parole Commission makes the following amendment to 28 CFR Part 2:

PART 2—[AMENDED]

(1) The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR Part 2, § 2.20, Chapter 2, Subchapter D, Section 232, is amended by adding the following new paragraph 232(d), to read as follows:

§ 2.20 Paroling policy guidelines: Statement of general policy.

* * * * *

Chapter Two Offenses Involving the Person

* * * * *

SUBCHAPTER D—SEXUAL OFFENSES

* * * * *

232 Carnal Knowledge* or Sodomy Involving Minors

* * * * *

(d) If the offender is an adult who has abused a position of trust (*e.g.*, teacher, counselor, or physician), or the offense involved predatory sexual behavior grade as Category Seven. Sexual behavior is deemed predatory when the offender repeatedly uses any trick or other device to attract, lure, or bribe victims into the initial contact that results in the offense.

* * * * *

Dated: December 16, 1994.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 94–31484 Filed 12–21–94; 8:45 am]

BILLING CODE 4410–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Modifications to Role of National Labor Relations Board's Administrative Law Judges Including: Assignment of Administrative Law Judges as Settlement Judges; Discretion of Administrative Law Judges to Dispense With Briefs, To Hear Oral Argument in Lieu of Briefs, and To Issue Bench Decisions

AGENCY: National Labor Relations Board.

ACTION: Experimental modification of rules.

SUMMARY: The National Labor Relations Board (NLRB) issues a document that it will begin a one-year experimental modification of its rules with respect to the role that its Administrative Law Judges (ALJs) play in facilitating the expeditious resolution of unfair labor practice proceedings. During the experimental period, the NLRB will amend its rules to give the Chief Administrative Law Judge discretion to assign a judge other than the trial judge to conduct settlement negotiations with the parties, and to give the settlement judge certain powers necessary to engage effectively in those settlement efforts. The NLRB will also, during the experimental period, modify its rules to give ALJs assigned to hear a case the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions. The rule changes will expire at the end of the one-year experimental period absent renewal by the Board.

EFFECTIVE DATES: February 1, 1995 through January 31, 1996. The rule changes will be effective on February 1, 1995 and apply to all unfair labor practice cases pending on or after that date. The changes will expire, however and be of no further force or effect with respect to any pending or future cases.

on January 31, 1996, absent renewal by the Board.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11602, Washington, DC 20570. Telephone: (202) 273–1934.

SUPPLEMENTARY INFORMATION: On September 8, 1994, the Board issued a Notice of Proposed Rulemaking (NPR) which proposed certain modifications to the Board's rules to permit the assignment of ALJs to serve as settlement judges, and to provide ALJs with the discretion to dispense with briefs, to hear oral argument in lieu of briefs, and to issue bench decisions (59 FR 46375). The NPR provided for a comment period ending October 7, 1994.

The Board received eight written comments on the NPR. The comments were received from a variety of sources, including unions, employer associations, practitioners, and the academic community. The comments were mixed, with some supporting some of the proposals but not others, and others supporting none of the proposals. Having carefully considered these comments, for the reasons discussed below, the Board has decided to implement the proposed changes with certain modifications for a one-year experimental period.

I. Settlement Judges

The proposal on the use of settlement judges proposed to amend § 102.35 of the Board's rules to include provisions for the assignment of ALJs to serve as settlement judges. The comments on this proposal were mixed, with two comments opposing the proposal, two comments supporting the proposal, and two comments suggesting that the proposal be modified to require the agreement of the parties. (The other two comments made no comment on the proposal.)

The comments opposing the proposal generally expressed the view that the proposal was unneeded and unlikely to yield significant benefits given the Agency's already high settlement rate. The comment submitted by the AFL–CIO also expressed the concern that the proposal would diminish the availability of trial judges, cause the postponement of hearing dates, and have a negative effect on settlement discussion at the Regional level.

The Board acknowledges that there are potential problems which could arise with the use of settlement judges. The proposed rules, however, were drafted to minimize any such problems by requiring the assigning judge to consider, among other factors, the likelihood that a settlement may occur, the good faith of any person making a request for assignment of a settlement judge, and whether the assignment is otherwise feasible. The Board indicated in the NPR that among the factors which the assigning judge could consider would be the effect of an assignment upon agency resources, whether the assignment is being sought for, or would have the effect of, delaying the proceeding, and whether the assignment might tend to undermine other pending settlement efforts.

As suggested by some of the comments, a further safeguard against abuse of the procedure would be to condition the use of settlement judges on the agreement of all parties. The proposed rule did not include such a condition or otherwise permit a party to veto the use of the procedure, but indicated that a party's opposition was a factor for the assigning judge to consider in assessing whether to appoint a settlement judge. Having considered the comments, however, the Board agrees that the rule should state clearly that the procedure should not be used unless the parties agree to it. This should further minimize the potential for problems of the kind discussed by the AFL–CIO.

In view of the Agency's lack of experience with settlement judges, however, the Board has decided to implement the procedure at this time for a one-year trial period. If significant problems arise with the procedure during that period, those problems may be considered by the Board in considering whether to implement the changes permanently.

II. Briefs, Oral Argument, Recommendations, and Bench Decisions

As part of its ongoing review of ways in which unfair labor practice proceedings can be revamped to move the cases more expeditiously, the Board proposed to give its ALJs the discretion, in appropriate cases, to dispense with post-hearing briefs or proposed findings and conclusions, to hear oral argument, and to issue bench decisions. These changes were proposed in the form of amendments to § 102.35(j) (renumbered to § 102.35(b)(10)), § 102.42, and § 102.45(a) of the Board's Rules and Regulations.

Of the eight comments received, two generally supported or did not oppose these changes, while the remaining comments generally opposed the changes. The comments opposing the changes generally expressed the concern that dispensing with post-hearing briefs and issuing bench decisions would be prejudicial to respondents given the absence of pretrial discovery in Board proceedings, and would result in lower quality ALJ decisions leading to further litigation.

As with the settlement-judge proposal, the Board recognizes that problems could arise under the proposed changes if not properly utilized. As the Board noted in the NPR, many cases are not suitable for these expedited procedures, and if inappropriate cases were selected, the resulting remands could delay the final disposition of the cases.

As indicated in the NPR, however, the Board believes that if ALJs choose the cases carefully, the benefits of expediting those cases would outweigh any problems arising in other cases where the procedures are improvidently utilized. In order to provide some guidance to the ALJs in this regard, the Board in the NPR suggested certain types of cases in which it may be appropriate to dispense with briefs and/or to issue bench decisions, such as cases that turn on a very straightforward credibility issue; cases involving one-day hearings; cases involving a well-settled legal issue where there is no dispute as to the facts; short-record single-issue cases; or cases in which a party defaults by not appearing at the hearing. The Board indicates that in more complex cases, including cases with lengthy records, these procedures would likely not be appropriate.

The Board continues to believe that the proposed changes would be beneficial if properly implemented in accordance with the cautions and guidance expressed by the Board in the NPR. However, in view of the Agency's lack of experience with such procedures, as with the settlement-judge proposal, the Board has decided to implement the procedure at this time for a one-year trial period.

As the dissent states, the Board has held that a judge's issuance of an oral decision did "not satisfactorily compl[y] with the requirements of Section 10(c) of the National Labor Regulations Act, as amended, and Section 102.45 of the Board's Rules and Regulations, as amended, with regard to the preparation of a written decision." See *Local Union No. 195, Plumbers (Stone & Webster Engineering Corp.)*, 237 NLRB 931, 931 (1978). See also *Plastic Film Products Corp.*, 232 NLRB 722, 722 (1977). It is clear, however, that it is the Board's regulations, and not Section 10(c) of the Act, which has been the obstacle to such decision. See *id.* at fn 1 in both cases (Member Murphy concurring). Indeed

in a subsequent case, a different panel of the Board, which included one of our dissenting colleagues, upheld an oral decision by a judge. See *Jumbo Produce*, 294 NLRB 998, 998–999 (1989) (rejecting General Counsel's contention that ALJ's dismissal of an 8(a)(1) allegation at the hearing was "procedurally incorrect" under *Stone & Webster* "because he did not issue a written decision," inasmuch as the judge had allowed the General Counsel to present his legal and factual arguments and had stated on the record the reasons for his findings). The rule changes which we adopt today on an experimental basis are designed to remove any regulatory obstacle which may exist in light of the Board's decisions in *Stone & Webster* and *Plastic Film Products* and are fully consistent with the Board's decision in *Jumbo Produce*.

In any event, the new provisions on bench decisions do not violate Section 10(c). Section 102.45 of the rules, as amended, provides that all decisions, including bench decisions, must contain findings of fact, conclusions, and the reasons or basis therefor upon all material issues of fact and law, as well as a recommended order, including affirmative provisions, all as required by Section 10(c). The amendments to § 102.45 of the rules provide that the administrative law judge will certify the accuracy of the pages of the transcript which contain the decision and shall cause those pages to be served on the parties and filed with the Board. Thus, these provisions provide for a written decision, in the form of a certified copy of the record pages containing the judge's full decision, which is served on the parties, in full compliance with the provisions of Section 10(c) of the Act. To the extent that the decisions in *Stone & Webster* and *Plastic Film Products* suggest otherwise, we conclude that they are based on a misreading of the requirements of Section 10(c), and they are overruled by the new provisions of the Rules.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the NLRB certifies that these rules will not have a significant impact on small business entities.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For reasons set forth above, during the one-year experimental period, 29 CFR Part 102 is amended as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR Part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.35 is revised to read as follows:

§ 102.35 Duties and powers of administrative law judges; assignment and powers of settlement judges.

(a) It shall be the duty of the administrative law judge to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. The administrative law judge shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Board, subject to the Rules and Regulations of the Board and within its powers:

(1) To administer oaths and affirmations;

(2) To grant applications for subpoenas;

(3) To rule upon petitions to revoke subpoenas;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(6) To regulate the course of the hearing and, if appropriate or necessary, to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;

(7) To hold conferences for the settlement or simplification of the issues by consent of the parties, but not to adjust cases;

(8) To dispose of procedural requests, motions, or similar matters, including motions referred to the administrative law judge by the Regional Director and motions for summary judgment or to amend pleadings; also to dismiss complaints or portions thereof; to order hearings reopened; and upon motion order proceedings consolidated or severed prior to issuance of administrative law judge decisions;

(9) To approve a stipulation voluntarily entered into by all parties to the case which will dispense with a verbatim written transcript of record of the oral testimony adduced at the hearing, and which will also provide for the waiver by the respective parties of their right to file with the Board exceptions to the findings of fact (but not to conclusions of law or recommended orders) which the administrative law judge shall make in his decisions;

(10) To make and file decisions, including bench decisions delivered within 72 hours after conclusion of oral argument, in conformity with Public Law 89–554, 5 U.S.C. 557;

(11) To call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence;

(12) To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(13) To take any other action necessary under the foregoing and authorized by the published Rules and Regulations of the Board.

(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, DC, the deputy chief judge in San Francisco, the associate chief judge in Atlanta, or the associate chief judge in New York may assign a judge who shall be other than the trial judge to conduct settlement negotiations. In exercising his or her discretion, the chief, deputy chief, or associate chief judge making the assignment will consider, among other factors, whether there is reason to believe that resolution of the dispute is likely, the request for assignment of a settlement judge is made in good faith, and the assignment is otherwise feasible. *Provided*, however, that no such assignment shall be made absent the agreement of all parties to the use of this procedure.

(1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties, assess the practicalities of a potential settlement, and report to the chief, deputy, or associate the status of settlement negotiations, recommending continuation or termination of the settlement negotiations. Where feasible, settlement conferences shall be held in person.

(2) The settlement judge may require that the attorney or other representative for each party be present at settlement conferences and that the parties or agents with full settlement authority also be present or available by telephone.

(3) Participation of the settlement judge shall terminate upon the order of the chief, deputy, or associates issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the hearing.

(4) All discussions between the parties and the settlement judge shall be confidential. The settlement judge shall not discuss any aspect of the case with the trial judge, and no evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement judge shall be admissible in any proceeding before the Board, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless voluntarily produced or obtained pursuant to subpoena.

(5) No decision of a chief, deputy, or associate concerning the assignment of a settlement judge or the termination of a settlement judge's assignment shall be appealable to the Board.

(6) Any settlement reached under the auspices of a settlement judge shall be subject to approval in accordance with the provisions of § 101.9 of the Board's Statements of Procedure.

3. Section 102.42 is revised to read as follows:

§ 102.42 Filings of briefs and proposed findings with the administrative law judge and oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which may include presentation of proposed findings and conclusions, and shall be included in the stenographic report of the hearing. In the discretion of the administrative law judge, any party may, upon request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge, who may fix a reasonable time for such filing, but not in excess of 35 days from the close of the hearing. Requests for further extensions of time shall be made to the chief administrative law judge in Washington, D.C., to the deputy chief judge in San Francisco, California, to the associate chief judge in New York, New York, or to the associate chief judge in Atlanta, Georgia, as the case may be. Notice of the request for any extension shall be immediately served on all other parties, and proof of service shall be furnished. Three copies of the brief or proposed findings and conclusions shall be filed with the administrative law judge, and copies shall be served on the other parties, and a statement of such service shall be furnished. In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions may not be necessary, he or she shall notify the parties at the opening of the hearing or as soon thereafter as practicable that he or she may wish to hear oral argument in lieu of briefs.

4. § 102.45, paragraph (a) is revised to read as follows:

§ 102.45 Administrative law judge's decision; contents; service; transfer of case to the Board; contents of record in case.

(a) After hearing for the purpose of taking evidence upon a complaint, the administrative law judge shall prepare a decision. Such decision shall contain findings of fact, conclusions, and the reasons or basis therefor, upon all material issues of fact, law, or discretion presented on the record, and shall contain recommendations as to what disposition of the case should be made, which may include, if it be found that the respondent has engaged in or is engaging in the alleged unfair labor practices, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The administrative law judge shall file the original of his decision with the Board and cause a copy thereof to be served on each of the parties. If the administrative law judge delivers a bench decision, promptly upon receiving the transcript the judge shall certify the accuracy of the pages of the transcript containing the decision; file with the Board a certified copy of those pages, together with any supplementary matter the judge may deem necessary to complete the decision; and cause a copy thereof to be served on each of the parties. Upon the filing of the decision, the Board shall enter an order transferring the case to the Board and shall serve copies of the order, setting forth the date of such transfer, on all the parties. Service of the administrative law judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

* * * * *

Dated, Washington, DC, December 16, 1994

By direction of the Board:[1]

John C. Truesdale,
Executive Secretary

Dissenting Opinion of Members Stephens and Cohen

1. Introduction

We are not opposed to the provision regarding settlement judges. We have some concerns that the provision may tempt respondents to delay settlement talks with the Regional Offices and thereby upset the highly successful settlement efforts of those offices. However, we are willing, in light of the one-year sunset provision, to join our colleagues in promulgating this provision.

We are strongly opposed, however, to the rules that give Administrative Law Judges (ALJs or Judges) the discretion to dispense with briefs and to issue bench decisions.

2. Statutory Issue

As a threshold matter, we note that, under established Board law, the provision for bench decisions directly contravenes the Act. In *Plastic Film Products Corp.*, 232 NLRB 722 (1977), the Board held that such decisions fail to comply not only with Section 102.45 of the Board's Rules and Regulations, *but also with Section 10(c) of the Act Id.* at 722. See also *Local Union No 195 (Stone & Webster Engineering Corp.)*, 237 NLRB 931 (1978) (oral grant of motion for summary dismissal of complaint at close of hearing violates Section 10(c) as well as Section 102.45 of Board's Rules and Regulations).[2] Thus, the Board's new rule reverses established Board law.

In arguing to the contrary, our colleagues rely upon *Jumbo Produce*, 294 NLRB 998. However, that case is readily distinguishable. In that case, the judge made an oral evidentiary ruling on a single issue. He did not rule on the entire case. Indeed, the Board specifically noted this in distinguishing its earlier ruling in *Local Union 195* See 294 NLRB at 999 n.4. We have no quarrel with the traditional practice under which judges issue bench rulings on evidentiary issues. But the instant rule goes far beyond that. It gives the judge the power to orally decide the entire case.

We recognize that, in *Local Union 195*, the judge did not read any findings and conclusions into the record. However, in *Plastic Film Products*, the judge did precisely that.

[1] Chairman Gould and Members Devaney and Browning, Members Stephens and Cohen dissenting in part The dissenting opinion by Members Stephens and Cohen is attached

[2] Contrary to the assertion of our colleagues, it is clear that Section 10(c) was indeed one of the obstacles to the oral decisions in these cases Only one Member (Murphy) relied solely on the Rules The majority relied on Section 10(c) and the Rules

Notwithstanding this, the Board found that the judge's decision violated Section 10(c) of the Act.[3]

In sum, the rules are at odds with Board law. Our colleagues, in apparent recognition of this fact, overrule Board law to the extent necessary to accomplish their purpose. However, they set forth no rationale for this result other than the assertion that the cases are based on a "misreading" of Section 10(c). They offer no support for this sweeping assertion. Further, they may not have the power to overrule the extant cases. If the Board was correct in the prior cases, i.e., if Congress did indeed intend to preclude bench decisions in enacting Section 10(c), then the Board is simply without authority to establish a rule to the contrary. See *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984) (where intent of Congress is clear, agency must give effect to that intent).

Although the Board has now declared that it has the power to issue the rule, that declaration will not end the matter. The statutory issue will undoubtedly be the subject of extended litigation in the federal courts. Thus, for this reason as well as other reasons described *infra*, the rule is at cross-purposes with its stated goal: to expedite the final resolution of unfair labor practice cases.

3. Policy Considerations

We do not rest entirely, or even principally, on the statutory issue. Quite apart from the statutory issue, we oppose, for policy reasons, the provisions giving ALJs the power to issue bench decisions and the related power to dispense with written briefs. In our view, the rules sacrifice fundamental fairness, procedural due process and high-quality decisionmaking. This sacrifice is said to be in the interest of speed. However, we are not convinced that the rules will result in any overall savings of time. More importantly, to the extent that they might save some time, the price is simply too high.

We first address the rule concerning briefs. Underlying much of our concern about this rule is one critical fact: NLRB proceedings are conducted without pre-trial discovery. Thus, far from involving a rehash of previous deposition testimony and jousting over the significance of documents long ago made available to the opposing side, Board trials typically represent the first occasion on which the parties learn the details of their opponent's case.[4] Notwithstanding this fact, the rule would require counsel, promptly upon the close of evidence, to marshal the pertinent facts, spot all the factual and legal issues, cite the relevant authority, and articulate policy concerns—all in a cogent and organized fashion. In our view, even the ablest of counsel cannot be expected to do an effective job under these circumstances. Moreover, as some of the comments on the proposed rules have pointed out,[5] counsel for respondents will be at a distinct disadvantage under this scheme. Armed with the information gathered in the pre-complaint investigation, the General Counsel is in a much better position than respondent's counsel to plot out in advance an oral presentation of the facts and the law.

The rule is otherwise flawed. Although it provides for a "reasonable period" for oral argument, it does not provide such a period for the *preparation* of the argument. Further, even if a judge granted such a period, that would not cure the fundamental defect in this provision. A recess period is simply no substitute for the time-honored practice of reading the transcript, researching the issues by use of a library and computer technology, reflecting upon the law and the facts, and writing a cogent, organized and persuasive brief.

Requiring counsel to throw together a presentation at the close of the trial also creates a real danger that relevant points will be overlooked. The consequences of any such omission or oversight can be severe. If a party fails to raise a point before the ALJ, it may well have waived its right to raise that issue before the Board. See, e.g., *Local 520, IUOE (Mautz & Oren, Inc.)*, 298 NLRB 1098, 1098 n.3 (1990); *Hydro Logistics, Inc.*, 287 NLRB 602, n.1 (1987). Issues not raised before the Board, of course, cannot ordinarily be raised on appeal. See NLRB Section 10(e).

For all of the reasons discussed above, we believe that dispensing with briefs is fundamentally unfair to the participants in Board proceedings. We further believe that this practice will erode the quality of decision-making by ALJs. As any decision-maker can attest, the decisional process is greatly facilitated by access to thorough and competent written arguments on both sides of the issue. Substituting hasty and perhaps ill-considered oral presentations for written briefs cannot help but make the job of the ALJ more difficult, as well as that of the Board members and federal judges who must review the ALJ's decision.

The provision allowing ALJs to issue decisions from the bench is perhaps even more objectionable. First of all, the threat to the quality of ALJ decisions posed by dispensing with briefing will only be compounded by the absence of a written ALJ decision. In essence, the Judge will have just heard oral arguments, which were constructed without benefit of time for assimilation, research, organization and reflection. The judge will thereupon render a decision, without an independent opportunity for assimilation, research, organization and reflection. In our view, such a process is not a recipe for excellence—or even quality—in decision-making.

The use of bench decisions, moreover, is bound to compound the Board's difficulties in the federal courts. In recent years, reviewing courts have shown an increasing propensity to remand cases to the Board (or simply to reverse the Board outright) on grounds that the Board has not adequately articulated the basis for its decision. Our colleagues nonetheless wish to implement a rule that can only exacerbate this problem.

As the new rule recognizes, ALJ bench decisions are not exempt from the requirements of the Administrative Procedures Act (APA), which provides that all decisions "shall include a statement of * * * findings and conclusions, and the reasons or basis therefore, *on all the material issues of fact, law, or discretion presented on the record* * * *" 5 U.S.C. Section 557(c) (1988) (emphasis added). Just as the most competent of counsel will have difficulty constructing a cogent oral argument on the spot, so, too will even the ablest of ALJs have difficulty covering all the basis required by the APA in a bench decision—especially one rendered without the benefit of written briefs. The question whether the Judge's oral decision complies with the APA will thus, as noted in comments on the proposed rule,[6] provide fertile

[3] Member Stephens finds the construction of Section 10(c) by the majority in *Plastic Film Products Corp* highly questionable, but he agrees that it at least presents an additional issue that parties might raise in the courts when seeking review of cases decided by bench rulings. As we argue below, to the extent that further grounds for appellate litigation are provided, the asserted delay minimizing objective of the rule is undermined

[4] As noted *infra*, the General Counsel will ordinarily have some prior knowledge of the specifics of the respondent's case, with the extent of that knowledge varying with the degree of cooperation extended by the respondent during the pre-complaint investigation

[5] See comments of Thomas A. Lenz (Atkinson, Andelson, Loya, Ruud & Romo) at 2; William K Harvey (Jackson, Shields, Yeiser & Cantrell) at 1

[6] See Comment of Jeffrey C McGuiness (Labor Policy Association) at 3

ground for litigation before the circuit courts as well as the Board.

In addition, we are not convinced that resorting to bench decisions will result in any net savings of time—the driving force behind this provision. Litigation over the adequacy of the Judge's oral findings is almost certain to add time at both the Board and court levels. Indeed, the mere opportunity to litigate this procedural issue may result in the appeal of cases that would not otherwise be taken up—for instance, Section 8(a)(3) cases that turn largely on the Judge's factual findings. Moreover, where the Judge has indeed failed to make all the proper findings, the Board will have to attempt, where possible, to supply the missing ingredients itself, or else remand the case for further findings—both time-consuming processes. Further remands will be doubt occur at the circuit court level when the court disagrees with the Board's determination regarding the adequacy of the findings.

Thus, litigation over the "adequacy" issue, and the necessity for remands in some cases, will add time to the process. In our view, this additional time will likely be greater than the time saved by dispensing with a written decision.[7] Whereas a remand will likely result in a minimum of several months of delay, requiring a written decision (after the filing of briefs) should add at most several weeks to the decision time in a "simple" case—a period that can be kept to a minimum by encouraging ALJs to set short briefing schedules in appropriate cases.

In this regard, we do not share our colleagues' apparent belief that remands can be avoided by carefully culling out only relatively simple cases. The rule, of course, does not confine use of the procedure to any particular kind of case. Even if ALJs attempt to abide by the "suggestions" put forth by the Board, there will undoubtedly be cases where the prediction is not borne out. A case that appears "simple" may turn out not to be so simple after all. This is particularly true, given the absence of discovery. The fact that the ALJ knows little about the case until the evidence unfolds at trial increases the risk that a case that appears at first blush to require only a straightforward credibility determination or the application of a well-settled principle of law may, upon reflection, turn out to involve much more.

[7] See also Comment of Jeffrey C. McGuiness (Labor Policy Association) at 3–4.

4. The Comments

The concerns set forth above are shared by most of the persons and organizations submitting comments. The great bulk of the comments submitted to the Board express strong opposition both to dispensing with briefs and to oral ALJ decisions.[8] Indeed, the proposed rules are characterized in such terms as "ill-advised", "unwarranted", and as "sacrific[ing] accuracy, fairness and quality for expedience."[9] The sole comment that fully supports the proposed rule completely ignores one of our primary sources of concern (discussed extensively in our earlier statement as well as in our dissent today)—the lack of discovery in Board proceedings. The comment is thus unpersuasive.[10]

5. Conclusion

Like our colleagues, we are in favor of expediting the Board's processes. The rules being implemented today, however, are unlikely to achieve that end, and in any event would do so at a cost that is much too high to pay. That price includes: a lack of fundamental fairness in Board proceedings, a decline in the quality of the agency's decisional product, and increasing tension in our relationship with the federal courts.

In our quest for speed, we must be careful not to undermine the fundamental goals of fairness in our decisional procedure and excellence in our decisional product. Because we believe that the rules approved by our colleagues will do just that, we dissent.

[8] See Comments of Jeffrey C. McGuiness (Labor Policy Association) at 2 ("strongly opposed" to proposed rule changes); William K. Harvey (Jackson, Shields, Yeiser & Cantrell) at 1 (same); Ellen J. Dannin (California Western School of Law) at 2 (opposing "all but the most limited use of such a process"); see also Comments cited *infra* note 8. All told, six of the eight comments expressed adamant opposition to these proposed changes.

[9] See, respectively, Comments of Philip J. Moss (Moon, Moss, McGill & Bachelder) at 1; Thomas A Lenz (Atkinson, Andelson, Loya, Ruud & Romo, Bachelder) at 1; Charlotte Herbert (Associated Builders and Contractors) at 1

[10] See Comment of Laurence Gold & James Coppess (AFL–CIO). This comment asserts that "a number of federal administrative agencies expressly authorize oral decisions by ALJs," and urges us to join the crowd. See id. at 5. Its citations support this claim as to three agencies or administrative bodies—the Maritime Administration of the Department of Transportation, the National Transportation Safety Board, and the Department of Agriculture. The rules of two of these bodies, however, expressly provide for discovery, see 49 C.F.R. Section 821.19 (1993) (National Transportation Safety Board); 46 C.F.R. Section 201.109 (1993) (Maritime Administration); and those of the third provide for a pre-hearing conference at which the Judge may compel the parties to furnish certain information regarding their case, including documents they intend to introduce, see 7 C.F.R. Section 1.140 (1994) (Department of Agriculture). This comment's analogy to bench decisions issued by the federal district courts is similarly wide of the mark; those proceedings, of course, are conducted in accordance with the Federal Rules of Civil Procedure, which provide for extensive pre-trial discovery.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, and 1926

RIN 1218–AB02

Hazard Communication; Correction

AGENCY: Occupational Safety and Health Administration.

ACTION: Correcting amendments.

SUMMARY: This document contains three corrections to the amendments to the hazard communication final rule, which were published February 9, 1994 (59 FR 6126).

EFFECTIVE DATE: December 22, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3647, Washington, DC 20210; telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION:

Background

Amendments to OSHA's Hazard Communication Standard (HCS) were published on February 9, 1994 (59 FR 6126). The modified final rule included a number of minor changes and technical amendments to further clarify the requirements of the HCS published August 24, 1987 (52 FR 31852). The amendments included a new exemption to the standard's requirements. Section (b)(6)(ii) intended to exempt any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), only when subject to comprehensive regulations issued under the Act by the Environmental Protection Agency (EPA).

Need for Correction

The language of the CERCLA exemption was patterned after the language of the Resources Conservation and Recovery Act (RCRA) exemption that precedes it. However, this has led

to possible misinterpretation because CERCLA, unlike RCRA, regulates many chemicals in the limited circumstances of remedial and removal actions and does not pervasively regulate those chemicals. It was OSHA's intent to exempt CERCLA-listed chemicals only in circumstances where they are fully regulated by EPA, making OSHA's HCS requirements duplicative.

Consequently, OSHA is correcting the language to make this clear. The new language states that the exemption applies to any hazardous substance as that term is defined by CERCLA when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with EPA regulations.

This document also corrects a typographical error in section (c) of the standard and eliminates a confusing clause.

List of Subjects

29 CFR Part 1910

Chemicals, Hazardous substances, Labeling, Occupational safety and health.

29 CFR Parts 1915, 1917, 1918, 1926

Hazardous substances, Occupational safety and health.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

PART 1917—MARINE TERMINALS

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Accordingly 29 CFR Parts 1910, 1915, 1917, 1918 and 1926 are corrected by making the following correcting amendments:

PART 1910—[AMENDED]

1. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Order 12–71 (36 FR 8754), 9–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR Part 1911

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances which have exposure limits listed in Tables Z–1, Z–2 and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)):

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Tables Z–1, Z–2 and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under Sec. 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1025 also issued under 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Section 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

PART 1915—[AMENDED]

2. The authority citation for part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911

Section 1915.99 also issued under 5 U.S.C. 553.

PART 1917—[AMENDED]

3. The authority citation for part 1917 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable, 29 CFR part 1911

Section 1917.28 also issued under 5 U.S.C. 553.

PART 1918—[AMENDED]

4. The authority citation for part 1918 continues to read as follows:

Authority: Sec 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

PART 1926—[AMENDED]

5. The authority citation for subpart D of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

§§ 1915.1200, 1917.28, 1918.90, 1926.59 [Amended]

6. The following amendments are made in §§ 1910.1200, 1915.1200, 1917.28, 1918.90 and 1926.59, which contain identical text:

a. The phrase "convey the specific physical or health," in the definition of *Hazard warning* in paragraph (c) is revised to read "convey the specific physical and health,".

b. The phrase "over-the-counter may also, as an alternative to keeping a file of material safety data sheets for all hazardous chemicals they sell, provide material safety data sheets" in paragraph (g)(7)(iv) is revised to read "over-the-counter may also provide material safety data sheets".

c. Paragraph (b)(6)(ii) is revised to read as follows:

§ _____ Hazard communication.

* * * * *

(b) * * *

(6) * * *

(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation and Liability ACT (CERCLA) (42 U.S.C. 9601 *et seq.*) when the hazardous substance is the focus of remedial or removal action being conducted under CERCLA in accordance with Environmental Protection Agency regulations.

* * * * *

Signed at Washington, D.C. this 29th day of July 1994

Joseph A. Dear,

Assistant Secretary of Labor for Occupational Safety and Health

[FR Doc. 94–31377 Filed 12–21–94, 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 6

RIN 1024–AB95

Solid Waste Sites in Units of the National Park System

AGENCY: National Park Service, Interior

ACTION: Final rule.

SUMMARY: The National Park Service (NPS), in accordance with 16 U.S.C. 460*l*–22, by this rule restricts the creation of new solid waste disposal sites in units of the National Park System and controls the operations of such sites, in existence as of September 1, 1984, so as to minimize adverse effects to the environment and visitor enjoyment in units of the National Park System.

EFFECTIVE DATE: These regulations will become effective on January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Shawn Norton, National Park Service Engineering and Safety Services Division, 800 North Capitol Street, Washington, DC 20001, (202) 343–7040.

SUPPLEMENTARY INFORMATION:

Background

In 1984, the Congress enacted legislation, Pub. L. 98–506 (98 Stat. 2338) codified at 16 U.S.C. 460*l*–22(c) (the Act), to prohibit the operation of "solid waste disposal sites" within units of the National Park System except for those "operating as of September 1, 1984," or those "used only for disposal of wastes generated within that unit so long as such site will not degrade any of the natural or cultural resources" of the unit. The Act went on to direct the Secretary of the Interior to promulgate regulations to "carry out the provisions of this subsection, including reasonable regulations to mitigate the adverse effects of solid waste disposal sites in operation as of September 1, 1984, upon the property of the United States." The regulations implement those statutory provisions. Further authority for the restriction and controls on operations of existing solid waste disposal sites is found in the Act of August 16, 1916, as amended, (NPS Organic Act) codified at 16 U.S.C. 1 and 3.

Summary of Comments

These rules were published in proposed form for public comment on December 13, 1993 (58 FR 65141–65149) with a comment period of 60 calendar days. The comment period closed at the end of business, February 11, 1994. The National Park Service received seven timely comments regarding the proposed regulations. Because Federal offices in Washington, DC were closed on February 11, 1994 due to a snow emergency, and the NPS could not accept comments on that day, the NPS accepted comments received on Monday, February 14, 1994. Comments were received from two States, two individuals, one organization, and two offices within the National Park Service. Of the seven comments, three were either fully supportive of the rule or advocated further restrictions. The other four comments questioned both the scope and the meaning of the rule.

Analysis of Comments

Section 6.2 Applicability and Scope

The regulations are generally applicable to any solid waste disposal site operated in, or proposed for operation in, units of the National Park System. Two comments sought clarification of this rule and how it coincides with State regulations. The States, under the overall aegis of the U.S. Environmental Protection Agency (EPA), are the primary regulatory authorities for solid waste disposal sites on all lands within the boundaries of National Park System units, including Federal lands (See Resource Conservation and Recovery Act at 42 U.S.C. 6961). This rule does not duplicate existing State regulatory controls for solid waste disposal sites in units of the National Park System. Rather, this rule governs the conditions under which a solid waste disposal site may exist within the boundaries of a National Park System unit, not whether the site meets the standards of EPA and State regulations.

The National Park Service does not intend to displace the States by administering the standards of 40 CFR parts 257 and 258, Solid Waste Disposal Facility Criteria, to sites within the boundaries of National Park System units.

One comment asked what action the National Park Service would take should the appropriate unit of State or local government fail to apply the standards at 40 CFR parts 257 and 258 to a solid waste disposal site within a National Park System unit. In such cases, the NPS Regional Director for the unit involved would notify the EPA and the appropriate States to secure enforcement of regulations by the proper entity. Where an operator of a solid waste disposal site is governed by a National Park Service permit under 36 CFR 6.4, 6.5, or 6.6 of this part, the Regional Director may, among other things, revoke a permit to operate under § 6.12 of this part for operator failure to comply with EPA or State regulations governing solid waste disposal. Language has been added to § 6.12 of the final rule to include noncompliance with State regulations or standards at 40 CFR parts 257 and 258 as a basis for which permit revocation, forfeiture of bond, or penalties may be applied.

One comment requested that the rule also apply to solid waste disposal sites adjacent to units of the National Park System. In the context of Pub. L. 98–506, the Service concludes that the regulation of existing sites and the prohibition of new sites apply only to lands and waters within the boundaries of a National Park System unit. Therefore, the final rule does not extend its reach beyond unit boundaries.

Three comments questioned whether the rule applies to nonfederal lands within the boundaries of National Park System units. The final rule, as does the proposed, applies to all nonfederal lands within such boundaries, without regard to title. Congress explicitly directed that the law apply "* * * within the boundary of any unit of the National Park System." It is not within the authority of the National Park Service to rewrite an act of Congress and limit the rule's applicability to only "Federal lands within the boundary."

There are many statutes establishing National Park System units. A brief survey of these statutes disclosed that the phrase "within the boundaries" is commonly employed to refer to both Federal land and nonfederally owned land or interests in land within the outer boundaries a unit. The statute, Pub. L. 98–506, that mandates this final rule specifically uses the term "*within the boundary* of any unit of the National Park System." (Emphasis added)

One comment from Alaska noted that 36 CFR 1.2 applies only certain regulations to nonfederal lands, and then, only in those units under the concurrent or exclusive legislative jurisdiction of the United States. However, the self-imposed limitation of 36 CFR 1.2(b) applies only to regulations at 36 CFR parts 1 through 5 and 7. Because Congress specifically enacted a statute, Pub. L. 98–506, that applies to all lands within the boundaries of a unit, the regulations derived from that statute are not limited by 36 CFR 1.2(b).

The situation most analogous to 36 CFR part 6 is 36 CFR part 9, subpart A, Mining and Mining Claims. The regulations at 36 CFR part 9A apply to all mining claims within a unit, both patented and unpatented, and in all parks, even in those where the United States exercises neither concurrent nor exclusive legislative jurisdiction. Thus, for example, patented claims, which are private property in every sense of the word, in Death Valley National Monument, or the Kantishna area of Denali National Park and Preserve (areas of proprietary jurisdiction only) are governed by 36 CFR part 9 subpart A, notwithstanding 36 CFR 1.2(b). The same principle applies to 36 CFR part 6.

Three comments questioned whether the regulations apply to nonfederal

lands within unit boundaries in units of the National Park System specifically in Alaska. (Alaska units of the National Park System contain approximately 2.7 million nonfederal acres of a total of over 54 million acres encompassed within their boundaries, or approximately 5% of the total acreage.)

The basis for the comments from Alaska lies in section 103(c) of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3103(c)). That language states:

> Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit. No lands which, before, on, or after the date of enactment of this act, are conveyed to the State, to any Native Corporation, or any private party shall be subject to the regulations applicable *solely* to public lands within such units. If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall *become part of the unit*, and be administered accordingly (Emphasis added)

The comments from Alaska cite this language to raise the significant issue of whether nonfederal lands within National Park System units in Alaska are part of the units at all, and thus subject to any NPS regulations, including the final rule at 36 CFR part 6.

Section 103(c) language creates a question of statutory interpretation. Namely, does this section effectively render the solid waste site law (Pub. L. 98–506), and its implementing regulations, inapplicable to all nonfederal lands in National Park System units in Alaska? Or does it simply mean that the non-federal lands are not be to be administered as part of the conservation unit in the same manner as the Federal lands? It is the Service's opinion that the language of section 103(c) does not render the final rule at 36 CFR part 6 inapplicable to nonfederal lands in units of the National Park System in Alaska because of the presence of the word "solely." Since Pub. L. 98–506 authorizes the regulation of solid waste disposal sites, and prohibits all but certain such sites, "within the boundary of any unit of the National Park System," neither the law, nor its regulations apply "solely" to public lands within the units.

The other possibility is that section 103(c) renders Pub. L. 98–506 inapplicable by its own terms. Pub. L. 98–506 applies "within the boundary of any unit of the National Park System." The first sentence of section 103(c) specifies:

> Only those lands within the boundaries of any conservation system units which are public lands (as such term is defined in this Act) shall be deemed to be included as a *portion of such unit*. (Emphasis added)

Under this argument, since nonfederal lands are not "a portion of" a unit, they are not "within the boundary of a National Park System unit" and thus not subject to this regulation. The Service believes that the better view of the law negates this argument.

Pub. L. 98–506 applies "within the boundary of any unit of the National Park System." Words in a statute generally are to be given their common meaning. The common understanding of the words "within the boundary" is that something be within the outer limits. It does not mean the same thing as "a portion of." Perhaps the best indication of this analysis is the use of the word "within" in the Alaska Lands Act itself. Section 1301(b)(7) (16 U.S.C. 3191(b)), refers to "privately owned areas, if any, which are *within such unit*." Thus, while there are no privately-owned areas which are "a portion of" the unit, the Alaska Lands Act recognizes that there are privately-owned areas "within" a unit.

Section 103(c) itself speaks of "only those lands within the boundaries of any conservation system unit which are public lands," thus implying the existence of non-public lands within those boundaries. The Service therefore concludes from the language of section 103(c) itself that nonfederal lands are "within" the boundaries of Alaska units of the National Park System even if they are not "a portion of" the unit.

The comments from Alaska offer an opportunity to further clarify the applicability of 36 CFR part 6 and illuminate the exceptions to this rule that are specifically aimed at small private residential inholders. Persons who either reside or farm within the exterior boundaries of a National Park System unit need not submit a request and obtain a permit from the Regional Director for the disposal of residential or agricultural wastes on their lands.

The proposed rule at § 6.2(c)(iii) stated that such waste could be disposed of "on lands or waters" that "he or she owns or leases" within the unit. In response to two comments, the final rule deletes the word "waters" since disposing of solid waste in water or wetlands may likely violate other laws. In the interest of gender neutrality, the word "person" is substituted for "he or she."

One comment noted that § 6.2(d) exempts the NPS from its own rules at this part. Two comments asked how the NPS will ensure compliance with conditions of § 6.4 for NPS-operated solid waste disposal sites, if the procedural, administrative, financial assurance and penalty provisions of the proposed regulations do not apply to NPS operated solid waste disposal sites. The NPS will adhere to the conditions of § 6.4 (for a new or expanded existing solid waste disposal site) and to the conditions of § 6.5 (for existing NPS operated solid waste disposal sites) as a matter of policy and special directive. In addition, the NPS will comply with the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and, at a minimum, prepare an environmental assessment for any new, or expansion of any existing, solid waste disposal site that the NPS proposes. The final rule changes the word "procedural" at § 6.2(d) to "permit" for clarity. The reason why the permit, bond and penalty provisions do not apply to the NPS is that there is no means by which the NPS may be both the permitting agency and the permittee, the bond-poster and the bond-holder, the enforcer and the violator, simultaneously.

Section 6.3 Definitions

In response to one comment, note that the proposed, as well as the final, definition of the term "agricultural waste" includes waste resulting from the "harvesting of . . . trees."

One comment specifically sought clarification about whether concession operations in parks, whether under contracts or commercial use licenses are "exempt" from the regulations. This question is best answered by discussing the definition of the term "National Park Service activities." There must be a necessary connection between the NPS and the establishment of a solid waste disposal site after the passage of the Act. "National Park Service activities" includes activities conducted by NPS contractors, concessionaires and commercial use licensees because such persons, under agreement with the NPS, provide eating, lodging, transportation and other services to park visitors or to park management itself. Since the NPS may operate a new solid waste disposal site within a unit for NPS activities, the NPS may approve new sites for the disposal of solid waste generated by NPS contractors, concessionaires and commercial use licensees. Such persons may also dispose of solid waste in existing NPS operated or approved sites.

While NPS contractors, concessionaires and commercial use licensees may dispose of solid waste on lands within a unit, any proposal by such a person to establish their own new site for solid waste disposal, or continue to operate and use their own

existing solid waste disposal site, is fully governed by 36 CFR 6.4 or 6.5 respectively.

The disposal of solid waste by such persons, while permissible on lands within a National Park System unit, must be subject to full NPS scrutiny. The NPS has a fundamental obligation to ensure that contractors, concessionaires and commercial use licensees dispose of solid waste on lands within a unit, even the remote lands in Alaska, in an environmentally sensitive manner.

"Residential waste," as defined in § 6.3, means waste generated by the normal activities of a household. One comment suggested that the residential waste exception at § 6.2(c) not include paper, plastic and metal. Since the § 6.2(c) exception is intended to minimize the solid waste stream by providing an alternative disposal means for agricultural or residential solid wastes that are compostible, we have partially adopted the suggestion. The final rule defines "residential waste" to exclude plastic and metal waste, since these are not compostible.

One comment appeared to confuse the "residential waste" exception of this part with the "household waste exclusion" that exists under Resource Conservation and Recovery Act (RCRA) regulations at 40 CFR 261.4(b)(1). The definition of "residential solid waste" used in this part comes from 40 CFR part 243. That definition means waste generated by the normal activities of households. This definition applies only to residences, not to commercial activities, such as lodges, motels or eating establishments. On the other hand, the EPA definition at 40 CFR 261.4(b)(1) broadly excludes "household waste" from the legal meaning of hazardous waste. The 40 CFR part 261 meaning of "household waste" includes waste generated by residences AND commercial lodging and eating establishments. It does not follow that because 36 CFR part 6 largely excludes residential waste from its control, that the NPS is also somehow excluding waste disposal from commercial lodging or eating establishments. The fact that wastes generated by such establishments are specifically excluded from the definition of "hazardous waste" under RCRA regulations does not make such wastes "residential wastes" for the purposes of this regulation. These two issues are unrelated and are addressed in separate sections of this regulation.

One comment suggested that the proposed definition of "solid waste disposal site" is so broad that it would encompass lands where the Exxon Valdez spilled oil. The Service agrees, and inserts language in the final definition of "solid waste disposal site" to make clear that 36 CFR part 6 does not govern discharges of materials, or substances into the environment that are covered by such laws as the Clean Water Act (33 U.S.C. 1321(b)(3)) and the Comprehensive Environmental Response and Compensation and Liability Act (42 U.S.C. 9601 *et seq.*). It was never the intent of the NPS to regulate such discharges or deposits as if they were "solid waste disposal sites."

One comment suggested that this rule also govern "transfer stations," since they are places where solid waste is deposited, albeit temporarily. Because such stations may be places of significant degradation to park resources resulting from noise, litter, visual intrusion, runoff and traffic, the Service has decided to include transfer stations in the definition of a "solid waste disposal site."

Section 6.4 Solid Waste Disposal Sites Not in Operation on September 1, 1984

Note that the EPA's definition of "hazardous waste" at 40 CFR part 261 excludes wastes generated by households (including single and multiple family residences, hotels and motels). In light of one comment, the Service reiterates that such waste is not "legally" hazardous. This "household waste exclusion" is mentioned here again because it is important to point out that the prohibition at § 6.4(a)(6)(i) and at § 6.5(c)(3)(i) does not prevent the NPS from accepting for disposal at NPS-operated solid waste disposal sites, solid wastes such as used oil, grease, paints, solvents, cleaning agents, or pesticides that are generated by "households." Such materials are not "legally" hazardous waste when discarded by households (including hotels, motels, restaurants, single or multiple family residences).

Thus, as long as such waste is generated by National Park Service activities, such as garbage collection from park/concessionaire employees, they may be disposed of in an NPS-operated solid waste disposal site.

Section 6.5 Solid Waste Disposal Sites in Operation on September 1, 1984

In response to comments from the NPS Alaska Region, the Service points out that both the proposed and the final rule recognize that some communities may lie wholly within the boundaries of a unit of the National Park System in Alaska. Such communities may exhaust the capacity of their existing solid waste disposal site. Such communities may request that the Regional Director permit them to expand an existing site within the unit. The Regional Director must normally judge such a request under the conditions in § 6.4. However, the Regional Director will instead judge a request for expansion of an existing site under the approval conditions of § 6.5(c), if the operator shows that the solid waste is generated solely from within the boundaries of the unit, the operator owns or leases the lands proposed for the expansion, and the solid waste disposal site lacks road, rail or adequate water access to any lands outside of the unit for all, or substantial, portions of the year.

Section 6.6 Solid Waste Disposal Sites Within New Additions to the National Park System

One comment indicates that this section applies to units of the National Park System created in Alaska in 1980. Although the regulation plainly states it, the Service repeats that this section applies only to lands and waters that fall within the boundaries of a unit of the National Park System as a result of unit establishment or expansion after the effective date of the regulations as final.

Section 6.7 Mining Wastes

One comment asked how this part applies to operations on mining claims. This section is intended to clarify the relationship between the final regulations governing solid waste disposal and existing regulations at 36 CFR part 9, Minerals Management, that govern mineral operations. Without this section, this final regulation would govern solid waste disposal sites by all mineral operators. The NPS now regulates solid waste disposal by many mineral operators and does not intend to create a duplicate regulatory scheme for such operators. Thus, this section excludes from the permit and financial assurance provisions of the final regulations solid waste disposal sites by operators that are, now or prospectively, governed by NPS regulations at 36 CFR part 9 or the terms of a Federal mineral lease.

Section 6.8 National Park Service Solid Waste Responsibilities

One comment asked if the NPS would establish a household "harmful" waste collection program for its inholders. The answer is "No." Inholders may not dispose of their waste in NPS operated solid waste disposal sites. Nor is the NPS in the business of collecting waste from inholders. Moreover, the NPS will establish collection programs for household waste that, though not legally

hazardous, may be harmful, ONLY in those units where the NPS operates a solid waste disposal site.

The same comment then seemed to suggest that since the regulations at 36 CFR 6.8(b) mandate the establishment of collection programs for "household hazardous wastes" ONLY for parks that operate solid waste disposal sites, then only such parks need have hazardous waste collection programs. This is incorrect. Every park that generates waste that is defined by 40 CFR part 261 as hazardous, must collect, store, handle and manage that waste under the regulations governing such waste prescribed under Subtitle D of RCRA. To eliminate confusion, the final rule at § 6.8(b) no longer refers to "household hazardous waste" which legally is not "hazardous" but to "harmful wastes generated by residential activities."

One comment asked why the requirements of § 6.8(c) apply only to "carbonated beverages in containers" as opposed to all beverage containers. The rule does not propose to go beyond 40 CFR part 244. Regulations at 40 CFR part 244 require deposit systems only for containers holding "carbonated beverages."

Section 6.12 Prohibited Acts and Penalties

One comment asked if this section applies the penalties to solid waste disposal sites on "private inholdings." The answer is yes, 36 CFR part 6, including its penalty provisions, applies to solid waste disposal sites on nonfederal lands, insofar as such lands are within the boundaries of a unit of the National Park System.

Section-by-Section Analysis

Section 6.2 Applicability and Scope

The regulations are generally applicable to any solid waste disposal site operated in, or proposed for operation in, units of the National Park System. While the NPS is concerned with the disposal of all solid wastes on all lands and waters within unit boundaries, the rule provides for certain exceptions. This final rule at § 6.2(c) does not require that all persons who either reside or farm within the exterior boundaries of a National Park System unit submit a request and obtain a permit from the Regional Director for the disposal of residential or agricultural wastes on their lands. Paragraph (c) provides that a person residing within the boundaries of a unit of the National Park System may dispose of certain solid wastes without a permit or penalty unless the person requires a State or local permit or license to dispose of solid waste. The final rule enumerates conditions under which such persons may dispose of waste. This exemption does not apply to the disposal of agricultural pesticides, pesticide equipment or containers.

This exception is intended to minimize the solid waste stream by providing an alternative disposal means for agricultural or residential solid wastes that are compostible.

If the Superintendent of the affected unit determines that the disposal of agricultural or residential solid wastes poses a reasonable probability of threat to public health or the environment, as described in the regulations at 40 CFR part 257, the Superintendent will notify the Regional Director and the resident that the request, permit, and penalty provisions of 36 CFR part 6 are applicable.

Paragraph 6.2(d) explains the effect of the regulations on NPS operated sites. Existing and new solid waste disposal sites operated or proposed by the NPS for administration of the National Park System must meet the standards prescribed in 40 CFR subchapter I, specifically at 40 CFR part 241, Guidelines for the Land Disposal of Solid Waste; part 257, Criteria for Classification of Solid Waste Disposal Facilities and Practices, and part 258 Criteria for Municipal Solid Waste Landfills, and by appropriate State laws. The permit, administrative, financial assurance and penalty provisions of the final rule do not apply to NPS operated landfills. However, the NPS will adhere to the conditions of § 6.4 to establish a new, or expand an existing, solid waste disposal site for NPS activities. The NPS will also adhere to the conditions of § 6.5 to continue operations at existing NPS operated solid waste disposal sites. In addition, the NPS will comply with the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and, at a minimum, prepare an environmental assessment for any new, or expansion of any existing, solid waste disposal site that the NPS proposes.

Section 6.3 Definitions

The definitions section of the rule applies to terms that are not otherwise defined in 36 CFR part 1. The words defined in the rule either come from the legislation on which the rule is based or are included to enhance the clarity and accuracy of the rule. The primary purposes of the definitions are to make clear the reach and applicability of the rule for the NPS and the regulated community and to ensure that actions taken under the rule are consistent and predictable. In most cases, other statutes serve as the bases for the precise wording selected. These statutes are referred to in the discussions of the definitions.

The term "boundaries" of any unit of the National Park System comes from the language of the statute. It is defined in the final rule to include all lands within units of the National Park System, regardless of jurisdictional status or ownership. Many units of the National Park System include nonfederal lands. Solid waste disposal on both Federal and nonfederal lands within National Park System unit boundaries come under the purview of this rule.

Because there are no limitations on applicability to any class or type of lands in the statutory language, the rule defines the term broadly. The definition includes waters as well as lands because of the breadth of the statutory language and because the effects of such solid waste disposal sites are not limited to lands, but can also affect waters, particularly groundwater.

The final rule adds a definition for the term "compostible materials." The Service determines that facilities for the management of compostible materials are not solid waste disposal sites for the purpose of these regulations.

Also defined is the term, "National Park Service activities." It is explained for two reasons: First, to clarify that there must be a necessary connection between the NPS and the establishment of solid waste disposal sites after the passage of the Act; second, beginning one year after the effective date of the regulations, only persons engaged in "National Park Service activities," as defined herein, may dispose of solid waste in an NPS operated solid waste disposal site. "National Park Service activities" thus includes activities conducted by NPS contractors, concessionaires and commercial use licensees. Such persons, under agreement with the NPS, provide eating, lodging, transportation and other services to park visitors. Since new solid waste disposal sites may be established in National Park System units for NPS activities only, new sites may accept for disposal waste generated only by these persons. NPS contractors, concessionaires, and commercial use licensees may also dispose of solid waste in existing NPS operated sites. "National Park Service activities" do not include activities engaged in by Special Use Permittees (Form 10–114). Waste disposal by Special Use Permittees and others is governed by all the substantive, permit, financial assurance and penalty provisions of § 6.4 for a new waste disposal site, or § 6.5 for an existing site.

The word "degrade" also comes from the statute and is defined as "to lessen in quantity, quality, or value." It is included in the terms defined in the rule for the sake of clarity and predictability. Since the statutorily mandated standard for any solid waste disposal site operating in a park unit is that the operation not "degrade" park resources, this section provides guidance as to how the term degrade is to be used by the NPS in determining such effects.

The terms "agricultural solid waste," "residential solid waste" and "leachate," are defined as they are in the regulations that govern solid waste under the authority of the Resource Recovery and Conservation Act (42 U.S.C. 6901 *et seq.*) and implemented at 40 CFR part 243, Guidelines for the Storage and Collection of Residential, Commercial, and Institutional Solid Waste. The term "hazardous waste" refers to the definition of such solid waste prescribed at 40 CFR part 261, Identification and Listing of Hazardous Wastes.

"Natural resources" is defined here so as to provide a comprehensive inventory of the inherent attributes of National Park System units that may be affected by solid waste disposal sites. The detailed listing of resource attributes is designed to enable the agency and the regulated community sufficient consistency and specificity to evaluate potential effects to the parks. The Report of the House Committee on Interior and Insular Affairs (House Report 98–1069) that accompanied the Act said, "the conditions of noise, air pollution, waste disposal in surrounding lands, rat and other pest problems, and area disruption due to heavy truck use that are created by these waste disposal sites have resulted in a deep concern over the degradation of park values." In another section, the Report stated "The Committee notes that the operation of solid waste disposal sites within units of the National Park System causes deterioration of air and water quality, increases levels of mechanical noise, and has the potential to degrade land and water areas that are in relatively natural condition and areas containing significant cultural values, and that the operation of such disposal sites renders adjacent lands, and waters, unfit for full public use and enjoyment." In light of the Committee's broad findings concerning what may constitute natural resources affected by solid waste disposal sites, the drafters have chosen to provide a broad definition for this term.

The definition of the term "National Park System," mirrors the statutory language of 16 U.S.C. 1c. The purpose in including it here is that the term is used in the statute. Defining it in the rule clarifies the applicability of the rule.

The definitions of the terms "PCBs and PCB items" and "post closure care" is the same as used by EPA. The terms "PCBs and PCB items" are defined by regulations at 40 CFR part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Distribution in Commerce, And Use Prohibitions. The terms "closure" and "post closure care" are described at 40 CFR part 258.

At the heart of this regulatory package are the management and control of "solid waste." The National Park Service defines the term similarly to that used in RCRA regulations at 40 CFR part 258. The broad definition of solid waste included here is intended to ensure that all potential sources of adverse effects to National Park System units from such sources come under the purview of the final rule. The rule also defines two classes of solid waste—agricultural and residential—that may be exempt from the rule under clearly delineated circumstances.

Because the statute severely restricts the establishment of new "(solid waste) disposal sites" within units of the National Park System and because the term is central to any regulatory activities under the framework of the statute, it is defined in the rule. The definition is based on the statutory language in RCRA for the term "disposal." The definition explicitly states that such sites include land or waters where such solid waste may be placed.

The final rule governs solid waste transfer stations but not recycling centers, sewage treatment plants, septic systems, or facilities for managing compostible materials.

Section 6.4 Solid Waste Disposal Sites Not in Operation on September 1, 1984

The regulation permits establishing new solid waste disposal sites after September 1, 1984, within units of the National Park System, *only* with the approval of the Regional Director. This section does not apply to solid waste disposal sites in operation on September 1, 1984.

The Regional Director may approve a permit for a new solid waste disposal site only under the stringent conditions outlined in the rule that are derived from the statute. The Act states that any new sites must be "* * * used only for disposal of wastes generated within that unit of the park system * * *" This is the basis for the first approval condition. The drafters have included the phrase "solely from National Park Service activities" in recognition of the fact that the Congress acknowledged that the National Park Service might need to operate solid waste disposal sites for its own management and associated activities. The Service believes that the statutory language "wastes generated within that unit of the park system" was meant to convey a nexus between the disposal sites and activities of the NPS.

The second condition requires that there be no reasonable alternative for disposal outside the unit boundaries.

The third condition also is directly derived from the statute which says "* * * so long as such site will not degrade any of the natural and cultural resources of such park unit." The fourth and fifth conditions ensure consistency and compliance with other Federal, State, and local regulatory programs.

The sixth condition, that hazardous wastes may not be stored, handled, or disposed at solid waste disposal sites within National Park System units, recognizes the unique resource values protected in the National Park System and the fundamental incompatibility of the placement of hazardous wastes with protecting those resources. The final rule adds tires to the list of wastes that may not be disposed of at a solid waste disposal site within the boundaries of a National Park System unit.

Note that the EPA's definition of hazardous waste at 40 CFR part 261 excludes wastes generated by households (including single and multiple residences, hotels and motels). Thus, the sixth condition does not restrict disposal of household wastes in NPS operated or other solid waste disposal sites in National Park System units, as long as the waste results from National Park Service activities, such as garbage collection from park/concessionaire employees' residences.

The seventh condition, that such sites be located wholly on nonfederal lands, implements the policy of the National Park Service articulated in its *Management Policies* (1988), page 9:6. As a consequence, no such sites may be established or expanded onto Federal lands in a unit, except that the NPS may establish a new solid waste disposal site on Federal lands in a park where nonfederal lands do not exist, or are otherwise unavailable or unsuitable.

The eighth condition implements Executive Orders 11988 and 11990. The ninth and tenth conditions seek to clearly specify precise categories of facilities and lands where solid waste disposal sites would be incompatible

with NPS management and visitor enjoyment. The eleventh condition limits the size of such sites and the twelfth condition seeks to ensure that such sites will not degrade park resources and visitor enjoyment at a future date.

The request for a permit forms the basis for the Regional Director's evaluation of whether the conditions for approval listed above may be met. The Act states that its general purpose is to "protect the air, land, water, natural and cultural values of the National Park System and the property of the United States therein." Section 6.4(b) of the rule specifies the minimum amount of information necessary, in the professional judgment of the NPS, to evaluate whether the air, land, water, and cultural and natural resources of the National Park System can be protected if a proposed operation is permitted.

Finally, § 6.4(c) requires that the Regional Director reject the request if the conditions for approval detailed in paragraph (a) are not met. This section also requires that the Regional Director notify the requester of the rejection and the reasons for the rejection.

Section 6.5 Solid Waste Disposal Sites in Operation on September 1, 1984

The NPS believes that solid waste disposal sites are not an appropriate use of lands within National Park System unit boundaries. The long-term intent of the National Park Service is to eliminate, to the extent possible, such sites from within unit boundaries. In the interim, the requirements of § 6.5 are designed to ensure that any solid waste disposal sites in operation on September 1, 1984, in units of the National Park System and continuously operated since that time meet minimum standards for operation and do not degrade park resources and values.

The term "continuous operation" requires clarification. The Service determines that a solid waste disposal site existing on September 1, 1984, qualifies under § 6.5, if that site has accepted solid waste for disposal at least for some portion of each year after 1984 To be in "continuous operation" does not require that the site receive waste on a daily, weekly, or even monthly basis. Often seasonal factors, such as weather, access, and fluctuations in waste loads require that some existing sites may be used intermittently

The approval conditions of § 6.5 are designed to implement the section of the Act that requires the Secretary to promulgate regulations "to mitigate the adverse effects of solid waste disposal sites in operation as of September 1, 1984, upon property of the United States." As a result of the statutory language, the first condition requires that there be adequate mitigation of adverse effects from the operation of the disposal site. The second condition requires compliance with all applicable Federal, State, and local laws and regulations. This section, like § 6.4, requires that there be no hazardous waste disposal at any such sites because such activities are incompatible with the values and purpose of the National Park System and each unit thereof.

Several solid waste disposal sites are currently operated by nonfederal parties in units of the National Park System. Most are on nonfederal lands within the unit boundaries, while others are on Federal lands within the units. The sites on Federal lands often exist because of agreements made as conditions to Federal acquisition of specific tracts of land. The regulations will not terminate any existing agreements that are in compliance with applicable local, State, and Federal laws.

Section 6.5(c) prescribes the conditions under which the Regional Director may allow existing solid waste disposal sites to continue operations. However, the NPS intends that existing solid waste disposal sites operated by nonfederal parties will not operate indefinitely. Under § 6.5(e), a site that reaches its capacity may continue operation only if the site meets conditions applicable to new sites at § 6.4(a). For the purposes of these regulations, the capacity of a solid waste disposal site is that area, volume, or height prescribed in the State-issued permit or other instrument. Any proposal to extend the capacity of an existing solid waste disposal site beyond that specified in the permit will be treated as a proposal for a new solid waste disposal site. Such a proposal is subject to the approval conditions in § 6.4.

It is conceivable that communities that lie wholly within the boundaries of a unit of the National Park System may exhaust the capacity of their existing solid waste disposal sites. Such communities may request that the Regional Director permit them to establish a new, or expand an existing, site within the unit. The Regional Director must judge such a request under the conditions prescribed in § 6.4 However, the Regional Director will judge a request for expansion of an existing site under the approval conditions of § 6.5(c), if the operator shows that:

- The solid waste is generated solely from within the boundaries of the unit; and
- The operator owns or leases the nonfederal lands proposed for the expansion; and
- The solid waste disposal site lacks road, rail or adequate water access to any lands outside of the unit for all or substantial portions of the year. A substantial portion of the year consists of three or more consecutive months.

The principles of this section govern the NPS. Should the NPS seek to expand an existing solid waste disposal site that has reached its capacity, such an expansion is to be judged as a "new" site, governed by the approval standards of § 6.4(a).

If the NPS meets the first and third conditions of § 6.5(e)(2), the NPS may also expand an existing NPS-operated solid waste disposal site that has reached its capacity, under the standards of § 6.5(c), rather than § 6.4(a).

The final rule includes a new section (f) to address concerns about solid waste incinerators and transfer stations. The proposed and final definition of "solid waste disposal site" included incinerators. The final rule defines solid waste disposal sites to also include transfer stations. The installation of an incinerator or a transfer station where there was no site for solid waste disposal on September 1, 1984 is governed by § 6.4. Section 6.5(a) governs the continued operation of an incinerator or a transfer station where such a solid waste disposal site existed before September 1, 1984. Existing incinerators or transfer stations, just as any other solid waste disposal site, may continue to dispose of solid waste within the boundaries of a unit of the National Park System only after applying to the NPS under § 6.5(a) and under the standards of § 6.5(c).

Because incinerators or transfer stations generally do not reach capacity and require expansion, § 6.5(e) does not apply to them. Rather § 6.5(e) addresses conventional land-fill solid waste disposal sites.

Section 6.5(f) is needed to address the conversion of an existing land-fill solid waste disposal site to a transfer station after the effective date of this rule. Without § 6.5(f), an operator of an existing solid waste disposal site, approved under § 6.5(c), may not realize that converting an existing solid waste disposal land-fill to a transfer station requires a request to the NPS Regional Director and further NPS review and approval.

Section 6.6 Solid Waste Disposal Sites Within New Additions to the National Park System

This section is included in the final rule in recognition of the fact that solid

waste disposal sites, either on Federal or nonfederal lands, may be added to the National Park System through addition of new units or the expansion of existing units. *Management Policies* state that solid waste disposal sites are not compatible with the purpose of the National Park System and the intent of Congress was to eliminate solid waste disposal sites from the National Park System in the future.

Thus, solid waste disposal sites on Federal or nonfederal lands included within a unit boundaries must cease operations immediately upon expiration of the permit or license in effect on the date the lands were included within the boundaries of a National Park System unit. The NPS will grant no extensions. Paragraph (a) applies to solid waste disposal sites on both Federal and nonfederal lands included within a National Park System unit boundaries.

In the interim, and until the expiration of the permit, permittees and/or operators of such sites on Federal or nonfederal lands within the boundaries must submit a permit request and environmental report. Thus, paragraph (b) states that an operator wishing to continue solid waste disposal must request a permit within 180 days of the site's designation as lying within the boundaries of a National Park System unit.

The final rule modifies paragraph (c) to delete immediate closure as the NPS remedy under part 6 for an operator on Federal or nonfederal lands who disposes of solid waste on that land without requesting NPS approval as specified in paragraph (b). The final rule substitutes instead a broader selection of remedies and penalties as defined in § 6.12.

The final rule modifies paragraph (d) to make clear that while an operator of a solid waste disposal site on lands incorporated within the boundaries of a unit of the National Park System may continue to operate until the expiration of the permit or other license that existed on the date the lands were incorporated into the unit, such an operator may do so, only insofar as such operator meets the NPS approval standards of § 6.5(c).

Section 6.7 Mining Wastes

This section is intended to clarify the relationship between the regulations governing solid waste disposal and existing regulations at 36 CFR part 9, Minerals Management, that govern mineral operations.

Section 6.7 (b) and (c) address solid waste disposal by persons conducting mineral operations on the date these regulations become effective. Section 6.7(b) addresses existing mineral operations within a unit of the National Park System that are not governed by an NPS-approved part 9 plan of operations or terms of a Federal mineral lease. Such an operation may continue to dispose of solid waste at a site within a unit only after following the procedures and conditions prescribed in § 6.5, posting financial assurance prescribed by the Regional Director, and obtaining a permit from the Regional Director under § 6.9.

Section 6.7(c) provides that an existing mineral operation, if governed by a plan of operations approved under 36 CFR part 9 or the terms of a Federal mineral lease, may continue to operate a solid waste disposal site within a unit of the National Park System pursuant to the approved plan of operations or lease. In approving the plan of operations, the Regional Director, under part 9, should have already prescribed conditions to "* * * mitigate the adverse effects of solid waste disposal on the property of the United States * * *" associated with the operation. Congress prescribed this standard as the basis for regulations that govern all existing solid waste disposal sites.

Section 6.7(c) makes clear that where an existing mineral operation is governed by 36 CFR part 9 or the terms of a Federal mineral lease, the Regional Director's approval of the plan of operations constitutes the permit for operation of a solid waste disposal site in connection with the mineral operation. Financial assurance is not required, if a bond has been posted under 36 CFR part 9 or the Bureau of Land Management regulations that govern Federal mineral lessees.

The final regulations allow new solid waste disposal sites by mineral operators within a unit only under the conditions that Congress prescribed for solid waste disposal at 16 U.S.C. 460l–22. Thus, final § 6.7(d) addresses solid waste disposal sites operated by persons proposing mineral operations beginning after the effective date of these regulations. Such an operator is governed by the conditions at § 6.4(a) that preclude any new solid waste disposal sites within the boundaries of a unit of the National Park System, unless the waste is generated solely by National Park Service activities. Thus, persons who begin mineral operations after the effective date of the regulations, as all other persons, could not operate a new solid waste disposal site within the boundaries of a unit of the National Park System. Among the alternatives available to mineral operators are disposing of the solid waste in appropriate facilities outside the unit boundaries, or in an existing solid waste disposal site in a unit, whose continued operation has been approved by the Regional Director under § 6.5 and permitted under § 6.9.

Section 6.7(d) applies to establishment of a solid waste disposal site by a prospective operator, whether the operator is governed by regulations at 36 CFR part 9 or the terms of a Federal mineral lease. Nonetheless, the Regional Director must ensure that all persons, including those beginning mineral operations within a unit, obey the prohibition on establishing a new solid waste disposal site on all lands within a unit's boundaries. This task will be relatively simple where an operator is governed by 36 CFR part 9 or a Federal mineral lease. Where an operator is not so governed, the Regional Director must inform the operator of, and enforce, the conditions that prohibit a new solid waste disposal site. To ease the regulatory burden on a mineral operator, nothing in this part prohibits the temporary storage, or stockpiling for return, or the return of mining overburden to the mine site for reclamation purposes. Such activity does not constitute creation of a solid waste disposal site and will not be governed by the need to request or possess a permit, the conditions at § 6.4 and § 6.5, or the financial assurance requirements of § 6.9. This exception applies only to mining overburden that is not hazardous under EPA regulations at 40 CFR part 261. However, a mineral operator commencing operations after the effective date of this final rule will not be permitted to permanently abandon spoil or overburden on their lands, including on patented claims, or other nonfederal lands in a unit. Such an action constitutes creation of a new "solid waste disposal site" which Congress prohibited within the boundaries of a National Park System unit. The Service recognizes that this requirement may increase the costs of conducting mining in parks. However, the cost of conducting mining must also include the cost of reclaiming the solid waste remaining after mining is completed. The NPS cannot reasonably implement congressional intent to prohibit new solid waste disposal sites in National Park System units, and then allow mining operators to establish such sites in parks in connection with mining.

Section 6.8 National Park Service Solid Waste Responsibilities

Paragraph (a) prohibits the disposal of solid waste in NPS-operated solid waste disposal sites by persons other than those engaged in National Park Service

activities. "National Park Service activities" are defined in § 6.3 to include NPS contractors, concessionaires or commercial use licensees. In several instances, persons other than contractors, concessionaires, or commercial use licensees now dispose of solid waste in NPS operated solid waste disposal sites on Federal lands. This is an inappropriate use of Federal park lands that the regulations terminate one year after the effective date of these regulations.

Paragraph (b) directs the NPS to set up special collection program to remove harmful substances from the household waste stream where appropriate. While wastes generated by households (including hotels and motels) are not hazardous, they may be harmful to NPS resources. Therefore the NPS, under § 6.8, will establish a collection program to remove such materials from the waste stream in units where the NPS operates a solid waste disposal site. The proposed rule required that such collections be conducted every six months. The final rule requires it once each year. Each such park has the latitude to establish a collection program that best meets its circumstances, ranging from a one-day collection of certain wastes only (used oil, paints, thinners, etc.) to a continually open collection site for all harmful wastes generated by park residents.

Paragraph (c) requires that the NPS strictly adhere to the regulations at 40 CFR part 244, Solid Waste Management Guidelines for Beverage Containers. While some units may not be aware of the requirements at 40 CFR part 244 for deposit systems on Federal facilities, nonetheless the requirements are longstanding. Note that the regulations require (not simply "recommend") that Federal facilities maintain deposit and return systems on containers in which "carbonated beverages" are sold. Such containers may be plastic, glass, aluminum or steel. Parks, such as Grand Canyon National Park, that have voluntary recycling programs are not exempt from final § 6.8(c). Mandatory deposit and return systems are not replaced by voluntary recycling efforts. Rather these two approaches complement each other. As part of its environmental leadership responsibilities, the NPS seeks to address the solid waste issue with several tools, including mandatory deposit and return systems for carbonated beverage containers sold by facilities on Federal lands in units of the National Park System. Individual units that propose not to implement 40 CFR part 244 shall maintain deposit and return systems while a fully-documented request for non-implementation is being considered.

The final rule inserts a new subsection (d) at § 6.8 to address Executive Order 12873, *Federal Acquisition, Recycling and Waste Prevention*. That order mandates that all Federal agencies "shall incorporate waste prevention and recycling in the agency's daily operations and work." This requirement governs not only the NPS but also NPS concessionaires, commercial use licensees and contractors.

Section 6.9 Permits

The final rule requires that a person proposing to continue, or begin operating a solid waste disposal site within the boundaries of a unit of the National Park System must possess a permit issued under this part. The regulations exempt only two classes of persons operating solid waste disposal sites from this permit requirement. They are persons who reside or farm within a park under § 6.2(c) and existing mineral operators described by § 6.7(c).

Residents under § 6.2(c) do not require a permit and the mineral operator's permit consists of an NPS-approved plan of operations or Federal lease terms. Also note that § 6.2(c)(3) and § 6.7(e) exclude some substances from the ambit of these regulations under certain conditions.

This section also governs the issuing of a permit for the operation of a solid waste disposal site and outlines the contents of such permits. Section 6.9(b) requires that the Regional Director comply with the National Environmental Policy Act (NEPA) and other pertinent laws and executive orders before issuing a permit.

The Regional Director may find that a proposal meets the conditions under which the NPS may approve a new, or continued operation of an existing, site. If a proposal meets the conditions, the Regional Director shall then determine, through preparation of an environmental assessment, whether the Service's approval constitutes a major Federal agency action significantly affecting the quality of the human environment. When the Regional Director finds such an effect, the NPS will prepare an Environmental Impact Statement on the proposal.

Section 6.9(d) makes clear that the issuance of a Special Use Permit is the method by which the Regional Director approves a request and environmental report, and provides that the authority to issue a permit resides with the Regional Director

Paragraph (e) sets forth the minimum requirements a permit may prescribe for operating a solid waste disposal site. The requirements are aimed at reducing the potential adverse effects attributable to the operation of such sites on the property of the United States.

Section 6.10 Financial Assurance

This section prescribes the procedures for financial assurance from a solid waste disposal site operator in a unit of the National Park System.

The regulations at 40 CFR part 258 require that an operator of a solid waste disposal site for household and certain other commercial and industrial solid wastes (not including hazardous wastes) must provide an estimate of costs related to closure and post-closure care responsibilities of the site, and establish sufficient financial assurance to meet those responsibilities. The NPS sees no need to require added financial assurance, in the form of cash or surety bond guaranteeing payment or performance, where the operator has provided such a bond under regulations at 40 CFR 258.74(b). Nor will the NPS require financial assurance from an owner or operator of a site that is a State entity whose debts and liabilities are the debts and liabilities of a State. There is also an exception that may apply to mineral operators under § 6.7(c).

The NPS will require financial assurance when issuing a permit for a new, or continued operation of an existing, solid waste disposal site if the operator has not posted a bond under 40 CFR 258.74(b).

Section 6.11 Appeals

This section establishes procedures under which an applicant for a new, or continued operation of an existing, solid waste disposal site may appeal a Regional Director's decision to the National Park Service Director. Among other issues, an aggrieved operator may appeal a Regional Director's rejection of a request for continued or new operations; or conditions that the Regional Director may attach to an approval; or the amount of the bond set by the Regional Director.

Section 6.12 Prohibited Acts and Penalties

This section of the rule clarifies that operating a solid waste disposal site within a unit of the National Park System without a permit is prohibited. Operating a site in violation of a term or condition of a permit, or in violation of 40 CFR parts 257 or 258, or in violation of the equivalent State law or regulation is also prohibited. Violations of these provisions subject operators to the

penalty provisions of 36 CFR 1.3 and/or, where applicable, revocation of the permit and/or forfeiture of the bond or security deposit. These penalties apply to operators on nonfederal lands within the boundaries of a unit of the National Park System.

Federal Paperwork Reduction Act

The collections of information contained in §§ 6.4, 6.5 and 6.6 of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* and assigned clearance number 1024–0026. The information will be used to ensure compliance with Congressionally enacted statutes. Response is mandatory in accordance with 16 U.S.C. 460*l*–22.

Applicant reporting time for this collection of information is estimated to average 100 hours per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Information Collection Officer, National Park Service, 800 North Capitol Street, NW., Washington DC 20002, and the Office of Management and Budget, Paperwork Reduction Project (1024–0026), Washington, DC 20503.

Compliance With Other Laws

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the NPS has prepared an environmental assessment (EA) of these regulations. The EA examines whether the implementation of the regulations will be a major Federal action that would have a significant effect on the quality of the human environment, requiring the preparation of an environmental impact statement. The EA was available for public inspection and comment at the National Park Service Office of Environmental Quality, located in the Department of Interior Building in Washington, DC for a period running concurrently with the comment period for the proposed regulations. The Director of the NPS has signed a Finding Of No Significant Impact (FONSI) declaring the implementation of this regulation not to be a significant Federal action.

In accordance with the Regulatory Flexibility Act (Pub. L. 96–511), the NPS is requested to perform a regulatory flexibility analysis for all rules that may have a significant impact on a substantial number of small entities. The NPS has determined that this action will not have a significant impact on a substantial number of small entities since the rule deals with the location of future solid waste disposal sites and the number of existing solid waste disposal sites is small. Consequently, there is no necessity for a regulatory flexibility analysis.

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The NPS has reviewed this rule as directed by Executive Order 12360, "Government Actions and Interference with Constitutionally Protected Property Rights," to determine if this rule has "policies that have takings implications." The NPS has determined that this rule does not have takings implications because the rule will not deny any private property owner all beneficial use of their land, nor will it significantly reduce their land's value.

List of Subjects in 36 CFR Part 6

National parks, Natural resources, Penalties, Reporting and recordkeeping requirements, Waste treatment, and disposal.

For reasons set out in the preamble, 36 CFR ch. I is hereby amended by adding a new part 6 to read as follows:

PART 6—SOLID WASTE DISPOSAL SITES IN UNITS OF THE NATIONAL PARK SYSTEM

Sec.

6.1 Purpose.
6.2 Applicability and scope.
6.3 Definitions.
6.4 Solid waste disposal sites not in operation on September 1, 1984.
6.5 Solid waste disposal sites in operation on September 1, 1984.
6.6 Solid waste disposal sites within new additions to the National Park System.
6.7 Mining wastes.
6.8 National Park Service solid waste responsibilities.
6.9 Permits.
6.10 Financial assurance.
6.11 Appeals.
6.12 Prohibited Acts and Penalties.

Authority: 16 U.S.C. 1, 3, 460*l*–22(c).

§ 6.1 Purpose.

(a) The regulations contained in this part prohibit the operation of any solid waste disposal site, except as specifically provided for, and govern the continued use of any existing solid waste disposal site within the boundaries of any unit of the National Park System.

(b) The purpose of the regulations in this part is to ensure that all activities within the boundaries of any unit of the National Park System resulting from the operation of a solid waste disposal site are conducted in a manner to prevent the deterioration of air and water quality, to prevent degradation of natural and cultural, including archeological, resources, and to reduce adverse effects to visitor enjoyment.

(c) The regulations in this part interpret and implement Pub. L. 98–506, 98 Stat. 2338 (16 U.S.C. 460*l*–22(c)).

§ 6.2 Applicability and scope.

(a) The regulations contained in this part apply to all lands and waters within the boundaries of all units of the National Park System, whether federally or nonfederally owned, and without regard to whether access to a solid waste disposal site requires crossing federally-owned or controlled lands or waters.

(b) The regulations contained in this part govern:

(1) The use of solid waste disposal sites not in operation on September 1 1984, including the approval of new solid waste disposal sites;

(2) The continued use or closure of solid waste disposal sites that were in operation on September 1, 1984;

(3) The continued use or closure of solid waste disposal sites on lands or waters added to the National Park System after January 23, 1995.

(c) Exceptions.

(1) The regulations contained in this part do not govern the disposal of residential or agricultural solid wastes in a site by a person who can show that he or she:

(i) Resides within the boundaries of the unit;

(ii) Generates the residential or agricultural solid waste within the boundaries of the unit;

(iii) Disposes of the solid waste only on lands that the person owns or leases within the unit;

(iv) Does not engage in a solid waste disposal practice that poses a reasonable probability of adverse effects on health or the environment, as described by the criteria in 40 CFR part 257, Criteria For Classification Of Solid Waste Disposal Facilities and Practices found at 40 CFR 257.3–1 to 257.3–8; and

(v) Is not required to possess a State or local permit or license for the disposal of solid waste.

(2) The exemption in paragraph (c)(1) of this section does not apply to agricultural solid waste consisting of a chemical used as a pesticide, an item used to apply, or a container used to store, a pesticide.

(3) Manure and crop residue returned to the soil as a fertilizer or soil conditioner are not solid wastes for purposes of this part, and do not require a request, environmental report, financial assurance or permit issued under this part.

(d) The conditions in § 6.4(a) govern the establishment of new, or the expansion of existing, solid waste disposal sites operated by the National Park Service. The conditions in § 6.5(c) govern the continued use of existing solid waste disposal sites operated by the National Park Service. However, the permit, financial assurance, administrative and penalty provisions of this part do not apply to any solid waste disposal site operated by the National Park Service.

§ 6.3 Definitions.

The following definitions apply to this part:

Agricultural solid waste means solid waste that is generated by the rearing or harvesting of animals, or the producing or harvesting of crops or trees.

Boundaries means the limits of lands or waters that constitute a unit of the National Park System as specified by Congress, denoted by Presidential Proclamation, recorded in the records of a State or political subdivision in accordance with applicable law, published pursuant to law, or otherwise published or posted by the National Park Service.

Closure and Post-closure care means all of the requirements prescribed by 40 CFR part 258, Criteria For Municipal Solid Waste Landfills at 40 CFR 258.60 and 258.61.

Compostible materials means organic substances that decay under natural and/or human-assisted conditions within relatively short time intervals, generally not in excess of ninety days.

Degrade means to lessen or diminish in quantity, quality or value.

Hazardous waste means a waste defined by 40 CFR part 261, Identification And Listing Of Hazardous Waste. Hazardous waste does not include any solid waste listed under 40 CFR 261.4(b).

Leachate means liquid that has percolated through solid waste and has extracted, dissolved or suspended materials in it.

Mining overburden means material overlying a mineral deposit that is removed to gain access to that deposit.

Mining wastes means residues that result from the extraction of raw materials from the earth.

National Park Service activities means operations conducted by the National Park Service or a National Park Service contractor, concessionaire or commercial use licensee.

National Park System means any area of land or water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational or other purposes.

Natural resource means the components of a park, both biotic and abiotic, including but not limited to, vegetation, wildlife, fish, water, including surface and ground water, air, soils, geological features, including subsurface strata, the natural processes and interrelationships that perpetuate such resources, and attributes that contribute to visitor enjoyment.

Operator means a person conducting or proposing to conduct the disposal of solid waste.

PCBs or PCB item means an item as defined in 40 CFR part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution In Commerce, And Use Prohibitions at 40 CFR 761.3(x).

Residential solid waste means waste generated by the normal activities of a household, including, but not limited to, food waste, yard waste and ashes, but not including metal or plastic.

Solid waste means garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, and contained gaseous material resulting from industrial, commercial, mining and agricultural operations or from community activities. "Solid waste" does not include a material listed under 40 CFR 261.4(a).

Solid waste disposal site means land or water where deliberately discarded solid waste, as defined above, is discharged, deposited, injected, dumped, spilled, leaked, or placed so that such solid waste or a constituent thereof may enter the environment or be emitted into the air or discharged into waters, including ground waters. Solid waste disposal sites include facilities for the incineration of solid waste and transfer stations. Facilities for the management of compostible materials are not defined as solid waste disposal sites for the purposes of this part.

§ 6.4 Solid waste disposal sites not in operation on September 1, 1984.

(a) No person may operate a solid waste disposal site within the boundaries of a National Park System unit that was not in operation on September 1, 1984, unless the operator has shown and the Regional Director finds that:

(1) The solid waste is generated solely from National Park Service activities conducted within the boundaries of that unit of the National Park System,

(2) There is no reasonable alternative site outside the boundaries of the unit suitable for solid waste disposal;

(3) The site will not degrade any of the natural or cultural resources of the unit;

(4) The site meets all other applicable Federal, State and local laws and regulations, including permitting requirements;

(5) The site conforms to all of the restrictions and criteria in 40 CFR 257.3–1 to 257.3–8, and 40 CFR part 258, subparts B, C, D, E and F;

(6) The site will not be used for the storage, handling, or disposal of a solid waste containing:

(i) Hazardous waste;

(ii) Municipal solid waste incinerator ash;

(iii) Lead-acid batteries;

(iv) Polychlorinated Biphenyls (PCBs) or a PCB Item;

(v) A material registered as a pesticide by the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*);

(vi) Sludge from a waste treatment plant, septic system waste, or domestic sewage;

(vii) Petroleum, including used crankcase oil from a motor vehicle, or soil contaminated by such products;

(viii) Non-sterilized medical waste;

(ix) Radioactive materials; or

(x) Tires;

(7) The site is located wholly on nonfederal lands, except for NPS operated sites in units where nonfederal lands are unavailable, or unsuitable and there is no practicable alternative;

(8) The site is not located within the 500 year floodplain, or in a wetland,

(9) The site is not located within one mile of a National Park Service visitor center, campground, ranger station, entrance station, or similar public use facility, or a residential area;

(10) The site will not be detectable by the public by sight, sound or odor from a scenic vista, a public use facility, a designated or proposed wilderness area a site listed on, or eligible for listing on, the National Register of Historic Places, or a road designated as open to public travel,

(11) The site will receive less than 5 tons per day of solid waste, on an average yearly basis; and

(12) The proposed closure and post closure care is sufficient to protect the resources of the National Park System unit from degradation.

(b) A person proposing to operate a solid waste disposal site that was not in operation on September 1, 1984, must submit a request for a permit to the proper Superintendent for review by

Regional Director demonstrating that the solid waste operation meets the criteria in paragraph (a) of this section. The following information must be included in a permit request:

(1) A map or maps, satisfactory to the Regional Director, that adequately shows the proposed area of solid waste disposal, size of the area in acres, existing roads and proposed routes to and from the area of operations and the location and description of surface facilities;

(2) The name and legal addresses of the following:

(i) Owners of record of the land; and

(ii) Any lessee, assignee or designee of the owner, if the proposed operator is not the owner of the land;

(3) The mode and frequency (in number of trips per day) of transport and size and gross weight of major vehicular equipment to be used;

(4) The amount of solid waste to be received, in average tons per day and average cubic yards per day;

(5) The estimated capacity of the site in cubic yards and tons;

(6) A detailed plan of the daily site operations;

(7) A plan for the reclamation and post closure care of the site after completion of solid waste disposal;

(8) Evidence that the proposed operator has obtained all other Federal, State and local permits necessary for solid waste disposal; and

(9) An environmental report that includes the following:

(i) A description of the natural and cultural resources and visitor uses to be affected;

(ii) An assessment of hydrologic conditions of the disposal site with projections of leachate generation, composition, flow paths and discharge areas and geochemical fate of leachate constituents;

(iii) An analysis of the quantitative and qualitative extent to which natural and cultural resources will be affected based on acceptable and appropriate monitoring of existing resource conditions;

(iv) Steps to be taken by the operator to prevent degradation of air and water quality, to manage pests and vermin, and to minimize noise, odor, feeding by native wildlife and conflicts with visitor uses;

(v) An analysis of alternative locations and methods for the disposal of the solid waste; and

(vi) Any other information required by the Regional Director to effectively analyze the effects that the proposed solid waste disposal site may have on the preservation, management and public use of the unit.

(c) If the Regional Director finds that the permit request and environmental report do not meet the conditions of approval set forth in paragraph (a) of this section, the Regional Director must reject the application and notify the proposed operator of the reasons for the rejection.

§ 6.5 Solid waste disposal sites in operation on September 1, 1984.

(a) The operator of a solid waste disposal site in operation as of September 1, 1984, within the boundaries of a unit of the National Park System, having been in continuous operation on January 23, 1995, and who wishes to remain in operation, must submit to the proper Superintendent for review by the Regional Director, within 180 calendar days of January 23, 1995, a permit request and an environmental report as described in § 6.4(b) (1)–(9).

(b) Any operator who fails to submit a request as described in paragraph (a) of this section will not be allowed to continue operations and must immediately fulfill all applicable closure and post-closure care requirements.

(c) The Regional Director may approve a request to allow the continued use of a solid waste disposal site only if the operator has shown and the Regional Director finds that:

(1) Adverse effects resulting from leachate, noise, odor, vehicular traffic, litter and other activities upon natural and cultural resources will be adequately mitigated;

(2) The proposed operator meets all other applicable Federal, State and local laws and regulations, including permit requirements;

(3) The site will no longer be used for the storage, handling or disposal of a solid waste containing:

(i) Hazardous waste;

(ii) Municipal solid waste incinerator ash;

(iii) Lead-acid batteries;

(iv) Polychlorinated Biphenyls (PCBs) or a PCB Item;

(v) A material registered as a pesticide by the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.);

(vi) Sludge from a waste treatment plant, septic system waste or domestic sewage;

(vii) Petroleum, including used crankcase oil from a motor vehicle, or soil contaminated by such products,

(viii) Non-sterilized medical waste;

(ix) Radioactive materials, or

(x) Tires;

(4) The proposed closure and post-closure care is sufficient to protect the resources of the National Park System unit from degradation; and

(5) The site conforms to all of the restrictions and criteria applicable to the site under 40 CFR 257.3 and 40 CFR part 258, or where applicable, 40 CFR part 240, Guidelines for the Thermal Processing of Solid Waste.

(d) If the Regional Director finds that the permit request and the environmental report do not meet the conditions for approval set forth in paragraph (c) of this section, the Regional Director shall reject the request and notify the proposed operator of the reasons for the rejection. Within 90 calendar days of such notice, the operator of the solid waste disposal site must cease disposing of solid waste at the site. The operator may resume disposing of solid waste only upon submission and approval of a permit request and environmental report that the Regional Director determines meet the conditions set forth in paragraph (c) of this section.

(e) Site expansions. (1) A request for an existing solid waste disposal site to continue operations by expanding its capacity, laterally or vertically, is considered a request for a new solid waste disposal site and is subject to the conditions of § 6.4(a), except as provided in paragraph (e)(2) of this section.

(2) A request for an existing solid waste disposal site to continue operations by expanding its capacity, laterally or vertically, will be judged by the approval conditions of paragraph (c) of this section if the operator shows that:

(i) The solid waste is generated solely from sources within the boundaries of the unit;

(ii) The area proposed for site expansion encompasses only nonfederal lands owned or leased by the operator; and

(iii) the solid waste disposal site lacks road, rail, or adequate water access to any lands outside the unit for all or substantial portions of the year

(f) After January 23, 1995, an operator of an NPS-approved existing landfill solid waste disposal site may convert that site to a transfer station only after submitting a request under paragraph (a) of this section, and only after receiving approval from the Regional Director under paragraph (c) of this section. The Regional Director may approve such a request, if in addition to meeting the standards of paragraph (c) of this section, the Regional Director finds that the conversion to a transfer station better protects the unit's natural or cultural resources than the existing land-fill operation.

§ 6.6 Solid waste disposal sites within new additions to the National Park System.

(a) An operator of a solid waste disposal site located on lands or waters added to the National Park System, by act of Congress or by proclamation, after January 23, 1995, will not be permitted to dispose of solid waste after expiration of the permit or license in effect on the date of the land's or water's designation as being within a National Park System unit's boundaries. The operator must then immediately fulfill all applicable closure and post-closure care requirements.

(b) An operator of a solid waste disposal site located on lands or waters designated as being within the boundaries of a unit of the National Park System established or expanded after January 23, 1995, who wishes to remain in operation for the duration of the existing permit or license, must submit to the Regional Director, within 180 calendar days of the land's or water's designation as being within a National Park System unit boundaries, a permit request and environmental report as described in § 6.4(b) (1)–(9).

(c) Any operator who fails to submit a request as described in paragraph (b) of this section will be subject to the penalty provisions of § 6.12.

(d) If the Regional Director finds that the permit request and the environmental report do not meet the conditions for approval set forth in § 6.5(c), the Regional Director will reject the request and notify the proposed operator of the reasons for the rejection. Within 90 calendar days of such notice, the operator of the solid waste disposal site must cease disposing of solid waste at the site. The operator may resume disposing of solid waste only upon submission and approval of a permit request and environmental report that the Regional Director determines meet the conditions set forth in § 6.5(c).

§ 6.7 Mining wastes.

(a) Solid waste from mining includes but is not limited to mining overburden, mining byproducts, solid waste from the extraction, processing and beneficiation of ores and minerals, drilling fluids, produced waters, and other wastes associated with exploration, development, or production of oil, natural gas or geothermal energy and any garbage, refuse or sludge associated with mining and mineral operations.

(b) A person conducting mining or mineral operations on January 23, 1995, and not governed by a plan of operations approved under 36 CFR part 9, Minerals Management, or pursuant to the terms of a Federal mineral lease, may continue to operate a solid waste disposal site within the boundaries of a unit only after complying with § 6.5 and § 6.10 and with a permit issued by the Regional Director under § 6.9.

(c) A person conducting mining or mineral operations on January 23, 1995, and governed by a plan of operations approved under 36 CFR part 9 or pursuant to the terms of a Federal mineral lease may continue to operate a solid waste disposal site under the terms of the approved plan of operations or lease. Where an existing mining or mineral operation is governed by 36 CFR part 9 or a Federal mineral lease, an NPS-approved plan of operations will constitute the permit for solid waste disposal site operation otherwise required under § 6.9. A bond required under 36 CFR part 9, or by the Bureau of Land Management for Federal lessees, will satisfy the requirements of § 6.10.

(d) A person proposing to initiate mining or mineral operations after January 23, 1995, within the boundaries of a unit of the National Park System, whether or not governed by a plan of operations approved under 36 CFR part 9 or the terms of a Federal mineral lease, may not establish or operate a new solid waste disposal site within a unit.

(e) The temporary storage, stockpiling for return, or return of nonhazardous mining overburden to the mine site for the purpose of mine site reclamation does not require a request, environmental report, financial assurance or a permit issued under this part.

§ 6.8 National Park Service solid waste responsibilities.

(a) Beginning one year after January 23, 1995, a Superintendent will not permit or allow a person to dispose of solid waste at a National Park Service operated solid waste disposal site except for waste generated by National Park Service activities.

(b) The Superintendent of a unit where the National Park Service operates a solid waste disposal site will establish a waste collection program for harmful wastes generated by residential activities by National Park Service and concessionaire households within the unit. The Superintendent will establish frequency and place of collection but such frequency must be, at a minimum, every twelve months.

(c) Each Superintendent will ensure full compliance with regulations at 40 CFR part 244, Solid Waste Management Guidelines For Beverage Containers. Only those units of the National Park System where carbonated beverages in containers are not sold, or that have prepared formal documentation of nonimplementation under 40 CFR 244.100(f)(3) that has been approved by the Director and the Administrator of the Environmental Protection Agency, are exempt from the deposit and container return program mandated in 40 CFR part 244.

(d) NPS concessionaires, commercial use licensees and contractors will comply with acquisition, recycling and waste minimization goals established by the NPS.

§ 6.9 Permits.

(a) A permit issued under this section is required to operate a solid waste disposal site within the boundaries of a unit of the National Park System, except as specified in § 6.2(c) or § 6.7(c).

(b) Upon receipt of a request under § 6.4, § 6.5 or § 6.6, the Regional Director will analyze whether a new site, or continued operation of an existing site, meets the approval conditions of § 6.4, or § 6.5 respectively The Regional Director will also review the request under appropriate laws and executive orders, including, but not limited to the National Environmental Policy Act (43 U.S.C. 4321), the National Historic Preservation Act (16 U.S.C. 470), the Endangered Species Act (16 U.S.C. 1531–1543), and E.O. 11988, Floodplain Management (3 CFR, 1978 Comp., p. 117), and E.O. 11990, Wetland Protection (3 CFR, 1978 Comp., 121).

(c) The Regional Director must approve or deny a solid waste disposal site request under this part within 180 calendar days of receipt of the request. The 180 calendar days do not include any days required for consultation with State or Federal agencies under, but not limited to, the Endangered Species Act, the National Historic Preservation Act and the Coastal Zone Management Act, or days required to prepare an Environmental Impact Statement under the National Environmental Policy Act.

(d) If the Regional Director approves a solid waste disposal site request under § 6.4, § 6.5 or § 6.6, the Regional Director may issue, after operator compliance with § 6.10, a nontransferable permit, the term of which shall not exceed five years. The permittee may request a new five year permit upon expiration of an existing permit. The permit instrument will be Form 10–114 (OMB No. 1024–0026), Special Use Permit, available from the park Superintendent.

(e) A permit for a solid waste disposal site will prescribe the site capacity and the requirements under which the solid waste disposal site will be operated. The requirements must include, but are not limited to:

(1) Hours of operation;

(2) Number, frequency, size, gross weight and types of vehicles used, and access routes;

(3) Type and height of perimeter fencing;

(4) Compliance with all applicable Federal, State and local laws and regulations, including permit requirements;

(5) Type and frequency of groundwater, surface water, explosive gas and other pertinent natural resource monitoring;

(6) Rights and conditions of access for inspection by National Park Service and other responsible Federal, State or local officials;

(7) Closure and post-closure care requirements;

(8) Methods of pest and vermin control;

(9) Methods of excluding hazardous waste, municipal solid waste incinerator ash, lead-acid batteries, PCBs and PCB Items, material registered by the Environmental Protection Agency as a pesticide, sludge from a waste treatment plant or septic system, domestic sewage, petroleum, including used crankcase oil from a motor vehicle and soil contaminated by such products, medical waste, radioactive materials and tires;

(10) Methods of excluding waste generated from non-National Park Service activities, except for a solid waste disposal site approved under § 6.5, or § 6.6, or § 6.7(c); and

(11) Methods of litter control.

(f) Any conflict between a requirement of the permit issued by the National Park Service and a requirement of State or local law will be resolved in favor of the stricter of the two requirements.

§ 6.10 Financial assurance.

(a) The Regional Director will not require a bond or security deposit for a solid waste disposal site for which the operator has established a bond under 40 CFR 258.74(b).

(b) The Regional Director will not require a bond or security deposit for a solid waste disposal site whose owner or operator is a State entity whose debts and liabilities are the debts and liabilities of a State.

(c) Upon approval of a request to operate a new, or continue an existing, solid waste disposal site, an operator who is not described in paragraphs (a) or (b) of this section must file with the Regional Director a suitable performance bond with satisfactory surety, payable to the Secretary of the Interior or the Secretary's designee. The bond must be conditioned upon faithful compliance with all applicable laws and regulations, and the permit requirements as approved. When bonds are to serve as security, an operator must provide a power of attorney to the Secretary or the Secretary's designee. The bond must be issued by a surety company listed and approved by the Department of the Treasury.

(d) In lieu of a performance bond, an operator may deposit with the Secretary or the Secretary's designee cash or negotiable bonds of the United States Government. The cash deposit or the market value of such securities must be at least equal to the required sum of the bond(s).

(e) The bond or security deposit will be established by the Regional Director in an amount equal to the estimated cost to accomplish all closure and post-closure care requirements as described in 40 CFR part 258, subpart F, but in no case less than $25,000.

(f) The responsibility and liability of the operator (and the surety, if any) under the bond or security deposit must continue until the Regional Director determines that closure and post-closure care have been completed in accordance with the permit requirements. No portion of the performance bond or security deposit may be released until such a determination has been made.

(g) Within 30 calendar days after the Regional Director determines that all closure and post-closure care requirements have been successfully completed according to the permit, the Regional Director will notify the operator (and the surety, if any) that liability under the bond or security deposit has been terminated and the bond or security deposit released.

§ 6.11 Appeals.

(a) An applicant aggrieved by a decision of the Regional Director with regard to a permit request under this part may appeal, in writing, to the Director for reconsideration. The aggrieved applicant must file the appeal with the Director within 45 calendar days of notification to the applicant of the decision complained of. The appeal must set forth in detail the respects to which the decision of the Regional Director is contrary to, or in conflict with, the facts, the law, this part, or is otherwise in error.

(b)(1) Within 45 calendar days after receiving the written appeal of the aggrieved applicant, the Director will make a decision in writing. The Director's decision will include:

(i) A statement of facts;

(ii) A statement of conclusions; and

(iii) an explanation of the reasons upon which the conclusions are based.

(2) The decision of the Director will constitute the final administrative action of the National Park Service.

§ 6.12 Prohibited Acts and Penalties.

(a) The following are prohibited:

(1) Operating a solid waste disposal site without a permit issued under § 6.9 or, where applicable, without approval granted under § 6.7(c);

(2) Operating a solid waste disposal site without the proper amount or form of bond or security deposit, as prescribed by the Regional Director, when such a bond or security deposit is required by this part;

(3) Operating a solid waste disposal site in violation of a term or a requirement of a National Park Service issued permit; or

(4) Operating a solid waste disposal site in violation of 40 CFR Parts 257 or 258, or in violation of the equivalent State law or regulation.

(b) A person who violates a provision of paragraph (a) of this section is subject to:

(1) The penalty provisions of 36 CFR 1.3; and/or

(2) Revocation of the permit by the Regional Director if a permit exists; and/or

(3) Forfeiture of a bond or security deposit if a bond or security deposit is required under § 6.10.

Dated: September 8, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 94-31201 Filed 12-21-94; 8:45 am]

BILLING CODE 4310-70-P

POSTAL SERVICE

39 CFR Part 20

Implementation of International Package Consignment Service

AGENCY: Postal Service.

ACTION: Interim rule with request for comments.

SUMMARY: International Package Consignment Service (IPCS) is an international mail service designed for mail order companies sending merchandise packages to other countries. The service will be available initially to Japan; Canada will be added as a destination country in the near future. If feasible, other destination countries will be added as customer needs dictate. To use IPCS, a customer will be required to mail at least 25,000 packages in 1 year to each country to which it wants to use the service, and to agree to link its information systems

with the Postal Service's so that the Postal Service can extract certain information about the contents of the customer's packages for customs clearance and other purposes. The implementation of IPCS will benefit U.S. mail order companies and other customers that export goods by making it easier and less costly to do so; and all other users of the Postal Service by increasing the total contribution to fixed costs realized by the Postal Service from its international operations. Interim implementing regulations have been developed and are set forth below for comment and suggested revision prior to adoption in final form.

DATES: The interim regulations take effect as of December 1, 1994. Comments must be received on or before January 31, 1995.

ADDRESSES: Written comments should be mailed or delivered to International Product Management, U.S. Postal Service, 475 L'Enfant Plaza SW, room 5300, Washington, DC 20260–2410. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Michael Sundel, (202) 268–2985.

SUPPLEMENTARY INFORMATION:

I. Introduction

With the exception of its International Surface Air Lift (ISAL) and International Priority Airmail (IPA) services for small packets, which have 4-pound weight limits, and VALUEPOST/CANADA service for small packets, which has a 2-pound weight limit, the Postal Service currently does not offer any bulk international service for customers sending packages containing merchandise to other countries. As a result, if those customers want to accomplish delivery through the mail, their only option is to use one of the Postal Service's single-piece international services: Air Parcel Post, Surface Parcel Post, or Express Mail International Service (EMS). These services are available to customers mailing as little as one package from anywhere in the United States and are designed and priced accordingly. They provide the features generally desired by household and small business mailers but do not necessarily provide the features needed by medium- or large-size business mailers that actively solicit customers in other countries and require a reliable and cost-effective means of sending large volumes of merchandise from the United States to their international customers.

During the past few years, many customers that traditionally have used international mail to send merchandise packages to other countries have sought more convenient and/or less costly delivery methods. This has been especially true for customers sending packages to Canada, where the combination of relatively cumbersome customs treatment for U.S.-origin international mail and Canada Post Corporation's practice of encouraging U.S. businesses to freight their merchandise packages to Canada and enter them as domestic mail has caused the Postal Service's existing services to appear increasingly unattractive as delivery methods.

Two factors in particular make customs clearance of U.S.-origin mail in Canada cumbersome for companies sending merchandise packages. First, the value threshold at which Revenue Canada rates inbound merchandise packages for duties and taxes is lower than the corresponding threshold used by most other industrialized nations' customs agencies. Thus, a relatively high proportion of merchandise packages mailed from the United States to Canada are assessed for duties and taxes. Second, as happens generally with international mail, any duties and taxes that have been assessed are collected from the addressee at the time of delivery. However, in the case of Canada, Canada Post Corporation charges the addressee a customs collection fee of $5 Canadian. In contrast, merchandise packages that clear Canadian customs as freight can be delivered to the addressee completely prepaid, without the need to collect duties, taxes, and fees at the time of delivery.

In addition, customers exporting merchandise to Japan have seen their businesses there detrimentally affected by the costs they must incur to send merchandise from the United States to Japan. Mail order companies that pass their delivery costs directly on to their Japanese customers generally are less likely to receive orders as those costs increase. As a result, even those customers that have continued to use the Postal Service to send merchandise packages to Japan are continually searching for better and cheaper delivery methods.

Section 403(b)(2) of the Postal Reorganization Act, 39 U.S.C. 403(b)(2), makes it the responsibility of the Postal Service "to provide types of mail service to meet the needs of different categories of mail and mail users." One of the most important manifestations of this responsibility in the international area are services that enhance the ability of U.S. companies to do business in other countries. That can be accomplished both by simplifying the process those companies use to prepare their packages for mailing and by reducing the costs those companies incur to mail merchandise to other countries. However, the Postal Service's existing international services for merchandise packages require those companies to pay the same postage rates as all other customers pay even though very different Postal Service operations may be involved.

II. International Package Consignment Service

A. Rationale

In order more closely to meet the needs of mail order companies and other customers that send merchandise packages from the United States to multiple international addressees, the Postal Service is implementing a new international service, International Package Consignment Service (IPCS). Initially, the service will be available only to Japan. The Postal Service anticipates offering IPCS to Canada in the near future. To the extent feasible, the Postal Service will expand the service to include other destination countries in response to requests from customers. In this regard, the Postal Service specifically requests comments from customers regarding the need for IPCS to destination countries other than Japan and Canada.

In addition to making it easier and less costly for U.S. mail order companies and other customers to export goods, the implementation of IPCS will benefit all users of the Postal Service's other services by decreasing the total revenues that the Postal Service needs to recover from them. Offering IPCS makes all Postal Service customers better off because the additional business generated not only covers the extra variable costs it causes, but also enables the Postal Service to recover its fixed costs from a larger base of customers.

B. Qualifying Criteria

A customer that wants to use IPCS will be required to enter into a service agreement with the Postal Service providing for the following. First, the customer must commit to mail at least 25,000 packages through the service during the next 12 months to each destination country to which it wants to use IPCS. Second, the customer must designate the Postal Service as its carrier of choice to each destination country to which it wants to use IPCS. Third, the customer must agree to link its

information systems with the Postal Service's so that (1) the Postal Service and the customer can exchange data transmissions concerning the customer's packages, and (2) by scanning the customer-provided barcode on each package, the Postal Service can extract, on an as-needed basis, certain information about the package.

In general, the information that must be made available to the Postal Service includes: the order number; the package identification number; the buyer's name and address; the recipient's name and address; the total weight of the package; the total value of the package; the number of items in the package; and, for each item in the package, its SKU number, its value, and its country of origin. The exact information required will vary, depending on the destination country to which the packages are sent. In practice, this requirement means that the customer will have to begin the necessary systems work by the time it begins using IPCS, and then will have to assist the Postal Service in completing and maintaining the information systems linkages. The Postal Service will use the extracted information to prepare any necessary customs forms and package labels, to accept the customer's mail and verify postage payment automatically, and to provide user-friendly tracking and tracing.

In addition to these required commitments, which must appear in all IPCS service agreements, arrangements between the Postal Service and the customer that are technical in nature also may appear in the IPCS service agreement. For instance, the service agreement may describe the EDI or proprietary file format that will be used to transmit data between the customer and the Postal Service, as well as the frequency and schedule of transmissions. Similarly, the service agreement may describe the formats and frequencies for any exception and performance reports that the Postal Service will provide to the customer

The IPCS service agreement will not define the basic terms and conditions of the service, or the rates that the customer will pay. As discussed below IPCS is not a customized service. All customers that use IPCS will be offered the same rates and will receive the same delivery services. New regulations in International Mail Manual (IMM) 620 establish IPCS and make it generally available at published rates.

III. IPCS to Japan

A. JFK Processing Facility

Because of (1) the greater availability of direct air transportation to Japan from JFK International Airport compared with that available from other airports; (2) the efficiencies created by the Postal Service's being able to process all IPCS mail to Japan at a single facility designed for that purpose; (3) the efficiencies created by the Postal Service's being able to dispatch all IPCS mail to Japan from a single facility designed for that purpose; and (4) general operational and managerial considerations, the Postal Service has determined that all IPCS mail to Japan should be processed at, and dispatched from, a dedicated facility located at JFK International Airport (the JFK Processing Facility).

If the plant at which the customer's packages originate is located within 500 miles of JFK International Airport, the Postal Service will accept the packages at the plant and transport them by truck to the JFK Processing Facility according to a schedule agreed upon by the Postal Service and the customer. If the customer's plant is located more than 500 miles from JFK International Airport, the customer will be required to present the packages to the Postal Service for verification at the plant and transport them as a drop shipment to the JFK Processing Facility according to a schedule agreed upon by the Postal Service and the customer. The Postal Service is imposing this requirement because the IPCS customer will be in a better position than the Postal Service to arrange for cost-effective air or long-haul surface transportation that meets the customer's package preparation schedule and other operational requirements. Although the Postal Service initially will require all IPCS mail to Japan to be brought to the JFK Processing Facility, the Postal Service specifically requests comments from customers regarding the need for an additional processing site in another part of the country, such as the Seattle or San Francisco metropolitan areas.

B Customs Forms

Packages mailed to Japan through IPCS will not be required to bear customs forms when they are tendered to the Postal Service. After scanning the customer-printed barcode on each package and correlating it with the package-specific information transmitted by the customer, the Postal Service will print the necessary customs forms and then affix them to the customer's packages as part of the processing operation at the JFK Processing Facility. However, during the interim period in which the Postal Service and the customer are working together to establish the information systems linkages to enable the Postal Service to accomplish this, the customer will be required to prepare the necessary customs forms on its own and affix the forms to the packages before tendering them to the Postal Service.

C. Delivery Options

Within the framework of IPCS to Japan, the Postal Service will offer three delivery options: Express Service, Standard Air Service, and Economy Air Service. While the weight limit for Express Service and Standard Air Service packages will be 44 pounds, the weight limit for Economy Air Service packages will be 4 pounds.

Express Service will be the fastest option and will provide tracking and tracing and insurance at no additional cost. The Postal Service will transport Express Service packages to Japan by air, where they will receive special handling by Japan Post and expedited delivery. Each package sent by this option must bear a label identifying it as an Express Service package (Label 11–B, *Express Mail Service Post Office to Addressee*, or an alternative label acceptable to Japan Post). Before or after scanning the customer-printed barcode on each package and correlating it with the package-specific information transmitted by the customer, the Postal Service will prepare the necessary labels and affix them to the customer's Express Service packages as part of the processing operation at the JFK Processing Facility. However, during the interim period in which the Postal Service and the customer are working together to establish the information systems linkages to enable the Postal Service to accomplish this, the customer will be able to use Express Service by preparing the necessary labels on its own and affixing the labels to the packages before tendering them to the Postal Service.

Standard Air Service will be the next fastest delivery option and will provide confirmation of dispatch from the United States.

Insurance will be available for Standard Air Service packages weighing more than 1 pound at an additional cost. The Postal Service will transport Standard Air Service packages by air to Japan, where they will enter Japan Post's domestic airmail system for delivery.

Economy Air Service will be the slowest delivery option and will provide confirmation of dispatch from the United States. No insurance will be

available for Economy Air Service packages. The Postal Service will transport Economy Air Packages by air to Japan, where they will enter Japan Post's domestic surface mail system for delivery.

D. Rates

The base rates for the three delivery options are set forth below. The base rates may be reduced by any or all of four additive annual discounts depending on how many packages the customer mails to Japan through IPCS.

For each delivery option, the Postal Service will charge the base rates, at 1-pound increments, for the first 100,000 packages mailed by the customer during the 12-month period. Once the customer has mailed 100,000 packages, postage for the customer's next 150,000 packages will be reduced by 4.75% from the base rates. Packages mailed through any of the three delivery options will count toward the customer's meeting the 100,000-package threshold.

Once the customer has mailed 250,000 packages during the 12-month period, postage for the customer's next 250,000 packages will be reduced by an additional 5.75% taking into account the first discount. That is, postage will be calculated for these 150,000 packages by calculating postage at the base rates, then reducing it by 4.75%, and then reducing that total by a further 5.75%. Again, packages mailed through any of the three delivery options will count toward the customer's meeting the 250,000-package threshold.

Once the customer has mailed 500,000 packages during the 12-month period, postage for the customer's next 500,000 packages will be reduced by an additional 6.00% taking into account the first two discounts. That is, postage will be calculated for these 500,000 packages by calculating postage at the base rates, then reducing it by 4.75%, then reducing that total by a further 5.75%, and then reducing that total by a further 6.00%. Again, packages mailed through any of the three delivery options will count toward the customer's meeting the 500,000-package threshold.

Once the customer has mailed 1,000,000 packages during the 12-month period, postage for the customer's remaining packages will be reduced by an additional 6.25% taking into account the first three discounts. That is, postage will be calculated for the remaining packages by calculating postage at the base rates, then reducing it by 4.75%, then reducing that total by a further 5.75%, then reducing that total by a further 6.00%, and then reducing that total by 6.25%. Again, packages mailed through any of the three delivery options will count toward the customer's meeting the 1,000,000-package threshold.

INTERNATIONAL PACKAGE CONSIGNMENT SERVICE TO JAPAN

[Base Rates]

Weight not over (lbs.)	Express service	Standard air service	Economy air service
1	$14.35	$6.64	$5.43
2	15.69	9.23	9.35
3	17.80	13.63	13.27
4	19.91	15.74	17.20
5	22.02	20.14	
6	27.03	24.93	
7	29.39	29.86	
8	31.76	32.22	
9	34.12	37.15	
10	36.49	39.52	
11	38.85	41.88	
12	41.21	46.81	
13	43.58	49.17	
14	45.94	54.10	
15	48.31	56.47	
16	54.29	65.78	
17	56.82	68.32	
18	59.36	73.60	
19	61.89	76.13	
20	64.42	81.42	
21	71.42	89.55	
22	74.12	92.25	
23	76.83	97.88	
24	79.53	100.58	
25	82.23	106.22	
26	84.93	108.92	
27	87.63	114.56	
28	90.34	117.26	
29	93.04	122.89	
30	95.74	125.59	
31	104.59	139.43	
32	107.47	142.30	
33	110.34	145.17	
34	113.21	151.16	
35	116.08	154.03	
36	118.95	160.02	
37	121.82	162.89	
38	124.69	168.88	
39	127.56	171.75	
40	130.43	177.73	
41	141.15	191.23	
42	144.19	197.57	
43	147.23	200.61	
44	150.27	203.65	

IV. Legal Issues

On May 16, 1994, the U.S. District Court for the District of Delaware ruled against the Postal Service in the case of *UPS Worldwide Forwarding, Inc.* v. *U.S. Postal Service* and enjoined it from offering International Customized Mail (ICM) service. ICM was a new service in which the Postal Service negotiated service features and rates with qualifying customers that entered into service agreements. To qualify for ICM service, a customer had to be capable of annually tendering to the Postal Service at least 1 million pounds of international mail or paying at least $2 million in international postage, and of tendering all of its mail to the Postal Service at one location. ICM enabled the Postal Service to provide customer-specific service offerings at rates that reflected the specific costs incurred in providing the service. Rates and services in any ICM service agreement were available to any customer qualifying for the service that sent mail with similar characteristics and that undertook the same preparation and work-sharing specified in the service agreement.

The District Court first held that UPS, as a competitor of the Postal Service, had standing to challenge ICM service even though it did not allege that ICM rates were predatory. The District Court then concluded that ICM rates violated section 403(b)(2) of the Postal Reorganization Act (Act), 39 U.S.C. 403(b)(2), because ICM agreements were with individual mailers and section 403(b)(2) limits the Postal Service to providing services and establishing rates for categories of mail and mailers consisting of more than one mailer. The District Court then concluded that ICM rates were unduly discriminatory because a mailer had to be capable of posting 1 million pounds of mail or paying $2 million annually in postage to be eligible for the service, but did not have to tender those minimum volumes to the Postal Service to receive ICM service. Under those circumstances, the Court concluded, different mailers could be paying different rates for similar mail and mail services. The District Court then concluded that ICM rates inequitably apportioned the costs of postal services because smaller mailers that could meet the minimum capabilities requirements did not have access to ICM rates even if they mailed similar quantities of mail. Finally, the District Court concluded that ICM rates were illegal because under section 407 of the Act, 39 U.S.C. 407, the Postal Service had to obtain the consent of the President to establish international rates, and the Postal Service had not obtained Presidential consent for ICM rates.

The Postal Service is appealing the District Court's decision to the U.S. Court of Appeals for the Third Circuit, and is confident that it will prevail on appeal. Notwithstanding the appeal, however, the Postal Service recognizes that it is obligated to comply with the terms of the District Court's injunction as long as it is in effect, and that IPCS may be challenged under the same legal theories that UPS used to challenge ICM service. Consequently, when designing IPCS, the Postal Service avoided those

features of ICM service that the District Court found to be inconsistent with the Act.

First, IPCS will be available, under the same terms and conditions and at the same rates, to any customer that can meet the qualifying criteria. All customers that use IPCS to mail packages to a particular country will receive the same delivery services. Further, all IPCS customers will pay the same base rates and will be able to take advantage of the same volume discounts. Thus, all customers using IPCS to Japan, even those that eventually mail 500,000 or more packages during a 12-month period, will pay the same rates for their first 100,000 packages. Similarly, all customers will pay the same rates for their next 150,000 packages.

Second, the volume-based qualifying criteria will be based on the actual number of packages that the customer will tender, not on the customer's potential volume. In selecting 25,000 packages per 12 months per country as the qualifying threshold, the Postal Service struck a balance between its desire to provide the service to as many customers as practicable and its need to be able to recover the costs associated with providing the service, including the costs of establishing the necessary information system linkages.

In light of the foregoing, the implementation of IPCS is fully consistent not only with the provisions of the Act that govern international rates and services, but also with the District Court's decision in *UPS Worldwide Forwarding, Inc.* v. *U.S. Postal Service.*

V. Conclusion

Accordingly, the Postal Service hereby adopts IPCS to Japan, on an interim basis, at the rates set forth in the schedule above. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning the interim rule.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401 404, 407, 408.

2. Chapter 6 of the International Mail Manual is amended by adding new subchapter 620 to read as follows:

SUBCHAPTER 620—[ADDED]

CHAPTER 6—SPECIAL PROGRAMS

* * * * *

620 International Package Consignment Service

621 Description

621.1 General

International Package Consignment Service (IPCS) is a bulk mailing system that provides fast, economical international delivery of packages containing merchandise. IPCS is designed to make it easier and less costly for mail order companies to export goods. The Postal Service provides IPCS on a destination county-specific basic pursuant to the terms and conditions stipulated in 620.

621.2 Admissible Items

621.21 Prohibited Enclosures

IPCS packages may not contain.

a. Typewritten and handwritten communications having the character of current correspondence.

b. Any item that is prohibited in international mail. Refer to the Country Conditions of Mailing in the Individual Country Listings for individual destination country prohibitions.

621.22 Exceptions

IPCS packages may contain an invoice as long as the invoice is limited to the particulars that constitute an invoice.

621.3 Availability

IPCS is available only to destination countries identified in 620.

622 Qualifying Mailers

To qualify, a mailer must enter into a service agreement containing the commitments stipulated in 625.2 and must be able to meet the general and destination country-specific preparation requirements stipulated in 620.

623 General

623.1 Special Services

The special services provided for in Chapter 3 are not available for packages sent by IPCS unless specifically provided for in 620.

623.2 Customs Documentation

The requirements for customs forms vary by destination country as stipulated in 620.

623.3 Size and Weight Limits

Size and weight limits for packages sent by IPCS vary by destination country as stipulated in 620.

623.4 Postage

623.41 Rates

Rates vary by destination country as stipulated in 620.

623.42 Postage Payment Method

Postage must be paid by permit imprint.

623.43 Documentation

Each mailing of IPCS packages must be accompanied by a manifest and other documentation in the form specified by the Postal Service.

624 Preparation Requirements

624.1 General Requirements

624.11 Barcode

Every IPCS package must bear a barcode, in a format acceptable to the Postal Service, that identifies the package by a unique number. The mailer must place the barcode on the address side of the package.

624.12 Addressing

See 122. The name and address of the mailer and of the addressee also should be recorded on a separate slip enclosed in the package.

624.13 Sealing

Every IPCS package must be sealed by the mailer. Wax, gummed-paper tape, nails, screws, wire, metal bands, or other materials may be used as suitable. The seal must be sufficient to allow detection of tampering.

624.14 Packaging

Every IPCS package must be securely and substantially packed. In packing, the mailer should consider the nature of the contents, the climate, and the delivery method. The Postal Service will determine whether the contemplated packaging is suitable prior to the mailer's use of IPCS.

624.15 Nonpostal Documentation

Forms required by nonpostal export regulations are described in Chapter 5.

624.2 Destination Country-Specific Requirements

Certain preparation requirements vary by destination country as stipulated in 620.

625 IPCS Service Agreements

625.1 General

The mailer must enter into a separate service agreement for each destination country to which it wants to use IPCS.

625.2 Required Provisions

Each service agreement must contain the following:

a. The mailer's commitment to send at least 25,000 packages by IPCS during the next 12 months to the specified destination country.

b. The mailer's commitment to designate the Postal Service as its carrier of choice to the specified destination country.

c. The mailer's commitment to link its information systems with the Postal Service's so that (1) the Postal Service and the mailer can exchange data transmissions concerning the mailer's packages, and (2) by scanning the mailer-provided barcode on each package, the Postal Service can extract, on an as-needed basis, certain information about the package. The package-specific information that the mailer is required to make available varies by destination country as stipulated in 620.

625.3 Optional Provisions

Each service agreement may set forth any IPCS-related arrangements between the Postal Service and the mailer that are technical in nature.

626 IPCS to Japan

626.1 Description

626.11 General

IPCS to Japan provides the mailer with three delivery options, and with preparation by the Postal Service of the customs forms required by Japan Post.

626.12 JFK Processing Facility

All IPCS packages sent to Japan are processed at, and dispatched from, a dedicated facility located at JFK International Airport (the JFK Processing Facility).

626.13 Delivery Options

626.131 Express Service

Packages sent through Express Service are transported by air to Japan, where they receive special handling by Japan Post and expedited delivery. The mailer can track Express Service packages through delivery. Reports of delivery performance are furnished to the mailer in the formats and at the frequencies agreed upon by the Postal Service and the mailer.

626.132 Standard Air Service

Packages sent through Standard Air Service are transported by air to Japan, where they enter Japan Post's domestic airmail system for delivery. The mailer can track Standard Air Service packages through dispatch from the JFK Processing Facility.

626.133 Economy Air Service

Packages sent through Economy Air Service are transported by air to Japan, where they enter Japan Post's domestic surface mail system for delivery. The mailer can track Economy Air Service packages through dispatch from the JFK Processing Facility.

626.2 Acceptance

626.21 Within 500 Miles of JFK

If the plant at which the mailer's IPCS packages originate is located within 500 miles of the JFK Processing Facility, the Postal Service accepts the packages at the plant and transports them by truck to the JFK Processing Facility according to a schedule agreed upon by the Postal Service and the mailer.

626.22 More Than 500 Miles From JFK

If the plant at which the mailer's IPCS packages originate is located more than 500 miles from the JFK Processing Facility, the mailer must present the packages for verification at the plant and transport them as a drop shipment to the JFK Processing Facility according to a schedule agreed upon by the Postal Service and the mailer.

626.3 Required Package-Specific Information

The mailer must make available to the Postal Service, by means of data transmissions in the formats and at the frequencies agreed upon by the Postal Service and the mailer, the following information about each IPCS package:

a. Order number.
b. Package identification number.
c. Delivery option used for package.
d. Buyer's name and address.
e. Recipient's name and address.
f. Total weight.
g. Total value.
h. Total number of items in package.
i. Number of each individual item in package.
j. SKU and/or key-word description of each item.
k. Value of each item.
l. Country of origin (if available) of each item.

626.4 Insurance and Indemnity

626.41 Express Service

Packages sent through Express Service are insured against loss, damage, or rifling at no additional cost. Indemnity will be paid by the Postal Service as provided in DMM S500. However, Express Service packages are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in the event of delay.

626.42 Standard Air Service

Packages sent through Standard Air Service weighing more than 1 pound may be insured at an additional cost. See 320.

626.43 Economy Air Service

Packages sent through Economy Air Service may not be insured.

626.5 Postage

626.51 Base Rates

See Exhibit 626.51. Postage is paid on a per-package basis.

INTERNATIONAL PACKAGE CONSIGNMENT SERVICE TO JAPAN BASE RATES

[Exhibit 626.51]

Weight not over (lbs.)	Express service	Standard air service	Economy air service
1	$14.35	$6.64	$5.43
2	15.69	9.23	9.35
3	17.80	13.63	13.27
4	19.91	15.74	17.20
5	22.02	20.14	
6	27.03	24.93	
7	29.39	29.86	
8	31.76	32.22	
9	34.12	37 15	
10	36.49	39.52	
11	38.85	41.88	
12	41.21	46.81	
13	43.58	49.17	
14	45.94	54.10	
15	48.31	56.47	
16	54.29	65.78	
17	56.82	68.32	
18	59.36	73.60	
19	61.89	76.13	
20	64.42	81.42	
21	71.42	89.55	
22	74.12	92.25	
23	76.83	97.88	
24	79.53	100.58	
25	82.23	106.22	
26	84.93	108.92	
27	87.63	114.56	
28	90.34	117.26	
29	93.04	122.89	
30	95.74	125.59	
31	104.59	139.43	
32	107 47	142.30	
33	110.34	145.17	
34	113.21	151 16	
35	116.08	154.03	
36	118.95	160.02	
37	121.82	162.89	
38	124.69	168.88	
39	127.56	171 75	

INTERNATIONAL PACKAGE CONSIGNMENT SERVICE TO JAPAN BASE RATES—Continued

[Exhibit 626.51]

Weight not over (lbs.)	Express service	Standard air service	Economy air service
40	130.43	177.73	
41	141.15	191.23	
42	144.19	197.57	
43	147.23	200.61	
44	150.27	203.65	

626.52 Discounts

Postage is reduced by the following additive discounts once the applicable volume thresholds are reached during a 12-month period:

a. 25,000 to 100,000 packages: 0.00%.

b. 100,001 to 250,000 packages: 4.75%.

c. 250,001 to 500,000 packages: additional 5.75%.

d. 500,001 to 1,000,000 packages: additional 6.00%.

e. More than 1,000,000 packages: additional 6.25%

626.6 Size and Weight Limits

626.61 Size Limits

626.611 Express Service

Express Service packages must meet these size limits:

a. Minimum length and width: large enough to accommodate the necessary labels and customs forms on the address side.

b. Maximum length: 60 inches (36 inches until Japan Post formally agrees to the larger size limit).

c. Maximum length and girth combined: 108 inches (79 inches until Japan Post formally agrees to the larger size limit).

626.612 Standard Air Service

Standard Air Service packages must meet these size limits:

a. Minimum length and width: large enough to accommodate the necessary labels and customs forms on the address side.

b. Maximum length: 60 inches (42 inches until Japan Post formally agrees to the larger size limit.) Maximum length for packages weighing 1 pound or less is 24 inches.

c. Maximum length and girth combined: 108 inches (79 inches until Japan Post formally agrees to the larger size limit). Maximum length, height, depth (thickness) combined for packages weighing 1 pound or less is 36 inches.

626.613 Economy Air Service

Economy Air Service packages must meet these size limits:

a. Minimum length and width: large enough to accommodate the necessary labels and customs forms on the address side.

b. Maximum length: 24 inches.

c. Maximum length, height, depth (thickness) combined: 36 inches.

626.62 Weight Limits

626.621 Express Service

Maximum weight: 44 pounds.

626.612 Standard Air Service

Maximum weight: 44 pounds.

626.613 Economy Air Service

Maximum weight: 4 pounds.

627 Customs Forms Required

The mailer is not normally required to affix customs forms to IPCS packages sent to Japan. The Postal Service prints the necessary customs forms based on the package-specific information transmitted by the mailer, and affixes them to the packages. However, during the interim period in which the Postal Service and the mailer are establishing the information systems linkages to enable the Postal Service to accomplish this, the mailer is required to affix the appropriate customs forms to the packages, as follows:

a. Express Service: Form 2966–A, *Parcel Post Customs Declaration—United States of America.*

b. Standard Air Service: Form 2966–A, *Parcel Post Customs Declaration—United States of America* (packages weighing 1 pound or less must bear Form 2976, *Customs—Douane C1*).

c. Economy Air Service: Form 2976, *Customs—Douane C1.*

628 Preparation Requirements

628.1 Express Service

Every package sent through Express Service must bear a label identifying it as an Express Service package. The mailer is not normally required to affix this label. The Postal Service prints the necessary label and affixes it to the Express Service package. However, during the interim period in which the Postal Service and the mailer are establishing the information systems linkages to enable the Postal Service to accomplish this, the mailer is required to affix Label 11–B, *Express Mail Service Post Office to Addressee,* or an alternative label as instructed by the Postal Service, to every Express Service package

628.2 Standard Air Service

There are no Japan-specific preparation requirements for packages sent through Standard Air Service (packages weighing 1 pound or less must bear the SMALL PACKET marking). See 264.21.

628.3 Economy Air Service

Packages sent through Economy Air Service must bear the SMALL PACKET marking. See 264.21.

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–31373 Filed 12–21–94; 8:45 am]

BILLING CODE 7710–12–P

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39 CFR Part 111

Revisions to Weight and Preparation Standards for Barcoded Letter Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends Domestic Mail Manual (DMM) standards concerning the maximum weight of an automation-compatible barcoded letter-size mailpiece. Subject to additional preparation requirements, certain barcoded mailpieces weighing more than 3 ounces will be acceptable at Barcoded rates for a trial period of up to 1 year.

EFFECTIVE DATE: January 16, 1995.

FOR FURTHER INFORMATION CONTACT: Anthony M. Pajunas, (202) 268–3669.

SUPPLEMENTARY INFORMATION: On July 14, 1994, the Postal Service published for public comment in the **Federal Register** (59 FR 35873–35875) a proposed rule to amend the Domestic Mail Manual (DMM) standards for the physical characteristics of automation-compatible barcoded letter-size mail. For a period of up to 1 year, the Postal Service proposed to conduct a live test of barcoded bulk third-class regular rate letter mail weighing between 3.0 and 3.3067 ounces, and First-, second-, and bulk third-class nonprofit rate letter mail weighing between 3.0 and 3.3363 ounces.

Although the Postal Service believes that this mail can benefit from barcoding (as the means of moving this mail into an automated processing environment), it also believes that this

benefit can be achieved only under specific standards governing the construction and preparation of this "heavy letter mail." Thus, the proposed new standards required that each "heavy letter" mailpiece comply with the following:

(1) Be part of a mailing that is 100 percent delivery point barcoded.

(2) Have the barcode in the address block.

(3) Be in an envelope that has no open windows.

(4) Not be bound or have stiff enclosures.

The Postal Service proposed to set the maximum weight for Barcoded rate letter-size mailpieces at 3.3363 ounces (or 3.3067 ounces for pieces mailed at regular bulk third-class rates), the break points between the bulk third-class minimum per-piece rates and the two-part piece/pound rates then in effect. (These values increase to 3.3376 and 3.3071 ounces, respectively, when R94 rates are implemented on January 1, 1995. The increased values are used in the text and DMM revisions appearing below.) If the maximum weight were set at 3.3 ounces, a small amount of letter-size minimum per-piece mail would be excluded from the rates otherwise available to letter mail. For simplicity and consistency, the maximum weight for First- and second-class barcoded letter mail was also proposed to be set at 3.3376 ounces. For regular bulk third-class rate only, the maximum is set at 3.3071 ounces, which is its "break point." If the proposed test or changes in the "break point" indicate that this alignment is not in the best interest of the Postal Service, the maximum weight will be adjusted accordingly.

The Postal Service received 14 comments on the proposed rule, including three from mailing industry trade associations, one from a mailing-related business, and 10 from companies and corporations. The specific topics covered in those comments are discussed below.

Consideration of Letter Mail Heavier Than 3.0 Ounces for Automation Rates

All 14 commenters expressed support for the Postal Service's efforts to conduct live tests of barcoded letters weighing between 3.0 and 3.3376 ounces (or 3.3071 ounces for third-class regular rate mail).

One commenter encouraged consideration for a much higher weight limit. The Postal Service believes that for the heavy letter-mail test period, the maximum weight should be limited to 3.3376 ounces. Previous controlled tests conducted by the Postal Service revealed that increased problems (such as damage, jams, and throughput) arose or worsened with mail heavier than 3.3376 ounces.

Another commenter (a mailing company) supported the Postal Service's effort but expressed doubts that presort service bureaus would accept address-block barcoded heavy letter mail to run through their automated equipment because of possible machine jams, lowered machine throughput, and the requirement for 100 percent delivery point barcoding. Participation in this test is voluntary. Although the Postal Service realizes that some companies will be unable to participate, it does not believe that the objectives of the test can be served if the test criteria are altered. The Postal Service believes that it will be able, under the requirements adopted by this rule, to obtain sufficient participation to conduct a valid test.

Requirement for Enveloped Mailpieces

Two comments were received opposing the proposed standard that all heavy letter mail be in envelopes. One commenter thought that the heavy letter mail tests should be conducted using mailpieces constructed under current standards and encouraged the use of tabbed catalogs during the trial period. One commenter recommended the inclusion of self-mailers.

The Postal Service believes that only enveloped mail should be tested as part of this trial and that the proposed restriction on self-mailers and on bound or booklet-type mail should remain. The preliminary tests were performed only on enveloped mailpieces that were heavier than 3.0 ounces and not on tabbed catalogs. The Postal Service has recently tested tabbed catalogs weighing 3.3 ounces on its automated equipment and found that such pieces caused equipment jams and were more susceptible to damage. As a result, the Postal Service believes that it is prudent to proceed to test only enveloped mail. Accordingly, that portion of the proposed rule that specified only enveloped mail would be eligible for the test will be retained in the final rule.

In allowing only enveloped mail in the proposed test, the Postal Service is seeking to evaluate the performance of heavy letter mail having the best opportunity for successful automated processing, insofar as that can be predicted by physical criteria. Accordingly, in addition to retaining its focus on enveloped mail, the Postal Service also wishes to point out that by including heavy letter mail in the general category of automation-compatible mail for the test period, it is expecting that this mail will be prepared in trays, as is currently the case for other automation-compatible letter mail. Although the proposed rule did not explicitly discuss this point, the Postal Service finds it appropriate to emphasize this point in the final rule as a logical corollary to the temporary transfer of heavy letter mail into the automation-compatible category.

Restriction of Open-Windowed Envelopes

Four comments were received opposing the standard that heavy letter mail not be in envelopes with open windows.

The Postal Service has conducted tests in which preliminary results indicate that open windows on mailpieces above 3.0 ounces have a greater tendency to snag on automated processing equipment. The Postal Service is also concerned about damage to the heavy letter mailpieces with open windows and other mail that might be adjacent to it during automated processing. Thus, the Postal Service has determined to retain the proposed prohibition of open-windowed envelopes in the final rule.

100% Delivery Point Barcode Requirement

Nine comments were received opposing the standard that mailings of heavy letter pieces be 100 percent delivery point barcoded. Eight commenters stated that 100 percent delivery point barcoding would discourage or inhibit them from participating in the test and requested that barcoding levels be set at the 85 percent level now generally applicable to Barcoded rate letter mailings.

Seven commenters stated that 100 percent delivery point barcoding would require splitting their mailings into two streams—one delivery point barcoded stream and one not. Several commenters stated that splitting the mail into two such streams would negate the benefits of the automation rate. One commenter stated that his company already splits the mail into two streams and meets the 100 percent requirement.

Four commenters stated that no major mailer today has been able to ZIP+4 code 100 percent of its mailing.

The Postal Service believes that the requirement for 100 percent delivery point barcoding of all heavy letter mail is necessary. As part of an effort to get a barcode on all mail, the Postal Service routinely processes on an optical character reader (OCR) all mailpieces rejected from barcode sorters in an effort to read the delivery address and print a barcode in the lower right corner of the mailpiece. However, heavy letter mail will not run through OCRs; attempts to

process and barcode such mail on an OCR revealed that significant damage occurred to the heavy letter pieces and that any barcodes printed in the barcode clear zone by the OCR were often unreadable. (The increased thickness caused the bottom edges of the heavy letter mail envelopes to be rounded and to buckle when bent. Because of the curvature and irregular surface created by the rounding and buckling of the heavy mailpiece, barcodes printed in the lower right corner of such mailpieces by the OCR were outside the working specifications of postal barcode readers and, as a result, useless for automated processing.)

The additional OCR processing of non-delivery point barcoded heavy letter mail, the labor to repair damaged pieces, and the ensuing manual or mechanized handling of that mail amount to unreasonable additional costs for the Postal Service, well beyond that appropriate for Barcoded rate mail. As a result, the proposed rule's provisions for a 100 percent delivery point barcoded mailstream for heavy letter mail will be retained in the final rule.

Follow Current Postal Requirements for Heavy Letter Mail

Six commenters stated that the heavy letter mail trial period should be run using the current standards for automation rate mail and that no additional constraints should be imposed.

The Postal Service believes that modification of the current standards for automation-compatible mail are necessary based on the results of controlled tests already performed on heavy letter mail as previously described. If appropriate additional standards are not imposed on heavy letter mail, consistent with the results of earlier tests, the Postal Service believes that live mail testing will have no chance for success and that greater customer dissatisfaction would result than may occur with the heavy letter mail standards adopted by this rule.

Barcode Window Placement

One commenter objected to extending the barcode window to the bottom of the envelope.

The section referred to by the commenter applies only to lower right corner barcode windows. The Postal Service does not intend to add new standards to DMM C840.6.0, only to limit the use of lower right corner barcode windows to mailpieces weighing 3.0 ounces or less.

Requirements for Identification of Test Mail

Before the Postal Service can determine whether a permanent increase in the maximum weight for barcoded letter mail is appropriate, it must determine whether the impact of heavy letter mail is acceptable. Accurate evaluation of the test data will depend in part on the Postal Service's ability to identify, measure, and monitor heavy letter mail as it enters and moves through the mailstream. Accordingly, test participants will be required to take specific measures to identify heavy letter mail to enable the Postal Service to gather the necessary data for this test. Although not specifically discussed in the proposed rule, the importance of mail identification became evident as the comments were being reviewed, and provisions requiring identification are being introduced in the final rule as reasonable and logical elements of the test process.

Specifically, the Postal Service will require that each container of heavy mail be clearly identified when submitted by the mailer. Pallets, general purpose mail containers, and other similar equipment used to transport trays of heavy letter mail will require labels (placards) bearing the words "HEAVY LETTER MAIL" in letters not less than 1/2 inch high. These labels must be white or light-colored stock, not smaller than 8 by 11 inches, and placed on two adjacent sides of the pallet or other equipment. Each tray of heavy letter mail must also be identified by a flag (similar to a separator card) clearly marked "HEAVY LETTER MAIL" and placed in front of the contents of the tray. No marking will be required on the pieces of heavy letter mail themselves other than as required by the class or rate claimed, or by the postage payment method used.

Participants in the heavy letter mail test will also be asked to provide documentation for any heavy letter mailing exceeding 100,000 pieces. Requested information includes the mailer's name and contact person for test information, the mailing's contents (size, weight, volume, level of presort, and proportion of heavy letter mail), and the mailing's distribution (place(s) of mailing and destination ZIP Code ranges). This information, which should be provided to the address below at least 3 weeks before mailing, will allow the Postal Service adequate time to conduct on-site evaluation and data collection for test mail. Documentation of heavy letter mailings should be addressed to: Manager Customer Mail Preparation, USPS Headquarters Rm 6912, 475 L'Enfant Plaza SW., Washington DC 20260–6805.

If heavy letter mail is damaged in processing during this test period, the mailer will be asked to recall the damaged pieces before delivery (by completing Form 1509) to allow their examination for evaluation of both the cause of the damage and possible remedies for that cause.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the Domestic Mail Manual as noted below:

C810 Letters and Cards

1.0 GENERAL DIMENSIONS

* * * * *

1.5 Barcoded

The weight of each piece in a Barcoded rate mailing must not exceed 3 ounces, except that until January 14, 1996, the maximum weight is 3.3376 ounces (or 3.3071 ounces if mailed at regular bulk third-class rates).

1.6 Heavy Letter Mail

Heavy letter mail (pieces weighing more than 3 ounces) must be prepared in an envelope and must meet the additional barcoding standards in C840.

2.0 PROHIBITIONS

* * * * *

2.3 Heavy Letter Mail

Heavy letter mail (as defined in 1.6) may not be prepared as a self-mailer or as a bound or booklet-type mailpiece.

* * * * *

C840 Barcoded Mailpieces

* * * * *

2.0 BARCODE LOCATION

* * * * *

2.2 Letter-Size Barcoded Rate Mailings

[Revise the first sentence as follows:]

Except for pieces subject to 2.3, pieces may bear a DPBC within either the address block or the barcode clear zone

in the lower right corner of the address side. * * *

* * * * *

[Renumber existing 2.3 through 2.10 as 2.4 through 2.11, respectively; add new 2.3, and revise renumbered 2.9, as follows:]

2.3 Heavy Letter Mail

Heavy letter mail (letter-size pieces weighing more than 3 ounces up to the maximum weight for barcoded pieces) must bear a DPBC in the address block, subject to 2.9.

* * * * *

2.9 Placement in Address Block

When the barcode is placed in the address block on cards or letter- or flat-size mail:

* * * * *

[Replace the last sentence in renumbered 2.9d with the following:]

d. * * * Address block windows on heavy letter mail (as defined in 2.3) *must* be covered; such windows *may* be covered on other mail. Covers for address block windows are subject to 6.3.

* * * * *

6.0 ADDITIONAL STANDARDS FOR WINDOWS (LETTER-SIZE MAIL)

* * * * *

6.2 Window Construction

Barcode windows must extend fully to the lower edge of the envelopes, must be of wraparound construction, and must be covered subject to 6.3.

6.3 Window Covers

Window covers must be of a nontinted clear or transparent material (e.g., cellophane or polystyrene), the edges of which are securely glued to the envelope, that permits the barcode and its background, as viewed through the window material, to meet the reflectance standards in 4.0.

* * * * *

E144 Barcoded Rate (Letters and Cards)

1.0 BASIC STANDARDS

* * * * *

1.2 Rate Application

* * * * *

c. Meets the applicable standards in 1.3 through 1.8.

1.3 Barcode Window

A mailpiece weighing 3 ounces or less, meeting the standards in 1.1 and 1.2, but with a barcode window in the lower right corner, may be eligible for Barcoded rates only if the correct delivery point barcode appears through the window.

1.4 5-Digit Barcodes

[Revise the first sentence as follows:]

Subject to 1.8, Barcoded rate mailings may include pieces with correct 5-digit barcodes if those pieces meet the standards in 1.1 and the standards for 5-digit barcodes in C840. * * *

1.5 ZIP+4 Barcodes

[Revise the first sentence as follows:]

Subject to 1.8, Barcoded rate mailings may include pieces with correct ZIP+4 barcodes if those pieces meet the standards in 1.1 and the standards for ZIP+4 barcodes in C840. * * *

1.6 85% Rule

[Revise the first sentence as follows:]

Subject to 1.8, at least 85% of all pieces in a Barcoded rate mailing (regardless of presort or rate) must bear the correct delivery point barcode for the delivery address, as defined by the standards for address quality and coding accuracy in A950. * * *

* * * * *

1.8 100% Barcoding

Each piece must bear the correct delivery point barcode:

a. In 5-digit trays in a tray-based mailing under M814.

b. In 5-digit packages in a package-based mailing under M815 or M816.

c. In any mailing containing heavy letters (as defined in C810).

* * * * *

E244 Barcoded Discounts (Letter-Size Pieces)

1.0 BASIC STANDARDS

* * * * *

1.2 Rate Application

* * * * *

c. Meets the applicable standards in 1.3 through 1.8.

* * * * *

1.3 Barcode Window

A mailpiece weighing 3 ounces or less, meeting the standards in 1.1 and 1.2, but with a barcode window in the lower right corner, may be eligible for Barcoded rates only if the correct delivery point barcode appears through the window.

1.4 5-Digit Barcodes

[Revise the first sentence as follows:]

Subject to 1.8, Barcoded rate mailings may include pieces with correct 5-digit barcodes if those pieces meet the standards in 1.1 and the standards for 5-digit barcodes in C840. * * *

1.5 ZIP+4 Barcodes

[Revise the first sentence as follows:]

Subject to 1.8, Barcoded rate mailings may include pieces with correct ZIP+4 barcodes if those pieces meet the standards in 1.1 and the standards for ZIP+4 barcodes in C840. * * *

1.6 85% Rule

[Revise the first sentence as follows:]

Subject to 1.8, at least 85% of all pieces in a Barcoded rate mailing (regardless of presort or rate) must bear the correct delivery point barcode for the delivery address, as defined by the standards for address quality and coding accuracy in A950. * * *

* * * * *

1.8 100% Barcoding

Each piece must bear the correct delivery point barcode:

a. In 5-digit trays in a tray-based mailing under M814.

b. In 5-digit packages in a package-based mailing under M815 or M816.

c. In any mailing containing heavy letters (as defined in C810).

* * * * *

E344 Barcoded Discounts (Letter-Size Pieces)

1.0 BASIC STANDARDS

* * * * *

1.2 Rate Application

* * * * *

c. Meets the applicable standards in 1.3 through 1.8.

* * * * *

1.3 Barcode Window

A mailpiece weighing 3 ounces or less, meeting the standards in 1.1 and 1.2, but with a barcode window in the lower right corner, may be eligible for Barcoded rates only if the correct delivery point barcode appears through the window.

1.4 5-Digit Barcodes

[Revise the first sentence as follows:]

Subject to 1.8, Barcoded rate mailings may include pieces with correct 5-digit barcodes if those pieces meet the standards in 1.1 and the standards for 5-digit barcodes in C840. * * *

1.5 ZIP+4 Barcodes

[Revise the first sentence as follows:]

Subject to 1.8, Barcoded rate mailings may include pieces with correct ZIP+4 barcodes if those pieces meet the standards in 1.1 and the standards for ZIP+4 barcodes in C840. * * *

1.6 85% Rule

[Revise the first sentence as follows:]

Subject to 1.8, at least 85% of all pieces in a Barcoded rate mailing (regardless of presort or rate) must bear the correct delivery point barcode for the delivery address, as defined by the standards for address quality and coding accuracy in A950. * * *

* * * * *

1.8 100% Barcoding

Each piece must bear the correct delivery point barcode:

a. In 5-digit trays in a tray-based mailing under M814.

b. In 5-digit packages in a package-based mailing under M815 or M816.

c. In any mailing containing heavy letters (as defined in C810).

* * * * *

M814 Barcoded—Tray-Based Mailings

1.0 BASIC STANDARDS

* * * * *

1.9 Heavy Letter Mail

Each tray of heavy letter mail (as defined in C810) must be identified by a flag (similar to a separator card) clearly marked "HEAVY LETTER MAIL" and placed in front of the contents of the tray. Each pallet, general purpose mail container, or other equipment used to transport trays of heavy letter mail must be labeled "HEAVY LETTER MAIL," in letters not less than 1/2 inch high on white or light-colored stock not smaller than 8 by 11 inches, on two adjacent sides of the pallet or other equipment.

* * * * *

M815 Barcoded—Two-Tier Package-Based Mailings

1.0 BASIC STANDARDS

* * * * *

1.7 Heavy Letter Mail

Each tray of heavy letter mail (as defined in C810) must be identified by a flag (similar to a separator card) clearly marked "HEAVY LETTER MAIL" and placed in front of the contents of the tray. Each pallet, general purpose mail container, or other equipment used to transport trays of heavy letter mail must be labeled "HEAVY LETTER MAIL," in letters not less than 1/2 inch high on white or light-colored stock not smaller than 8 by 11 inches, on two adjacent sides of the pallet or other equipment.

* * * * *

M816 Barcoded—Three-Tier Package-Based Mailings

1.0 BASIC STANDARDS

* * * * *

1.7 Heavy Letter Mail

Each tray of heavy letter mail (as defined in C810) must be identified by a flag (similar to a separator card) clearly marked "HEAVY LETTER MAIL" and placed in front of the contents of the tray. Each pallet, general purpose mail container, or other equipment used to transport trays of heavy letter mail must be labeled "HEAVY LETTER MAIL," in letters not less than 1/2 inch high on white or light-colored stock not smaller than 8 by 11 inches, on two adjacent sides of the pallet or other equipment.

* * * * *

R100 First-Class Mail

* * * * *

[Revise the Summary of First-Class Rates chart as follows:]

Weight not over (oz.)	Presorted 3-digit barcoded	Presorted 5-digit barcoded
.	. .	. .
4	$0.908 (Weight not to exceed 3.3376 oz.)	$0.902 (Weight not to exceed 3.3376 oz.)
.	. .	. .

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94-31396 Filed 12-21-94, 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA23-1-5641a; FRL-5109-4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania: Control of Volatile Organic Compounds (VOC) From Surface Coating, Pneumatic Rubber Tire Manufacturing, Graphic Arts and Synthetic Organic Chemical Manufacturing Industry (SOCMI) Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision corrects deficiencies and adds requirements for the control of VOCs from surface coating, pneumatic rubber tire manufacturing, graphic arts and synthetic organic chemical manufacturing industry (SOCMI) equipment leaks. The intended effect of this action is to approve these Pennsylvania VOC regulations as a revision to the SIP. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

DATES: This action will become effective February 21, 1995, unless adverse or critical comments are received on or before January 23, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Docket and Information Center in the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Aquanetta Dickens, (215) 597-3164 at the Region III address above.

SUPPLEMENTARY INFORMATION: On December 31, 1985, June 29, 1988, and August 19, 1992, the Pennsylvania

Department of Environmental Resources (PADER) formally submitted amendments to 25 Pa Code Chapter 121—General Provisions and Chapter 129—Standards for VOC as SIP revisions. These revisions were submitted by PADER to correct existing deficiencies in its VOC regulations and to control emissions as part of the Reasonably Available Control Technology (RACT) Fix-up requirement of Section 182 of the CAA. Specifically, this document approves the addition of § 129.72—Manufacture of Sulfonates (Surface Active Agents) and § 129.71—Synthetic Organic Chemical Manufacturing Industry Equipment (SOCMI) Leaks into the PADER SIP submitted on December 31, 1985 and June 29, 1988, as well as amendments to the following section of 25 PA Code § 121.4—Regional Organization of the Department; § 129.51 General—VOC Recordkeeping Requirements; § 129.52—Surface Coating; § 129.62—General Standards for Bulk Gasoline Terminals, Bulk Gasoline Plants and Small Gasoline Storage Tanks; § 129.66—Compliance Schedules and Final Compliance Dates; § 129.67—Graphic Arts; and § 129.69—Pneumatic Rubber Tire Manufacturing; § 129.72—Manufacture of Sulfonates (Surface Active Agents) and § 129.71—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Equipment Leaks contained in the August 19, 1992 submittal.

The December 31, 1985 and June 29, 1988 submittals also included a request that EPA approve the addition of the Commonwealth's wood cabinet and wood furniture finishing rule into the Pennsylvania's SIP. That regulation is the subject of a separate rulemaking document.

On May 26, 1988, EPA issued a SIP call letter to Pennsylvania notifying the Commonwealth that its SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. In a June 14, 1988 follow-up letter, EPA notified PADER of deficiencies in its existing VOC regulations which needed to be corrected in order to make the regulations consistent with EPA policy and guidance. A SIP call letter is a finding made by EPA that the SIP does not provide for attainment by the required date, (section 110(a)(2)(H) of the Act, as amended, 42 U.S.C. 7410(a)(2)(H); 42 U.S.C. 7410(A)(K)(5)). EPA's review of this material indicates that PADER has addressed the deficiencies pertaining to the correction of State VOC regulations required by section 182(a)(2)(A) and section 184(b) of the Act, as amended in 1990.

Summary of the SIP Revision

Section 121.4—Regional Organization of the Department

The PADER revised the names and the counties included in the six administrative regions for the purpose of air pollution control. Southeast Region: Bucks, Chester, Delaware, Montgomery and Philadelphia Counties; Northeast Region: Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Susquehanna, Wayne and Wyoming Counties; Southcentral Region: Adams, Bedford, Berks, Blair, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Perry and York Counties; Northcentral Region: Bradford, Cameron, Centre, Clearfield, Clinton, Columbia, Lycoming, Montour, Northumberland, Potter, Synder, Sullivan, Tioga, and Union Counties; Southwest Region: Allegheny, Armstrong, Beaver, Cambria, Fayette, Greene, Indiana, Somerset, Washington and Westmoreland Counties; Northwest Region: Butler, Clarion, Crawford, Elk, Erie, Forest, Jefferson, Lawrence, McKean, Mercer, Venango and Warren Counties.

Section 129.51—General

Section 129.51(d) was amended to add general recordkeeping requirements for regulated sources of VOCs subject to the emission limitations and control requirements in Chapter 129. Section 129.51 requires the owner or operator of a facility or source to keep records to demonstrate compliance with the applicable limitation or control requirement. Those records are to provide sufficient data and calculations which clearly demonstrate that the emission limitations or control requirements are met. The data or information required to determine compliance with the applicable limitation are to be recorded and maintained in a timeframe consistent with the averaging period of the standard. The records are to be retained at least two years and made available to PADER on request. A facility or source which claims exemption from the emission limitations and control requirements is to maintain records adequate to demonstrate that the facilities and sources are entitled to the exemption.

Section 129.52—Surface Coating Processes

Section 129.52(a) was changed to expand the applicability of the surface coating requirements to statewide for facilities with emissions greater than 2.7 tons/yr., 15 lbs/day, or 3 lbs/hr. before controls.

Section 129.62—General Standards for Bulk Gasoline Terminals, Bulk Plants and Small Gasoline Storage Tanks

Subsection (c) specifies that a person may not allow a gasoline tank truck subject to § 129.59—Bulk Gasoline Terminals, § 129.60—Bulk Gasoline Plants or § 129.61—Small Gasoline Storage Tank Control to be filled or emptied statewide unless the gasoline tank truck meets the requirement below

The word "annual" was deleted from subsection (c)(1) to add "12 months." The gasoline tank truck leak check requirement was revised to clarify the annual gasoline tank truck leak check requirement to add that the owner or operator subject to the requirements of § 129.62(c) may not allow a tank to be filled or emptied statewide unless the gasoline tank truck has been tested by the owner or operator within the immediately preceding 12 months in accordance to the applicable test method and procedure in § 139.14—Emissions of VOCs.

Section 129.66—Compliance Schedules and Final Compliance Dates

This regulation adds a one year compliance interval for existing sources newly subject to the requirements of § 129.52, §§ 129.59–129.61, §§ 129.67–129.69 as a result of the revised applicability requirements, and to the newly affected pneumatic rubber manufacturing facilities and surface coating processes subject to the emission standards. Newly subject sources or facilities are those existing sources which were not previously subject to the emission limitations because they emitted less than the cutoff levels or operated at de minimis production levels prior to the date of publication of the limitation in the Pennsylvania Bulletin, but are now subject to the standard because they meet or exceed the cutoff levels; compliance shall be achieved by May 23, 1993. Section 129.68—Manufacture of Synthesized Pharmaceutical Products was deleted from this section because the compliance schedule (August 3, 1992) for this source category was the subject of a separate rulemaking.

Section 129.67—Graphic Arts Systems

Section 129.67(e) establishes a requirement that the emissions of VOCs used in clean-up operations shall be summed with emissions from surface coating and printing to determine the applicability of the graphic arts regulatory requirements.

Section 129.69—Manufacture of Pneumatic Rubber Tires

The VOC control requirements in Section 129.69(a) are revised to delete the 5,000 tire/day exemption level, add the definitions of pneumatic rubber tire manufacture and passenger type tire, specify minimum control requirements for tire manufacturing, and allow an affected tire manufacturer to petition for approval of an alternative RACT control program. Such an alternative must be approved by PADER and EPA as a SIP revision.

Pneumatic rubber tire manufacturing is defined as the production of pneumatic rubber passenger-type on a mass production basis, and passenger-type tires are agricultural, airplane, industrial, mobile home, light or medium duty truck or passenger vehicle tires with bead diameters up to 20 inches (50.8 centimeters) and cross-sectional dimensions up to 12.8 inches (32.5 centimeters).

In addition, this section adds that the production of specialty tires for antique or other vehicles, when produced on an irregular basis or with short production runs and when produced on equipment separate from normal production lines for passenger-type tires, are exempt from the requirements of this section upon written approval from PADER.

Subsection (b)(1) clarifies the requirement that the owner or operator of an undertread cementing, tread-end cementing or bead dipping operation subject to this section shall install and operate a capture system designed to achieve maximum reasonable capture of at least 85% by weight of VOC emitted, from all undertread cementing, tread-end cementing and bead dipping operations.

Subsection (c)(1) deletes the 5% VOC content water-based spray limit provision.

Subsection (d) deletes the 0.161 pound per tire emission limit, and adds the requirement that as an alternative to meeting the specified control level, an affected facility may develop and implement an alternative RACT control program if the program is approved by the PADER and EPA as a SIP revision.

Section 129.71—Synthetic Organic Chemical and Polymer Manufacturing-Fugitive Sources

Section 129.71(a) applies to surface active agent manufacturing facilities subject to § 129.72 (relating to manufacturing of surface active agents) and to facilities with design capability to manufacture 1,000 tons per year (tpy) or more of one or a combination of synthetic organic chemicals listed in 40 CFR 60.489 (relating to list of chemicals provided by affected facilities), Methyl tert-butyl ether, polyethylene, polypropylene, or polystyrene. The previous 4,000 tpy applicability level was deleted.

Subsection (c) requires the owner or operator of a newly affected facility to complete, develop and initiate a leak detection program including liquid leaks for pumps, valves, compressors, vessels, and safety pressure relief valves and a repair program for these components that cause a hydrocarbon detection instrument reading equal to or greater than 10,000 ppm not later than May 23, 1993. The leak detection and repair program shall include the following: a leak check during every quarter of all components, by methods referenced in § 139.14; a waterproof identification tag is to be attached to the leaking component (that is causing the instrument to read greater than 10,000 ppm) with the identification number and the date which the leak was detected in a visible area; the repair and retest of a leaking component must be done within 15 days from the date of detection; and the identification tag must indicate if the component cannot be repaired until a process shutdown that will not occur within 15 days from the date of detection.

Subsection (2)(iv) was revised to require a weekly visual check of all pumps in light liquid service for indications of leaks.

The fugitive emission leak check requirements in § 139.14 (relating to emissions of VOCs) were separated from subsection (2)(iv) and added as a new subsection, (2)(v). This new subsection specifies that safety relief valves are subject to the requirements for rechecking within 24 hours. The requirements for the recordkeeping and reporting of the leak detection and repair program were separated from subsection (2)(iv) and added as a new subsection, (2)(vi).

Section 129.72—Manufacture of Surface Active Agents

Section 129.72 requires a leak detection program (see § 129.71 synthetic organic chemical and polymer manufacturing fugitive sources). Subsection (b) of this section was amended to clarify the emission control system efficiency requirements for surface active agent manufacturing facilities with potential VOC emissions of greater than 100 tpy. Emission of VOCs in ambient air from solvent wash tanks, reaction vessels, separators, distillation processes, solvent trippers and solvent storage tanks may not be caused or permitted by any person unless the emissions are exhausted through an emission reduction system which is designed and operated to recover or destroy at least 90% by weight of the VOC emissions exhausted to the emission reduction system.

EPA is approving this SIP revision without prior publication of a notice of proposed rulemaking because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 21 1995, unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time If no such comments are received, the public is advised that this action will be effective on February 21, 1995

Final Action

EPA is approving the addition of and revision to Pennsylvania's SIP to control VOCs from § 129.52 - surface coating, § 129.69 - pneumatic rubber tire manufacturing, § 129.67 - graphic arts and § 129.72 - synthetic organic chemical manufacturing industry equipment leaks which were submitted to EPA on December 31, 1985, June 29, 1988 and August 19, 1992. These revisions meet part of the RACT Fix-up requirement of the Act, as amended.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA 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, EPA 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 Commonwealth is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. §§ 7410(a)(2).

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

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 February 21, 1995. 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).)

The Regional Administrator's decision to approve or disapprove Pennsylvania's SIP revisions to control VOCs from surface coating, pneumatic rubber tire manufacturing, graphic arts and synthetic organic chemical manufacturing industry equipment leaks SIP revision will be based on whether it meets the requirements of Section 110(a)(2)(A)–(K), and Part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

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

Dated: September 21, 1994.

Stanley Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(94) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(94) Revision to the Commonwealth of Pennsylvania Volatile Organic Compound (VOC) Regulations, amending 25 Pa Code Chapters 121—General Provisions and Chapter 129—Standards for Sources submitted on August 19, 1992, by the Pennsylvania Department of Environmental Resources (PADER).

(i) Incorporation by reference.

(A) A letter of August 19, 1992, from PADER transmitting a state implementation plan revision which corrects deficiencies and adds requirements for the control of VOCs from surface coating, pneumatic rubber tire manufacturing, graphic arts and synthetic organic chemical manufacturing industry equipment leaks.

(B) 25 Pa Code, Chapter 121, § 121.4; and 25 Pa Code, Chapter 129, §§ 129.51, 129.52, 129.62, 129.66, 129.67, 129.69, 129.71 and 129.72, submitted on August 19, 1992 and effective on May 23, 1992.

[FR Doc. 94–31379 Filed 12–21–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 941133–4333; I.D. 111494B]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of embargoes.

SUMMARY: NMFS announces that, in adherence to regulations and court orders, yellowfin tuna and products derived from yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) by purse seine vessels of Colombia or the Republic of Vanuatu are prohibited from entry into the United States.

EFFECTIVE DATE: September 28, 1994.

ADDRESSES: Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90731.

FOR FURTHER INFORMATION CONTACT: LT Dana Wilkes, 310–980–4000; Fax 310–980–4018.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires a ban on the importation of commercial fish or products from fish that have been caught with commercial fishing technology which results in the incidental kill or serious injury of marine mammals in excess of U.S. standards. In the case of yellowfin tuna harvested by purse seine in the ETP, the MMPA requires a ban unless the harvesting nation has a program and performance that is comparable in its level of marine mammal protection to that of the United States. The regulatory program of the harvesting nation must include, among other things, such prohibitions against encircling certain schools of dolphin, conducting sundown sets, and other activities as are applicable to U.S. vessels under the marine mammal program of the United States (16 U.S.C. 1371(a)(2)(B)(I)). MMPA regulations require that harvesting nations implement marine mammal protection requirements within 180 days of the date that such requirements are placed on U.S. vessels (50 CFR 216.24(e)(5)(v)(B)).

On November 1, 1993 (58 FR 58285), NMFS published a final rule declaring the northeastern stock of offshore spotted dolphin (*Stenella attenuata*) to be depleted under section 3(1) of the MMPA (16 U.S.C. 1362(1)). On January 27, 1994, the U.S. District Court for the Northern District of California in the case of *Earth Island Institute v. Brown*, No. C 88–1380 TEH, enjoined NMFS, effective immediately, from permitting any incidental taking of any northeastern offshore spotted dolphin in the ETP, and required that NMFS include this prohibition in the comparability requirements for foreign nations. On February 1, 1994, NMFS notified U.S. vessels fishing under the general permit issued to the American Tunaboat Association (ATA general permit) that all sets on the northeastern stock of offshore spotted dolphin were

prohibited due to the stock's recently determined status as depleted under the MMPA. On February 4, 1994, NMFS further advised those vessels that the take of all offshore spotted dolphin was prohibited immediately under the provisions of the January 27, 1994, order requiring NMFS to minimize the take of northeastern offshore spotted dolphin. On February 8, NMFS, in order to ensure that the aggregate dolphin mortality quota mandated by the International Dolphin Conservation Act was not exceeded, prohibited the taking of any additional dolphin, regardless of species or stock, under the ATA general permit, thus closing the fishery.

On February 22, 1994, NMFS published a notice in the **Federal Register** (59 FR 8417) of the January 27, 1994, court order, and of the February 1, 4, and 8, 1994, NMFS actions discussed above. The prohibition on the take of any of the northeastern stock of offshore spotted dolphin has been incorporated as a new element in the marine mammal program of the United States. On August 24, 1994, with a subsequent technical correction on September 19, 1994, the U.S. District Court for the Northern District of California amended its order of January 27, 1994, and specified that its prohibition applied only in the area from 40° N. lat. to 5° N. lat., and from 120° W. long. to the coastline of Central and South America.

As of September 28, 1994, NMFS had not received documentary evidence from Colombia or from the Republic of Vanuatu that either nation has incorporated into its marine mammal protection program a prohibition on encircling with a purse seine net any school in which a northeastern offshore spotted dolphin is observed. Therefore, because the 180-day period allowed for a foreign nation to adopt a comparable prohibition expired on July 26, 1994, in adherence to the regulations and court orders cited above, NMFS on September 28, 1994, notified the U.S. Customs Service, and here announces, an immediate ban on imports of yellowfin tuna harvested in the ETP by purse seine vessels of Columbia and the Republic of Vanuatu.

Dated: December 13, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service

[FR Doc 94–31398 Filed 12–21–94, 8:45 am]

BILLING CODE 3510–22–F

50 CFR Parts 611, 672, and 676

[Docket No. 941249–4349; I.D. 112894C]

Foreign Fishing; Groundfish of the Gulf of Alaska; Limited Access Management of Federal Fisheries In and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim 1995 initial specifications of groundfish, associated management measures, and closures.

SUMMARY: NMFS issues interim 1995 initial total allowable catches for each category of groundfish and specifications for prohibited species bycatch allowances for the groundfish fishery of the Gulf of Alaska (GOA). NMFS is closing specified fisheries consistent with the interim 1995 groundfish specifications. The intended effect is to conserve and manage the groundfish resources in the GOA.

EFFECTIVE DATE: January 1, 1995, until the effective date of the final 1995 initial specification, which will be published in the **Federal Register**.

ADDRESSES: The preliminary Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1994, is available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act. The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fisheries at 50 CFR parts 672, 676, and 677. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

This action provides certain specifications for the 1995 fishing year on a preliminary or interim basis, including: (1) Specifications of total allowable catch (TAC) for each groundfish target species category in the GOA and apportionments thereof among domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves; (2) apportionments of reserves to DAP; (3) apportionments of the sablefish TAC to vessels using hook-and-line and trawl gear; (4) apportionments of pollock TAC; (5) apportionments of Pacific cod TAC; (6) "other species" TAC; (7) halibut prohibited species catch (PSC) limits; (8) seasonal allocations of the halibut PSC limits, (9) interim groundfish harvest specifications, (10) the opening date of the directed fishery for sablefish for hook-and-line gear, and (11) closures to directed fishing. A discussion of each of these measures follows.

1. Proposed Establishment of TACs and Apportionments Thereof Among Domestic Annual Processing (DAP), Joint Venture Processing (JVP), Total Allowable Level of Foreign Fishing (TALFF), and Reserves

Under § 672.20(c)(1)(ii), NMFS, after consultation with the Council, publishes in the **Federal Register** preliminary specifications of annual TACs and interim harvest limits. These preliminary specifications indicate apportionments of TACs among DAP, JVP, reserves, and TALFF for each target species and the "other species" category. The sum of the TACs for all species must fall within the combined optimum yield (OY) range, of 116,000–800,000 metric tons (mt), established for these species.

Species TACs are apportioned initially among DAP, JVP, TALFF, and reserves under §§ 611.92(c)(1) and 672.20(a)(2). DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen deliver their catches to foreign processors at sea. TALFF amounts are intended for harvest by foreign fishermen. Existing harvesting and processing capacity of the U.S. industry is capable of utilizing the entire 1995 TAC specification for GOA groundfish. Therefore, the Council recommended that DAP equal TAC for each species category, resulting in no proposed amounts of TALFF or JVP for the 1995 fishing year.

The reserves for the GOA are 20 percent of the TACs for pollock, Pacific cod, flatfish target species categories, and "other species." Given that the GOA groundfish TACs have been utilized fully by DAP since 1987, NMFS has reapportioned all the reserves to DAP.

The Council met from September 28 to October 5, 1994, to review scientific information concerning groundfish stocks. The preliminary SAFE Report, dated September 1994, prepared and presented to the Council by the GOA

Plan Team (Plan Team), summarizes the best available scientific information.

The September 1994 SAFE Report contains revised stock assessments for all species except sablefish and demersal shelf rockfish (DSR). New assessments for these two species are discussed in the final SAFE Report issued in November. New stock assessment models were used in the assessments for Pacific cod, arrowtooth flounder, and thornyhead rockfish. Additional information, based on 1993 trawl surveys, was presented for pollock, slope rockfish, Pacific ocean perch (POP), pelagic shelf rockfish, and the flatfish groups. Details of the assessments can be found in the September 1994 SAFE Report.

The total ABC amount recommended by the SSC and accepted by the Council was a range from 481,090 – 533,690 mt. The range accounted for the recommended ABC range in the Pacific cod stock. The total TAC amount recommended by the Advisory Panel (AP) was 326,515 mt. The AP recommended a 1995 TAC equal to the 1995 ABCs, as recommended by the SSC, for pollock, rex sole, sablefish, shortraker/rougheye, other rockfish, northern rockfish, pelagic shelf rockfish, DSR, and thornyhead rockfish. The AP recommendation for a 1995 TAC for Pacific cod was equal to the upper end of the range (103,000 mt) recommended by the SSC.

The Council considered information in the SAFE Report, recommendations from its SSC and its AP, as well as public testimony. The Council then accepted the ABCs as recommended by the SSC and, with the exception of "other rockfish," the TACs as recommended by the AP.

The Council chose a TAC range for "other rockfish" that ranged from the 1994 TAC amount of 2,235 mt to the 1995 ABC amount of 6,930 mt. This range was recommended to recognize the need for conservative management of this group. However, NMFS must manage the fisheries based on a single TAC amount, rather than on a range of numbers. NMFS has chosen to propose a TAC of 6,930 mt, which is the number proposed by the AP and is the ABC that was recommended from the 1994 stock assessment. Even though this number will be used to establish the 1995 interim TAC until the final specifications are implemented, no practical difference exists in choosing any number within the Council's recommended TAC range. The hook-and-line fisheries typically do not harvest other rockfish and the trawl fisheries for rockfish do not open until July 1, by which time the final specifications will be published.

NMFS also revises the Council's recommendation for the 1995 flathead sole TAC. The Council approved the AP recommendation of adopting the 1994 TAC amounts for flathead sole for the 1995 TAC amounts. In the GOA Eastern Regulatory Area, the 1994 TAC amount (3,000 mt) is higher than the Council's recommended 1995 ABC (2,740 mt). To maintain consistency with the accepted policy of setting TACs lower than or equal to ABC amounts, NMFS is proposing to establish a 1995 TAC of 2,740 mt for the Eastern Regulatory Area. This number is equal to the 1995 ABC recommended by the Plan Team and the SSC and approved by the Council. Adjustment of the flathead sole TAC in the Eastern Regulatory Area changes the total 1995 flathead sole TAC to 9,740 mt. This also results in a revised "other species" TAC amount of 15,535 mt and a revised 1995 total GOA TAC of 326,242 mt.

The 1995 ABCs, TACs and interim TACs, as well as the ABC and TAC apportionments, are shown in Table 1

TABLE 1.—PRELIMINARY 1995 ABCS, PROPOSED TACS, PRELIMINARY TACS AND DAPS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS IN THE WEST YAKUTAT (WYAK), SOUTHEAST (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.[1] AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE PROPOSED TO BE APPORTIONED TO DAP. AMOUNTS IN METRIC TONS.

Species	Area	ABC	TAC=DAP	¼ TAC=Interim TAC
Pollock:[2]				
	W (61)	30,380	30,380	7,595
	C (62)	15,310	15,310	3,,827
	C (63)	16,310	16,310	4,078
Subtotal	W/C	62,000	62,000	15,500
	E	3,360	3,360	840
Total		65,360	65,360	16,340
Pacific cod:[3]				
Inshore	W		26,910	6,727
Offshore	W		2,990,	748
Inshore	C		61,200	15,300
Offshore	C		6,800	1,700
Inshore	E		4,590	1,147
Offshore	E		510	128
	W	16,630–29,900	29,900	7,475
	C	31,250–68,000	68,000	17,000
	E	2,520–5,100	5,100	1,275
Total		50,400–103,000	103,000	25,750
Flatfish, Deep-water[4]				
	W	670	460	115
	C	8,150	7,500	1,875
	E	5,770	3,120	780

TABLE 1.—PRELIMINARY 1995 ABCS, PROPOSED TACS, PRELIMINARY TACS AND DAPS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS IN THE WEST YAKUTAT (WYAK), SOUTHEAST (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.[1] AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE PROPOSED TO BE APPORTIONED TO DAP. AMOUNTS IN METRIC TONS.—Continued

Species	Area	ABC	TAC=DAP	¼ TAC=Interim TAC
Total		14,590	11,080	2,770
Rex sole:				
	W	1,350	1,350	338
	C	7,050	7,050	1,763
	E	2,810	2,810	703
Total		11,210	11,210	2,804
Flathead sole:				
	W	8,880	2,000	500
	C	17,170	5,000	1,250
	E	2,740	2,740	685
Total		28,790	9,740	2,435
Flatfish, Shallow-water:[5]				
	W	26,280	4,500	1,125
	C	23,140	12,950	3,238
	E	2,850	1,180	295
Total		52,270	18,630	4,658
Arrowtooth flounder:				
	W	28,400	5,000	1,250
	C	141,290	25,000	6,250
	E	28,440	5,000	1,250
Total		198,130	35,000	8,750
Sablefish:[6]				
	W	2,290	2,290	573
	C	11,220	11,220	2,805
	W. Yak	4,850	4,850	1,213
	SEO	7,140	7,140	1,785
Total		25,500	25,500	6,376
Pacific ocean perch:[7]				
	W	1,780	1,195	299
	C	3,190	2,152	538
	E	3,860	2,630	657
Total		8,830	5,977	1,494
Shortraker/rougheye:[8]				
	W	170	170	43
	C	1,210	1,210	303
	E	530	530	133
Total		1,910	1,910	479
Rockfish, other:[9 10 11]				
	W	170	170	43
	C	1,150	1,150	288
	E	5,610	5,610	1,403
Total		6,930	6,930	1,734
Rockfish, northern:[12]				
	W	640	640	160
	C	4,610	4,610	1,153
	E	20	20	5
Total		5,270	5,270	1,318
Rockfish, pelagic shelf:[13]				
	W	910	910	228

TABLE 1.—PRELIMINARY 1995 ABCS, PROPOSED TACS, PRELIMINARY TACS AND DAPS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS IN THE WEST YAKUTAT (WYAK), SOUTHEAST (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.[1] AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE PROPOSED TO BE APPORTIONED TO DAP. AMOUNTS IN METRIC TONS.—Continued

Species	Area	ABC	TAC=DAP	¼ TAC=Interim TAC
	C	3,200	3,200	800
	E	1,080	1,080	270
Total		5,190	5,190	1,298
Demersal shelf rockfish[11]	SEO	960	960	240
Thornyhead rockfish	GW	1,450	1,450	363
Atka mackerel[14]	GW	4,300	3,500	875
Other species[15]		NA[16]	15,535	3,884
GOA Total[17]		481,090–533,690	326,242	81,568

[1] See § 672.2 for definitions of regulatory area, regulatory district, and statistical area.

[2] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into equal quarterly allowances. The first quarterly allowances are in effect on an interim basis. In the Eastern Regulatory Area, pollock is not divided into quarterly allowances, and one-fourth of the TAC is available on an interim basis.

[3] Pacific cod is allocated 90 percent to the inshore, and 10 percent to the offshore component. One-fourth of the inshore and offshore allocations will be available on an interim basis. Component allowances are shown in Table 4.

[4] "Deep-water flatfish" means Dover sole and Greenland turbot. Rex sole is a separate target species beginning with the 1994 fishing year.

[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).

[7] "Pacific ocean perch" means *Sebastes alutus*.

[8] "Shortraker/rougheye rockfish" means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[9] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means slope rockfish.

[10] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegateu* (harlequin), *S. wilsoni* (pygmy), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail, *S. miniatus* (vermilion), *S. babcocki* (redbanded), and *S. reedi* (yellowmouth).

[11] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[12] "Northern rockfish" means *Sebastes polyspinis*.

[13] "Pelagic shelf rockfish" includes *Sebastes melanops* (black), *S. mystinus* (blue), *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[14] Atka mackerel is a separate target species beginning in 1994.

[15] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of target species.

[16] NA=not applicable.

[17] The total ABC reflects the sum of the ABCs for target species.

2. Preliminary Apportionment of Reserves to DAP

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish species, and the "other species" category be set aside in reserves for possible apportionment at a later date (§ 672.20(a)(2)(ii)). Consistent with § 672.20(a)(2)(iii), NMFS is preliminarily apportioning the 1995 reserves for each of the four species categories to DAP, anticipating that domestic harvesters and processors have established markets for these species and should be provided the opportunity to realize revenues from the harvest of the full DAP amounts so specified. Specifications of DAP shown in Table 1 reflect apportioned reserves.

3. Preliminary Apportionment of the Sablefish TACs to Users of Hook-and-Line and Trawl Gear

Under § 672.24(c), sablefish TACs for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC is allocated to hook-and-line gear and 20 percent is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear and 5 percent is assigned to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used as bycatch to support directed fisheries for other target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl must be treated as prohibited species and may not be retained. Table 2 shows the assignments of the preliminary 1995 sablefish TACs between hook-and-line and trawl gears.

TABLE 2.—PRELIMINARY 1995 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ASSIGNMENTS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR. VALUES ARE IN METRIC TONS.

Area/District	TAC	Hook-and-line share	Trawl share
Western	2,290	1,832	458
Central	11,220	8,976	2,244
Eastern West Yakutat	4,850	4,607	243

TABLE 2.—PRELIMINARY 1995 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ASSIGNMENTS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR. VALUES ARE IN METRIC TONS.—Continued

Area/District	TAC	Hook-and-line share	Trawl share
Southeast Outside	7,140	6,783	357
Total	25,500	22,198	3,302

4. Preliminary Apportionments of Pollock TAC

In the GOA, pollock is apportioned by area and season. These amounts are further apportioned between inshore and offshore components. Regulations at § 672.20(a)(2)(iv) require that the TAC for pollock in the combined Western/Central Regulatory Areas (W/C) be apportioned among statistical areas Shumagin (61), Chirikof (62), and Kodiak (63) in proportion to known distribution of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Each statistical area apportionment is further divided equally into the four calendar quarters. Within any fishing year, any unharvested amount of any quarterly allowance of pollock TAC is added in equal proportions to the quarterly allowances of following quarters, resulting in a sum for each quarter not to exceed 150 percent of the initial quarterly allowance. Similarly, harvests in excess of a quarterly allowance of TAC are deducted in equal proportions from the remaining quarterly allowances of that fishing year. The Eastern Regulatory Area proposed TAC of 3,360 mt is not allocated among smaller areas, or quarterly.

Regulations at § 672.20(a)(2)(v)(A) require that the DAP apportionment for pollock in all regulatory areas and all quarterly allowances thereof be divided into inshore and offshore components. The inshore component is apportioned 100 percent of the pollock DAP in each regulatory area after subtraction of amounts that are determined by the Director, Alaska Region, NMFS, (Regional Director) to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown, and will be determined during the fishing year. The preliminary distribution of pollock within the combined W/C GOA is shown in Table 3, except that inshore and offshore component apportionments of pollock are not shown.

TABLE 3.—PRELIMINARY DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND QUARTERLY ALLOWANCES. ABC FOR THE W/C GOA IS PROPOSED TO BE 62,000 METRIC TONS (MT). BIOMASS DISTRIBUTION IS BASED ON 1993 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN. ABCS AND TACS ARE ROUNDED TO THE NEAREST 10 MT.

Statistical area	Biomass percent	1995 ABC = TAC	Quarterly allowance
Shumagin (61)	49	30,380	7,595
Chirikof (62)	24.7	15,310	3,827
Kodiak (63)	26.3	16,310	4,078
Total	100.0	62,000	15,500

5. Preliminary Apportionments of Pacific Cod TAC

Regulations at § 672.20(a)(2)(v)(B) require that the DAP apportionment of Pacific cod in all regulatory areas be divided into inshore and offshore components. The inshore component is equal to 90 percent of the Pacific cod TAC in each regulatory area. Inshore and offshore component allocations of the proposed 103,000 mt TAC for each regulatory area are shown in Table 4.

TABLE 4.—PRELIMINARY 1995 ALLOCATION (METRIC TONS) OF PACIFIC COD IN THE GULF OF ALASKA; ALLOCATIONS TO INSHORE AND OFFSHORE COMPONENTS

Component Allocation	Regulatory area	TAC	
		Inshore (90%)	Offshore (10%)
Western	29,900	26,910	2,990
Central	68,000	61,200	6,800
Eastern	5,100	4,590	510
Total	103,000	92,700	10,300

6. "Other Species" TAC

The FMP specifies that amounts for the "other species" category are calculated as 5 percent of the combined TACs for target species. The GOA-wide "other species" TAC is calculated as 15,535 mt, which is 5 percent of the sum of combined TACs for the target species.

7. Preliminary Halibut PSC Mortality Limits

Under § 672.20(f), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear.

At its September 1994 meeting, the Council recommended that, for 1995, NMFS re-establish 1994 PSC limits of 2,000 mt and 750 mt for the trawl and hook-and-line gear fisheries, respectively, with 10 mt of the hook-and-line limit allocated to the DSR fishery in the Southeast Outside District and the remainder to other hook-and-line gear fisheries. These interim specifications exempt pot gear from halibut limits for 1994, as proposed by the Council.

In 1994, NMFS approved a rule that authorizes separate apportionments of the trawl halibut bycatch mortality limit between trawl fisheries for deep-water and shallow-water species (59 FR 38132, July 27, 1994). These apportionments are divided seasonally to avoid seasonally high halibut bycatch rates.

Consistent with the goals and objectives of the FMP to reduce halibut bycatches while providing an opportunity to harvest the groundfish OY, NMFS preliminarily concurs in the Council's 1995 recommendations and assigns 2,000 mt and 750 mt of halibut PSC mortality limits to trawl and hook-and-line gear, respectively, as interim limits. While these limits would reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they would not result in unfair allocation to any particular user group. NMFS recognizes that some halibut bycatch will occur in the groundfish fishery, but expansion of the Vessel Incentive Program, required modifications to gear, implementation of the IFQ program, and changes in the season start date for some fisheries are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery.

8. Preliminary Seasonal Allocations of the Halibut PSC Limits

Under § 672.20(f)(2)(iii), NMFS preliminarily allocates seasonal halibut PSC limits based on recommendations from the Council. The Council recommended the same seasonal allocation of PSC limits for the 1995 fishing year as those in effect during the 1994 fishing year. The publication of the final 1994 initial groundfish and PSC specifications (59 FR 7647, February 16, 1994) summarizes Council findings with respect to each of the FMP considerations set forth above. At this time, the Council's findings are unchanged from those set forth for 1994.

Pacific halibut PSC limits, and apportionments thereof, are presented in Table 5. Regulations specify that any overages or shortfalls in PSC limits will be accounted for within the 1995 season.

The Council did not recommend changes in the seasonal apportionments for the hook-and-line gear fisheries from those specified in 1994; however, NMFS notes that the opening date of the sablefish fishery is scheduled to change from May 18, in 1994, to March 1, in 1995, under the IFQ program. This change and the Council's proposed exemption of the sablefish fishery from the 1995 PSC limit may prompt the Council to alter its recommendation for seasonal apportionments at its December 1994 meeting.

The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR.

TABLE 5.—PRELIMINARY 1995 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. VALUES ARE IN METRIC TONS

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1–Mar 31	600 (30%)	Jan 1–May 17	200 (27%)	Jan 1–Dec 31	10 (100%)
Apr 1–Jun 30	400 (20%)	May 18–Aug 31	500 (68%)		
Jul 1–Sep 30	600 (30%)	Sep 1–Dec 31	40 (5%)		
Oct 1–Dec 31	400 (20%)				
Total	2,000 (100%)		740 (100%)		10 (100%)

Regulations at § 672.20(f)(1) authorize apportionments of the trawl halibut PSC limit allowance as bycatch allowances to a deep-water species complex, comprising sablefish, rockfish, deep-water flatfish, and arrowtooth flounder, and a shallow-water species complex, comprising pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and other species. The apportionment for these two complexes is presented in Table 6.

TABLE 6.—PRELIMINARY 1995 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX. VALUES ARE IN METRIC TONS

Season	Shallow-water	Deep-water	Total
Jan 20–Mar 31	500	100	600
Apr 1–Jun 30	100	300	400
Jul 1–Sep 30	200	400	600
Oct 1–Dec 31	(1)	(1)	(1)

[1] No apportionment between shallow and deep for the 4th quarter.

9. Interim Groundfish Harvest Specifications

Current regulations at § 672.20(c)(1)(ii)(A) require that one-fourth of the proposed TAC (not including the reserves and the first quarterly allowance of pollock), one-fourth of the inshore and offshore allocations of Pacific cod in each regulatory area, and one-fourth of the halibut PSC amounts, take effect on January 1 on an interim basis and remain in effect until superseded by the final 1995 initial specifications published in the **Federal Register** or until harvested. Seasonal apportionments of TACs or PSC limits under provisions of other regulations may supersede this interim specification. Table 1 shows amounts of proposed specifications of target species and the "other species" categories in effect on an interim basis beginning January 1, 1995.

10. Opening Date of the Directed Fishery for Sablefish for Hook-and-Line Gear

Under new regulations implementing the IFQ program (50 CFR part 676) in 1995, the opening date of the sablefish fishery is March 1.

11. Closures to Directed Fishing

Under § 672.20(c)(2)(ii), if the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery, or with respect to Pacific cod, to an allocation to the inshore or offshore component, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species group or allocation of Pacific cod to the inshore or offshore component that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified regulatory area or district.

The Regional Director has determined that interim amounts of groundfish specified by this preliminary specification (Table 1) for species or species groups identified in Table 7 will be necessary as incidental catch to support anticipated groundfish fisheries prior to the time that final specifications of groundfish are in effect for the 1995 fishing year. Therefore, NMFS is prohibiting directed fishing for those target species, gears, and components listed in Table 7 to prevent exceeding the interim amounts of groundfish TACs specified. These closures will be in effect during the period that the appropriate interim specifications of groundfish TACs are in effect. During these closures, applicable directed fishing standards may be found at § 672.20(g). Additional closures and restrictions may be found in existing regulations at 50 CFR part 672.

TABLE 7.—CLOSURES TO DIRECTED FISHING FOR INTERIM TOTAL ALLOWABLE CATCHES IMPLEMENTED BY THIS NOTICE [1]. OFFSHORE = THE OFFSHORE COMPONENT; TRW = TRAWL; ALL = ALL GEARS; WG = WESTERN REGULATORY AREA; CG = CENTRAL REGULATORY AREA; EG = EASTERN REGULATORY AREA; GOA = ENTIRE GULF OF ALASKA.

Fishery	Component	Gear	Closed areas
Atka mackerel		ALL	GOA
Northern rockfish		ALL	EG
Deep-water flatfish		ALL	WG
Pacific cod	Offshore	ALL	WG, CG, EG
Pacific ocean perch		ALL	WG, CG
Rex sole		ALL	WG
Sablefish		TRW	WG, CG
Shortraker/rougheye rockfish		ALL	WG, CG, EG
Thornyhead rockfish		ALL	GOA

These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 672.

After consideration of public comments and additional scientific information presented at its December 1994 meeting, the Council may recommend other closures to directed fishing. Additionally, NMFS may implement other closures at the time the final 1995 initial specifications of groundfish TACs are implemented, or during the 1995 fishing year as necessary for effective management.

Classification

This action is authorized under 50 CFR 611.92 and 672.20; and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 15, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–31399 Filed 12–21–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 245
Thursday, December 22, 1994

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[EE–60–94]

RIN 1545–AT11

Withholding on Distributions of Indian Gaming Profits to Tribal Members

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the income tax withholding requirement on distributions of profits from certain gaming activities made to members of Indian tribes under section 3402(r) of the Internal Revenue Code of 1986. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by February 21, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE–60–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–60–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rebecca Wilson (202) 622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Employment Tax Regulations (26 CFR part 31) relating to section 3402(r). The temporary regulations contain rules relating to the income tax withholding requirement on distributions of profits from certain gaming activities made to members of Indian tribes under section 3402(r).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

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 Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the regulations is Rebecca Wilson, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 31.3402(r)–1 also issued under 26 U.S.C. 3402(r). * * *

Par. 2. Section 31.3402(r)–1 is added to read as follows:

§ 31.3402(r)–1 Withholding on distributions of Indian gaming profits to tribal members.

[The text of this proposed section is the same as the text of § 31.3402(r)–1T published elsewhere in this issue of the **Federal Register**.]

Margaret Milner Richardson,
Commissioner of Internal Revenue

[FR Doc. 94–31284 Filed 12–21–94, 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Part 31

[EE–83–89]

RIN 1545–AN57

Time for Furnishing Wage Statements on Termination of Employer's Operations

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under sections 6051 and 6071 of the Internal Revenue Code of 1986 concerning the time for furnishing wage statements to both employees and the Social Security Administration upon the termination of an employer's operations. These proposed regulations will affect employers and their employees in the year the employer ceases to pay wages. These regulations will improve the wage reconciliation process between the Social Security Administration and the IRS.

DATES: Written comments and requests for a public hearing must be received by February 21, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (EE–83–89), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–83–89), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jean Whalen Casey, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Employment Tax Regulations (26 CFR part 31) under sections 6051 and 6071 of the Internal Revenue Code (Code). The proposed regulations are to be issued under the authority of sections 6051, 6071 and 7805.

Explanation of Provisions

The proposed regulations improve the wage reconciliation process between the Social Security Administration (SSA) and the Internal Revenue Service (IRS) by generally requiring an employer that is required to file a final Form 941, Employer's Quarterly Federal Tax Return, to file Forms W–2, Wage and Tax Statement, and W–3, Transmittal of Wage and Tax Statements, with SSA and to furnish Form W–2 to the employees at the same time the employer is required to file the final Form 941.

Prior to 1978, employers had submitted quarterly tax returns to the IRS listing both the aggregate wages and taxes for all employees (Form 941) and each employee's name and Social Security number, showing the amount of wages paid to the employee for that quarter (Schedule A of Form 941 or Form 941A). The IRS forwarded Form 941A to SSA, which used it to post earnings to individual Social Security records.

In order to minimize the burden on employers, Congress changed the requirement for submission of detailed wage statements from a quarterly to an annual basis, effective in 1978. As a result, under the current system, an employer submits quarterly tax returns (Forms 941) to the IRS listing the aggregate wages and taxes of all of its employees. Annual information returns are submitted to SSA listing the wages of each individual employee (Forms W–2, accompanied by Forms W–3 listing aggregate annual wages of all employees). A reconciliation problem arises when the aggregate wages on the annual reports to the SSA do not match the aggregate wages on the four quarterly reports submitted to the IRS. Where the wages reported to the IRS exceed the wages reported to SSA, this indicates a possible underreporting of social security wages to SSA.

One source of these discrepancies is the termination by employers of their business operations. In some instances, employers that have gone out of business well before the due date for the annual filing of Form W–2 have failed to file Forms W–2 with SSA as required. These failures have occurred even though the employer might have filed one or more quarterly Forms 941 with the IRS during the year. In these cases, the failure to receive the Forms W–2 means SSA is unable to credit wages to the social security accounts of affected employees. This problem can be eliminated by requiring employers that terminate business operations to file Forms W–2 and W–3 at the time they are required to file the final Form 941.

Generally, under § 31.6071(a)–1(a)(1) of the existing regulations, the Form 941 is due on or before the last day of the first calendar month following the period (generally a calendar quarter) for which it is made. Thus, the Form 941 is generally due on or before April 30, July 31, October 31, and January 31. There is a ten-day extension if the employer timely deposited the taxes due for the quarter. Section 31.6011(a)–6(a)(1) of the existing regulations requires an employer that ceases to pay wages in a quarter to mark and file the Form 941 for that quarter as a final return. The proposed regulations require an employer that is required to file a final Form 941 to provide Forms W–2 to the employees and Forms W–2 and W–3 to SSA at the same time that the employer is required to file the final Form 941.

Different time frames apply to monthly Form 941 filers. Under § 31.6071(a)–1(a)(2) of the existing regulations, if the district director notifies an employer that it is required to make monthly returns on Form 941 in lieu of quarterly returns, the Form 941 is due on or before the fifteenth day of the calendar month following the period (generally a calendar month) for which it is made. For employers that are required to file Form 941 monthly, requiring the filing of the Forms W–2 at the same time as the final Form 941 might be unduly burdensome. Thus, the proposed regulations would not require a monthly filer to provide Forms W–2 to the employees until the end of the calendar month in which the final Form 941 is due, rather than by the fifteenth day of that month. The proposed regulations leave in place the provisions of § 31.6071(a)–1(a)(3) of the existing regulations requiring a monthly filer that files a final Form 941 to furnish Forms W–2 and W–3 to SSA on or before the last day of the second calendar month following the period for which the final Form 941 is due.

Under § 31.6051–1(d)(1) of the existing regulations, applicable to both quarterly and monthly Form 941 filers, if an individual's employment is terminated before the end of a calendar year, the employer may furnish Form W–2 to the employee at any time after termination but no later than January 31 of the next year. If the terminated employee requests a Form W–2, and if there is no reasonable expectation on the part of either the employer or the employee of further employment during the calendar year, the employer must furnish Form W–2 to the employee by the later of 30 days after the employee made the request or 30 days after the last payment of wages. The proposed regulation has no effect on the rights of terminated employees to require the employer to furnish Form W–2 within this time frame.

In Revenue Procedure 84–77, 1984–2 C.B. 753, the IRS provided procedures for preparing and filing certain forms, including Form 941, Form W–2 and Form W–3, when a successor employer acquires substantially all of the property (1) used in a trade or business of a predecessor employer, or (2) used in a separate unit of a trade or business of a predecessor, and in connection with or immediately after the acquisition (but during the same calendar year) the successor employs individuals who were employed in the trade or business of the predecessor immediately prior to the acquisition. This proposed regulation would have the effect of modifying the time frame for the standard procedure in section 4.01 of the Revenue Procedure. Except for this change, the proposed regulation would not affect the continuing validity of the Revenue Procedure

The proposed regulation applies to employers who file Form 941 on a monthly or quarterly basis, including railroad employers It does not apply to employers with respect to their agricultural employees (in those cases, employers file on an annual basis on Form 943). Nor does it apply to employers with respect to their domestic employees (in those cases, employers file on an annual basis beginning in 1995)

These regulations are effective upon the date of publication of these regulations in final form in the **Federal Register**. However, these regulations shall apply only to employers that cease the payment of wages after the close of the calendar quarter in which the date of publication occurs.

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 (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**

Drafting Information

The principal author of these regulations is Jean Whalen Casey, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement Reporting and recordkeeping requirements, Social security, Unemployment compensation

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 31.6051–1(d) also issued under 26 U.S.C. 6051 * * * Section 31.6071–1 also issued under 26 U.S.C. 6071 * * *

Par. 2. Section 31.6051–1(d)(1) is amended as follows:

1. Paragraph (d)(1) is redesignated as (d)(1)(i).

2. Paragraph (d)(1)(ii) is added to read as follows:

§ 31.6051–1 Statements for employees.

* * * * *

(d) * * * (1)(i) * * *

(ii) *Expedited filing*—(A) *General rule* If an employer is required to make a final return under § 31.6011(a)–6(a)(1) (relating to the final return for Federal Insurance Contributions Act taxes and income tax withholding from wages) on Form 941, the employer must furnish the statement required by this section on or before the time required for filing the final return. See § 31.6071(a)–1(a)(1). However, if the final return under § 31.6011(a)–6(a)(1) is a monthly return, as described in § 31.6011(a)–5, the employer must furnish the statement required by this section on or before the last day of the month in which the final return is required to be filed. See § 31.6071(a)–1(a)(2). The requirements set forth in this paragraph (d)(1)(ii) do not apply to employers with respect to employees whose wages are for domestic service in the private home of the employer. See § 31.6011(a)–1(a)(3).

(B) *Requests by employees.* The provisions of the third sentence of paragraph (d)(1)(i) of this section (relating to requests by terminated employees of Form W–2) are unaffected by the provisions of paragraph (d)(1)(ii)(A) of this section. However, an employer shall not be permitted to furnish a statement pursuant to the provisions of the third sentence of paragraph (d)(1)(i) of this section at a time later than that required by the provisions of paragraph (d)(1)(ii)(A) of this section.

(C) *Effective date.* This paragraph (d)(1)(ii) is effective upon the date of publication of these regulations in final form in the **Federal Register**. However, this paragraph (d)(1)(ii) shall apply only to employers that cease the payment of wages after the close of the calendar quarter in which the date of publication occurs.

* * * * *

Par. 3. The first sentence of § 31.6051–2(c) is revised to read as follows:

§ 31.6051–2 Information returns on Form W–3 and Internal Revenue Service copies of Form W–2.

* * * * *

(c) *Cross references.* For provisions relating to the time for filing the information returns required by this section and to extensions of the time for filing, see § 31.6071(a)–1(a)(3) and § 31.6081(a)–1(a)(3), respectively. * * *

Par. 4. Section 31.6071(a)–1(a)(3) is amended as follows:

1. Paragraph (3)(i) is removed.

2. Paragraph (a)(3)(ii) is redesignated as paragraph (a)(3)(i) and the heading is revised.

3. A new paragraph (a)(3)(ii) is added.

4. The addition and revision read as follows:

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) * * *

(3) * * * (i) *General rule.* * * *

(ii) *Expedited filing*—(A) *General rule* If an employer who is required to make a return pursuant to § 31.6011(a)–1 or § 31.6011(a)–4 is required to make a final return on Form 941 under § 31.6011(a)–6(a)(1) (relating to the final return for Federal Insurance Contributions Act taxes and income tax withholding from wages), the return which is required to be made under § 31.6051–2 shall be filed on or before the time required for filing the final return on Form 941 under § 31.6011(a)–6(a)(1). See § 31.6071(a)–1(a)(1). The requirements set forth in this paragraph (a)(3)(ii) do not apply to employers with respect to employees whose wages are for domestic service in the private home of the employer. See § 31.6011(a)–1(a)(3).

(B) *Effective date.* This paragraph (a)(3)(ii) is effective upon the date of publication of these regulations in final form in the **Federal Register**. However, this paragraph (a)(3)(ii) shall apply only to employers that cease the payment of wages after the close of the calendar quarter in which the date of publication occurs.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue

[FR Doc 94–31290 Filed 12–21–94; 8:45 am]

BILLING CODE 4830–01–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM95–1; Order No. 1038]

Express Mail Market Response Rate Requests: Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In response to a petition filed by the Postal Service, the Postal Rate Commission proposes to re-enact its rules of practice allowing expedited consideration of Express Mail market response rate requests. These rules expired recently pursuant to a sunset provision. Re-enactment will insure the continued existence of a flexible ratemaking mechanism for consideration of changes in Express Mail rates between omnibus rate cases when required by market conditions.

DATES: Comments should be filed by January 23, 1995.

ADDRESSES: Comments should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street NW, 20268–0001. Comments will be available for inspection and photocopying at the Commission's Docket Room.

FOR FURTHER INFORMATION CONTACT: Stephen Sharfman, Legal Advisor (202) 789–6820.

SUPPLEMENTARY INFORMATION: On August 15, 1994, the Postal Service filed a petition for institution of a rulemaking to re-enact Commission rules of practice and procedure on Postal Service requests for changes in Express Mail rates in response to market conditions. These rules were the outcome of Docket No. RM88–2, Express Mail Rulemaking. That rulemaking, like this one, was instituted at the Service's request. The rules that were finally issued differed from those initially proposed by the Service. They are codified at 39 CFR 3001.57–3001.57c. They took effect August 16, 1989. At that time, they were identified as experimental rules and issued subject to a five-year sunset provision. That period has expired.

As the Service notes in its recent petition, the original impetus for adoption of these rules was a period of intense price competition in the expedited (overnight) delivery market. Postal Service Petition at 2. Prior to their adoption, rates for Express Mail service could be set only by filing a formal request under rule 54. Rule 54 requires detailed information on costs, revenues, elasticities of demand and entails numerous procedural stages. *See* 39 CFR 3001.54. Fulfillment of these requirements generally means that decisions on rate change requests require the full ten months allowed by the statute. This effectively forecloses prompt responses to frequent price changes. *See generally* 54 FR 33681 (August 16, 1989). As rapid price changes were the hallmark of expedited delivery competition in the early-to-mid 1980s, it was believed that a flexible ratemaking mechanism would allow the Postal Service to respond more effectively to market conditions.

In support of its petition for re-enactment, the Postal Service acknowledges that it has never invoked the market response rules. However, it asserts several reasons for their retention. One is that the overnight delivery market remains competitive, primarily on price. Another is Express Mail's emergence as a low-cost alternative for household users and small- and medium-volume businesses not eligible for discounts from other carriers' published rates. A third is preservation of Express Mail's contribution to institutional costs.

The Commission's initial review of the Service's petition leads it to agree that the Express Mail market response rules should be retained. Interested parties are invited to comment on the appropriateness of this action. The Commission directs W. Gail Willette, Acting Director of the Office of the Consumer Advocate, to participate to the extent necessary to fulfill her responsibilities under 39 CFR 3002.7 and part 3002, Appendix A.

II. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the PRC hereby certifies that this notice of proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

III. List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. § 404(b), 3603, 3622–3624, 3661, 3662

2. Sections 3001.57 through 3001.57c are added to Subpart B to read as follows:

§ 3001.57 Market response rate requests for Express Mail service—purpose and duration of rules.

(a) This section and §§ 3001.57a through 3001.57c only apply in cases in which the Postal Service requests an expedited recommended decision pursuant to section 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of minimizing the loss of Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case. Further explanation concerning these rules can be found at 54 FR 11394–413 (March 20, 1989), 54 FR 251342–42 (June 13, 1989) and PRC Order No. 836.

(b) This section and §§ 3001.57a through 3001.57c are initially to be effective for the limited period of five years from the date of their adoption by the Commission. During that period the Commission will continue to analyze the need for these rules to enable the Postal Service to respond to changes in the market for expedited delivery services, and the impact of these procedures on Postal Service proposals These rules will cease to be effective at the end of this period unless they have been reissued by the Commission following a Notice of Proposed Rulemaking published in the **Federal Register** which provides an appropriate opportunity for public comments.

§ 3001.57a Market Response Rate Requests—data filing requirements.

(a) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by such information and data as are necessary to inform the Commission and the parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in paragraphs (c) through (i) of this section shall also be provided with each request.

(b) Except as otherwise expressly provided in this section, the information required by § 3001.54 (b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or fees. Test period volume, cost, and revenue estimates presented in satisfaction of rule 57a shall be for four postal quarters beginning after the filing date of the request The cost roll-forward may be developed by extending the cost forecasting model used in the

last omnibus rate case (utilizing available actual data). Volume and revenue estimates required by these rules shall utilize, to the extent practicable, the factors identified in rule 54 (j)(6), and must be fully explained, with all available supporting documentation supplied, but they need not be econometrically derived.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the then effective Domestic Mail Classification Schedule sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Classification Schedule sections the Postal Service proposes.

(e) In addition to the required test period cost estimates, every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case, for the base year used in that case, and for each fiscal year thereafter for which cost data is available. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include a description of all operational changes, occurring since the most recent omnibus rate case, having an important impact on the attributable cost of Express Mail. Postal Service shall include an analysis and estimate of the cost impact of each such operational change.

(g) Every formal request made under the provisions of §§ 3001.57 through 3001 57c shall be accompanied by a statement of the actual Express Mail revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001 57c shall include estimates, on a quarterly basis, of test period volumes, revenues, and attributable costs determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case for each Express Mail service for which rate changes are proposed assuming:

(1) Rates remain at their existing levels, and

(2) Rates are changed after 90 days to the levels suggested in the request.

(j)(1) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the following information, for each quarter following the base year in the most recent omnibus rate case:

(i) Estimated volume by rate cell, for each Express Mail service;

(ii) Total postage pounds of Express Mail rated at:

(A) Up to ½ pound,

(B) ½ pound up to 2 pounds,

(C) 2 pounds up to 5 pounds; and

(iii) Total pounds of Express Mail and of each other subclass of mail carried on hub contracts.

(2) In each instance when rates change based on a proceeding under the provisions of §§ 3001 57 through 3001.57c the Postal Service shall provide, one year after the conclusion of the test period, the data described in § 3001.57a(j)(1)(i–iii), for each of the four quarters of the test period.

(k) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include analyses to demonstrate:

(1) That the proposed rates are consistent with the factors listed in 39 U.S.C. 3622 (b),

(2) That the proposed rate changes are in the public interest and in accordance with the policies and applicable criteria of the Act, and

(3) That the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case.

(l) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a certificate that service of the filing in accordance with § 3001.57b (c) has been made.

§ 3001.57b Market Response Rate Requests—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.57c rates lower than:

(1) The average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or

(2) The average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with § 3001.57a (e) for the most recent fiscal year for which information is available, whichever is higher Neither shall the Postal Service propose a rate for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.

(c) (1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response Registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market Response rate proceeding. Other interested persons may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.57c. Parties may withdraw from the register or a case by filing a notice with the Commission

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c it shall on that same day effect service by hand delivery of the complete filing to each Express Mail Market Response Registrant who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other Registrants. Each Registrant is responsible for insuring that his or her address remains current

(3) When the Postal Service files a request under the provisions of §§ 3001 57 through 3001.57c, it shall on

that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.57c, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in accordance with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e) (1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.57c unless it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve this issue

(3) Whether or not a hearing is held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its recommended decision as promptly as is consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be made within 10 days in the form of a Motion to Excuse from Answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to Motions to Excuse from Answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is needed, or a potential discovery dispute might be resolved by means of such communication.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to respond promptly to changed circumstances in the market and the standards of 5 U.S.C. § 556 and 557. The procedural schedule, subject to change as described in paragraph (e) (6) of this section, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response Rate Request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The Presiding Officer may adjust any of the schedule dates prescribed in paragraph (e)(5) of this section in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into the evidentiary record, and should include a description of the evidence to be offered and the amount of time needed to prepare and present it. Requests for additional time will be reviewed with consideration as to whether the requesting participant has exercised due diligence, and whether the requesting participant has been unreasonably delayed from fully understanding the proposal.

§ 3001.57c Express Mail Market Response—"rule for decision.

The Commission will issue a recommended decision in accordance with the policies of 39 U.S.C., and which it determines would be a reasonable response to the change in the market for expedited delivery services. The purpose of §§ 3001.57 through 3001.57c is to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested persons.

Issued by the Commission on December 14 1994.

Charles L. Clapp,

Secretary

[FR Doc. 94–31344 Filed 12–21–94; 8:45 am]

BILLING CODE 7710–FW–P

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39 CFR Part 3001

Rules of Practice and Procedure; Procedural Streamlining Inquiry, Docket No. RM95–2

AGENCY: Postal Rate Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is soliciting suggestions from interested persons regarding potential mechanisms for expediting its proceedings conducted under 39 U.S.C. 3624(a), which requires "the opportunity for a hearing on the record under sections 556 and 557 of title 5 * * * " The Commission's rules currently provide for the application of streamlined procedures to certain categories of Postal Service requests, such as proposals to effect mail classification changes that are experimental in character. See 39 CFR 3001.67, 3001.67a through .67d.[1] In appropriate instances, the Commission has also implemented streamlined procedures in the form of Special Rules of Practice adopted for individual postal rate and mail classification dockets. The proposed rulemaking contemplated by

[1] The Commission has also adopted streamlined procedures for consideration of Postal Service proposals to adjust rates for Express Mail service in response to a change in the market for expedited delivery services. *See* 39 CFR 3001 57 and 3001 57a through 57c These sections have expired by virtue of the five-year sunset provision in 39 CFR 3001 57(b) On August 15, 1994, the United States Postal Service petitioned the Commission to institute a rulemaking for the purpose of re-enacting these rules The Commission is initiating Docket No RM95–1 to consider the Postal Service's request

the Commission would consider suggested additions to the permanent Rules of Practice and Procedure (39 CFR Part 3001) for the purpose of streamlining the procedures employed in additional categories of postal rate and mail classification proceedings.

DATES: Comments responding to this advance notice of proposed rulemaking must be submitted on or before February 21, 1995.

ADDRESSES: Comments and correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Legal Advisor, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: The Postal Reorganization Act requires the Commission to afford the opportunity for a formal, on-the-record hearing under sections 556 and 557 of title 5 in several categories of proceedings: those involving Postal Service requests for changes in postal rates and mail classifications (39 U.S.C. 3624(a)); those involving Postal Service proposals to make a change in the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis (39 U.S.C. 3661(c)); and complaint proceedings under 39 U.S.C. 3662 that concern postal rate or mail classification matters. In proceedings initiated by a Postal Service request to change rates pursuant to section 3622, the Commission is obliged to transmit its recommended decision "no later than 10 months after receiving any such request[,]" with a narrow exception for instances of Postal Service recalcitrance. 39 U.S.C. 3624 (c)(1) and (c)(2). In order to conduct proceedings with the utmost expedition consistent with procedural fairness to the parties, section 3624(b) authorizes the Commission to adopt rules for expediting its dockets to which the requirements of 5 U.S.C. 556 and 557 apply.

In addition to the special-purpose procedural streamlining rules cited in the Summary, the Commission has pursued expedition in its formal, on-the-record proceedings through the adoption of Special Rules of Practice and expedited procedural schedules. For example, in the recently concluded omnibus rate proceeding, Docket No. R94–1, the Commission expedited the discovery process by shortening the permanent rule's 20-day deadline for responses to 14 days. The Commission also expedited the procedural schedule by reducing the interval between oral argument in the case and the Commission's rendition of an Opinion and Recommended Decision. By these and other means, the Commission completed the R94–1 proceeding less than nine months after receiving the Postal Service's request.

It must be noted that Docket No. R94–1 was not a typical omnibus rate case, in that it involved considerably less than the usual spectrum of ratemaking and mail classification issues. Nonetheless, the expedition with which the Commission succeeded in hearing and deciding the R94–1 case suggests that appropriate forms of procedural streamlining, regularized in the Commission's rules of practice, may enable similar results in future proceedings.

Some forms of procedural streamlining may involve alterations in the terms of existing rules of practice. For example, replacement of the current 20-day deadline for discovery responses (see 39 CFR 3001.25(b), .26(b), .27(b)) with the 14-day interval adopted in the Special Rules of Practice in Docket No. R94–1 could serve to shorten the discovery phase of most proceedings. Similarly, conversion of oral argument before the Commission (see 39 CFR 3001.37) into an extraordinary procedure not usually employed could expedite the decisional phase of Commission proceedings under section 3624.

Other avenues of expedition may require more fundamental changes in the rules of practice, including the adoption of new requirements and procedures. One model of procedural streamlining for consideration of Postal Service rate requests is contained in draft legislation introduced in the 102nd Congress. S. 946, one of four postal reform bills jointly sponsored by Senators Stevens and Pryor, would have decreased the statutory period for the Commission's consideration of Postal Service rate requests to 265 days, while introducing several mandatory procedures to facilitate an expedited proceeding. These procedures included: (1) Requiring the Postal Service to announce its intent to file a rate case between 20 and 40 days in advance, and to enhance the information the Service files annually with the Commission, to better prepare the Commission and interested parties for the actual filing; (2) requiring the Service to provide information on its current financial condition, base year costs, revenues and volumes, and other detailed information bearing on its forthcoming rate request at least 30 days before a request is filed; and (3) directing the Commission to establish the most expeditious schedule possible for discovery in such proceedings. S. 946, 102d Cong., 1st Sess. (1991); see 137 Cong. Rec. S. 5154–57 (daily ed. April 25, 1991).

Interested parties are invited to address these and other potential means of streamlining the Commission's proceedings under section 3624, consistent with procedural fairness and the requirements of the Administrative Procedure Act. The Commission encourages interested parties to address the questions listed below, although other germane comments are also welcome.

1. What category or categories of Commission proceedings subject to the requirements of 39 U.S.C. 3624(a) should be candidates for procedural streamlining?

2. What additional undertakings or obligations on the part of the United States Postal Service would be reasonable and appropriate to the more expeditious completion of such proceedings?

3. Which procedures currently available to parties other than the Postal Service under the Commission's rules of practice and procedure (39 CFR part 3001) for such proceedings could be curtailed or foreshortened in the interest of expedition, consistent with due process and the requirements of the Administrative Procedure Act?

Issued by the Commission on December 14, 1994.

Charles L. Clapp,

Secretary

[FR Doc. 94–31345 Filed 12–21–94; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA23–1–5641b; FRL–5109–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania: Control of Volatile Organic Compounds (VOC) From Surface Coating, Pneumatic Rubber Tire Manufacturing, Graphic Arts and Synthetic Organic Chemical Manufacturing Industry (SOCMI) Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the

Commonwealth of Pennsylvania for the purpose of correcting deficiencies and adding requirements for the control of volatile organic compounds from surface coating, pneumatic rubber tire manufacturing, graphic arts, and synthetic organic chemical manufacturing industry equipment leaks. In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 23, 1995.

ADDRESSES: Written comments on this action should be addressed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Aquanetta Dickens, (215) 597–3164.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the rules and regulations section of this **Federal Register**.

The Regional Administrator's decision to approve or disapprove Pennsylvania's SIP revisions to control VOCs from surface coating, pneumatic rubber tire manufacturing, graphic arts and synthetic organic chemical manufacturing industry equipment leaks SIP revision will be based on whether it meets the requirements of Section 110(a)(2) (A)–(K), and Part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: September 21, 1994.

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 94–31380 Filed 12–21–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 745

[OPPTS–62134D; FRL–4927–2]

RIN 2070–AC21

Lead Fishing Sinkers; Response to Citizens' Request; Reopening of Public Hearing Reply Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of public hearing reply comment period.

SUMMARY: EPA is reopening the public hearing reply comment period for a proposed rule to prohibit the manufacture, processing, and distribution in commerce of certain lead- and zinc-containing fishing sinkers which was published in the **Federal Register** of March 9, 1994.

DATES: Public hearing reply comments must be received on or before January 6, 1995.

ADDRESSES: All comments should be sent in triplicate to: TSCA Docket Receipt (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460, Attention: Docket No. OPPTS–62134D1.

FOR FURTHER INFORMATION CONTACT: James B. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–1024, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 9, 1994 (59 FR 11122), EPA issued a proposed rule under section 6(a) of the Toxic Substances Control Act (TSCA) to prohibit the manufacture, processing, and distribution in commerce of certain lead- and zinc-containing fishing sinkers. In that proposal, the Agency stated that it would hold an informal hearing if persons requested time for oral comment. EPA received requests for a hearing. A notice published in the **Federal Register** of September 19, 1994 (59 FR 47832), announced a hearing for November 30, and December 1, 1994. The hearing was subsequently held, and as part of the hearing process, reply comments could be submitted through December 15, 1994.

EPA received requests seeking to extend the reply comment period deadline of December 15, 1994, for a period of time after the availability of the hearing transcript. EPA expects to receive the public hearing transcript no later than December 23, 1994. Therefore, in order to give all interested persons the opportunity to review the hearing transcript before submitting reply comments, EPA has decided to reopen the reply comment period. Written reply comments must now be received on or before January 6, 1995, and shall be restricted to comments on: (1) Other comments; (2) material in the hearing record; and (3) material which was not and could not reasonably have been available to the commenting party a sufficient time before main comments were due.

A person may assert a claim of business confidentiality for any comments submitted to EPA in connection with the proposed rule. Any person who submits a comment that contains information claimed as confidential, must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons may claim information as confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of business confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information in comments at the time it is submitted to EPA, the Agency will put the comments in the public docket without further notice to that person.

List of Subjects in 40 CFR Part 745

Environmental protection, Lead, Reporting and recordkeeping requirements.

Dated: December 16, 1994.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–31463 Filed 12–21–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 676

[Docket No. 941250–4350; I.D. 112894A]

Foreign Fishing; Groundfish of the Gulf of Alaska; Limited Access Management of Federal Fisheries In and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 1995 initial specifications of groundfish and associated management measures; request for comments.

SUMMARY: NMFS proposes initial harvest specifications of groundfish and associated management measures in the Gulf of Alaska (GOA) for the 1995 fishing year. This action is necessary to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Comments must be received by January 20, 1995.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668 (Attn: Lori Gravel). The preliminary Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1994, is available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907 586–7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act. The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fisheries at 50 CFR parts 672, 676, and 677. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

This action proposes for the 1995 fishing year: (1) Specifications of total allowable catch (TAC) for each groundfish target species category in the GOA and apportionments thereof among domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves; (2) apportionments of reserves to DAP; (3) apportionments of the sablefish TAC to vessels using hook-and-line and trawl gear; (4) apportionments of pollock TAC; (5) apportionments of Pacific cod TAC; (6) "other species" TAC; (7) halibut prohibited species catch (PSC) limits; and (8) seasonal allocations of the halibut PSC limits. A discussion of each of these measures follows.

Comments on the proposed 1995 specifications are invited from the public through (see **DATES**). After again consulting with the Council, NMFS will publish final specifications for the 1995 fishing year in the **Federal Register**

1. Proposed Establishment of TACs and Apportionments Thereof Among DAP, JVP, TALFF, and Reserves

Under § 672.20(c)(1)(ii), NMFS, after consultation with the Council, publishes in the **Federal Register** proposed specifications of annual TACs and interim harvest limits. These proposed specifications indicate apportionments of TACs among DAP, JVP, reserves, and TALFF for each target species and the "other species" category. The sum of the TACs for all species must fall within the combined optimum yield (OY) range, of 116,000–800,000 metric tons (mt), established for these species.

Species TACs are apportioned initially among DAP, JVP, TALFF, and reserves under §§ 611.92(c)(1) and 672.20(a)(2). DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen deliver their catches to foreign processors at sea. TALFF amounts are intended for harvest by foreign fishermen. Existing harvesting and processing capacity of the U.S. industry is capable of utilizing the entire 1995 TAC specification for GOA groundfish. Therefore, the Council recommended that DAP equal TAC for each species category, resulting in no proposed amounts of TALFF or JVP for the 1995 fishing year.

The reserves for the GOA are 20 percent of the TACs for pollock, Pacific cod, flatfish target species categories, and "other species." If necessary, these reserve amounts may be set aside for possible apportionment to DAP and/or to JVP if the initial apportionments prove inadequate. Reserves that are not apportioned to DAP or JVP may be reapportioned to TALFF. Given that the GOA groundfish TACs have been utilized fully by DAP since 1987, NMFS has reapportioned all the reserves to DAP.

Council met from September 28 to October 5, 1994, to review scientific information concerning groundfish stocks. The preliminary SAFE Report, dated September 1994, prepared and presented to the Council by the GOA Plan Team (Plan Team), summarizes the best available scientific information.

The September 1994 SAFE Report contains revised stock assessments for all species except sablefish and demersal shelf rockfish (DSR). New assessments for these two species are discussed in the final SAFE Report issued in November. New stock assessment models were used in the assessments for Pacific cod, arrowtooth flounder, and thornyhead rockfish. Additional information, based on 1993 trawl surveys, was presented for pollock, slope rockfish, Pacific ocean perch (POP), pelagic shelf rockfish, and the flatfish groups. Details of the assessments can be found in the September 1994 SAFE Report.

Substantial changes to the 1995 acceptable biological catches (ABCs), compared to 1994 ABCs, occurred for pollock, Pacific cod, POP, arrowtooth flounder, and shallow-water flatfish. Changes to the 1995 ABCs also occurred for deep-water flatfish, flathead sole, other rockfish, pelagic shelf rockfish, thornyhead rockfish, and Atka mackerel. The 1995 ABCs for rex sole, shortraker/rougheye and northern rockfish remain similar to the 1994 ABCs.

The Plan Team recommended an ABC for pollock of 65,360 mt, down from 109,300 mt in 1994. The Plan Team chose a more conservative exploitation strategy for this stock because of recent trends in poor recruitment of GOA pollock and because of ecosystem considerations. The stock biomass for pollock has been declining for a number of years and even with the more conservative exploitation strategy, the biomass is still likely to go below the threshold for sustainable yield. The Scientific and Statistical Committee (SSC) concurred with the Plan Team's recommended ABC and the Council accepted the SSC's recommendation.

An ABC of 103,000 mt was recommended by the Plan Team for Pacific cod. The 1995 ABC is double the 1994 ABC for this stock because a higher natural mortality rate was assumed and because the stock assessment model was changed. The model for assessing this stock was changed to a stock synthesis model,

which resulted in a higher estimate of exploitable biomass. The SSC expressed some concern over the large increase in ABC and recommended a range from the 1994 ABC level of 50,400 mt to the Plan Team's recommended 1995 level of 103,000 mt.

A new biomass estimate for POP resulted in a 1995 ABC that is more than twice the 1994 ABC. Age composition data also indicate an exceptionally strong 1986 year class, especially in the Central and Western Regulatory areas. New biomass estimates for POP indicate that POP is close to the rebuilding level, as established by the POP rebuilding plan, authorized under Amendment 32 to the FMP. The assessment authors determined an ABC of 8,830 mt, which was then adjusted according to established guidelines by the Plan Team, to provide a buffer between the ABC and the overfishing level. The resulting ABC was 6,800 mt. The SSC did not agree with the guidelines for the downward adjustment of the ABC and recommended an ABC of 8,830 mt, equal to the overfishing level. The SSC believes that adjusting the overfishing level upwards to create a buffer between ABC and overfishing might be more appropriate. The Council accepted the SSC recommendation and set the 1995 ABC at 8,830 mt. The TAC amount for POP is set by the POP rebuilding plan and is not affected by the ABC amount.

The new biomass estimates for shallow-water flatfish were greater than the previous estimates and the 1995 ABC (52,270 mt) is greater than the 1994 ABC (34,420 mt). The 1995 ABC for arrowtooth flounder (198,130 mt) is lower than the 1994 ABC (236,240 mt), based on new biomass estimates. New survey information indicated declines in biomass levels for some flatfish groups, resulting in associated declines in ABCs. The 1995 ABCs for deep-water flatfish (14,590 mt) and for flathead sole (28,790 mt) were both lower than the 1994 ABCs (16,510 mt and 35,850 mt, respectively).

A new assessment model for thornyhead rockfish resulted in a Plan Team ABC recommendation of 2,320 mt, which is double the 1994 ABC. Because rockfish are vulnerable to over-exploitation and because the model is new, the SSC recommended phasing in the new ABC. A 4-year stair-step approach to implementation of the Plan Team's recommended ABC was recommended so that the new assessment model can be reevaluated after the 1996 trawl survey. For 1995, the ABC was set at ⅝ of the Plan Team's ABC because the 1994 ABC was about one-half the new ABC. This procedure results in a 1995 ABC of 1,450 mt.

The 1995 ABC for Atka mackerel, recommended by the SSC and accepted by the Council, is similar to the 1994 ABC. The Plan Team recommended an ABC of 6,480 mt. However, in 1994, when Atka mackerel was separated from the "other species" category, the Plan Team's calculated 1994 ABC was reduced to ⅜. This reduction factor would increase by ⅙ per year (stair stepping) and be multiplied by subsequent annual calculated ABCs. The SSC recommended that this procedure be continued to maintain consistency of approach for the management of the Bering Sea and Aleutian Islands (BSAI) management area and the GOA Atka mackerel resource. Continuing the stair-step approach for the 1995 fishing year, the calculated ABC should be reduced to ⅚ of the Plan Team's 1995 ABC. Using this approach, the SSC recommended an ABC of 4,300 mt. This approach also takes into account concern about survey variability and concerns for northern fur seals and Steller sea lions, which feed on Atka mackerel. Even though the stair-step approach provides some protection to this stock, the SSC expressed concern that other management measures be considered to reduce the potential impacts on marine mammals.

New assessments for other rockfish, northern rockfish, shortraker/rougheye and pelagic shelf rockfish resulted in slightly lower 1995 ABCs for these groups, compared to the 1994 ABCs. Because there were no new assessments for DSR and sablefish at this time, the ABCs for these two groups remain unchanged.

The Plan Team and the SSC recommended removing redbanded rockfish (*Sebastes babcocki*) from the DSR group and placing it in the "other rockfish" category because this species can constrain the DSR fishery and it is caught as bycatch in the "other rockfish" category. This would not affect the ABC recommendation for either group. The Plan Team had recommended removing black rockfish from the pelagic shelf rockfish group but the SSC did not agree, because not enough biological data exist on black rockfish biomass.

The total ABC amount recommended by the SSC and accepted by the Council was a range from 481,090—533,690 mt. The range accounted for the recommended ABC range in the Pacific cod stock. The total TAC amount recommended by the Advisory Panel (AP) was 326,515 mt. The AP recommended a 1995 TAC equal to the 1995 ABCs, as recommended by the SSC, for pollock, rex sole, sablefish, shortraker/rougheye, other rockfish, northern rockfish, pelagic shelf rockfish DSR, and thornyhead rockfish. The AP recommendation for a 1995 TAC for Pacific cod was equal to the upper end of the range (103,000 mt) recommended by the SSC.

The AP recommended a 1995 TAC that was lower than the 1995 ABC recommended by the SSC, and that was equal to the 1994 TAC, for deep-water flatfish, flathead sole, shallow-water flatfish, and Atka mackerel.

Because the POP biomass was higher than in 1994, the 1995 TAC for POP is higher than in 1994. As mentioned above, the TAC for POP is specified in the rebuilding plan and the apportionments are based on the biomass distribution in each of the GOA regulatory areas.

The AP increased the 1995 apportionment from the 1994 TAC for arrowtooth flounder in the Central Regulatory area by 5,000 mt, to 25,000 mt. The TAC amount for arrowtooth flounder in the other regulatory areas is the same as the 1994 TAC amount, resulting in a total of TAC of 35,000 mt.

The Council considered information in the SAFE Report, recommendations from its SSC and its AP, as well as public testimony. The Council then accepted the ABCs as recommended by the SSC and, with the exception of slope rockfish, the TACs as recommended by the AP.

The Council chose a TAC range for "other rockfish" that ranged from the 1994 TAC amount of 2,235 mt to the 1995 ABC amount of 6,930 mt. This range was recommended to recognize the need for conservative management of this group. However, NMFS must manage the fisheries based on a single TAC amount, rather than on a range of numbers. NMFS has chosen to propose a TAC of 6,930 mt, which is the number proposed by the AP and is the ABC that was recommended from the 1994 stock assessment. Even though this number will be used to establish the 1995 interim TAC until the final specifications are implemented, no practical difference exists in choosing any number within the Council's recommended TAC range. The hook-and-line fisheries typically do not harvest slope rockfish and the trawl fisheries for rockfish do not open until July 1, by which time the final specifications will be published.

NMFS also revises the Council's recommendation for the 1995 flathead sole TAC. The Council approved the AP recommendation of adopting the 1994 TAC amounts for flathead sole for the 1995 TAC amounts. In the GOA Eastern Regulatory Area, the 1994 TAC amount

(3,000 mt) is higher than the Council's recommended 1995 ABC (2,740 mt). To maintain consistency with the accepted policy of setting TACs lower than or equal to ABC amounts, NMFS is proposing to establish a 1995 TAC of 2,740 mt for the Eastern Regulatory Area. This number is equal to the 1995 ABC recommended by the Plan Team and the SSC and approved by the Council. Adjustment of the flathead sole TAC in the Eastern Regulatory Area changes the total 1995 flathead sole TAC to 9,740 mt. This also results in a revised "other species" TAC amount of 15,535 mt and a revised 1995 total GOA TAC of 326,242 mt.

The 1995 ABCs, TACs and interim TACs, as well as the ABC and TAC apportionments, are shown in Table 1.

TABLE 1.—PROPOSED 1995 ABCS, PROPOSED TACS, ONE-FOURTH TACS AND DAPS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYAK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.[1] AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE PROPOSED TO BE APPORTIONED TO DAP. AMOUNTS ARE IN METRIC TONS.

Species	Area	ABC	TAC=DAP	¼ TAC=interim TAC
Pollock:[2]				
	W (61)	30,380	30,380	7,595
	C (62)	15,310	15,310	3,827
	C (63)	16,310	16,310	4,078
Subtotal	W/C	62,000	62,000	15,500
	E	3,360	3,360	840
Total		65,360	65,360	16,340
Pacific cod:[3]				
Inshore	W		26,910	6,727
Offshore	W		2,990	748
Inshore	C		61,200	15,300
Offshore	C		6,800	1,700
Inshore	E		4,590	1,147
Offshore	E		510	128
	W	16,630–29,900	29,900	7,475
	C	31,250–68,000	68,000	17,000
	E	2,520–5,100	5,100	1,275
Total		50,400–103,000	103,000	25,750
Flatfish, Deep-water:[4]				
	W	670	460	115
	C	8,150	7,500	1,875
	E	5,770	3,120	780
Total		14,590	11,080	2,770
Rex sole:				
	W	1,350	1,350	338
	C	7,050	7,050	1,763
	E	2,810	2,810	703
Total		11,210	11,210	2,804
Flathead sole:				
	W	8,880	2,000	500
	C	17,170	5,000	1,250
	E	2,740	2,740	685
Total		28,790	9,740	2,435
Flatfish, Shallow-water:[5]				
	W	26,280	4,500	1,125
	C	23,140	12,950	3,238
	E	2,850	1,180	295
Total		52,270	18,630	4,658
Arrowtooth flounder:				
	W	28,400	5,000	1,250
	C	141,290	25,000	6,250
	E	28,440	5,000	1,250

TABLE 1.—PROPOSED 1995 ABCS, PROPOSED TACS, ONE-FOURTH TACS AND DAPS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYAK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.[1] AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE PROPOSED TO BE APPORTIONED TO DAP. AMOUNTS ARE IN METRIC TONS.—Continued

Species	Area	ABC	TAC=DAP	¼ TAC=interim TAC
Total		198,130	35,000	8,750
Sablefish:[5]				
	W	2,290	2,290	573
	C	11,220	11,220	2,805
	W. Yak.	4,850	4,850	1,213
	SEO	7,140	7,140	1,785
Total		25,500	25,500	6,376
Pacific ocean perch:[7]				
	W	1,780	1,195	299
	C	3,190	2,152	538
	E	3,860	2,630	657
Total		8,830	5,977	1,494
Shortraker/rougheye:[8]				
	W	170	170	43
	C	1,210	1,210	303
	E	530	530	133
Total		1,910	1,910	479
Rockfish, other:[9 10 11]				
	W	170	170	43
	C	1,150	1,150	288
	E	5,610	5,610	1,403
Total		6,930	6,930	1,734
Rockfish, northern:[12]				
	W	640	640	160
	C	4,610	4,610	1,153
	E	20	20	5
Total		5,270	5,270	1,318
Rockfish, pelagic shelf:[13]				
	W	910	910	228
	C	3,200	3,200	800
	E	1,080	1,080	270
Total		5,190	5,190	1,298
Demersal shelf rockfish[11]	SEO	960	960	240
Thornyhead rockfish	GW	1,450	1,450	363
Atka mackerel[14]	GW	4,300	3,500	875
Other species[15]	NA[16]	15,535	3,884	
GOA Total[17]	481,090–533,690	326,242	81,568	

[1] See § 672.2 for definitions of regulatory area, regulatory district, and statistical area.

[2] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into equal quarterly allowances. The first quarterly allowances are in effect on an interim basis. In the Eastern Regulatory Area, pollock is not divided into quarterly allowances, and one-fourth of the TAC is available on an interim basis.

[3] Pacific cod is allocated 90 percent to the inshore, and 10 percent to the offshore component. One-fourth of the inshore and offshore allocations will be available on an interim basis. Component allowances are shown in Table 4.

[4] "Deep-water flatfish" means Dover sole and Greenland turbot. Rex sole is a separate target species beginning with the 1994 fishing year.

[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).

[7] "Pacific ocean perch" means *Sebastes alutus.*

[8] "Shortraker/rougheye rockfish" means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[9] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District means slope rockfish.

[10] "Slope rockfish" means *Sebastes aurora* (aurora), *S melanostomus* (blackgill), *S paucispinis* (bocaccio), *S goodei* (chilipepper), *S crameri* (darkblotch), *S elongatus* (greenstriped), *S variegateu* (harlequin), *S wilsoni* (pygmy), *S proriger* (redstripe), *S zacentrus* (sharpchin), *S jordani* (shortbelly), *S brevispinis* (silvergrey), *S diploproa* (splitnose), *S saxicola* (stripetail), *S miniatus* (vermilion), *S babcocki* (redbanded), and *S reedi* (yellowmouth).

[11] "Demersal shelf rockfish" means *Sebastes pinniger* (canary),*S nebulosus* (china), *S caurinus* (copper), *S maliger* (quillback), *S helvomaculatus* (rosethorn), *S nigrocinctus* (tiger), and *S ruberrimus* (yelloweye).

[12] "Northern rockfish" means *Sebastes polyspinis*.

[13] "Pelagic shelf rockfish" includes *Sebastes melanops* (black), *S mystinus* (blue), *S ciliatus* (dusky), *S entomelas* (widow), and *S flavidus* (yellowtail).

[14] Atka mackerel is a separate target species beginning in 1994.

[15] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of target species.

[16] NA=not applicable.

[17] The total ABC reflects the sum of the ABCs for target species.

2. Proposed Apportionment of Reserves to DAP

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish species, and the "other species" category be set aside in reserves for possible apportionment at a later date (§ 672.20(a)(2)(ii)). Consistent with § 672.20(a)(2)(iii), NMFS is proposing to apportion the 1995 reserves for each of the four species categories to DAP, anticipating that domestic harvesters and processors have established markets for these species and should be provided the opportunity to realize revenues from the harvest of the full DAP amounts so specified. Specifications of DAP shown in Table 1 reflect apportioned reserves.

3. Proposed Apportionment of the Sablefish TACs to Users of Hook-and-Line and Trawl Gear

Under § 672.24(c), sablefish TACs for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC is allocated to hook-and-line gear and 20 percent is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear and 5 percent is assigned to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used as bycatch to support directed fisheries for other target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl must be treated as prohibited species and may not be retained. Table 2 shows the assignments of the proposed 1995 sablefish TACs between hook-and-line and trawl gears.

TABLE 2.—PROPOSED 1995 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ASSIGNMENTS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

[Values are in metric tons.]

Area/District	TAC	Hook-and-line share	Trawl share
Western	2,290	1,832	458
Central	11,220	8,976	2,244
Eastern West Yakutat	4,850	4,607	243
Southeast Outside	7,140	6,783	357
Total	25,500	22,198	3,302

4. Proposed Apportionments of Pollock TAC

In the GOA, pollock is apportioned by area and season. These amounts are further apportioned between inshore and offshore components. Regulations at § 672.20(a)(2)(iv) require that the TAC for pollock in the combined Western/Central Regulatory Areas (W/C) be apportioned among statistical areas Shumagin (61), Chirikof (62), and Kodiak (63) in proportion to known distribution of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Each statistical area apportionment is further divided equally into the four calendar quarters. Within any fishing year, any unharvested amount of any quarterly allowance of pollock TAC is added in equal proportions to the quarterly allowances of following quarters, resulting in a sum for each quarter not to exceed 150 percent of the initial quarterly allowance. Similarly, harvests in excess of a quarterly allowance of TAC are deducted in equal proportions from the remaining quarterly allowances of that fishing year. The Eastern Regulatory Area proposed TAC of 3,360 mt is not allocated among smaller areas, or quarterly.

Regulations at § 672.20(a)(2)(v)(A) require that the DAP apportionment for pollock in all regulatory areas and all quarterly allowances thereof be divided into inshore and offshore components. The inshore component is apportioned 100 percent of the pollock DAP in each regulatory area after subtraction of amounts that are determined by the Director, Alaska Region, NMFS, (Regional Director) to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown, and will be determined during the fishing year. The proposed distribution of pollock within the combined W/C GOA is shown in Table 3, except that inshore and offshore component apportionments of pollock are not shown.

TABLE 3.—PROPOSED DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND QUARTERLY ALLOWANCES ABC FOR THE W/C GOA IS PROPOSED TO BE 62,000 METRIC TONS (MT). BIOMASS DISTRIBUTION IS BASED ON 1993 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN.

[ABCs and TACs are rounded to the nearest 10 mt.]

Statistical area	Biomass percent	1995 ABC=TAC	Quarterly allowance
Shumagin (61)	49	30,380	7,595
Chirikof (62)	24.7	15,310	3,827
Kodiak (63)	26.3	16,310	4,078
Total	100.0	62,000	15,500

5. Proposed Apportionments of Pacific Cod TAC

Regulations at § 672.20(a)(2)(v)(B) require that the DAP apportionment of Pacific cod in all regulatory areas be divided into inshore and offshore components. The inshore component is equal to 90 percent of the Pacific cod TAC in each regulatory area. Inshore and offshore component allocations of the proposed 103,000 mt TAC for each regulatory area are shown in Table 4.

TABLE 4.— PROPOSED 1995 ALLOCATION (METRIC TONS) OF PACIFIC COD IN THE GULF OF ALASKA; ALLOCATIONS TO INSHORE AND OFFSHORE COMPONENTS

Regulatory area	TAC	Component Allocation	
		Inshore (90%)	Offshore (10%)
Western	29,900	26,910	2,990
Central	68,000	61,200	6,800
Eastern	5,100	4,590	510
Total	103,000	92,700	10,300

6. "Other Species" TAC

The FMP specifies that amounts for the "other species" category are calculated as 5 percent of the combined TACs for target species. The GOA-wide "other species" TAC is calculated as 15,535 mt, which is 5 percent of the sum of combined TACs for the target species.

7. Proposed Halibut PSC Mortality Limits

Under § 672.20(f), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear.

At its September 1994 meeting, the Council recommended that, for 1995, NMFS re-establish 1994 PSC limits of 2,000 mt and 750 mt for the trawl and hook-and-line gear fisheries, respectively, with 10 mt of the hook-and-line limit allocated to the DSR fishery in the Southeast Outside District and the remainder to other hook-and-line gear fisheries. As in 1994, the Council proposes to exempt pot gear from halibut limits for 1994.

At its September 1994 meeting, the Council also recommended that NMFS initiate rulemaking that would authorize exemption of the hook-and-line sablefish fishery from the halibut PSC limit. The Council recommended this because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota (IFQ) program, which would allow legal-sized halibut to be retained in the sablefish fishery. NMFS is preparing a proposed rule to implement the Council's recommendation. The proposed rule would also specify a reduced halibut PSC limit for the 1995 GOA hook-and-line gear fisheries other than sablefish. The Council recommended that the trawl fishery apportionment of the 1995 halibut bycatch mortality limit (2,000 mt) remain unchanged from 1994.

In 1994, NMFS approved a rule that authorizes separate apportionments of the trawl halibut bycatch mortality limit between trawl fisheries for deep-water and shallow-water species (59 FR 38132, July 27, 1994). These apportionments are divided seasonally to avoid seasonally high halibut bycatch rates.

NMFS preliminarily concurs in the Council's 1995 recommendations. Some changes may be made in the seasonal, gear type and fishing-complex apportionments of halibut PSC limits for the final 1995 specifications. NMFS considers the following types of information as presented by, and summarized from, the preliminary 1994 SAFE Report, or from public comment and testimony.

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is available from data collected in 1994 by NMFS-certified observers. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through November 11, 1994, is 2,221 mt, 752 mt, and 4 mt, respectively, for a total of 2,977 mt. Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the first, second, third and fourth quarters of the fishing year. Trawling, with the exception of trawling for pollock with pelagic trawl gear, was closed in 1994 from March 21 to March 31 for the shallow-water species complex (59 FR 13894, March 24, 1994); from April 22 to June 30 for the deep-water species complex (59 FR 21946, April 28, 1994); from May 19 to June 30 for the shallow-water species complex (59 FR 26761, May 24, 1994); from August 15 to September 30 for the shallow-water complex (59 FR 42776, August 19, 1994); and from August 29 to September 30 for the deep-water complex (59 FR 45239, September 1, 1994), as a result of halibut PSC seasonal allowances. The fourth quarter halibut PSC allowance was reached on October 29 (59 FR 55066, November 3, 1994). Hook-and-line gear was closed to directed fishing for all but DSR on May

28 to December 31, 1994 (59 FR 17737, April 14, 1994; 59 FR 43296, August 23, 1993). The sablefish hook-and-line gear fishery was reopened for a 48-hour period in September, 1994, concurrent with the Pacific halibut fishery (59 FR 44944, August 31, 1994).

The amount of groundfish that trawl or hook-and-line gear might have harvested, if halibut PSC had not been seasonally limiting in 1994, is unknown. However, lacking market incentives, some amounts of groundfish will not be harvested, regardless of halibut PSC bycatch availability.

(B) Expected Changes in Groundfish Stocks

At its September 1994 meeting, the Council recommended lower 1995 ABCs than 1994 ABCs for pollock, deep-water flatfish, rex sole, flathead sole, arrowtooth flounder, other rockfish, northern rockfish, pelagic shelf rockfish, shortraker/rougheye, and Atka mackerel. Higher 1995 ABCs, as compared to the 1994 ABCs, were recommended for Pacific cod, shallow-water flatfish, POP, and thornyhead rockfish.

The 1995 ABCs for DSR and sablefish are unchanged from 1994 levels. More information on these proposed changes is included in the preliminary SAFE Report, dated September 1994, and in the AP, SSC, and Council minutes from the September 1994 meeting.

(C) Expected Changes in Groundfish Catch

The total of the proposed 1995 specified TACs for the GOA is 326,242 mt, which represents 107 percent of the sum of TACs for 1994 (304,589 mt). Significant changes in TACs for pollock, Pacific cod, POP, other rockfish, shallow-water rockfish, and arrowtooth flounder are proposed. Increased TACs for some groups could result in increased halibut mortality associated with those fisheries. The changes in pollock TACs are not expected to affect halibut bycatches, because most of the pollock harvest in the GOA is accomplished with pelagic trawls that experience low bycatch rates of halibut.

(D) Current Estimates of Halibut Biomass and Stock Condition

The stock assessment for 1993 conducted by the International Pacific Halibut Commission (IPHC) indicates that the total exploitable biomass of Pacific halibut in the BSAI management area and the GOA together was 300.4 million lb (136,236 mt) using the standard assessment methods and 249.8 million lb (113,288 mt) when discounting the effects of an upturn in catch per unit effort for 1992 and 1993. This represents a decline in biomass of 12–15 percent from the previous stock assessment, a rate that is higher than the 5–10 percent annual decline observed in previous years. Exploitable biomass was estimated at 219.6 million lb (99,592 mt) for the GOA areas, a decrease of 13 percent with respect to the 1992 biomass. Recruitment was the lowest in 20 years, but was consistent with cyclical patterns of recruitment that have occurred over the last 50 years. The low recruitment exhibited in recent years can be expected to contribute to a continued decline in the overall stock at a rate of 10–15 percent over the next several years. Some changes may be made to the IPHC Report in November.

(E) Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S. Halibut Fisheries

Halibut fisheries will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 1995 groundfish fisheries are expected to use the entire proposed halibut PSC limit of 2,750 mt. The allowable directed commercial catch is determined by accounting for the recreational catch, waste, and bycatch mortality, and then providing the remainder to the directed fishery. How this affects the directed fishery depends on the constant exploitable yield (CEY) determined by the IPHC. Therefore, if the PSC limit of 2,750 mt is instituted for the 1995 fishery, the results could be either positive or negative to the directed halibut fishery, depending on whether the CEY is higher or lower than it was in the previous year's fishery.

(F) Methods Available For, and Costs of, Reducing Halibut Bycatches in Groundfish Fisheries

Methods available for reducing halibut bycatch include (1) reducing amounts of groundfish TACs, (2) reducing halibut bycatch rates through a Vessel Incentive Program, (3) modifying gear, (4) changing groundfish fishing seasons, and (5) instituting individual transferable quota programs designed to reduce the derby-style fishing.

Reductions in groundfish TACs provide no incentives for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TACs depend on species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with the Observer Plan are subject to the Vessel Incentive Program. The program encourages trawl fishermen to avoid high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations require groundfish pots to have halibut exclusion devices to reduce halibut bycatches. Resulting low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

Regulations also define pelagic trawl gear in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation and also for performance of the trawl gear in terms of crab bycatch (58 FR 39680, July 26, 1993). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch. This measure is intended to reduce handling mortality, increase the amount of groundfish harvested under the available halibut mortality bycatch limits, and possibly lower overall halibut bycatch mortality in groundfish fisheries.

Halibut bycatch has been reduced by changes in some groundfish fishing seasons. In 1994, the sablefish hook-and-line season started May 18, and the rockfish trawl fishery was delayed until the third quarter, July 1. These delays postponed the start of the sablefish and rockfish fisheries to times when seasonal halibut bycatch rates are lower In 1995, the season start date for sablefish, under the IFQ program, will be March 1 (§ 676.23(b)).

The anticipated implementation in 1995 of the sablefish/halibut IFQ program should reduce the halibut discard mortality in the sablefish fishery because any legal-sized halibut caught by vessels with quota-share holders onboard must be retained.

Methods available for reducing halibut bycatch listed above will be reviewed by NMFS and the Council to determine their effectiveness. Changes will be initiated, as necessary, in response to this review or to public testimony and comment.

Consistent with the goals and objectives of the FMP to reduce halibut bycatches while providing an opportunity to harvest the groundfish OY, NMFS proposes the assignments of 2,000 mt and 750 mt of halibut PSC mortality limits to trawl and hook-and-line gear, respectively. While these limits would reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they would not result in unfair allocation to any particular user group. NMFS recognizes

that some halibut bycatch will occur in the groundfish fishery, but expansion of the Vessel Incentive Program, required modifications to gear, implementation of the IFQ program, and changes in the season start date for some fisheries are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery.

As mentioned above, NMFS is pursuing rulemaking that would authorize the annual exemption of the sablefish hook-and-line gear fishery from halibut bycatch restrictions. This action was recommended by the Council based on the anticipation of reduced halibut discard mortality in the fishery under the IFQ program and to support the first-year implementation of the IFQ program. This action would minimize competition within the sablefish hook-and-line fleet for halibut bycatch before individual sablefish quota-share amounts are harvested.

8. Proposed Seasonal Allocations of the Halibut PSC Limits

Under § 672.20(f)(2)(iii), NMFS proposes to allocate seasonally the halibut PSC limits based on recommendations from the Council. The FMP requires that the following information be considered by the Council in recommending seasonal allocations of halibut: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relevant to changes in halibut biomass and expected catches of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and, (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry

The Council recommended the same seasonal allocation of PSC limits for the 1995 fishing year as those in effect during the 1994 fishing year. The publication of the final 1994 initial groundfish and PSC specifications (59 FR 7647, February 16, 1994) summarizes Council findings with respect to each of the FMP considerations set forth above. At this time, the Council's findings are unchanged from those set forth for 1994.

Pacific halibut PSC catch limits, and apportionments thereof, are presented in Table 5. Regulations specify that any overages or shortfalls in PSC catches will be accounted for within the 1995 season.

The Council did not recommend changes in the seasonal apportionments for the hook-and-line gear fisheries from those specified in 1994; however, NMFS notes that the opening date of the sablefish fishery is scheduled to change from May 18, in 1994, to March 1, in 1995, under the IFQ program. This change and the Council's proposed exemption of the sablefish fishery from the 1995 PSC limit may prompt the Council to alter its recommendation for seasonal apportionments at its December 1994 meeting.

TABLE 5.—PROPOSED 1995 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR

[Values are in metric tons]

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1–Mar 31	600 (30%)	Jan 1–May 17	200 (27%)	Jan 1–Dec 31	10 (100%)
Apr 1–Jun 30	400 (20%)	May 18–Aug 31	500 (68%)		
Jul 1–Sep 30	600 (30%)	Sep 1–Dec 31	40 (5%)		
Oct 1–Dec 31	400 (20%)				
Total	2,000 (100%)		740 (100%)		10 (100%)

Regulations at § 672.20(f)(1) authorize apportionments of the trawl halibut PSC limit allowance as bycatch allowances to a deep-water species complex, comprising sablefish, rockfish, deep-water flatfish, and arrowtooth flounder, and a shallow-water species complex, comprising pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and other species. The apportionment for these two complexes is presented in Table 6.

TABLE 6.—PROPOSED 1995 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
Jan 20–Mar 31	500	100	600
Apr 01–Jun 30	100	300	400
Jul 01–Sep 30	200	400	600
Oct 01–Dec 31	(1)	(1)	(1)

No apportionment between shallow and deep for the 4th quarter

Assumed halibut mortality rates for halibut PSC bycatch in 1995 are based on an average of mortality rates determined from NMFS-observer data collected during 1992 and 1993, except for the GOA hook-and-line rockfish, for which 1992/93 rates were not available and the rates from 1990 and 1991 were used. Except as noted below, the Council proposed that revised halibut discard mortality rates recommended by the IPHC be adopted for purposes of

monitoring halibut bycatch mortality limits established for the 1995 groundfish fisheries. The Council's action would establish two separate mortality rates for the GOA bottom trawl pollock fishery: 54 percent for shoreside operations and 81 percent for offshore operations. The proposed rate differences for at-sea and shoreside processors result from analyses by the IPHC that showed that at-sea processing vessels had a significantly higher discard mortality rate than the shorebased operators. However, NMFS notes that directed fishing for GOA pollock by the offshore component is prohibited under § 672.20(a)(2)(v).

The IPHC determined that the careful release measures implemented for vessels using hook-and-line gear did not show appreciable improvements in mortality rates and has recommended one rate for both observed and unobserved vessels in the hook-and-line fisheries. This action was approved by the Council. The halibut mortality rates are listed in Table 7.

TABLE 7.—1995 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Table values are percent of halibut bycatch assumed to be dead]

Gear and Target	
Hook-and-Line:	
Sablefish	25
Pacific cod	20
Rockfish	18
Trawl:	
Midwater pollock	66
Rockfish	66
Shallow-water flatfish	64
Pacific cod	58
Deep-water flatfish	59
Bottom pollock:	
Shoreside	54
At-sea	81
Pot: Pacific cod	18

For most fisheries, the 1992–93 averages, on which the 1995 recommendations are based, are somewhat higher than the actual rate used in 1994. This occurs because the rates used in 1994 were a rollover of the 1993 rates, which had been derived from data for 1990 and 1991. After the December 1994 Council meeting, NMFS will consider all available data and will publish preseason assumed halibut mortality rates in the **Federal Register** publication announcing the final 1995 initial specifications of groundfish TACs.

Interim Groundfish Harvest Specifications

Current regulations at § 672.20(c)(1)(ii)(A) require that one-fourth of the preliminary TAC (not including the reserves and the first quarterly allowance of pollock), one-fourth of the inshore and offshore allocations of Pacific cod in each regulatory area, and one-fourth of the halibut PSC amounts, take effect on January 1 on an interim basis and remain in effect until superseded by the final 1995 initial specifications published in the **Federal Register** or until harvested. Seasonal apportionments of TACs or PSC limits under provisions of other regulations may supersede these interim specifications. Table 1 shows amounts of proposed specifications of target species and the "other species" categories. NMFS is publishing interim initial specifications as a separate document in the final rule section of today's **Federal Register**.

Opening Date of the Directed Fishery for Sablefish for Hook-and-Line Gear

Under new regulations implementing the IFQ program (50 CFR part 676) in 1995, the opening date of the sablefish fishery is March 1.

Closures to Directed Fishing

After consideration of public comments and additional scientific information presented at its December 1994 meeting, the Council may recommend closures to directed fishing. Additionally, NMFS may implement other closures at the time the final 1995 initial specifications of groundfish TACs are implemented, or during the 1995 fishing year as necessary for effective management.

Under § 672.20(b)(1), when NMFS determines, after consultation with the Council, that the TAC for any species or species group will be fully harvested in the DAP fishery, NMFS may specify, for each calendar year, the PSC limit applicable to any JVP or TALFF fisheries for that species or species group. Any PSC limit specified shall be for bycatch only and cannot be retained. Under § 672.20(c)(6), if the Regional Director determines that a PSC limit applicable to a directed JVP or TALFF fishery has been or will be reached, NMFS will publish a closure in the **Federal Register** prohibiting all further JVP or TALFF fishing in all or part of the regulatory area concerned.

The Council did not propose any PSC limits for fully utilized groundfish species at its September meeting, and it is not expected to make such recommendations at its December meeting. Groundfish PSC limits would only have been relevant if the Council had recommended groundfish apportionments to JVP or TALFF. The Council is not expected to recommend JVP or TALFF apportionments for the 1995 fishing year.

Classification

This action is authorized under 50 CFR 611.92 and 672.20; and is exempt from review under E.O. 12866.

A draft environmental assessment (EA) on the allowable harvest levels set forth in the final 1994 SAFE Report will be available for public review at the December 1994 Council meeting. After the December meeting, a final EA will be prepared on the final 1995 TAC amounts recommended by the Council.

Consultation pursuant to section 7 of the Endangered Species Act has been initiated for the 1995 GOA initial specifications.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 15, 1994

Gary Matlock,

Program Management Officer National Marine Fisheries Service

[FR Doc. 94–31400 Filed 12–21–94 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 59, No. 245
Thursday, December 22, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Assembly of the Administrative Conference of the United States.

DATES: Thursday, January 19, 1995, 1:00 p.m.; Friday, January 20, 1995, 9:00 a.m.

ADDRESSES: Amphitheatre of the Office of Thrift Supervision, Second Floor, 1700 G Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Renee Barnow (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Assembly of the Administrative Conference of the United States makes recommendations to administrative agencies, the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out their programs. The Assembly will meet in Plenary Session to consider, not necessarily in the order stated, proposed recommendations on the following subjects:

1. Application and Modification of Exemption 8 of the Freedom of Information Act; and
2. Debarment and Suspension from Federal Programs.

The following topics will be the subject of brief presentations and discussion by the members of the Conference:

3. Self-Enforcement as a Regulatory Technique; and
4. Procedures at the Foreign-Trade Zones Board.

The Conference's staff will report to the members on the status of efforts by the Administrative Conference and other federal agencies to implement the Administrative Dispute Resolution Act, Public Law 101–552. The agenda will also include a forum on reform of the regulatory process.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recomendations, may be obtained from the Office of the Chairman, Suite 500, 2120 L Street, N.W., Washington, D.C. 20037, telephone (202) 254–7020.

Dated: December 19, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–31546 Filed 12–21–94; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 16, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Agricultural Marketing Service
Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR, Part 110)
SD–8
State or local governments; Farms; Federal agencies or employees; 184,802,265 responses; 1,623,625 hours
Bonnie Poli (703) 330–7826

• Agricultural Marketing Service
National Research, Promotion, and Consumer Information Programs, Addendum 1
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 20,887 responses; 4,141 hours
Richard Schultz (202) 720–5976

• Rural Economic and Community Development
7 CFR 1980–E, Business and Industry Loan Program
FmHA 4491 2, 4, 22; 1980–68, 70, 71, 73
Businesses or other for-profit; State, Local or Tribal Government; 11,750 responses; 78,518 hours
Jack Holston (202) 720–9736

• Rural Economic & Community Development
7 CFR 1806–A, Real Property Insurance
FmHA 426–2
Individuals or households; Businesses or other for-profit; Farms; 2,180 responses; 240 hours
Jack Holston (202) 720–9736

Extension

• Grain Inspection, Packers and Stockyards Administration
"Clear Title" Regulations to Implement Section 1324 of the Food Security Act of 1985
State or local governments; 4 responses; 48 hours
Gerald E. Grinnell (202) 720–7455

• Foreign Agricultural Service
Export Sales of U.S. Agricultural Commodities
FAS 97, FAS 98, FAS 99, and FAS 100
Businesses or other for-profit; 39,612 responses; 21,390 hours
Thomas B. McDonald, Jr. (202) 720–3273

• Rural Economic and Community Development
7 CFR 1951–0, Servicing Cases Where Unauthorized Loan and Other Financial Assistance was Received—Community and Business Programs
State or local governments; Non-profit institutions; 14 responses; 12 hours
Jack Holston (202) 720–9736

New Collection

• Agricultural Marketing Service
Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and

Northeast Oregon—Proposed Marketing Order No. 956

FV–112, FV–113, FV–113A, and FV–114

Farms; Businesses or other for-profit; Small businesses or organizations; 19 responses; 7 hours

Robert F. Matthews (202) 690–0464

• Food Safety and Inspection Service

Official Marking Devices, Labeling, and Packaging Material—Addendum—4—Poultry Products Produced by Mechanical Separation and Products In Which Such Poultry Products Are Used

FSIS Form 7234–1

Businesses or other for-profit; 59,140 responses; 17,365 hours

Lee Puricelli (202) 720–7163

Larry K. Roberson,

Deputy Departmental Clearance Officer

[FR Doc. 94–31468 Filed 12–21–94; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Wildcat River Advisory Commission

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Wildcat River Advisory Commission will meet at the Jackson Town Hall in Jackson, New Hampshire, on January 18, 1995. The purpose of the meeting is to review the draft river management plan for administration of the designated Wild and Scenic Wildcat River. The Wild and Scenic Rivers Act requires the establishment of an advisory commission to advise the Secretary of Agriculture on administration of the river. Interested members of the public may obtain copies of the draft plan from the Saco Ranger District office. The public is encouraged to attend the meeting and may provide written comment on the plan to the commissioner c/o the district office.

DATES: The meeting will be held January 18, 1995, at 7:30 p.m.

ADDRESSES: The meeting will be held at the Jackson Town Hall, Route 16B, Jackson, New Hampshire.

Send written comments to Richard J. Alimi, Assistant District Ranger, Saco Ranger District, White Mountain National Forest, 33 Kancamagus Highway, Conway, NH 03818.

FOR FURTHER INFORMATION CONTACT: Richard J. Alimi, Assistant District Ranger, Saco Ranger District, (603) 447–5482.

Dated: December 12, 1994.

Rick D. Cables,

Forest Supervisor, White Mountain National Forest.

[FR Doc. 94–31329 Filed 12–21–94; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Boydsville Watershed, Arkansas

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR Part 622), the Natural Resources Conservation Service gives notice of the deauthorization of Federal funding for the Boydsville Watershed project, Clay County, Arkansas, effective on November 23, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas H. Wehri, State Conservationist, Natural Resources Conservation Service, room 5404, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, (501) 324–5445.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: December 15, 1994.

C. K. Bradford,

Deputy State Conservationist.

[FR Doc. 94–31488 Filed 12–21–94; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held January 12, 1995, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street & Pennsylvania Avenue, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

General Session

1. Opening remarks by the Chairman
2. Introduction of members and guests
3. Presentation of public papers or comments
4. Discussion on status of Export Administration Regulations (EAR)
5. Discussion of BXA reorganization

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA, Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 15, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call (202) 482–2583.

Dated: December 19, 1994.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit

[FR Doc. 94–31501 Filed 12–21–94; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A-583-605]

Carbon Steel Butt-Weld Pipe Fittings from Taiwan; Preliminary Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the U.S. Butt-Weld Fittings Committee, petitioner in this proceeding, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on carbon steel butt-weld pipe fittings from Taiwan. The review covers four manufacturers/exporters of the subject merchandise to the United States for the period December 1, 1992, through November 30, 1993.

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 22, 1994.

FOR FURTHER INFORMATION CONTACT: Carlo G. Cavagna or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1986, the Department published in the **Federal Register** (51 FR 45152) the antidumping duty order on carbon steel butt-weld pipe fittings from Taiwan. On November 26, 1993, the Department published (58 FR 62327) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order for the period December 1, 1992, through November 30, 1993. We received a timely request from the petitioner, the U.S. Butt-Weld Fittings Committee, to review C.M. Pipe Fitting Manufacturing Co., Ltd. (CM), Rigid Industries Co., Ltd. (Rigid), Chup Hsin Enterprises (Chup Hsin), and Gei Bey Corporation (Gei Bey). The period of review (POR) covers December 1, 1992, through November 30, 1993, and the administrative review was initiated on January 18, 1994 (59 FR 2593). 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

Imports covered by this review are shipments of carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, and caps, and if forged, have been advanced after forging. These advancements may include one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping, or painting.

Carbon steel butt-weld pipe fittings are currently classifiable under Harmonized Tariff Schedule (HTS) item number 7307 93.3000. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Best Information Available

In accordance with section 776(c) of the Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for certain firms. The Department's regulations provide that we may take into account whether a party refuses to provide information (19 CFR 353.37(b)). For purposes of these reviews, we have used the most adverse BIA—generally, the highest rate for any company for this same class or kind of merchandise from this or any prior segment of the proceeding—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. When a company substantially cooperated with our requests for information, but failed to provide all the information requested in a timely manner or in the form requested, we used as BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the same class or kind of merchandise from the same country. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al., Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31704 (July 11, 1991); see also *Allied-Signal Aerospace Co. v. United States* 996 F.2d 1185 (Fed. Cir. 1993).

Because Chup Hsin and Gei Bey failed to respond to the Department's questionnaire, we have used the highest rate ever found in this proceeding to establish their margins. This rate is 87.30 percent, which was also used for these two firms in the LTFV investigation when they failed to respond in that stage of the proceeding.

United States Price

In calculating USP, the Department treated respondents' sales as purchase price (PP) transactions, as defined in section 772 of the Act, because the merchandise was sold to unrelated U.S. purchasers prior to importation.

PP was based on c.i.f. U.S. port prices to unrelated purchasers in, or for exportation to, the United States. We made deductions from PP, as appropriate, for domestic inland freight, brokerage and handling charges, assorted port and trade development taxes in Taiwan, ocean freight, marine insurance, imputed credit expenses, assorted bank and interest charges, and commissions.

We adjusted USP for taxes in accordance with our practice as outlined in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204 (June 17, 1994).

No other adjustments were claimed or allowed.

Foreign Market Value

In order to determine whether there were sufficient sales of carbon steel butt-weld pipe fittings in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of carbon steel butt-weld pipe fittings to the volume of third country sales, in accordance with section 773(a)(1) of the Act. CM and Rigid had viable home markets with respect to sales of carbon steel butt-weld pipe fittings.

Because 20 percent of Rigid's foreign market sales were determined to have been made below the cost of production (COP) during the last administrative review (56 FR 20187, 20188), we concluded that reasonable grounds existed to believe or suspect that home market sales during the POR were made at prices below COP. Therefore, pursuant to section 773(b) of the Act, the Department initiated a COP investigation of Rigid for purposes of this administrative review. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts*

Thereof from Eight Countries; Preliminary Results of Antidumping Duty Administrative Reviews, 59 FR 9463, 9467 (February 28, 1994). Furthermore, based on an allegation by petitioner, we also determined that reasonable grounds existed to believe or suspect that sales below cost of carbon steel butt-weld pipe fittings had been made by CM. Thus, we initiated a COP investigation with respect to CM.

We performed a model-specific COP test, in which we examined whether each home market sale was priced below the merchandise's COP. The Department defines the COP as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packing. For each model, we compared this sum to the reported home market unit price, net of price adjustments and movement expenses. In accordance with section 773(b) of the Act, we also examined whether the home market sales of each model were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each model where less than 10 percent, by quantity, of the home market sales during the POR were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model where 10 percent or more, but not more than 90 percent, of the home market sales during the POR were priced below the merchandise's COP, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's COP, provided that these below-cost sales were made over an extended period of time. For each model where 90 percent or more of the home market sales during the POR were priced below the COP, we disregarded all sales of that model from our calculation of FMV and used the constructed value (CV) of those models as described below See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Eight Countries, Preliminary Results of Antidumping Duty Administrative Reviews*, 59 FR 9463, 9467 (February 28, 1994).

In order to determine if sales below cost had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each model to the number of months during the POR in which each model was sold. If a model was sold in fewer than three months, we did not exclude the below-cost sales unless there were below-cost sales in each month of sale. If a model was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three months during the POR. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Nine Countries; Final Results of Antidumping Duty Administrative Reviews*, 58 FR 39729, 39751 (July 26, 1993). Based on this test, we found it necessary to disregard certain home market sales made by CM and Rigid.

We used CV as FMV for those U.S. sales for which there were insufficient sales of the comparison home-market model at or above the COP. We calculated CV, in accordance with section 773(e) of the Act, as the sum of the cost of manufacturing of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, home market profit, and U.S. packing. For home market SG&A expenses, we used the larger of the actual SG&A expenses reported by the respondents or 10 percent of the COM, the statutory minimum for foreign SG&A expenses. For home market profit, we used the larger of the actual profit reported by the respondents or the statutory minimum of eight percent of the sum of COM and SG&A expenses.

For those models that had sufficient above-cost sales, we calculated FMV based on delivered prices to unrelated customers in the home market. In calculating FMV, we made adjustments, where appropriate, for inland freight and imputed credit expenses. We adjusted for the Taiwan consumption tax in accordance with our decision in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204 (June 17, 1994). We deducted home market packing costs from the home market price and added U.S. packing costs to the FMV Pursuant to 19 CFR 353.56, we also made, where applicable, adjustments for differences in the physical characteristics of merchandise. Furthermore, where commissions were paid on U.S. sales and not paid on home market sales, we allowed an offset to FMV amounting to the lesser of the weighted-average home market indirect selling expenses or the U.S. commissions, in accordance with 19 CFR 353.56(b) of the regulations.

No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of this review, we preliminary determine that the following margins exist for the period December 1, 1992, through November 30, 1993:

Manufacturer/exporter	Percent margin
Chup Hsin Enterprises	87.30
C.M. Pipe Fittings	12.24
Gei Bey Corporation	87.30
Rigid Industries	2.53
All Others	49.46

Upon completion of the final results of this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. Upon completion of the review the Department will issue appraisement instructions with respect to each exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of carbon steel butt-weld pipe fittings 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 companies will be those rates established in the final results of this review; (2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, but the manufacturer is, the cash deposit rate will be the rate established in this review for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be 49.46%, the all other rate established in the LTFV investigation (51 FR 37772).

These deposit requirements will remain in effect until publication of the final results of the next administrative review

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments,

limited to issues in the case briefs, 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 issues raised in any such written comments.

This notice 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 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: December 7, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31502 Filed 12–21–94, 8:45 am]

BILLING CODE 3510–DS–P

[A–351–824]

Notice of Antidumping Duty Order: Silicomanganese From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 22, 1994.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or John Brinkmann, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0186 or (202) 482–5288, respectively.

Scope of Order

The merchandise covered by this order is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Antidumping Duty Order

On December 14, 1994, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of silicomanganese from Brazil materially injure a U.S. industry. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of silicomanganese from Brazil. These antidumping duties will be assessed on all unliquidated entries of silicomanganese from Brazil entered, or withdrawn from warehouse, for consumption on or after June 17, 1994, the date on which the Department published its preliminary determination notice in the **Federal Register** (59 FR 14852).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Companhia Paulista de Ferro-Ligas and Sibra Eletro Siderurgica Brasileira S/A	64.93
All Others	17.60

This notice constitutes the antidumping duty order with respect to silicomanganese from Brazil, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: December 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31623 Filed 12–20–94; 3:01 pm]

BILLING CODE 3510–DS–P

[A–570–828]

Notice of Antidumping Duty Order: Silicomanganese From the People's Republic of China (PRC)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 22, 1994.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or John Brinkmann, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0186 or (202) 482–5288, respectively

Scope of Order

The merchandise covered by this order is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur Silicomanganese generally contains by weight not less than four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202-30-0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomananese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Antidumping Duty Order

On December 14, 1994, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC did not determine, pursuant to section 735(b)(4)(B)of the Act that, but for the suspension of liquidation of entries of silicomanganese from the PRC, the domestic industry would have been materially injured.

When the ITC fins threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries or warehouse withdrawals, for consumption of silicomanganese from the PRC made on or after December 14, 1994, the date on which the ITC issued its final determination of threat of material injury, will be liable for the assessment of antidumping duties. The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before December 14, 1994, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

The Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of silicomanganese from the PRC. These antidumping duties will be assessed on all unliquidated entries of silicomanganese from the PRC entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC issued its final affirmative determination of threat of material injury U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 150.00 percent *ad valorem* on all entries of silicomanganese from the PRC.

Date Adjustment of Suspension of Liquidation

Based on the information available to the Department for the preliminary determination (59 FR 31199, June 17, 1994), the Department determined that critical circumstances existed for imports of silicomanganese from the PRC, However, the ITC determined, as required by section 735(b)(4)(A) of the Act, that retroactive imposition of antidumping duties of the merchandise is not necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time. Therefore, in accordance with the ITC finding and pursuant to section 735(c)(3) of the Act, the Department will direct the Customs Service to terminate the retroactive suspension of liquidation and to release any bond or security, and refund any cash deposit required under section 733(d)(2) of the Act with respect to entries of silicomanganese, the liquidation of which was suspended retroactively under section 733(e)(2) of the Act.

This notice constitutes the antidumping duty order with respect to silicomanganese from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: December 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–31624 Filed 12–20–94; 3:01 pm]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of Issuance of an amended Export Trade Certificate of Review, Application No. 89–3A005.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to CherreX Corporation on June 6, 1989. Notice of the original Certificate was published in the **Federal Register** on June 12, 1989 (54 FR 24928).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 89–3A005 was issued to CherreX Corporation on September 16, 1994. The Certificate was previously amended on October 18, 1989 (54 FR 32002.)

CherreX's Export Trade Certificate of Review has been amended to:

1. Add the following additional companies as new "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): Peterson Farms, Inc., Shelby, Michigan; and Seaquist Orchards, Inc., Sister Bay, Wisconsin.

2. Delete Burnette Foods, Inc.; Buskirk Processing, Inc.; DeRuiter Farms; Smeltzer Orchard Co.; Stanek & Sons, Inc.; Utah Finer Fruits; Ludington Fruit Exchange, Inc.; and Larson-Seaquist Processing, Inc. as "Members" of the Certificate.

3. Change the definition of "products" to include processed sweet cherries including individually quick frozen and stored in freezer (IQF); cherries canned in water, light syrup, heavy syrup, extra heavy syrup or as a pie fill; and juice from sweet cherries.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: December 19, 1994.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 94–31503 Filed 12–21–94, 8:45 am]

BILLING CODE 3510–DR–P

National Institute of Standards and Technology

Inventions, Government-Owned; Availability for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government Owned Inventions Available for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C.

207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Marcia Salkeld, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, Room B–256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 91–020CIP2

Title: Electric Test Structure and Method for Measuring the Relative Locations of Conducting Features on an Insulating Substrate

Description: NIST researchers have invented a new electrical test structure to provide measurements of the separations of conducting features on an insulating substrate with uncertainties typically below 10 nm. Measurement dynamic repeatability is nominally less than 1 nm. Absolute accuracy has been determined by comparing measurements of the same feature separations with those made by the NIST line-scale interferometer which has traceability to absolute length standards.

NIST Docket No. 92–017

Title: Electroforming of Metallic Glasses for Dental Applications

Description: A method of electroforming metallic glasses to produce dental prostheses and the resulting prostheses. The method uses a cobalt-phosphorus metallic glass alloy that produces prostheses with superior strength and high corrosion resistance.

NIST Docket No. 93–040

Title: Underwater Work Platform Support System

Description: NIST researchers have developed a system to stabilize an underwater work platform in six degrees of freedom. Suspended by cables beneath a surface vessel, the platform is stabilized through the use of winches and motion sensors even when the surface vessel is disturbed by waves.

NIST Docket No. 93–057

Title: Prevention of Contact Tube Melting In Arc Welding

Description: NIST engineers have developed a technique to detect and prevent the onset of contact tube melting in gas metal arc and flux cored arc welding. Anticipating the problem enables interruption of the welding power supply and prevention of contact tube melting.

NIST Docket No. 93–012

Title: Accumulator Distillation Insert for Zeotropic Refrigerant Mixtures

Description: NIST researchers have developed an accumulator distillation insert that improves the efficiency of heat pumps. The insert is cost-effective because it only requires minor modifications to an existing system, it does not change the basic refrigeration cycle, and it adds no additional moving parts or valves.

Dated: December 19, 1994.

Samuel Kramer,

Associate Director

[FR Doc. 94–31504 Filed 12–21–94, 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 121694B]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene separate public meetings of its Joint Shrimp Advisory Panel/Standing and Special Shrimp Scientific and Statistical Committees (Shrimp SSC) and its Standing and Special Reef Fish SSC on January 10–11, 1995. On January 10, the Shrimp SSC will convene from 10:00 a.m. until 5:00 p.m., and continue on January 11 from 8:00 a.m. to noon to review and discuss reduction of fish bycatch in shrimp trawls, management of royal red shrimp, review of the 1994 Texas seasonal closure to shrimping, and the recent NMFS biological opinion on impact of shrimping on endangered species. Also on January 11, the Reef Fish SSC will convene from 1:00 p.m. until 5:00 p.m. to review and consider recent findings of the reef fish stock assessment on generation time for red snapper and projected impact of various management measures on the 1995 recreational harvest of red snapper

The meetings will be held at the Radisson Inn New Orleans Airport, 2150 Veterans Memorial Boulevard, Kenner, LA.

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Fishery Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by January 3, 1995.

Dated: December 16, 1994

David S. Crestin,

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

[FR Doc. 94–31422 Filed 12–21–94, 8:45 am]

BILLING CODE 3510–22–F

[I.D. 121694A]

North Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (NPFMC or Council) and its advisory bodies will meet the week of January 9, 1995, at the Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK. All meetings are open to the public with the exception of an executive session to be held during the lunch hour one day during the meeting week to review personnel matters and pending litigation. All meetings will be held at the hotel and are scheduled as follows:

On January 9, the NPFMC Advisory Panel will begin meeting at 8:00 a.m. and the Scientific and Statistical Committee will begin meeting at 10:30 a.m. Each meeting will continue until business is completed.

The Council will meet jointly with the Alaska Board of Fisheries beginning at 8:00 a.m. on January 10, and begin their normal plenary session at 8:00 a.m. on January 11. The meeting is expected to continue through January 14. There may be other workgroup and/or committee meetings held during the week. Notice of meetings will be posted.

During the joint meeting on January 10, the Council and Alaska Board of Fisheries will address the following agenda items:

(1) Crab management and crab bycatch in groundfish and other crab fisheries;

(2) Salmon bycatch issues, and

(3) Review scallop fishery issues and other fisheries issues of mutual interest.

During the normal plenary NPFMC session beginning on January 11, the Council will address, and may take appropriate action on, the following agenda items, time permitting:

(1) Report from the NMFS on current status of fisheries and regulations;

(2) Review available information on implementation, administration and enforcement costs associated with the Council's proposed license limitation program for groundfish and crab fisheries;

(3) Receive progress report on development of analysis for extension of inshore-offshore allocations and pollock community development quota program;

(4) Review proposed rule for scallop fishery management plan, including issue of management jurisdiction over vessels not registered with the State of Alaska, crab bycatch limits, incorporation into the Research Plan, and permits for persons or vessels;

(5) Review actions to protect red king crab in Bristol Bay, including a report on opilio bycatch and consider next steps;

(6) Review proposed amendments to groundfish fishery management plans to protect chum and chinook salmon;

(7) Review of the Salmon Research Foundation;

(8) Review proposals for amendments to groundfish fishery management plans; give staff further direction;

(9) Receive a committee report on options to manage the guided sport halibut fishery off Alaska and determine next steps;

(10) Receive report from the NMFS on possible enforcement problems related to fisheries occurring outside the U.S. EEZ, particularly in relation to the sablefish IFQ program;

(11) Preliminary review of an amendment to require improved sorting of halibut incidentally caught in trawl groundfish fisheries off Alaska;

(12) Discuss inter-council coordination in developing management and data reporting amendments for the Pacific pelagics fishery;

(13) Review and comment on State of Alaska oil and gas lease sales in areas adjacent to Council-managed fisheries;

(14) Discuss issues of observer training and minority hire; and

(15) Review a plan amendment for the sablefish and halibut Individual Fishery Quota (IFQ) Program that would exempt the Community Development Quota portion of the program from the block proposal. Receive a report from the IFQ Implementation Workgroup on various issues concerning the IFQ Program.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen (907) 271–2809, at least 5 working days before the meeting begins.

Dated: December 16, 1994.

David S. Crestin,

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

[FR Doc. 94–31423 Filed 12–21–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 121394A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Modification 4 to Scientific Research and Enhancement Permit 747 (P45H) and Notice of Receipt of an Application for a Scientific Research Permit (P578).

On September 12, 1994, an application was filed by the U.S. Department of Fish and Wildlife (FWS) for a modification to their scientific research and enhancement Permit 747 (P45H). Permit 747 allows FWS to take threatened Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–22).

FWS requested an expansion of their research sampling area to include the lower reaches of the creeks and tributaries of the Sacramento River in Butte, Glenn, and Tehama Counties in CA. The expanded sampling will occur in the tributaries within 5 miles of their confluence with the mainstem Sacramento River. In addition, FWS requested authorization to allow Dr. Paul E. Maslin, Department of Biological Sciences, California State University at Chico and his graduate students to carry out this expanded sampling and to participate in the part of the research involving the annual collection and sacrifice of up to 450 adipose fin-clipped and coded-wire tagged juvenile, listed, Sacramento River winter-run chinook salmon released from the FWS's Coleman National Fish Hatchery

Notice is hereby given that on December 6, 1994, as authorized by the provisions of the ESA, NMFS issued Modification 4 to Permit 747 for the above taking, subject to certain conditions set forth therein. This modification will be in effect for the duration of the permit, which expires on December 31, 1995.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was also issued in accordance with and is subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Notice is hereby given that the California Department of Water Resources (DWR) has applied in due form to take listed species as authorized by the ESA and the NMFS regulations governing listed fish and wildlife permits.

DWR (P578) requests authorization to take juvenile and adult, threatened, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) for scientific research purposes while conducting an acoustic barrier applied research project at the confluence of Georgiana Slough with the Sacramento River. The purpose of the proposed project is to determine the effectiveness of an underwater acoustic barrier in diverting migrating juvenile chinook salmon away from Georgiana Slough under various hydraulic and hydrologic conditions. Previous studies have demonstrated substantially higher mortality rates for downstream migrating juvenile chinook salmon which pass from the Sacramento River into Georgiana Slough when compared with salmon which continue their migration downstream within the Sacramento River channel. The proposed study involves Kodiak trawling within the Sacramento River and Georgiana Slough between February and June 1995 to determine the guidance efficiency of the barrier.

Written data or views, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of

such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above actions are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Dated: December 14, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service

[FR Doc. 94–31401 Filed 12–21–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

December 15, 1994.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, establishes limits for the period beginning on January 1, 1995 and extending through December 31, 1995.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1683.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Information regarding the 1995 CORRELATION will be published in the **Federal Register** at a later date.

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

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 15, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, between the Governments of the United States and Nepal; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	178,773 dozen.
340	284,025 dozen.
341	912,321 dozen.
342	138,486 dozen.
347/348	639,753 dozen.
640	142,948 dozen.
641	322,313 dozen.

Imports charged to these category limits, as applicable, for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive

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

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

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–31499 Filed 12–21–94; 8:45 am]

BILLING CODE 3510–DR–F

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

December 16, 1994.

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

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

EFFECTIVE DATE: December 19, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6716. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65582, published on December 15, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on December 19, 1994, you are directed to amend the December 9, 1993 directive to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the the Republic of Singapore:

Category	Adjusted twelve-month limit [1]
239	520,023 kilograms.
331	439,311 dozen pairs.
338/339	1,274,508 dozen of which not more than 637,847 dozen shall be in Category 338 and not more than 709,205 dozen shall be in Category 339.
341	190,248 dozen.
639	3,542,469 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

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

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 94–31500 Filed 12–21–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Joint Military Intelligence College; Notice of Closed Meeting

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Thursday, 12 January 1995, 0915 to 1630; and Friday, 13 January 1995, 0900 to 1130.

ADDRESSES: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/373–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: December 19, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 94–31457 Filed 12–21–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Partial Record of Decision (PROD) for the Disposal and Reuse Final Environmental Impact Statement for Carswell Air Force Base (AFB), Texas

On November 21, 1994, the Air Force issued a PROD for the disposal of a portion of Carswell Air Force Base (AFB), Texas. The decisions included in this PROD have been made in consideration of the Carswell AFB Disposal and Reuse Final Environmental Impact Statement (FEIS), which was filed with the Environmental Protection Agency on February 18, 1994, and other relevant considerations.

Carswell AFB was officially closed on September 30, 1993, pursuant to the Defense Base Closure and Realignment Act (DBCRA) of 1990, (Public Law 101–510) and the recommendations of the Defense Secretary's Commission on Base Realignment and Closure. This PROD documents the Carswell AFB disposal decisions.

The Air Force has decided to dispose of the approximately 1946 acres fee and 69.99 acres leased portion of the base in the following manner: Parcel A (approximately 95.03 acres) will be transferred to the Federal Bureau of Prisons for the development of a Federal Medical Center Complex, Parcel B (20 houses on approximately 6.68 acres) will be assigned to Health and Human Services for a Public Benefit Conveyance to ARI for a rehabilitation center, Parcel C (one house on approximately .23 acres) will be assigned to the Department of Education for a Public Benefit Conveyance to Westworth Village for use as a public library, Parcel D (approximately 1,840 acres fee and 69.99 acres leased), will be retained and realigned by the DoD as mandated by the Defense Base Closure and Realignment Commission.

The uses proposed for the property by prospective recipients of property under the ROD are included in the proposed action in the FEIS and are consistent with the community's draft redevelopment plan for the base. Carswell Redevelopment Authority prepared the plan, with the assistance of the broader community.

By this decision, the Air Force adopts certain mitigation measures, as described in this PROD, to protect public health and the environment. In response to existing or forecasted environmental impacts to or in the area of Carswell AFB, subsequent property owners should consider implementation of the more specific mitigation measures associated with reuses they may undertake, as set forth in Chapter 4 of the Final Environmental Impact Statement.

Any questions regarding this matter should be directed to Mr. Charles R. Hatch, Program Manager, Southwest Division. Correspondence should be sent to AFBCA/SW, 1700 N. Moore Street, suite 2300, Arlington, VA 22209–2809.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 94–31490 Filed 12–21–94; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board Meeting

The Theater Air Defense Independent Review Team of the USAF Scientific Advisory Board will meet on 17–18 January 1995 at Kirtland AFB, Albuquerque, NM from 8 a.m. to 5 p.m

The purpose of the meeting is to evaluate the Airborne Laser Program Data for the Theater Air Defense COEA submission.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–31491 Filed 12–21–94; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

PURPOSE OF PROGRAM: This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973 (Act), as amended, consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

ELIGIBLE APPLICANTS: To be eligible, an applicant must—

(1) be an eligible agency as defined in 34 CFR 364.4; (2) meet the requirements of § 366.24; and (3) either—

(a) not currently receive funds under Part C of Chapter 1 of Title VII of the Act; or (b) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to those entities proposing to serve areas that are unserved or underserved in the States and territories listed under **AVAILABLE FUNDS.**

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: March 17, 1995.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: May 16, 1995.

APPLICATIONS AVAILABLE: January 3, 1995.

AVAILABLE FUNDS: Pursuant of sections 721 and 722 of the Act, $3,145,967 is distributed as follows:

Arkansas	$25,642
Delaware	59,083
Florida	252,516
Georgia	131,153
Illinois	111,619
Indiana	101,073
Iowa	86,042
Kentucky	7,307
Louisiana	27,885
Maryland	80,113
Montana	25,642
New Hampshire	27,885
New Jersey	101,527
North Carolina	132,620
North Dakota	27,885
Ohio	204,807
Pennsylvania	152,185
South Carolina	27,885
Tennessee	101,299
Texas	337,025
Washington	56,088
Puerto Rico	107,992
American Samoa	154,046
Guam	49,156

ESTIMATED RANGE OF AWARDS: $7,307 to $200,000

ESTIMATED NUMBER OF AWARDS: 1 to 5 per eligible State or territory.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 60 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The program regulations in 34 CFR Parts 364 and 366.

FOR APPLICATIONS: Telephone (202) 205–9315. 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. Individuals may write to receive an application from Donald Thayer, U.S. Department of Education, 600 Independence Avenue, SW., room 3326, Switzer Building, Washington, DC 20202–2741.

FOR FURTHER INFORMATION CONTACT: Donald Thayer, telephone: (202) 205–9315, or John Nelson, telephone: (202) 205–9362 (Voice and TDD), U.S. Department of Education, 600 Independence Avenue, SW., room 3326 Switzer Building, Washington, DC 20202–2741.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 721 (c) and (e) and 796(f).

Dated: December 19, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–31455 Filed 12–21–94; 8:45 am]

BILLING CODE 4000–01–P

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for Comments on Agencies applying to the Secretary for Initial Recognition or Renewal of Recognition.

DATES: Commentors should submit their written comments by February 6, 1995 to the address below.

FOR FURTHER INFORMATION CONTACT: Carl S. Person, Chief, Accrediting Agency Evaluation Branch, U.S. Department of Education, 600 Independence Avenue, SW., Room 3036 ROB–3, Washington, DC 20202–5171, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition.

The National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet May 24–26, 1995 in Washington, DC. All written comments received regarding the agencies listed in this Notice will be considered by both the Advisory Committee and the Secretary.

The following agencies will be reviewed during the May 1995 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies and Associations

Petitions for Initial Recognition

1. American Academy for Liberal Education (requested scope of recognition: The accreditation of institutions and programs in the liberal arts)

2. Montessori Accreditation Council for Teacher Education (requested scope of recognition: The accreditation of institutions and programs for Montessori teacher education)

Petitions for Renewal of Recognition

1. American Academy of Microbiology, Committee on Postdoctoral Educational Programs (requested scope of recognition: The accreditation of postdoctoral programs in medical and public health laboratory microbiology)

2. American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education (requested scope of recognition: The accreditation of graduate degree programs and clinical training programs in marriage and family therapy education)

3. Accrediting Commission on Education for Health Services Administration (requested scope of recognition: the accreditation of graduate programs in health services administration)

4. American Osteopathic Association, Bureau of Professional Education (requested scope of recognition: The accreditation of programs leading to the D.O. degree)

5. American Podiatric Medical Association, Council on Podiatric Medical Education (requested scope of recognition: For the accreditation of colleges of podiatric medicine, including first professional and graduate degree programs)

6. Association of Theological Schools in the United States and Canada, Commission on Accrediting (requested scope of recognition: The accreditation of freestanding schools, as well as schools affiliated with larger institutions offering graduate professional education for ministry and graduate study of theology)

7. Council on Naturopathic Medical Education, Commission on Accreditation (requested scope of recognition: The accreditation of programs leading to the N.D. or N.M.D. degree)

8. Joint Review Committee on Education in Radiologic Technology (formerly recognized in cooperation with the Committee on Allied Health Education and Accreditation of the American Medical Association but now requesting recognition on its own) (requested scope of recognition: The accreditation of programs for the radiographer and the radiation therapy technologist)

9. National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (requested scope of recognition: The accreditation of first professional master's degree and professional master's level certificate and diploma programs in acupuncture and oriental medicine)

10. National Accrediting Commission on Cosmetology Arts and Sciences (requested scope of recognition: The accreditation of postsecondary schools and departments of cosmetology arts and sciences)

11. National Council for Accreditation of Teacher Education (requested scope of recognition: The accreditation of baccalaureate and graduate programs for the preparation of teachers and other professional personnel for elementary and secondary schools)

12. National League for Nursing, Inc. (requested scope of recognition: The accreditation of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs)

13. New York State Board of Regents (requested scope of recognition: The registration (accreditation) of collegiate degree-granting programs or curricula offered by institutions of higher education and of credit-bearing certificate and diploma programs offered by degree-granting institutions of higher education)

14. Southern Association of Colleges and Schools, Commission on Occupational Education Institutions (requested scope of recognition: The accreditation of occupational education institutions located in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia)

15. Transnational Association of Christian Colleges and Schools, Accrediting Commission (requested scope of recognition: The accreditation of Christian postsecondary institutions whose missions are characterized by a belief in Biblical inerrancy, Bible authority, and in historicity of the first eleven chapters of Genesis and that offer certificates, diplomas, and associate, baccalaureate, and graduate degrees)

16. Western Association of Schools and Colleges, Accrediting Commission for Schools (requested scope of recognition: The accreditation of secondary and other institutions offering postsecondary education located in California, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands)

17. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities (requested scope of recognition: The accreditation of senior colleges and universities located in California, Hawaii, American Samoa, and the Commonwealth of the Northern Mariana Islands)

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Missouri State Board of Vocational/Technical Education

2. New York State Board of Regents

State Agencies Recognized for the Approval of Nurse Education

Petitions for Renewal of Recognition

1. Missouri State Board of Nursing

2. New Hampshire Nurse Registration Board

3. New York State Board of Regents (Nursing Education)

In accordance with the Federal policy governing the granting of academic degree by Federal agencies (approved by a letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed which would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution:

Proposed Bachelor's Degree-Granting Authority

1. Joint Military Intelligence College (formerly the Defense Intelligence College), Washington, DC (request to award a bachelor's degree in Intelligence Studies)

Public Inspection of Petitions and Third-Party Comments

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be

available for public inspection at the U.S. Department of Education, ROB–3, Room 3036, 7th and D Streets, SW., Washington, DC 20202–5171, telephone (202) 708–7417 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–31458 Filed 12–21–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2528–ME; Project No. 2527–ME; Project No. 2194–ME; Project No. 2531–ME; Project No. 2529–ME; Project No. 2530–ME; Project No. 11365–ME]

Central Maine Power; Swans Falls Power Corp.; Notice of Intention To Hold a Public Meeting for Discussion of the Draft Environmental Impact Statement for the Saco River

December 16, 1994.

On December 1, 1994, the Commission staff mailed the Saco River Basin DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental consequences of the "Saco River Fish Passage Agreement" and continuing the operations and maintenance of the existing Saco River Projects, in Maine.

The subject DEIS also evaluates the environmental effects of: implementing the applicants' proposals supplemented with staff's recommended mitigative measures; and the no-action alternative.

A public meeting which will be recorded by an official stenographer, is scheduled on Thursday, January 5, 1995, from 2:00 P.M. to 5:00 P.M. at Alfred's Restaurant, 281 Civic Center Drive, Augusta, ME, 04330.

Commission staff will have site visit of the Cataract Project at 9:00 A.M. Friday, January 6, 1995.

At the subject meeting, resource agency personnel and other interested persons will have opportunity to provide oral and written comments and recommendations regarding the subject DEIS for the Commission's public record.

For further information, please contact Rich McGuire (Telephone 202 219–3084), or Bob Bell (Telephone 202 219–2806), Federal Energy Regulatory Commission, Office of Hydropower Licensing, 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31407 Filed 12–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–685–000]

Tuscarora Gas Transmission Co., Notice of Availability of the Draft Environmental Impact Report/ Environmental Impact Statement for the Proposed Tuscarora Pipeline Project

December 16, 1994.

The staffs of the Federal Energy Regulatory Commission (FERC) and the California State Lands Commission (SLC) have prepared this draft environmental impact report/ environmental impact statement (EIR/ EIS) on the natural gas pipeline facilities proposed by Tuscarora Gas Transmission Company (Tuscarora) in the above docket.

The draft EIR/IS was prepared to satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act. The FERC and SLC believe, subject to public comment, that approval of the proposed project, with appropriate mitigation measures including receipt of necessary permits and approvals, has the potential to significantly impact the environment. The draft EIR/EIS evaluates alternatives to the proposal.

The draft EIR/EIS assesses the potential environmental effects of the construction and operation of the proposed Tuscarora Pipeline Project, which includes the following facilities:

- One 229-mile, 20 inch-diameter pipeline between Malin, Oregon and Tracy, Nevada (the Tuscarora mainline). The Tuscarora mainline would interconnect with the Pacific Gas Transmission Company's mainline at Malin;
- One 4.42-mile, 4-inch-diameter lateral between the Tuscarora mainline and Alturas, California (the Alturas Lateral);
- One 10.61-mile, 6-inch-diameter lateral between the Tuscarora mainline and a point near Susanville, California (the Susanville Lateral);
- One 5.45-mile, 4-inch-diameter lateral between the Tuscarora mainline and the Sierra Army Depot near Herlong, California (the Herlong Lateral);
- Five meter stations located in Alturas, Susanville, and Herlong (Sierra Army Depot), California; and near Spanish Springs and Tracy, Nevada; and
- Twelve mainline valves.

The draft EIR/EIS has been placed in the public files of the FERC and is available for public inspection at:

Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, (202) 208–1371

California State Lands Commission, 1807 13th Street, Sacramento, CA 95814, (916) 322–0530

Copies have been mailed to Federal, state and local agencies, public interest groups, interested individuals, public libraries, newspapers, and parties to this proceeding.

A limited number of copies of the draft EIR/EIS are available from either:

Ms. Alisa Lykens, Federal Energy Regulatory Commission, Environmental Project Manager, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0766

Mr. Kirk Walker, California State Lands, Environmental Project Manager, 1807 13th Street, Sacramento, CA 95814, (916) 322–0530

Any person wishing to comment on the draft EIR/EIS may do so. Written comments must reference Docket No. CP 93–685–000. Comments should be addressed to:

Office of the Secretary, Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426

California State Lands Commission, 1807 13th Street, Sacramento, CA 95814, Attn: Kirk Walker

Comments should be filed as soon as possible, but must be received no later than February 6, 1995, to ensure consideration prior to a FERC and SLC decision on this proposal. A copy of any comments should also be sent to either Ms. Alisa Lykens, FERC Environmental Project Manager, or Kirk Walker, SLC Environmental Project Manager.

Comments will be considered by the FERC and SLC but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene with the Secretary, FERC pursuant to Rule 214 of the FERC's Rules of Practice and Procedure (18 CFR 385.214).

In addition to asking for written comments, we invite you to attend any of the public meetings that will be held at the following times and locations listed below. The meetings will be designed to provide you with more detailed information and other

opportunity to offer your comments on the draft EIR/EIS. Those wanting to speak at the meetings can call the EIR/EIS Project Managers to pre-register their names on the speakers' list. Those people on the speakers' list prior to the date of the meeting will be allowed to speak first. Priority will be given to people representing groups. A transcript of each meeting will be made so that your comments will be accurately recorded.

- Alturas, California: January 31, 1995; 7:00 pm—Modoc High School, 900 North Main Street, Alturas, California 96101
- Susanville, California: February 1, 1995; 7:00 pm—Monticola Club, 140 Lassen Street, Susanville, California 96130
- Reno/Sparks, Nevada; February 2, 1995; 7:00 pm—Best Western—McCarran House, 55 East Nugget Avenue, Sparks, Nevada 89431

Additional information about this project is available from Ms. Alisa Lykens, FERC, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, at (202) 208–0766; or Kirk Walker, SLC, (916) 322–0530.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31408 Filed 12–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST95–389–000 et al.]

Florida Gas Transmission Co.; Notice of Self-Implementing Transactions

December 16, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to section 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline purusant to section 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under section 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under section 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to section 284.303 of the Commission's regulations.

A"K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to section 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket Number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–389	FLORIDA GAS TRANSMISSION CO.	TENNECO GAS MARKETING CO.	11–01–94	G–S	50,000	N	I	10–02–94	INDEF.
ST95–390	ARKANSAS WESTERN GAS CO.	ARKANSAS WESTERN P/L CO., ET AL.	11–01–94	G–HT	5,000	N	I	10–01–94	INDEF.
ST95–391	TRANSTEXAS GAS CORP.	TRUNKLINE GAS CO.	10–14–94	C	30,000	N	I	08–18–94	INDEF.
ST95–392	TRANSTEXAS GAS CORP.	NATURAL GAS P/L CO. OF AMERICA.	10–14–94	C	30,000	N	I	06–11–94	INDEF.
ST95–393	TRANSTEXAS GAS CORP.	KOCH GATEWAY PIPE LINE CO.	10–14–94	C	30,000	N	I	06–16–94	INDEF.
ST95–394	TRANSTEXAS GAS CORP.	NATURAL GAS P/L CO. OF AMERICA.	10–14–94	C	30,000	N	I	07–07–94	INDEF.
ST95–395	TRANSTEXAS GAS CORP.	TRUNKLINE GAS CO.	10–14–94	C	30,000	N	I	08–03–94	INDEF.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket Number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–396	TRANSTEXAS GAS CORP.	NATURAL GAS P/L CO. OF AMERICA.	10–14–94	C	25,000	N	I	07–12–94	INDEF
ST95–397	TRANSTEXAS GAS CORP.	KOCH GATEWAY PIPE LINE CO.	10–14–94	C	30,000	N	I	07–15–94	INDEF
ST95–398	TRANSTEXAS GAS CORP.	TENNESSEE GAS PIPELINE CO.	10–14–94	C	30,000	N	I	08–01–94	INDEF
ST95–399	TRANSTEXAS GAS CORP.	TENNESSEE GAS PIPELINE CO.	10–14–94	C	25,000	N	I	06–08–94	INDEF
ST95–400	TRANSTEXAS GAS CORP.	TENNESSEE GAS PIPELINE CO.	10–14–94	C	25,000	N	I	06–18–94	INDEF
ST95–401	TRANSTEXAS GAS CORP.	NATURAL GAS P/L CO. OF AMERICA.	10–14–94	C	25,000	N	I	06–10–94	INDEF
ST95–402	SOUTHERN CALIFORNIA GAS CO.	CATEX VITOL GAS, INC.	11–02–94	G–HT	100,000	N	I	10–01–94	09–30–95
ST95–403	SOUTHERN CALIFORNIA GAS CO.	CHEVRON U.S.A., INC.	11–02–94	G–HT	100,000	N	I	10–01–94	09–30–95
ST95–404	LONE STAR GAS CO.	EL PASO NATURAL GAS CO., ET AL.	11–02–94	C	50,000	N	I	10–18–94	INDEF
ST95–405	NATURAL GAS P/L CO. OF AMERICA.	PEOPLES NATURAL GAS CO.	11–02–94	G–S	25,000	N	F	11–01–94	03–31–95
ST95–406	PANHANDLE EASTERN PIPE LINE CO.	GEDI, INC	11–03–94	G–S	1,800	N	F	10–20–94	10–31–95
ST95–407	FLORIDA GAS TRANSMISSION CO.	FELDSPAR CORP	11–03–94	G–S	645	N	I	10–11–94	INDEF
ST95–408	FLORIDA GAS TRANSMISSION CO.	CATEX VITOL GAS, INC.	11–03–94	G–S	40,000	N	I	10–05–94	INDEF
ST95–409	COLUMBIA GULF TRANSMISSION CO.	GM HYDROCARBONS LTD.	11–03–94	G–S	50,000	N	I	10–20–94	INDEF
ST95–410	COLUMBIA GULF TRANSMISSION CO.	MERIDIAN OIL TRADING, INC.	11–03–94	G–S	1,500	N	I	10–24–94	INDEF
ST95–411	COLUMBIA GULF TRANSMISSION CO.	SHELL GAS TRADING CO.	11–03–94	G–S	150,000	N	I	10–04–94	INDEF
ST95–412	COLUMBIA GULF TRANSMISSION CO.	SHELL GAS TRADING CO.	11–03–94	G–S	150,000	N	I	10–04–94	INDEF
ST95–413	WILLIAMS NATURAL GAS CO.	WESTERN GAS RESOURCES.	11–03–94	G–S	10,000	N	I	09–30–94	08–31–95
ST95–414	WILLIAMS NATURAL GAS CO.	TEXACO GAS MARKETING INC.	11–03–94	G–S	111	N	I	09–30–94	08–31–95
ST95–415	ALABAMA-TENNESSEE NATURAL GAS CO.	CITY OF DECATUR GAS DEPARTMENT	11–03–94	B	5,400	N	F	11–01–94	11–01–96
ST95–416	ALABAMA-TENNESSEE NATURAL GAS CO.	CITY OF DECATUR GAS DEPARTMENT	11–03–94	B	1,371	N	F	11–01–94	11–01–96
ST95–417	ALABAMA-TENMESSEE NATURAL GAS CO.	CITY OF DECATUR GAS DEPARTMENT	11–03–94	B	6,000	N	F	11–01–94	11–01–96
ST95–418	ALABAMA-TENNESSEE NATURLA GAS CO	CITY OF DECATUR GAS DEPARTMENT	11–03–94	B	9,273	N	F	11–01–94	11–01–96
ST95–419	EL PASO NATURAL GAS CO	KCS ENERGY MARKETING, INC.	11–03–94	G–S	100,000	N	I	10–08–94	INDEF

Docket Number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–420	MIDWESTERN GAS TRANSMISSION CO.	MOBIL NATURAL GAS INC.	11–04–94	G–S	21,000	N	F	10–16–94	INDEF.
ST95–421	ROCKY MOUNTAIN NATURAL GAS CO.	NORTHWEST PIPELINE CORP.	11–04–94	G–HT	5,000	N	I	09–01–94	INDEF.
ST95–422	K N INTERSTATE GAS TRANS. CO.	WESTERN SUGAR CO.	11–04–94	G–S	6,124	N	I	09–01–94	INDEF.
ST95–423	K N INTERSTATE GAS TRANS. CO.	CHEVRON U.S.A., INC.	11–04–94	G–S	3,900	N	F	10–01–94	01–31–95
ST95–424	K N INTERSTATE GAS TRANS. CO.	AMERICAN WESTEX GAS SERVICES CO.	11–04–94	G–S	250,000	A	I	10–12–94	INDEF.
ST95–425	K N INTERSTATE GAS TRANS. CO.	NEBRASKA PUBLIC GAS AGENCY	11–04–94	G–S	250	N	F	10–01–94	09–30–95
ST95–426	K N INTERSTATE GAS TRANS. CO.	WESTERN GAS RESOURCES.	11–04–94	G–S	6,000	N	F	10–01–94	10–31–94
ST95–427	TRANSOK, INC ...	ANR PIPELINE CO., ET AL.	11–04–94	C	5,000	N	I	10–08–94	INDEF
ST95–428	NATURAL GAS P/L CO. OF AMERICA.	ANTHEM ENERGY CO., L.P.	11–04–94	G–S	1,000	N	F	10–08–94	11–30–00
ST95–429	PANHANDLE EASTERN PIPE LINE CO.	AMERICAN NATIONAL CAN CO.	11–07–94	G–S	3,900	N	F	11–01–94	04–30–97
ST95–430	PANHANDLE EASTERN PIPE LINE CO.	AMGAS, INC	11–07–94	G–S	15,000	N	I	10–25–94	09–24–96
ST95–431	NATURAL GAS P/L CO. OF AMERICA.	1 SOURCE ENERGY SERVICES CO.	11–07–94	G–S	10,000	N	F	10–08–94	10–31–94
ST95–432	TRUNKLINE GAS CO.	UNION OIL CO. OF CALIFORNIA.	11–08–94	G–S	155,250	N	I	10–23–94	INDEF.
ST95–433	PANHANDLE EASTERN PIPE LINE CO.	ANADARKO TRADING CO.	11–08–94	G–S	246,000	N	F	11–01–94	11–30–95
ST95–434	PANHANDLE EASTERN PIPE LINE CO.	CITIZENS ENERGY SERVICES CORP.	11–08–94	G–S	25,000	N	I	10–31–94	08–22–96
ST95–435	PANHANDLE EASTERN PIPE LINE CO.	WESTCOAST GAS SERVICES INC.	11–08–94	G–S	50,000	N	I	10–27–94	10–31–96
ST95–436	ALABAMA-TENNESSEE NATURAL GAS CO.	CITY OF SHEFFIELD.	11–08–94	B	4,781	N	F	10–25–94	09–01–00
ST95–437	SOUTHERN NATURAL GAS CO.	ATLANTA GAS LIGHT CO.	11–08–94	G–S	5,173	N	F	11–01–94	10–31–95
ST95–438	SOUTHERN NATURAL GAS CO.	CITY OF SYLVESTER.	11–08–94	G–S	275	N	F	11–01–94	12–31–05
ST95–439	SOUTHERN NATURAL GAS CO.	CHATTANOOGA GAS CO.	11–08–94	G–S	14,051	N	F	11–01–94	10–31–95
ST95–440	SOUTHERN NATURAL GAS CO.	POLARIS CORP ..	11–08–94	G–S	250	N	F	11–01–94	10–31–96
ST95–441	SOUTHERN NATURAL GAS CO.	MISSISSIPPI VALLEY GAS CO.	11–08–94	G–S	20,000	N	F	11–01–94	09–30–96
ST95–442	SOUTHERN NATURAL GAS CO.	CHATTANOOGA GAS CO.	11–08–94	G–S	14,051	N	F	11–01–94	10–31–95
ST95–443	SOUTHERN NATURAL GAS CO.	ATLANTA GAS LIGHT CO.	11–08–94	G–S	406,222	N	F	11–01–94	10–31–95
ST95–444	SOUTHERN NATURAL GAS CO.	CITY OF SYLVESTER.	11–08–94	G–S	106	N	F	11–01–94	12–31–05
ST95–445	SOUTHERN NATURAL GAS CO.	CITY OF SYLVESTER.	11–08–94	G–S	381	N	F	11–01–94	10–31–95
ST95–446	SOUTHERN NATURAL GAS CO.	CHATTANOOGA GAS CO.	11–08–94	G–S	7,949	N	F	11–01–94	10–31–95

Docket Number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–449	NATURAL GAS P/L CO. OF AMERICA.	NICHOLS-HOME-SHIELD.	11–09–94	G–S	2,600	N	F	11–01–94	11–30–94
ST95–450	NATURAL GAS P/L CO. OF AMERICA.	MIDCON GAS SERVICES CORP.	11–09–94	G–S	149,000	N	F	11–01–94	02–28–95
ST95–451	COLUMBIA GAS TRANSMISSION CORP.	TIMKEN CO	11–09–94	G–S	7,500	N	F	11–01–94	INDEF
ST95–452	COLUMBIA GAS TRANSMISSION CORP.	R.E. FOX & ASSOCIATES.	11–09–94	G–S	40,000	N	I	11–01–94	INDEF
ST95–453	COLUMBIA GAS TRANSMISSION CORP.	COMMONWEALTH ENERGY SERVICES CORP	11–09–94	G–S	10,000	Y	I	11–01–94	INDEF
ST95–454	COLUMBIA GAS TRANSMISSION CORP.	BASE TECHNOLOGIES, INC.	11–09–94	G–S	5,000	N	I	11–01–94	INDEF
ST95–455	COLUMBIA GAS TRANSMISSION CORP.	ROANOKE GAS CO.	11–09–94	G–S	7,000	N	F	11–01–94	INDEF
ST95–456	COLUMBIA GAS TRANSMISSION CORP.	R.E. FOX & ASSOCIATES.	11–09–94	G–S	N/A	N	I	11–01–94	INDEF
ST95–457	SABINE PIPE LINE CO.	NGC TRANSPORTATION INC.	11–01–94	G–S	5,000	N	F	11–01–94	INDEF
ST95–458	SABINE PIPE LINE CO.	1 SOURCE ENERGY SERVICES CO.	11–01–94	G–S	25,000	N	F	11–01–94	INDEF
ST95–459	SABINE PIPE LINE CO.	WICKFORD ENERGY MARKETING, L.C.	11–01–94	G–S	5,000	N	I	11–01–94	INDEF
ST95–460	ONG TRANSMISSION CO.	PANHANDLE EASTERN PIPE CO..	11–10–94	C	50,000	N	I	10–13–94	INDEF
ST95–461	TEXAS GAS PIPELINE CO.	TEXAS EASTERN TRANSMISSION CORP.	11–10–94	C	25,000	N	I	09–01–96	INDEF
ST95–462	WILLISTON BASIN INTER. P/L CO.	INTERENERGY CORP.	11–10–94	G–S	150	A	F	10–14–94	10–13–95
ST95–463	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO. ET AT.	11–14–94	C	50,000	Y	I	10–13–94	INDEF
ST95–464	PACIFIC GAS TRANSMISSION CO.	TECO GAS MARKETING CO.	11–14–94	G–S	100,000	N	I	07–01–94	INDEF
ST95–465	PACIFIC GAS TRANSMISSION CO.	WASHINGTON WATER POWER CO.	11–14–94	G–S	48,000	N	I	10–19–94	INDEF
ST95–466	PACIFIC GAS TRANSMISSION CO.	WASCANA ENERGY MARKETING (U S.) INC.	11–14–94	G–S	1,000,000	N	I	10–29–94	INDEF
ST95–467	COLUMBIA GAS TRANSMISSION CORP.	T W. PHILLIPS GAS AND OIL CO.	11–14–94	B	7,000	N	F	11–01–94	INDEF
ST95–468	COLUMBIA GAS TRANSMISSION CORP	INTERSTATE GAS SUPPLY, INC.	11–14–94	G–S	889	N	F	11–01–94	03–31–95
ST95–469	COLUMBIA GAS TRANSMISSION CORP	CORNING, INC	11–14–94	G–S	2,000	N	F	11–01–94	INDEF
ST95–470	COLUMBIA GAS TRANSMISSION CORP	STAND ENERGY CORP	11–14–94	G–S	235	N	F	11–01–94	03–31–95
ST95–471	COLUMBIA GAS TRANSMISSION CORP	INTERSTATE GAS SUPPLY, INC.	11–14–94	G–S	500	N	F	11–01–94	03–31–95

Docket Number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–472	COLUMBIA GAS TRANSMISSION CORP.	ENRON CAPITAL & TRADE RESOURCES.	11–14–94	G–S	100,000	N	F	11–01–94	01–31–95
ST95–473	COLUMBIA GAS TRANSMISSION CORP.	WESTVACO CORP.	11–14–94	G–S	5,263	N	F	11–01–94	03–31–95
ST95–474	COLUMBIA GAS TRANSMISSION CORP.	STAND ENERGY CORP.	11–14–94	G–S	15	N	F	11–01–94	03–31–95
ST95–475	COLUMBIA GAS TRANSMISSION CORP.	POWER GAS MARKETING & TRANS INC.	11–14–94	G–S	1,000	N	F	11–03–94	03–31–95
ST95–476	COLUMBIA GAS TRANSMISSION CORP.	U.S. ENERGY PARTNERS.	11–14–94	G–S	500,000	N	I	11–01–94	INDEF
ST95–477	COLUMBIA GAS TRANSMISSION CORP.	BELDEN & BLAKE CORP.	11–14–94	G–S	2,000	N	I	11–01–94	INDEF
ST95–478	COLUMBIA GAS TRANSMISSION CORP.	SHAWMUT DEVELOPMENT CORP.	11–14–94	G–S	600	N	I	11–01–94	INDEF
ST95–479	COLUMBIA GAS TRANSMISSION CORP.	INTERSTATE GAS MARKETING, INC.	11–14–94	G–S	150	N	F	11–01–94	03–31–95
ST95–480	COLUMBIA GAS TRANSMISSION CORP.	INTERSTATE GAS MARKETING, INC.	11–14–94	G–S	875	N	F	11–01–94	03–31–95
ST95–481	COLUMBIA GAS TRANSMISSION CORP.	INTERSTATE GAS MARKETING, INC.	11–14–94	G–S	850	N	F	11–01–94	03–31–95
ST95–482	COLUMBIA GAS TRANSMISSION CORP.	INTERSTATE GAS MARKETING, INC.	11–14–94	G–S	4,075850	N	F	11–01–94	03–31–95
ST95–483	COLUMBIA GAS TRANSMISSION CORP.	INTERSTATE GAS MARKETING, INC.	11–14–94	G–S	250	N	F	11–01–94	03–31–95
ST95–484	COLUMBIA GAS TRANSMISSION CORP.	ENERGY PRODUCTION CO.	11–14–94	G–S	328	N	F	11–01–94	03–31–95
ST95–485	WILLIAMS NATURAL GAS CO.	MIDCOAST ENERGY RESOURCES, INC.	11–14–94	B	20,000	N	I	11–03–94	09–01–95
ST95–486	NORTHWEST PIPELINE CORP.	R.R. DONNELLEY & SONS CO.	11–14–94	G–S	1,000	N	I	10–27–94	INDEF
ST95–487	TRUNKLINE GAS CO.	DELMARVA POWER & LIGHT CO.	11–14–94	G–S	21,003	N	F	11–01–94	INDEF
ST95–488	TRUNKLINE GAS CO.	ARCADIAN FERTILIZER, L.P.	11–14–94	G–S	25,000	N	F	11–01–94	INDEF
ST95–489	ALGONQUIN GAS TRANSMISSION CO.	BAY STATE GAS CO.	11–14–94	B	2,110	N	F	10–11–94	INDEF
ST95–490	ALGONQUIN GAS TRANSMISSION CO.	EASTEX HYDROCARBONS, INC.	11–14–94	G–S	10,000	N	I	10–01–94	INDEF
ST95–491	NATURAL GAS P/L CO. OF AMERICA.	PEOPLES NATURAL GAS CO.	11–14–94	G–S	25,000	N	F	11–01–94	03–31–95
ST95–493	TRAILBLAZER PIPELINE CO.	NORTHWESTERN PUBLIC SERVICE CO.	11–14–94	B	5,000	N	F	11–01–94	03–31–95
ST95–494	ALABAMA-TENNESSEE NATURAL GAS CO.	TENNESSEE RIVER INTRA. GAS CO., INC.	11–14–94	B	6,000	N	I	10–17–94	INDEF
ST95–495	ALABAMA-TENNESSEE NATURAL GAS CO.	TENNESSEE RIVER INTRA. GAS CO., INC.	11–14–94	B	1,351	N	F	10–17–94	INDEF
ST95–496	ALABAMA-TENNESSEE NATURAL GAS CO.	TENNESSEE RIVER INTRA. GAS CO., INC.	11–14–94	B	10,000	N	I	10–17–94	INDEF

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ST95–497	ALABAMA-TENNESSEE NATURAL GAS CO.	TENNESSEE RIVER INTRA. GAS CO., INC.	11–14–94	B	150,000	N	I	10–17–94	INDEF
ST95–498	ALABAMA-TENNESSEE NATURAL GAS CO.	TENNESSEE RIVER INTRA. GAS CO., INC.	11–14–94	B	559	N	F	10–17–94	12–31–01
ST95–499	TRANSCONTINENTAL GAS P/L CORP.	STONY BROOK COGENERATION, INC.	11–14–94	G–S	25,000	N	I	10–19–94	INDEF
ST95–500	ARKANSAS OKLAHOMA GAS CORP.	OZARK GAS TRANS. SYSTEM, ET AL.	11–15–94	G–HT	3,000	N	I	09–01–94	INDEF
ST95–501	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	11–15–94	C	70,000	Y	I	10–18–94	INDEF
ST95–502	HOUSTON PIPE LINE CO.	TRANSCO ENERGY MARKETING.	11–15–94	G–I	50,000	N	I	08–01–94	INDEF
ST95–503	HOUSTON PIPE LINE CO.	BLACK MARLIN PIPELINE CO., ET AL.	11–15–94	C	50,000	N	I	07–01–94	INDEF
ST95–504	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	11–15–94	C	50,000	N	I	08–01–94	INDEF
ST95–505	OASIS PIPE LINE CO.	TRANSWESTERN PIPELINE CO.	11–15–94	C	20,000	N	I	07–01–94	INDEF
ST95–506	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO.	11–15–94	C	25,000	N	I	08–20–94	INDEF
ST95–507	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	11–15–94	C	50,000	N	I	06–15–94	INDEF
ST95–508	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	11–15–94	C	50,000	N	I	08–24–94	INDEF
ST95–509	OASIS PIPE LINE CO.	NATURAL GAS P/L CO. OF AMERICA.	11–15–94	C	5,000	N	I	08–01–94	INDEF
ST95–510	OASIS PIPE LINE CO.	EL PASO NATURAL GAS CO., ET AL.	11–15–94	C	50,000	N	I	07–01–94	INDEF
ST95–511	GULF STATES PIPELINE CORP.	MID LOUISIANA GAS CO.	11–15–94	C	5,000	N	I	10–19–94	09–30–99
ST95–512	GULF STATES PIPELINE CORP.	SOUTHERN NATURAL GAS CO., ET AL.	11–15–94	C	20,000	N	I	11–01–94	10–31–95
ST95–513	ALGONQUIN GAS TRANSMISSION CO.	PANHANDLE TRADING CO.	11–15–94	G–S	175,000	N	I	06–16–94	INDEF
ST95–514	NORTHERN BORDER PIPELINE CO.	INTERSTATE POWER CO.	11–15–94	B	1,072	Y	I	11–01–94	09–19–03
ST95–515	NORTHERN BORDER PIPELINE CO.	POCO PETROLEUMS LTD.	11–15–94	G–S	10,000	N	I	11–01–94	10–31–01
ST95–516	NORTHERN BORDER PIPELINE CO.	WISCONSIN GAS CO.	11–15–94	B	2,431	Y	I	11–01–94	09–19–03
ST95–517	NORTHERN BORDER PIPELINE CO.	WISCONSIN POWER & LIGHT CO.	11–15–94	B	942	Y	I	11–01–94	09–19–03
ST95–518	NORTHERN BORDER PIPELINE CO.	NORTHERN STATES POWER CO.	11–15–94	B	6,347	Y	I	11–01–94	09–19–03
ST95–519	NORTHERN BORDER PIPELINE CO.	MIDWEST GAS	11–15–94	B	6,536	Y	I	11–01–94	09–19–03
ST95–520	NORTHERN BORDER PIPELINE CO.	CITY OF DULUTH	11–15–94	B	1,209	Y	I	11–01–94	09–19–03

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ST95–521	NORTHERN BORDER PIPELINE CO.	IOWA-ILLINOIS GAS AND ELECTRIC CO.	11–15–94	B	1,646	N	I	11–01–94	09–19–03
ST95–522	NORTHERN BORDER PIPELINE CO.	NUMAC ENERGY (U.S.) INC.	11–15–94	G–S	20,000	N	I	11–01–94	10–31–96
ST95–523	QUESTAR PIPELINE CO.	BONNEVILLE FUELS MARKETING CORP.	11–15–94	G–S	300	N	F	11–01–94	11–30–94
ST95–524	QUESTAR PIPELINE CO.	BARRETT RESOURCES CORP.	11–15–94	G–S	650	N	F	11–01–94	09–30–95
ST95–525	PANHANDLE EASTERN PIPE LINE CO.	CENTANA GATHERING CO.	11–16–94	G–S	40,000	Y	F	11–01–94	03–31–96
ST95–526	PANHANDLE EASTERN PIPE LINE CO.	CENTANA GATHERING CO.	11–16–94	G–S	40,000	Y	I	11–01–94	03–31–96
ST95–527	PANHANDLE EASTERN PIPE LINE CO.	PHILADELPHIA GAS WORKS.	11–16–94	G–S	6,246	N	F	11–01–94	10–31–14
ST95–528	PANHANDLE EASTERN PIPE LINE CO.	ASSOCIATED NATURAL GAS CO.	11–16–94	G–S	6,000	N	I	11–01–94	04–30–99
ST95–529	PANHANDLE EASTERN PIPE LINE CO.	ANADARKO TRADING CO.	11–16–94	G–S	6,650	N	F	11–01–94	11–30–94
ST95–530	PANHANDLE EASTERN PIPE LINE CO..	ALUMINUM CO. OF AMERICA.	11–16–94	G–S	2,600	N	F	11–01–94	03–03–95
ST95–531	PANHANDLE EASTERN PIPE LINE CO.	UTILICORP UNITED, INC.	11–16–94	G–S	22,000	N	F	11–01–94	10–31–00
ST95–532	PANHANDLE EASTERN PIPE LINE CO.	NORTHERN INDIANA FUEL AND LIGHT CO.	11–16–94	G–S	5,000	N	F	11–01–94	03–31–95
ST95–533	PANHANDLE EASTERN PIPE LINE CO.	WESTCOAST GAS SERVICES (U.S.A.).	11–16–94	G–S	10,000	N	I	11–01–94	07–31–96
ST95–534	PANHANDLE EASTERN PIPE LINE CO.	DELMARVA POWER & LIGHT CO.	11–16–94	G–S	20,823	N	F	11–01–94	10–31–14
ST95–535	PANHANDLE EASTERN PIPE LINE CO.	OLYMPIC FUELS CO.	11–16–94	G–S	800	N	F	11–01–94	10–31–95
ST95–536	PANHANDLE EASTERN PIPE LINE CO.	CATEX VITOL GAS INC.	11–16–94	G–S	1,367	N	F	11–01–94	11–30–94
ST95–537	PANHANDLE EASTERN PIPE LINE CO.	UTILICORP UNITED, INC.	11–16–94	G–S	1,000	N	F	11–01–94	10–31–99
ST95–538	PANHANDLE EASTERN PIPE LINE CO.	UTILICORP UNITED, INC.	11–16–94	G–S	6,000	N	F	11–01–94	03–31–99
ST95–539	PANHANDLE EASTERN PIPE LINE CO	OPTEC D.D. U.S.A., INC.	11–16–94	G–S	600	N	F	11–01–94	10–31–95
ST95–540	PANHANDLE EASTERN PIPE LINE CO.	PUBLIC SERVICE ELECTRIC & GAS CO.	11–16–94	G–S	114,527	N	F	11–01–94	10–31–16
ST95–541	PANHANDLE EASTERN PIPE LINE CO	RANGE INC. CORP	11–16–94	G–S	50	N	F	11–01–94	10–31–95
ST95–542	PANHANDLE EASTERN PIPE LINE CO	UTILICORP UNITED, INC.	11–16–94	G–S	20,000	N	F	11–01–94	10–31–00
ST95–543	PANHANDLE EASTERN PIPE LINE CO	SEMCO ENERGY SERVICES, INC.	11–16–94	G–S	13,124	N	F	11–01–94	11–30–94

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ST95–544	TEXAS EASTERN TRANSMISSION CORP.	EASTEX HYDROCARBONS, INC.	11–16–94	G–S	50,000	N	I	11–01–94	INDEF
ST95–545	TEXAS EASTERN TRANSMISSION CORP.	SCANA HYDROCARBONS, INC.	11–16–94	G–S	30,000	N	I	10–26–94	INDEF
ST95–546	TEXAS EASTERN TRANSMISSION CORP.	CITY OF HAMILTON.	11–16–94	G–S	55,000	N	I	10–24–94	INDEF
ST95–548	TEXAS EASTERN TRANSMISSION CORP.	EQUITABLE RESOURCES MARKETING CO.	11–16–94	G–S	590,000	N	I	11–02–94	INDEF
ST95–549	TEXAS EASTERN TRANSMISSION CORP.	EASTEX HYDROCARBONS, INC.	11–16–94	G–S	51,750	N	I	11–01–94	INDEF
ST95–550	TEXAS EASTERN TRANSMISSION CORP.	PHILADELPHIA GAS WORKS.	11–16–94	G–S	6,000	N	F	11–01–94	INDEF
ST95–551	TEXAS EASTERN TRANSMISSION CORP.	DELMARVA POWER & LIGHT CO.	11–16–94	G–S	20,000	N	F	11–01–94	INDEF
ST95–552	TEXAS EASTERN TRANSMISSION CORP.	PENN FUEL GAS, INC.	11–16–94	G–S	17,113	N	F	11–01–94	INDEF
ST95–553	TEXAS EASTERN TRANSMISSION CORP.	CONNECTICUT NATURAL GAS CORP.	11–16–94	G–S	644	N	F	09–01–94	INDEF
ST95–554	TEXAS EASTERN TRANSMISSION CORP.	COLONIAL GAS CO.	11–16–94	G–S	10,648	N	F	11–01–94	INDEF
ST95–555	TEXAS EASTERN TRANSMISSION CORP.	PUBLIC SERVICE ELECTRIC AND GAS CO.	11–16–94	G–S	60,000	N	F	11–01–94	INDEF
ST95–556	TEXAS EASTERN TRANSMISSION CORP.	YANKEE GAS SERVICES CO.	11–16–94	G–S	15,164	N	F	11–01–94	INDEF
ST95–557	TEXAS EASTERN TRANSMISSION CORP.	UNITED CITIES GAS CO. (TN).	11–16–94	G–S	3,500	N	F	11–01–94	INDEF
ST95–558	TEXAS EASTERN TRANSMISSION CORP.	TEXAS-OHIO GAS, INC.	11–16–94	G–S	161	N	F	11–01–94	INDEF
ST95–559	TEXAS EASTERN TRANSMISSION CORP.	WOODWARD MARKETING, INC.	11–16–94	G–S	6,706	N	F	11–05–94	INDEF
ST95–560	TEXAS EASTERN TRANSMISSION CORP.	WOODWARD MARKETING, INC.	11–16–94	G–S	13,294	N	F	11–05–94	INDEF
ST95–561	TEXAS EASTERN TRANSMISSION CORP.	PHILADELPHIA GAS WORKS.	11–16–94	G–S	6,235	N	F	11–01–94	INDEF
ST95–562	TEXAS EASTERN TRANSMISSION CORP.	DELMARVA POWER & LIGHT CO.	11–16–94	G–S	20,782	N	F	11–01–94	INDEF
ST95–563	TEXAS EASTERN TRANSMISSION CORP.	SUBURBAN NATURAL GAS CO.	11–16–94	G–S	1,060	N	F	11–02–94	INDEF
ST95–564	TEXAS EASTERN TRANSMISSION CORP.	PUBLIC SERVICE ELECTRIC & GAS CO.	11–16–94	G–S	62,344	N	F	11–01–94	INDEF
ST95–565	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	11–16–94	C	100,000	Y	I	10–01–94	INDEF
ST95–566	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	11–16–94	C	30,000	Y	I	10–18–94	INDEF
ST95–567	GREAT LAKES GAS TRANSMISSION L.P.	WESTCOAST GAS SERVICES (USA), INC.	11–16–94	G–S	100,000	N	F	09–28–94	07–31–95

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ST95-568	COLORADO INTERSTATE GAS CO.	MONTANA POWER CO.	11-16-94	B	7,086	N	F	11-01-94	03-15-95
ST95-569	COLORADO INTERSTATE GAS CO.	HELMERICH & PAYNE ENERGY SERVICES.	11-16-94	G-S	12,000	N	F	11-01-94	03-15-95
ST95-570	COLORADO INTERSTATES GAS GAS CO.	RETEX GATHERING CO., INC.	11-16-94	G-S	7,086	N	F	11-01-94	03-15-95
ST95-571	TENNESSEE GAS PIPELINE CO.	BERKSHIRE GAS CO.	11-16-94	G-S	18,350	N	F	11-01-94	INDEF
ST95-572	TENNESSEE GAS PIPELINE CO.	ASHLAND EXPLORATION, INC.	11-16-94	G-S	50,000	N	I	11-01-94	INDEF.
ST95-573	TENNESSEE GAS PIPELINE CO.	PAWTUCKET POWER ASSOCIATES.	11-16-94	G-S	1,100	N	F	11-01-94	INDEF
ST95-574	TENNESSEE GAS PIPELINE CO.	M & B INDUSTRIAL GAS DEVELOP. CORP.	11-16-94	G-S	4,000	N	F	11-01-94	INDEF
ST95-575	TENNESSEE GAS PIPELINE CO.	FULTON COGENERATION ASSOCIATE.	11-16-94	G-S	6,500	N	F	11-01-94	INDEF
ST95-576	TENNESSEE GAS PIPELINE CO.	DISTRIGAS OF MASSACHUSETTS CORP	11-16-94	G-S	15,000	N	F	11-01-94	INDEF
ST95-577	TENNESSEE GAS PIPELINE CO.	VIRGINIA ELECTRIC & POWER CO.	11-16-94	G-S	4,000	N	F	11-01-94	INDEF
ST95-578	TENNESSEE GAS PIPELINE CO.	M & B INDUSTRIAL GAS DEVELOP. CORP.	11-16-94	G-S	10,000	N	F	11-01-94	INDEF
ST95-579	TENNESSEE GAS PIPELINE CO.	CATEX ENERGY, INC.	11-16-94	G-S	10,000	N	F	11-01-94	INDEF
ST95-580	TENNESSEE GAS PIPELINE CO.	VALLEY GAS CO.	11-16-94	G-S	5,000	N	F	11-01-94	INDEF
ST95-581	TENNESSEE GAS PIPELINE CO.	NYCOTEX GAS TRANSPORT	11-16-94	G-S	150,000	N	I	11-01-94	INDEF
ST95-582	EAST TENNESSEE NATURAL GAS CO.	MIDDLE TENNESSEE UTILITY DISTRICT.	11-16-94	G-S	1,193	N	F	11-01-94	INDEF
ST95-583	EAST TENNESSEE NATURAL GAS CO.	POWELL-CLINCH UTILITY DISTRICT.	11-16-94	G-S	644	N	F	11-01-94	INDEF
ST95-584	EAST TENNESSEE NATURAL GAS CO.	HAWKINS COUNTY UTILITY DISTRICT.	11-16-94	G-S	596	N	F	11-01-94	INDEF
ST95-585	EAST TENNESSEE NATURAL GAS CO.	CITY OF COOKESVILLE.	11-16-94	G-S	875	N	F	11-01-94	INDEF
ST95-586	EAST TENNESSEE NATURAL GAS CO.	KNOXVILLE UTILITIES BOARD.	11-16-94	G-S	9,888	N	F	11-01-94	INDEF
ST95-587	EAST TENNESSEE NATURAL GAS CO.	JEFFERSON-COCKE COUNTY UTILITY DIST.	11-16-94	G-S	804	N	F	11-01-94	INDEF
ST95-588	NORTHERN ILLINOIS GAS CO.	NATURAL G/P/L CO. OF AMERICA, ET AL.	11-17-94	G-HT	5,000	N	I	11-01-94	11-30-94
ST95-589	NORTHERN ILLINOIS GAS CO.	NATURAL G/P/L CO. OF AMERICA, ET AL.	11-17-94	G-HT	5,167	N	I	11-12-94	11-16-94
ST95-590	K N INTERSTATE GAS TRANS. CO.	K N GAS MARKETING, INC.	11-17-94	G-S	10,000	A	F	11-01-94	03-31-95
ST95-591	K N INTERSTATE GAS TRANS. CO.	WEXPRO CO	11-17-94	G-S	11,200	N	F	10-15-94	03-31-01

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ST95-592	K N INTERSTATE GAS TRANS. CO.	K N GAS MARKETING, INC.	11-17-94	G-S	3,000	A	F	11-01-94	03-31-95
ST95-593	NATURAL GAS P/L CO. OF AMERICA.	WESTCOAST GAS SERVICES (U.S.A.).	11-17-94	G-S	7,500	N	F	11-01-94	11-30-94
ST95-594	TEXAS GAS TRANSMISSION CORP	MARATHON OIL CO.	11-17-94	G-S	24,000	N	I	09-01-94	INDEF
ST95-595	TEXAS GAS TRANSMISSION CORP	PROVIDENCE GAS CO.	11-17-94	G-S	778	N	F	11-05-94	INDEF
ST95-596	TEXAS GAS TRANSMISSION CORP	CITY OF OLIVE BRANCH.	11-17-94	G-S	750	N	F	11-01-94	INDEF
ST95-597	TEXAS GAS TRANSMISSION CORP	MAYOR AND ALDERMAN OF RIPLEY	11-17-94	G-S	1,000	N	F	11-01-94	INDEF
ST95-598	MIDWESTERN GAS TRANSMISSION CO.	SOUTHERN INDIANA GAS & ELECTRIC CO	11-17-94	G-S	6,598	N	F	11-01-94	INDEF
ST95-599	MIDWESTERN GAS TRANSMISSION CO.	PHIBRO OIL & GAS, INC.	11-17-94	G-S	10,000	N	F	11-01-94	INDEF
ST95-600	MIDWESTERN GAS TRANSMISSION CO.	TENNECO GAS MARKETING CO	11-17-94	G-S	7,300	A	F	11-01-94	INDEF
ST95-601	TENNESSEE GAS PIPELINE CO.	FITCHBERG GAS AND ELECTRIC LIGHT CO	11-17-94	G-S	1,596	N	F	11-01-94	INDEF
ST95-602	COLORADO INTERSTATE GAS CO	UTILICORP UNITED INC.	11-17-94	G-S	7,000	N	F	11-01-94	11-01-94
ST95-603	COLORADO INTERSTATE GAS CO	VESSELS OIL & GAS CO.	11-17-94	G-S	335	N	I	11-09-94	INDEF
ST95-604	COLORADO INTERSTATE GAS CO	HOLMAN, INC	11-17-94	G-S	68	N	I	11-01-94	INDEF
ST95-605	COLORADO INTERSTATE GAS CO	MONTANA POWER CO.	11-17-94	B	4,377	N	F	11-01-94	3-15-95
ST95-606	COLORADO INTERSTATE GAS CO	BARRETT FUELS CORP	11-17-94	G-S	3,331	N	I	11-01-94	INDEF
ST95-607	COLORADO INTERSTATE GAS CO	CNG PRODUCING CO.	11-17-94	G-S	3,117	N	I	11-01-94	INDEF
ST95-608	NATURAL GAS P/L CO OF AMERICA.	VESTA ENERGY CO.	11-18-94	G-S	1,000	N	F	11-01-94	03-31-95
ST95-609	NATIONAL FUEL GAS SUPPLY CORP	IROQUOIS ENERGY MANAGEMENT, INC.	11-18-94	G-S	9,362	N	F	11-01-94	10-31-94
ST95-610	MIDCON TEXAS PIPELINE CORP	GOODYEAR TIRE & RUBBER CO.	11-18-94	G-I	9,000	N	I	11-01-94	INDEF
ST95-611	MIDCON TEXAS PIPELINE CORP	TRANSCONTINENTAL GAS PIPE LINE CORP	11-18-94	C	20,000	N	I	10-28-94	INDEF
ST95-612	MIDCON TEXAS PIPELINE CORP	NATURAL GAS P/L CO. OF AMERICA.	11-18-94	C	5,000	N	I	04-01-94	INDEF
ST95-613	SOUTHERN NATURAL GAS CO	CHATTANOOGA GAS CO.	11-18-94	G-S	14,051	N	F	11-01-94	10-31-95
ST95-614	NORTHERN NATURAL GAS CO	TWISTER TRANSMISSION CO	11-18-94	G-S	25,000	N	F	05-01-94	03-31-95
ST95-615	NORTHERN NATURAL GAS CO	RALPH ERWIN OIL & GAS.	11-18-94	G-S	500	N	I	07-22-94	INDEF

Docket Number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–616	MISSISSIPPI RIVER TRANS. CORP.	WICKFORD ENERGY.	11–18–94	G–S	50,000	Y	I	10–20–94	INDEF.
ST95–617	TEJAS GAS PIPELINE CO.	KOCH GATEWAY PIPELINE CORP.	11–21–94	C	5,000	N	I	10–01–94	INDEF
ST95–618	TEJAS GAS PIPELINE CO.	TEXAS GAS PIPELINE CO.	11–21–94	C	5,000	N	I	10–01–94	INDEF
ST95–619	EL PASO NATURAL GAS CO.	MIDLAND MARKETING CORP.	11–21–94	G–S	103,000	N	I	10–28–94	INDEF
ST95–620	NATURAL GAS P/L CO. OF AMERICA.	BRING GAS SERVICES CORP	11–21–94	G–S	4,836	N	F	11–01–94	11–30–94
ST95–621	NATURAL GAS P/L CO. OF AMERICA.	CENTRAL ILLINOIS PUBLIC SERVICE CO.	11–21–94	B	10,000	N	F	11–01–94	10–31–99
ST95–622	NATURAL GAS P/L CO. OF AMERICA.	MIDCON GAS SERVICES CORP	11–21–94	G–S	14,500	Y	F	11–01–94	03–31–95
ST95–623	PANHANDLE EASTERN PIPE LINE CO.	UGI UTILITIES, INC.	11–21–94	G–S	10,450	N	F	11–01–94	10–31–13
ST95–624	PANHANDLE EASTERN PIPE LINE CO.	COWEST ENERGY	11–21–94	G–S	50,000	N	I	11–01–94	08–31–96
ST95–625	PANHANDLE EASTERN PIPE LINE CO.	DAYTON POWER & LIGHT CO.	11–21–94	B	15,000	N	F	11–01–94	03–31–98
ST95–626	PHILLIPS GAS PIPELINE CO.	SEAGAS PIPELINE CO.	11–21–94	B	5,000	Y	I	10–01–94	INDEF
ST95–627	NORTHERN ILLINOIS GAS CO	NATURAL G/P/L CO OF AMERICA, ET AL.	11–21–94	G–HT	40,000	N	I	10–18–94	11–27–94
ST95–628	COLUMBIA GAS TRANSMISSION CORP	LOUIS DREYFUS ENERGY CORP	11–21–94	G–S	100,000	N	I	11–01–94	INDEF
ST95–629	COLUMBIA GAS TRANSMISSION CORP	EXPLORATION PARTNERS, INC.	11–21–94	G–S	4,000	N	I	11–01–94	INDEF
ST95–630	COLUMBIA GAS TRANSMISSION CORP	EXPLORATION PARTNERS, INC	11–21–94	G–S	N/A	N	I	11–01–94	INDEF
ST95–631	COLUMBIA GULF TRANSMISSION CO	BALTIMORE GAS & ELECTRIC CO	11–21–94	G–S	179,135	N	F	11–01–94	INDEF
ST95–632	MIDWESTERN GAS TRANSMISSION CO	MOBIL NATURAL GAS INC	11–22–94	G–S	895	N	F	11–01–94	INDEF
ST95–633	MIDWESTERN GAS TRANSMISSION CO	TENNECO GAS MARKETING CO	11–22–94	G–S	5,000	N	F	11–01–94	INDEF
ST95–634	MIDWESTERN GAS TRANSMISSION CO	TENNECO GAS MARKETING CO	11–22–94	G–S	10,000	N	F	10–29–94	INDEF
ST95–635	MIDWESTERN GAS TRANSMISSION CO	O & R ENERGY INC	11–22–94	G–S	11,350	N	F	11–10–94	INDEF
ST95–636	CARNEGIE NATURAL GAS CO	CORNERSTONE GAS RESOURCES, INC	11–22–94	G–S	3,000	N	I	11–01–94	INDEF
ST95–637	NORAM GAS TRANSMISSION CO	MEYER'S BAKERIES, INC	11–22–94	G–S	310	N	F	11–01–94	INDEF
ST95–638	NORAM GAS TRANSMISSION CO	ANTHONY TIMBERLANDS, INC	11–22–94	G–S	371	N	F	11–01–94	INDEF
ST95–639	NORAM GAS TRANSMISSION CO	SOUTHERN COTTON OIL CO	11–22–94	G–S	420	N	F	11–01–94	INDEF

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ST95-640	NORAM GAS TRANSMISSION CO.	PRODUCERS RICE MILL, INC.	11-22-94	G-S	1,400	N	F	11-01-94	INDEF
ST95-641	NORAM GAS TRANSMISSION CO.	BIBLER BROTHERS, INC.	11-22-94	G-S	545	N	F	11-01-94	INDEF
ST95-642	NORAM GAS TRANSMISSION CO.	NORAM ENERGY SERVICES, INC.	11-22-94	G-S	75	N	F	11-01-94	INDEF
ST95-643	NORAM GAS TRANSMISSION CO.	TIDEWEST TRADING & TRANSPORT CO.	11-22-94	G-S	1,500	N	F	11-01-94	INDEF
ST95-644	TRUNKLINE GAS CO	NI-TEX, INC	11-22-94	G-S	10,050	N	F	11-01-94	INDEF
ST95-645	TRUNKLINE GAS CO.	NATIONAL STEEL CORP.-MW STEEL DIV	11-22-94	G-S	2,000	N	F	11-01-94	INDEF
ST95-646	TRUNKLINE GAS CO.	NATIONAL STEEL GCS DIVISION.	11-22-94	G-S	24,904	N	F	11-01-94	INDEF
ST95-647	TRUCKLINE GAS CO.	LACLEDE GAS CO	11-22-94	G-S	50,000	N	F	11-01-94	INDEF
ST95-648	TRUNKLINE GAS CO	NATIONAL STEEL GCS DIVISION.	11-22-94	G-S	41,400	N	I	11-01-94	INDEF
ST95-649	TRUNKLINE GAS CO.	PHIBRO DIVISION OF SALOMON, INC.	11-22-94	G-S	100,000	N	I	11-01-94	INDEF
ST95-650	TRUNKLINE GAS CO.	H & N GAS, LTD	11-22-94	G-S	50,000	N	I	11-01-94	INDEF
ST95-651	TRUNKLINE GAS CO.	MEMPHIS LIGHT, GAS & WATER DIVISION.	11-22-94	B	50,000	N	F	11-01-94	INDEF
ST95-652	WILLIAMS NATURAL GAS CO.	RANGELINE CORP	11-22-94	G-S	10,000	N	F	11-01-94	11-01-95
ST95-653	WILLIAMS NATURAL GAS CO	RANGELINE CORP	11-22-94	G-S	10,500	N	I	11-01-94	11-01-95
ST95-654	WILLIAMS NATURAL GAS CO	WOOLSEY PETROLEUM CORP	11-22-94	G-S	200	N	I	11-01-94	11-01-95
ST95-655	WILLIAMS NATURAL GAS CO.	NGC TRANSPORTATION, INC.	11-22-94	G-S	10,000	N	I	10-04-94	10-01-95
ST95-656	GASDEL PIPELINE SYSTEM INC.	ENERGY DEVELOPMENT CORP.	11-23-94	G-S	500	N	I	10-01-94	INDEF
ST95-657	ONG TRANSMISSION CO.	TRANSOK GAS CO	11-23-94	C	50,000	N	I	11-01-94	INDEF
ST95-658	ONG TRANSMISSION CO.	NATURAL GAS P/L CO. OF AMERICA.	11-23-94	C	50,000	N	I	10-31-94	INDEF
ST95-659	FLORIDA GAS TRANSMISSION CO.	AMOCO ENERGY TRADING CORP	11-23-94	G-S	200,000	N	I	10-27-94	INDEF
ST95-660	TEXAS GAS TRANSMISSION CORP.	ENRON GAS MARKETING, INC.	11-23-94	G-S	30,000	N	I	11-10-94	INDEF
ST95-661	NATURAL GAS P/L CO. OF AMERICA.	NGC TRANSPORTATION, INC.	11-23-94	G-S	30,000	N	F	11-01-94	11-30-94
ST95-662	NATURAL GAS P/L CO. OF AMERICA.	NGC TRANSPORTATION, INC.	11-23-94	G-S	38,646	N	F	11-01-94	03-31-95
ST95-663	WILLIAMS NATURAL GAS CO.	ENRON GAS MARKETING, INC.	11-23-94	G-S	250,000	N	I	10-24-94	10-01-95
ST95-664	WILLIAMS NATURAL GAS CO.	CENERGY, INC ...	11-23-94	G-S	5,000	N	I	10-24-94	10-01-95
ST95-665	WILLIAMS NATURAL GAS CO.	TRIAD ENERGY, INC.	11-23-94	G-S	150	N	I	10-20-94	09-30-98
ST95-666	COLUMBIA GAS TRANSMISSION CORP.	TOYOTA MOTOR MANUFACTURING U.S.A.	11-23-94	G-S	5,150	N	F	11-17-94	03-31-95

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ST95-667	CNG TRANSMISSION CORP	CHAUTAUQUA ENERGY MARKETING.	11-23-94	G-S	10,000	N	I	10-27-94	12-31-94
ST95-668	CNG TRANSMISSION CORP	PROVIDENCE GAS CO	11-23-94	G-S	3,760	N	F	11-03-94	03-31-03
ST95-669	CNG TRANSMISSION CORP	EAST OHIO GAS CO	11-23-94	G-S	588,115	N	F	11-01-94	03-31-01
ST95-670	VALERO TRANSMISSION, L.P	TRANSWESTERN PIPE LINE CO.	11-25-94	C	10,000	N	I	11-01-94	INDEF
ST95-671	VALERO TRANSMISSION, L.P	FLORIDA GAS TRANSMISSION CO.	11-25-94	C	5,000	N	I	11-01-94	INDEF
ST95-672	GASDEL PIPELINE SYSTEM INC	ENERGY DEVELOPMENT CORP.	11-25-94	G-S	428	N	I	10-01-94	INDEF
ST95-673	GASDEL PIPELINE SYSTEM INC	ENERGY DEVELOPMENT CORP.	11-25-94	G-S	485	N	I	10-01-94	INDEF
ST95-674	TENNESSEE GAS PIPELINE CO	CONNECTICUT NATURAL GAS CORP	11-23-94	G-S	5,000	N	F	11-01-94	INDEF
ST95-675	TENNESSEE GAS PIPELINE CO	GLOBAL PETROLEUM.	11-23-94	G-S	4,613	N	F	11-01-94	INDEF
ST95-676	TENNESSEE GAS PIPELINE CO	ENERGY NORTH NATURAL GAS INC.	11-25-94	G-S	24,848	N	F	11-01-94	INDEF
ST95-677	TENNESSEE GAS PIPELINE CO	CO ENERGY TRADING CO.	11-25-94	G-S	36,000	N	I	11-01-94	INDEF
ST95-678	TENNESSEE GAS PIPELINE CO	BELDEN & BLAKE CORP	11-25-94	G-S	55,000	N	F	11-01-94	INDEF
ST95-679	TENNESSEE GAS PIPELINE CO	ALCAN ALUMINUM CORP	11-25-94	G-S	1,700	N	F	11-01-94	INDEF
ST95-680	TENNESSEE GAS PIPELINE CO	ESSEX COUNTY GAS CO.	11-25-94	G-S	15,728	N	F	11-01-94	INDEF
ST95-681	TENNESSEE GAS PIPELINE CO.	PITTSBURGH CORNING CORP	11-25-94	G-S	500	N	F	11-01-94	INDEF
ST95-682	TENNESSEE GAS PIPELINE CO.	SELKIRK COGEN PARTNERS, LP	11-25-94	G-S	55,000	N	F	11-01-94	INDEF
ST95-683	TENNESSEE GAS PIPELINE CO.	NOBLE GAS MARKETING, INC.	11-23-94	G-S	700	N	F	11-01-94	INDEF
ST95-684	TENNESSEE GAS PIPELINE CO.	O & R ENERGY INC.	11-23-94	G-S	1,825	N	F	11-01-94	INDEF
ST95-685	TENNESSEE GAS PIPELINE CO.	TENNECO GAS MARKETING CO.	11-23-94	G-S	8,800	N	F	11-10-94	INDEF
ST95-686	TENNESSEE GAS PIPELINE CO.	ATLAS GAS MARKETING INC.	11-23-94	G-S	1,000	N	F	11-11-94	INDEF
ST95-687	TENNESSEE GAS PIPELINE CO.	ASSOCIATED NATURAL GAS INC.	11-23-94	G-S	7,648	N	F	11-01-94	INDEF
ST95-688	TENNESSEE GAS PIPELINE CO.	ASHLAND PETROLEUM.	11-23-94	G-S	1,000	N	F	11-01-94	INDEF
ST95-689	MIDWESTERN GAS TRANSMISSION CO.	TENNECO GAS MARKETING CO.	11-25-94	G-S	10,000	A	F	11-01-94	INDEF
ST95-690	MIDWESTERN GAS TRANSMISSION CO.	TENNECO GAS MARKETING CO.	11-25-94	G-S	10,000	A	F	11-01-94	INDEF
ST95-691	TRUNKLINE GAS CO.	ALUMINUM CO. OF AMERICA.	11-28-94	G-S	2,623	N	F	11-01-94	INDEF
ST95-692	MIDWESTERN GAS TRANSMISSION CO.	EASTEX HYDROCARBONS INC.	11-29-94	G-S	20,000	N	F	11-01-94	INDEF
ST95-693	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	11-29-94	C	50,000	Y	I	11-04-94	INDEF
ST95-694	TRUNKLINE GAS CO.	PUBLIC SERVICE ELECTRIC & GAS CO.	11-29-94	G-S	49,358	N	F	11-01-94	INDEF

Docket Number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST95–695	TRUNKLINE GAS CO.	PHILADELPHIA GAS WORKS.	11–29–94	G–S	6,300	N	F	11–01–94	INDEF
ST95–696	NATURAL GAS P/L CO. OF AMERICA.	AMGAS, INC	11–29–94	G–S	50,000	N	F	11–01–94	03–31–96
ST95–697	NATURAL GAS P/L CO. OF AMERICA.	HADSON GAS SYSTEMS, INC.	11–29–94	G–S	20,000	N	F	11–01–94	10–31–98
ST95–698	NATURAL GAS P/L CO. OF AMERICA.	KOCH GAS SERVICES CO.	11–29–94	G–S	77,000	N	F	11–01–94	03–31–95
ST95–699	NATURAL GAS P/L CO. OF AMERICA.	TENASKA MARKETING VENTURES.	11–29–94	G–S	20,000	N	F	11–01–94	10–31–01
ST95–700	NATURAL GAS P/L CO. OF AMERICA.	TEXACO GAS MARKETING, INC.	11–29–94	G–S	700	N	F	11–01–94	10–31–95
ST95–701	NATURAL GAS P/L CO. OF AMERICA.	IOWA–ILLINOIS GAS AND ELECTRIC CO.	11–29–94	G–S	100,000	N	I	11–01–94	INDEF
ST95–702	NATURAL GAS P/L CO. OF AMERICA.	ENRON GAS MARKETING INC.	11–29–94	G–S	15,000	N	F	11–01–94	10–31–97
ST95–703	NATURAL GAS P/L CO. OF AMERICA.	NGC TRANSPORTATION, INC.	11–29–94	G–S	15,000	N	F	11–01–94	11–30–94
ST95–704	FLORIDA GAS TRANSMISSION CO.	ASSOCIATED NATURAL GAS, INC.	11–29–94	G–S	100,000	N	I	11–01–94	INDEF
ST95–705	NORTHERN NATURAL GAS CO.	HONEYMEAD PRODUCTS CO.	11–29–94	G–S	150,000	N	I	10–27–94	INDEF
ST95–706	NORTHERN NATURAL GAS CO.	TRADING AND TRANSPORTATION MANAGE.	11–29–94	G–S	400,000	N	I	09–30–94	INDEF.
ST95–707	NORTHERN NATURAL GAS CO.	LONE STAR GAS CO.	11–29–94	B	100,000	N	I	10–29–94	INDEF
ST95–708	NORTHERN NATURAL GAS CO.	MS GAS RESOURCES, INC.	11–29–94	G–S	100,000	N	I	09–15–94	INDEF
ST95–709	NORTHERN NATURAL GAS CO.	CITY OF SUNRAY	11–29–94	G–S	2,000	N	I	09–29–94	INDEF
ST95–710	SOUTHERN NATURAL GAS CO.	TEXAS OHIO GAS INC.	11–29–94	G–S	10,000	N	I	11–10–94	INDEF
ST95–711	SOUTHERN NATURAL GAS CO.	ALABASTER WATER AND GAS BOARD.	11–29–94	G–S	1,397	N	F	11–14–94	03–31–95
ST95–712	ALGONQUIN GAS TRANSMISSION CO.	ORANGE AND ROCKLAND UTILITIES, INC.	11–30–94	B	1.014	N	F	11–01–94	INDEF
ST95–713	ALGONQUIN GAS TRANSMISSION CO.	FALL RIVER GAS CO.	11–30–94	B	653	N	F	11–01–94	INDEF
ST95–714	ALGONQUIN GAS TRANSMISSION CO.	CONNECTICUT NATURAL GAS CORP.	11–30–94	B	1,702	N	F	11–02–94	INDEF
ST95–715	ALGONQUIN GAS TRANSMISSION CO.	WESTVACO CO ..	11–30–94	G–S	1,915	N	F	11–01–94	03–31–95
ST95–716	ALGONQUIN GAS TRANSMISSION CO.	COLUMBIA GAS TRANSMISSION CO.	11–30–94	G	10,000	N	F	11–01–94	03–31–95
ST95–717	ALGONQUIN GAS TRANSMISSION CO.	BAY STATE GAS CO.	11–30–94	B	14,758	N	F	11–01–94	INDEF
ST95–718	ALGONQUIN GAS TRANSMISSION CO.	CONSOLIDATED EDISON CO. OF NEW YORK	11–30–94	B	5,739	N	F	11–01–94	INDEF
ST95–719	ALGONQUIN GAS TRANSMISSION CO	CONSOLIDATED EDISON CO. OF NEW YORK.	11–30–94	B	9,261	N	F	11–01–94	INDEF

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ST95–720	PANHANDLE EASTERN PIPE LINE CO.	ALUMINUM CO. OF AMERICA.	11–30–94	G–S	3,100	N	F	11–01–94	03–31–96
ST95–721	PANHANDLE EASTERN PIPE LINE CO.	TYLEX, INC	11–30–94	G–S	3,500	N	F	11–01–94	03–31–96
ST95–722	PANHANDLE EASTERN PIPE LINE CO.	OXY USA INC	11–30–94	G–S	55,000	N	F	11–01–94	10–31–95
ST95–723	PANHANDLE EASTERN PIPE LINE CO.	CENTRAL ILLINOIS PUBLIC SERVICE CO.	11–30–94	G–S	30,000	N	F	11–01–94	03–31–96
ST95–724	WILLISTON BASIN INTER. P/L CO.	KOCH GAS SERVICES CO.	11–30–94	G–S	737	A	F	11–01–94	03–31–95
ST95–725	WILLISTON BASIN INTER. P/L CO.	RAINBOW GAS CO.	11–30–94	G–S	1,650	A	F	11–01–94	11–30–94
ST95–726	NORTHERN ILLINOIS GAS CO.	NATURAL G/P/L CO. OF AMERICA, ET AL.	11–30–94	G–HT	60,000	N	I	10–10–94	11–18–94
ST95–727	NORTHERN NATURAL GAS CO.	UTILICORP UNITED INC.	11–30–94	B/G–S	237,808	N	F	11–01–94	10–31–07
ST95–728	NORTHERN NATURAL GAS CO.	NORTHERN STATES POWER CO.–MINNESOTA.	11–30–94	B/G–S	55,000	N	F	11–01–94	10–31–08
ST95–729	NORTHERN NATURAL GAS CO.	KAZTEX ENERGY MANAGEMENT INC.	11–30–94	G–S	2,000	N	F	11–01–94	11–30–94
ST95–730	NORTHERN NATURAL GAS CO.	MIDWEST POWER SYSTEMS INC.	11–30–94	B/G–S	7,000	N	F	11–01–94	03–31–97
ST95–731	NORTHERN NATURAL GAS CO.	TEXARKOMA TRANSPORTATION CO.	11–30–94	G–S	50,000	N	I	11–01–94	10–31–95
ST95–732	NORTHERN NATURAL GAS CO.	IOWA–ILLINOIS GAS AND ELECTRIC CO.	11–30–94	B/G–S	3,000	N	F	11–01–94	03–31–95
ST95–733	NORTHERN NATURAL GAS CO.	MIDWEST POWER SYSTEMS INC.	11–30–94	B/G–S	10,000	N	F	11–01–94	03–31–95
ST95–734	FLORIDA GAS TRANSMISSION CO.	FLORIDA GAS UTILITY.	11–30–94	G–S	900,000	N	I	11–01–94	INDEF
ST95–735	FLORIDA GAS TRANSMISSION CO.	TEXAS–OHIO GAS, INC.	11–30–94	G–S	15,000	N	I	11–01–94	INDEF
ST95–736	FLORIDA GAS TRANSMISSION CO.	ENERFIN RESOURCES 11–92 L.P.	11–30–94	G–S	20,000	N	I	11–01–94	INDEF
ST95–737	FLORIDA GAS TRANSMISSION CO.	CHESAPEAKE UTILITIES CORP.	11–30–94	G–S	20,000	N	I	11–03–94	INDEF
ST95–738	NORTHWEST PIPELINE CORP	COASTAL GAS MARKETING CO.	11–30–94	G–S	50,000	N	F	11–01–94	10–31–96
ST95–739	NORTHWEST PIPELINE CORP.	COASTAL GAS MARKETING CO.	11–30–94	G–S	20,000	N	F	11–01–94	10–31–96
ST95–740	NORTHWEST PIPELINE CORP	GRAND VALLEY GAS SERVICES CO.	11–30–94	G–S	5,000	N	F	11–01–94	10–31–96
ST95–741	EL PASO NATURAL GAS CO.	MID–AMERICA PIPELINE CO	11–30–94	G–S	3,000	N	I	11–01–94	INDEF
ST95–742	EL PASO NATURAL GAS CO.	CHEVRON U.S.A INC.	11–30–94	G–S	15,000	N	I	11–01–94	INDEF
ST95–743	EL PASO NATURAL GAS CO.	SUN GAS SERVICES.	11–30–94	G–S	100,000	N	I	11–01–94	INDEF

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ST95–744	TRANS-CONTINENTAL GAS P/L CORP.	CONOCO, INC	11–30–94	G–S	12,444	N	F	11–01–94	03–31–99
ST95–745	MISSISSIPPI RIVER TRANS. CORP.	NGC TRANSPORTATION, INC.	11–30–94	G–S	100,000	Y	I	11–01–94	INDEF
ST95–746	MISSISSIPPI RIVER TRANS. CORP.	NATIONAL STEEL CORP.	11–30–94	G–S	12,000	N	F	11–01–94	INDEF.
ST95–747	MISSISSIPPI RIVER TRANS. CORP.	NATIONAL STEEL CORP	11–30–94	G–S	2,448	N	F	11–01–94	INDEF
ST95–748	NATURAL GAS P/L CO. OF AMERICA.	TEXACO GAS MARKETING, INC.	11–30–94	G–S	85,000	N	F	11–01–94	10–31–95
ST95–749	NATURAL GAS P/L CO. OF AMERICA.	AMOCO ENERGY TRADING CORP	11–30–94	G–S	10,000	N	F	11–01–94	11–30–94
ST95–750	WILLISTON BASIN INTER. P/L CO.	KOCH GAS SERVICES CO.	11–30–94	G–S	737	A	F	11–01–94	03–31–95
ST95–751	WILLISTON BASIN INTER. P/L CO.	RAINBOW GAS CO.	11–30–94	G–S	1,650	A	F	11–01–94	11–30–94

[1] NOTICE OF TRANSACTIONS DOES NOT CONSTITUTE A DETERMINATION THAT FILINGS COMPLY WITH COMMISSION REGULATIONS IN ACCORDANCE WITH ORDER NO. 436 (FINAL RULE AND NOTICE REQUESTING SUPPLEMENTAL COMMENTS, 50 FR 42,372, 10/10/85).

[2] ESTIMATED MAXIMUM DAILY VOLUMES INCLUDES VOLUMES REPORTED BY THE FILING COMPANY IN MMBTU, MCF AND DT.

[3] AFFILIATION OF REPORTING COMPANY TO ENTITIES INVOLVED IN THE TRANSACTION. A "Y" INDICATES AFFILIATION, AN "A" INDICATES MARKETING AFFILIATION, AND A "N" INDICATES NO AFFILIATION.

[FR Doc. 94–31409 Filed 12–21–94; 8:45 am]

BILLING CODE 6717–01–M

CNG Transmission Corporation; Notice of Technical Conference

[Docket No. TM95–2–22–000]

December 16, 1994.

In the Commission's order issued on October 28, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Thursday, January 12, 1995, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31410 Filed 12–21–94; 8:45 am]

BILLING CODE 6717–01–M

Dixie Pipeline Company; Notice of Complaint

[Docket No. OR95–2–000]

December 16, 1994.

Take notice that on November 18, 1994, Santee Distributing Company (Santee) filed a complaint against Dixie Pipeline Company (Dixie) pursuant to section 13(1) of the Interstate Commerce Act (ICA). Santee alleges that Dixie's throughput has increased since 1991 and its current rates in Tariff No. 52 are no longer just and reasonable. Santee states that the Commission should investigate, *inter alia*, Dixie's cost of service and throughput in order to derive new rates, and should order a reduction in Dixie's current rates.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.215. All such motions or protests should be filed on or before January 17, 1995. Protests will be considered by the Commission in determining the action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint are due on or before January 17, 1995.

Lois D. Cashell,

Secretary

[FR Doc. 94–31411 Filed 12–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–343–002]

NorAm Gas Transmission Company; Notice Of Filing

December 16, 1994.

Take notice that on December 14, 1994, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, revised Original Sheet No. 126, to become effective February 1, 1995.

NGT states that the revised tariff sheet describes, in greater detail than as originally filed, the area around the Chandler Compressor Station in which pool receipts may be designated to any one of NGT's three zones, by stating that receipt points in Pittsburg, Latimer, Haskell, and Pushmataha Counties in Oklahoma, and receipt points on Lines O West, OT–12, and OT–16, will be eligible receipt points for all of NGT's zones.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such protests should be filed on or before December 23, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31412 Filed 12–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–6–000]

Northwest Pipeline Corporation; Notice of Technical Conference

December 16, 1994.

In the Commission's order issued on November 4, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Tuesday, January 10, 1995, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31413 Filed 12–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–20–001]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 16, 1994.

Take notice that on December 12, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to be effective on the dates shown:

First Sub. Second Revised Sheet No. 126, December 5, 1994
Second Revised Sheet No. 175, February 1, 1995
Second Revised Sheet No. 181, February 1, 1995
Second Revised Sheet No. 186, February 1, 1995
Third Revised Sheet No. 187, February 1, 1995

Southern states that the purpose of this filing is to comply with the Order issued by the Commission in the captioned proceeding on December 2, 1994. The Order required Southern (1) to revise its midday nomination proposal to reinstate the provision allowing shippers to cancel their nominations on four hours prior notice and to remove the limitation on shippers decreasing their nominations midday, and (2) to allow releasing shippers to offer to release either downstream or upstream segments of their capacity while retaining the downstream segment for their use.

Southern states that copies of the filing will be served upon its shippers, interested state commissions and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211). All such protests should be filed on or before December 23, 1994. Protests will not be considered by the Commission in determining the parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31414 Filed 12–21–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–15–002]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 16, 1994.

Take notice that on December 14, 1994, pursuant to and in compliance with Ordering Paragraph (B) of the Commission's "Order Accepting Tariff Sheets Subject to Conditions" issued November 30, 1994 in Docket No. RP95–15–000 (November 30 Order), Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Sub First Revised Sheet No. 503
Sub First Revised Sheet No. 504

Texas Eastern states that by this filing, it is making certain modifications to the operational flow order (OFO), Section 4.3(L) of its General Terms and Conditions, as required by the November 30 Order.

The proposed effective date of the tariff sheets is December 1, 1994, as required by the November 30 Order.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before December 23, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–31415 Filed 12–21–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 95–11; Advanced Battery Technology Research and Development

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Energy Research (ER), U.S. Department of Energy, hereby announces its interest in receiving grant applications to support a continuing program for advanced battery technology research and development focused on batteries for the consumer market.

Batteries and battery-like devices are a mainstay of contemporary electronic, information, and transportation industries. The performance of batteries is often the limiting factor that hinders the development of improved portable devices such as cellular telephones, laptop computers, hand held tools, and other consumer products. Stringent environmental requirements impose restrictions on the use of battery materials and components deemed to be harmful not only to the environment but also to human well being.

The objective of this effort is to develop new generic battery technology for a wide range of non-automotive uses, with particular emphasis on improvements in battery size, weight, life, and recharge cycles. The interest is in novel research and technology development, and not in research leading to incremental improvements in existing devices. For the purpose of this notice, batteries for transportation and fuel cells are excluded from consideration.

DATES: Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., February 2, 1995, to be accepted for merit review in early 1995 and to permit timely consideration for award in Fiscal Year 1995.

ADDRESSES: Formal applications referencing Program Notice 95–11 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, (GTN) Washington, D.C. 20585, Attn: Program Notice 95–11. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Marianelli, Office of Basic Energy Sciences, Chemical Sciences Division, ER–14, GTN, U.S. Department of Energy, Washington, D.C. 20585. Telephone: (301) 903–5804.

SUPPLEMENTARY INFORMATION: The Department's intention for this program is to use a limited amount of money to stimulate as much research and development as possible on new battery technologies. Accordingly, applicants are encouraged to collaborate with industry and to incorporate cost sharing and consortia wherever feasible. The extent of collaboration and cost sharing may be considered when DOE selects applicants for support under this program.

Appropriate topics for research are: Electrode research including investigations of graphitized and composite electrodes for Li^+ cells, metal hydrides, bifunctional air electrodes, fundamental studies of composite electrode structures, the failure and degradation of active electrode materials, and thin-film electrodes, electrolytes, and interfaces. Consideration will also be given to secondary aqueous zinc cells and the problems of overcharge/overdischarge, power capability, and cyclability of anodes in lithium cells, oxidative degradation of electrolytes by high voltage cathodes, and highly conductive thin-film ceramic electrodes. Appropriate topics in the area of characterization and methodologies include problems of electrode morphology, zinc corrosion, separator/electrolyte stability and stable microelectrodes. Also of interest are investigations in computational chemistry, modeling, and simulations, including property predictions, phenomenological studies of reactions and interactions at critical interfaces, film formation, phase change effects on electrodes and characterization of crystalline and amorphous materials. Other topics of interest include novel battery separators and the transport properties of electrode and electrolyte materials and surface films. A detailed listing of research needs for battery technology appears in the report of a "Workshop on Advanced Battery Technology Research and Development". Copies are available on request from the U.S. Department of Energy, Chemical Sciences Division, Office of Energy Research, ER–14, Washington, D.C. 20585. Telephone requests may be made by calling (301) 903–5804.

It is anticipated that $600,000 will be available for grant awards during FY 1995, contingent upon availability of appropriated funds. The number of awards and the range of funding will depend on the number of applications received and selected for award. Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. The application guide is available from the U.S. Department of Energy, Chemical Sciences Division, Office of Energy Research, ER–14, Washington, D.C. 20585. Telephone requests may be made by calling (301) 903–5804.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, D.C. on December 9, 1994.

D. D. Mayhew,

Director, Office of Management Office of Energy Research.

[FR Doc. 94–31497 Filed 12–21–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of proposed implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $3,657.84, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to a September 30, 1981Remedial Order issued to Ed's Exxon, Case No. LEF–0078, and an April 27, 1982 Remedial Order issued to Ron's Shell, Case No. LEF–0084. The OHA has tentatively determined that the funds obtained from the above firms, plus accrued interest, will be distributed to customers who purchased gasoline from them during the following periods: August 1, 1979 through October 31, 1979 in the Ed's Exxon proceeding and August 1, 1979 through November 13, 1981 in the Ron's Shell proceeding.

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register**, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585. All comments should display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585,(202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 C.F.R. 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $3,657.84, plus accrued interest, obtained by the DOE pursuant to September 30, 1981 and April 27, 1982 Remedial Orders. In the Remedial Orders, the DOE found that, during periods beginning August 1, 1979, the firms each had sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has tentatively determined to distribute the funds obtained from the

firms in two stages. In the first stage, we will accept claims from identifiable purchasers of gasoline from the firms who may have been injured by overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of gasoline which they purchased from Ed's Exxon or Ron's Shell.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, DC 20585.

Dated: December 14, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Ed's Exxon; Ron's Shell
Date of Filing: July 20, 1993
Case Numbers: LEF–0078; LEF–0084

On July 20, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds received pursuant to Remedial Orders issued by the DOE to Ed's Exxon of Cotati, California, and Ron's Shell of Danville, California (hereinafter jointly referred to as the remedial order firms). In accordance with the provisions of the procedural regulations at 10 C.F.R. Part 205, Subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order. This Decision and Order sets forth the OHA's plan to distribute these funds.

I. Background

Each of the remedial order firms was a retailer of motor gasoline during the periods relevant to this proceeding. The ERA issued Proposed Remedial Orders (PROs) to each of the firms.[1] The PROs alleged that, during separate periods beginning on August 1, 1979, the remedial order firms had: charged more than the maximum lawful selling price for one or more grades of gasoline in violation of 10 C.F.R. 212.93; failed to post and maintain the maximum lawful selling price or a proper certification in violation of 10 C.F.R. 212.129; failed to keep and maintain books and records to support the lawfulness of the price for gasoline on the audit date in violation of 10 C.F.R. 210.92 and 212.93; and/or engaged in unlawful or discriminatory business practices in violation of 10 C.F.R. 210.62.

After considering and dismissing the firms' objections to the PROs, the DOE issued final Remedial Orders. *Ed's Exxon*, 8 DOE ¶83,035 (1981); *Alameda Chevron Service, et al.*, 9 DOE ¶83,027 (1982).[2] Each of the firms has since remitted a specified amount in compliance with the Remedial Orders, to which interest has since accrued. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Petroleum Overcharge Distribution and Restitution Act of 1986*, 15 U.S.C. 4501 et seq., *Office of Enforcement*, 9 DOE ¶82,508 (1981), and *Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement Subpart V proceedings with respect to the above remedial order funds and have determined that such proceedings are appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Before taking the actions proposed in this Decision, we intend to publicize our proposal and solicit comments from interested parties. Comments regarding the tentative distribution processes set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

III. Proposed Refund Procedures

We propose to implement a two-stage refund procedure for distribution of the remedial order funds, by which purchasers of gasoline from the remedial order firms during the period covered by the Remedial Orders may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants generally will be limited to ultimate consumers ("end-users"). Therefore, we do not anticipate that it will be necessary to employ the injury presumptions that we have used in past proceedings in evaluating applications submitted by refiners, resellers, and retailers.[3]

A. *First Stage Refund Procedures.* In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of gasoline from the remedial order firm during the period covered by the Remedial Order. Our experience indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See *Marathon Petroleum Co.*, 14 DOE ¶85,269 (1986) (*Marathon*).

Presumptions in refund cases are specifically authorized by the applicable Subpart V regulations at 10 C.F.R. § 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

1. Calculation of Refunds. First, we will adopt a presumption that the overcharges were dispersed equally in all of the remedial order firms' sales of gasoline during the period covered by the Remedial Orders. In accordance

[1] Ed's Exxon was issued a PRO on January 25, 1980; Ron's Shell was issued a PRO on December 31, 1980.

[2] A Remedial Order was issued to Ed's Exxon on September 30, 1981. A Remedial Order was issued to Ron's Shell on April 27, 1982.

[3] If a refiner, reseller, or retailer should file an application in any of the refund proceedings, however, we will utilize the standards and appropriate presumptions established in previous proceedings. *See, e.g., Starks Shell Service*, 23 DOE ¶85,017 (1993); *Shell Oil Co.*, 18 DOE ¶85,492 (1989).

with this presumption, refunds will be made on a pro-rata or volumetric basis.[4] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of a Remedial Order fund is equal to the number of gallons purchased from the remedial order firm during the period covered by that Remedial Order times the per gallon refund amount.[5] We derived the per gallon refund figures by dividing the amount of each Remedial Order fund by the total volume of gasoline which each remedial order firm sold during the period specified in that Remedial Order. An applicant that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[6]

In addition to the volumetric presumption, we will adopt a presumption regarding injury for end-users.

2. End-Users. In accordance with prior Subpart V proceedings, we will adopt the presumption that an end-user or ultimate consumer of gasoline purchased from one of the remedial order firms whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the Remedial Order. See, *e.g.*, *Texas Oil and Gas Corp.*, 12 DOE ¶85,069 at 88,209 (1984) (*TOGCO*). Members of this group generally were not subject to price controls during the period covered by the Remedial Order, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* End-users of gasoline purchased from the remedial order firms need only document their purchase volumes from the firm during the period covered by the Remedial Order to make a sufficient showing that they were injured by the overcharges.

B. *Refund Applications Filed by Representatives.* We will adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. See, *e.g.*, *Starks Shell Service*, 23 DOE ¶85,017 (1993); *Texaco Inc.*, 20 DOE ¶85,147 (1990); *Shell Oil Co.*, 18 DOE ¶85,492 (1989). We will also require strict compliance with the filing requirements as specified in 10 C.F.R. § 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

The OHA reiterates its policy to scrutinize applications filed by filing services closely. Applications submitted by a filing service should contain all of the information indicated in the final Decision and Order in this proceeding.

D. *Distribution of Funds Remaining After First Stage.* We propose that any funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Remedial Order funds that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

The payments remitted to the Department of Energy by Ed's Exxon and Ron's Shell pursuant to the Remedial Orders dated September 30, 1981 and April 27, 1982 will be distributed in accordance with the foregoing Decision.

[FR Doc. 94–31498 Filed 12–21–94; 8:45 am]

BILLING CODE 6450–01–P

[4] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of the remedial firm's overcharges. See, *e.g.*, *Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co.*, 20 DOE ¶85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed those overcharges. See *Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[5] The per gallon refund amount is $0.0251 for claimants applying in the Ed's Exxon proceeding ($2,500 remitted/99,651 gallons sold), $0.0072 in the Ron's Shell proceeding ($1,157.84 remitted/160,777.9 gallons sold).

[6] As in previous cases, we will establish a minimum refund amount of $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See *Exxon Corp.*, 17 DOE ¶85,590, at 89,150 (1988) (*Exxon*).

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5122–7]

Preparation, Adoption, and Submittal of State Implementation Plans: List of Qualified Coke Oven Panel Members

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On March 15, 1994, the EPA proposed the list of experienced coke oven inspectors who will serve as panel members during the certification of coke oven observers [1]. The purpose of proposing and promulgating the list is to set forth the list of experienced coke oven inspectors who will serve as panel members during the certification of coke oven observers. This action also informed the public that these people have demonstrated to the Agency that they satisfy the minimum experience requirements, established in Method 303 of Appendix A of Part 63, and gave the public the opportunity to examine the panel members' qualifications and to comment. Additional panel members may be added in the future in accordance with implementation needs. Any additions of certified and qualified inspectors to the panel will be made without promulgation, which was necessary only to establish this initial panel.

EFFECTIVE DATE: December 22, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or documentation concerning the proposed rule, contact Mr. Roy Huntley, or Mr. Peter Westlin, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–1060.

SUPPLEMENTARY INFORMATION: On October 27, 1993, the EPA promulgated the coke oven National Emission Standards for Hazardous Air Pollutants, which limits the number of visible leaks from coke oven doors, topside ports, and offtake systems, and the amount of time of visible emissions from the charging operation. Also promulgated at that time was Method 303 (40 CFR, part 63, appendix A), which sets forth the procedures an observer shall follow to determine compliance with the coke oven standards. In order to implement the coke oven rule, coke oven inspectors must be certified by an EPA recognized panel in accordance with the procedures set forth in section 2 of

[1] The proposed list was published at 59 FR 11960 in the proposed rules section of the **Federal Register**.

Method 303. The Method 303 certification training for each trainee concludes with a determination by a three-member panel as to the trainee's ability to conduct Method 303 satisfactorily. The Agency developed a certification course for coke oven inspectors and, as part of this effort, the Agency selected a group of experienced individuals to act as panel members. With today's action, the Agency finalizes an initial list of experienced coke oven inspectors who will serve as panel members during the certification of coke oven observers. Additional panel members may be added in the future in accordance with implementation needs. Any additions of certified and qualified inspectors to the panel will be made without promulgation, which was only necessary to establish this initial panel.

Summary of Significant Comments and Associated Changes

One verbal comment was received from EPA Region V. The commenter stated that one of the panel members, Mr. Basim Dihu of EPA, had the experience to be a panel member for all of the emission points covered in the coke oven NESHAP, i.e., doors, lids, offtakes, and charging. The proposal indicated that Mr. Dihu was qualified to be a panel member only for door observations.

The commenter is correct. Mr. Dihu's qualifications meet the Agency's criteria. The restrictions in the proposed list have been removed in the final list, and Mr. Dihu is now considered by the Agency to be a qualified panel member and able to act as such in the Method 303 certification course.

I. Administrative Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis (RIA).

This action does not require any revision to existing State implementation plans (SIP's) or changes to any SIP regulation. This action is not a major rule because it will neither have an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Because this action is not a major regulation, no RIA is being conducted.

B. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budget impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB had exempted this regulatory action from E.O. 12866 review.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements for the Coke Oven Battery National Emission Standards under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0253. This proposed action does not add any additional requirements to those already approved.

D. Regulatory Flexibility Act Compliance

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the publication of this list does not significantly change the status quo for such entities. This regulation therefore does not require an RFA.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Coke oven emissions, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 8, 1994.

Carol M. Browner,

Administrator.

TABLE 1.—PANEL MEMBERS

Name	Affiliation
Basim Dihu	US EPA, Central District Office, 77 West Jackson Blvd, Chicago, IL 60604–3590.
William Klettner.	US EPA Wheeling Office, 303 Methodist Building/3ES12, 11th & Chapline Streets, Wheeling, WV 26003.
Ron Mordosky	Pennsylvania Dept. of Environmental Resources, 4530 Bath Pike, Bethlehem, PA 18017.
Robert Simmons.	Indiana Department of Environmental Management, Gainer Bank Building/Rm 418, 504 N. Broadway, Gary, IN 46402.
Mark Hughes .	Allegheny County Health, Dept. Bureau of Air Pollution Control, 301–30 Ninth St., Pittsburgh, PA 15201.
Bernie Clark ...	Chester Environmental, P O Box 15777, Pittsburgh, PA 15244.
Rich Casselberry.	Chester Environmental, P O Box 15777, Pittsburgh, PA 15244.
Beryl Denne ...	Chester Environmental, P O Box 15777, Pittsburgh, PA 15244.
Frank Georgakis.	Chester Environmental, P O Box 15777, Pittsburgh, PA 15244.
Robert Gori	Chester Environmental, P O Box 15777, Pittsburgh, PA 15244.
Linda McCracken.	Chester Environmental, P O Box 15777, Pittsburgh, PA 15244
Gordon Lawson.	Chester Environmental, P O Box 15777, Pittsburgh, PA 15244.
Terry Redenbaugh.	Chester Environmental, P O Box 15777, Pittsburgh, PA 15244.
Cindy Rogers .	Independent consultant.
Elmer Spiker ..	Chester Environmental, P O Box 15777, Pittsburgh, PA 15244.
Ed Peterson ...	Mostardi-Platt & Associates, 945 Oaklawn Avenue, Elmherst, IL 60126.
John Simpson	Mostardi-Platt & Associates, 945 Oaklawn Avenue, Elmherst, IL 60126.
Richard Somers.	Mostardi-Platt & Associates, 945 Oaklawn Avenue, Elmherst, IL 60126.
Bob Trezak	Mostardi-Platt & Associates, 945 Oaklawn Avenue, Elmherst, IL 60126.

TABLE 1.—PANEL MEMBERS—Continued

Name	Affiliation
Scott Trezak ..	Mostardi-Platt & Associates, 945 Oaklawn Avenue, Elmherst, IL 60126.
Jim Fanning ...	Independent consultant, P O Box 2752, Union City, PA 16438.

[FR Doc. 94-30873 Filed 12-21-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5126-6]

Draft Arctic General NPDES Permit for Oil and Gas Exploration in Waters of the United States: General NPDES Permit No. AKG284200

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Extension of the Public Comment Period.

SUMMARY: On September 15, 1994, EPA provided notice of the draft general National Pollutant Discharge Elimination System (NPDES) permit no. AKG284200 for oil and gas stratigraphic and exploration wells on the Alaskan Outer Continental Shelf and contiguous state waters. Development and production wells are not authorized to discharge by this permit. The public comment period schedule was published in the notice. At the request of interested parties, EPA is today providing notice that the public comment period has been extended.

ORIGINAL PUBLIC NOTICE ISSUANCE DATES: September 15, 1994.

EXTENDED PUBLIC NOTICE EXPIRATION DATES: January 20, 1995.

PUBLIC COMMENTS: Interested persons may submit written comments on the draft general NPDES permit to the attention of Anne Dailey at the address below. All comments should include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated. Comments must be submitted to EPA on or before the extended expiration date of the public notice.

ADMINISTRATIVE RECORD: The complete administrative record for the draft permit is available for public review at the EPA Region 10 office at the address listed below. Copies of the draft general NPDES permit and fact sheet are available upon request from the Region 10 Public Information Center at 1-800-424-4EPA (4372).

ADDRESSES: Public comments should be sent to: Anne Dailey, Environmental Protection Agency Region 10, Wastewater Management and Enforcement Branch (WD-137), 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Anne Dailey, of EPA Region 10, at the address listed above or telephone (206) 553-2110.

Dated: December 13, 1994.

Sylvia Kawabata,

Acting Director, Water Division

[FR Doc. 94-31461 Filed 12-21-94; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

A.N.B. Holding Company, LTD.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 17, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. A.N.B. Holding Company, LTD., Terrell, Texas; to acquire 30 percent of the voting shares of The ANB Corporation, Terrell, Texas; The ANB Delaware Corporation, Terrell, Texas; and The American National Bank of Terrell, Terrell, Texas.

Board of Governors of the Federal Reserve System, December 16, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board

[FR Doc. 94-31453 Filed 12-21-94; 8:45 am]

BILLING CODE 6210-01-F

First Commerce Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Commerce Bancshares, Inc.*, Lincoln, Nebraska; Stuart Family Partnership, Lincoln, Nebraska; Catherine Stuart Schmoker Family Partnership, Lincoln, Nebraska; James Stuart, Jr. Family Partnership, Lincoln, Nebraska; Scott Stuart Family Partnership, Lincoln, Nebraska, to engage *de novo* through Community Mortgage Company, Lincoln, Nebraska, in origination of real estate mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. This is a joint venture between First Commerce Bancshares, Inc. & Woods Bros. Realty, Inc., who each will own 50% of Community Mortgage Company. The Stuart Family Partnerships are also applying to engage in these activities because of their indirect control of First Commerce Bancshares.

Board of Governors of the Federal Reserve System, December 16, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–31450 Filed 12–21–94; 8:45 am]

BILLING CODE 6210–01–F

John B. Holdhusen; Change in Bank Control Notice Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than January 11, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *John B. Holdhusen*, Sioux Falls, South Dakota; to acquire 27.57 percent, Richard S. Holdhusen, Belle Fourche, South Dakota, to acquire 27.57 percent; Thomas L. Holdhusen, Ipswich, South Dakota, to acquire 33.74 percent; of the voting shares of Yellowstone Trail Bancorporation, Ipswich, South Dakota, and thereby indirectly acquire Ipswich State Bank, Ipswich, South Dakota.

Board of Governors of the Federal Reserve System, December 16, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–31451 Filed 12–21–94; 8:45 am]

BILLING CODE 6210–01–F

Mercantile Bancorporation, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1 *Mercantile Bancorporation Inc.*, St. Louis, Missouri; to acquire Central Mortgage Bancshares, Inc., Warrensburg, Missouri, and thereby engage in the origination, sale, and servicing of mortgage loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–31452 Filed 12–21–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the National Advisory Council for Human Genome Research

Pursuant to Pub. L. 94–463, notice is hereby given of the meeting of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, January 30 and 31, 1995, Embassy Suites Chevy Chase Pavilion, Chevy Chase I and II, 4300 Military Road NW., Washington, DC.

This meeting will be open to the public on Monday, January 30, from 8:30 a.m. to discuss administrative details or other issues relating to committee activiities. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 30 at 11:30 a.m. to recess and on January 31 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 or 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 Assistance Program No. 93.172, Human Genome Research.)

Dated: December 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–31382 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Services; Notice of the Meeting of the National Advisory Eye Council

National Institutes of Health (NIH)

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on January 26 and 27, 1995, in Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland.

The NAEC meeting will be open to the public from 8:30 a.m. until approximately 3:00 p.m. on Thursday, January 26, 1995. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in Secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and Sec. 10(d) of Public Law 92-463, the meeting of the NAEC will be closed to the public from approximately 3:00 p.m. on Thursday, January 26 until adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy The meeting will be closed on Friday, January 27 from 8:30 a.m. until adjournment at approximately noon.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, EPS, Suite 350, 6120 Executive Boulevard, MSC-7164, Bethesda, Maryland 20892-7164, (301) 496-5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No 93 867 Vision Research National Institutes of Health)

Dated: December 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–31383 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on February 22–24, 1995. Meetings of the Council, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be held at the National Institutes of health, Building 31C, Bethesda, Maryland. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held at the Marriott Pooks Hill Hotel, 5151 Pooks Hill Road, Bethesda, Maryland.

The meeting of the full Council will be open to the public on February 22 in Conference Room 6 from approximately 1 p.m. until 4:15 p.m. for opening remarks of the Institute Director, discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include a report on reinvention activities related to NIH extramural programs, and a discussion on issues raised at the NIH winter policy retreat.

On February 23 the meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. The subcommittees will meet in conference rooms 7 and 6 respectively The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public from 8 a.m. until adjournment on February 23, and from 8 a.m. until recess on February 24. The subcommittee will meet at the Marriott Pooks Hill Hotel, 5151 Pooks Hill Road, Bethesda, Maryland.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for proximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on February 22, in conference rooms 6, 7, and 8 respectively. The meeting of the full Council will be closed from 4:15 p.m. until recess on February 22 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 3C20, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93 855 Immunology, Allergic and Immunologic Diseases Research, 93 856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: December 15, 1994

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 94–31387 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities
Dates of Meeting: January 31–February 1, 1995
Time: 8:30 a.m.–until adjournment
Place of Meeting: Marriott Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814
Scientific Review Administrator: Dr. Jrill Carrington, National Institutes of Health, Westwood Building, Room 10A14, Bethesda, MD 20892, Telephone: (301) 594–7902
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. 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.

(Catalog of Federal Domestic Assistance Program Nos. 93.214, Extramural Research Facilities Construction Projects, National Institutes of Health, HHS)

Dated: December 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–31384 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee National Institute on Deafness and Other Communication Disorders Special Emphasis Panel
Date: January 11, 1995
Time: 3 pm to 7 pm
Place: Holiday Inn, Iowa City, IA
Date: January 17, 1995
Time: 3 pm to 7 pm
Place: Holiday Inn, New Haven, CT
Contact Person Mary Nekola, Ph.D., Scientific Review Administrator, NIH, NIDCD, EPS Suite 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301/496–8683
Purpose/Agenda To review and evaluate Center Grant applications (P50).

The 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. 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.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: December 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–31390 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given by the meeting of the National Advisory Environmental Health Sciences Council, February 6–7, 1995, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on February 6 from 9 a.m. to approximately 3:00 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 6 from approximately 3:00 p.m. to recess and from 8:30 a.m. to adjournment on February 7, for the review, discussion and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. B1C02. NIH. Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Herrell in advance of the meeting. Dr. Anne Sassaman, Director, Division of Extramural Research and Training. NIEHS, P.O. Box 12233, Research Triangle Park. North Carolina 27709. (919) 541–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115. Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: December 5, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–31388 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Meeting of the National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on January 26, and 27, Ramada Inn Hotel, Embassy Rooms II and III, 8400 Wisconsin Avenue, Bethesda, Maryland.

This meeting will be open to the public on January 26, from 9 a.m. to 4 p.m. for opening remarks; the report of the Acting Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 26 from 4 p.m. to 5:30 p.m., and on January 27, from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AS–43H, Bethesda, Maryland 20892, telephone: 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such

as sign language interpretation or other reasonable accommodations, should contact Mrs. Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Natcher Building, Room 2AN–32C, Bethesda, Maryland 20892, telephone: 301–594–4499 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].

Dated: December 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–31389 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Clinical Centers for Etiology of Sarcoidosis: A Case Control Study
Date: January 26–27, 1995
Time: 8:00 a.m.
Place: Holiday Inn, Chevy Chase, Maryland
Contact Person: S. Charles Selden, Ph.D. 5333 Westbard Avenue, room 552, Bethesda, Maryland 20892, (301) 594–7476
Purpose/Agenda. To evaluate and review contract proposals.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. 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

(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: December 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–31385 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Technical, Analytical and Documentation Support Services for the National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program
Date: January 12, 1995
Time: 9:00 a.m.
Place: National Institutes of Health, Building 31A, Room 5A16, Bethesda, MD 20892
Contact Person. Louise Corman, Ph.D., 5333 Westbard Avenue, Room 548, Bethesda, MD 20892, (301) 594–7452
Purpose/Agenda. To review and evaluate contract proposals.

Name of SEP: Enhancing Recovery in Coronary Heart Disease (ENRICHD) Patients—Clinical Center
Date: January 23, 1995
Time: 7:30 p.m.
Place: Georgetown Inn, Washington, DC
Contact Person: C. James Scheirer, Ph.D. 5333 Westbard Avenue, Room 557 Bethesda, MD 20892, (301) 594–7478
Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Enhancing Recovery in Coronary Heart Disease (ENRICHD) Patients—Coordinating Center
Date: January 24, 1995
Time: 8:00 a.m.
Place: Georgetown Inn, Washington, DC
Contact Person: C. James Scheirer, Ph.D. 5333 Westbard Avenue, Room 557 Bethesda, MD 20892, (301) 594–7478
Purpose/Agenda: To review and evaluate contract proposals.

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. 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.

(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: December 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–31386 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Board of Regents and its Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 24–25, 1995, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on January 23 in the 5th-floor Conference Room, Building 38A, from 2 p.m. to approximately 3:30 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 9 a.m to approximately 4:30 p.m. on January 24 and from 9 a.m. to adjournment on January 25 for administrative reports and program discussions. 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 Mrs. Karin Colton at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on January 23 will be closed to the public, and the regular Board meeting on January 24 will be closed from approximately 4:30 p.m. to 5 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters and Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health.)

Dated: December 15, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–31391 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications
Name of SEP: Behavioral and Neurosciences
Date: January 5, 1995
Time: 9:00 a.m.
Place: Hyatt Regency Hotel, Bethesda, MD
Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 5333 Westbard Ave., Room 309, Bethesda, MD 20892, (301) 594–7257.

Name of SEP: Behavioral and Neurosciences
Date: January 5, 1995
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 303
Contact Person: Dr. Joe Marwah, Scientific Review Administrator, 5333 Westbard Ave., Room 303, Bethesda, MD 20892, (301) 594–7158.

The 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. 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.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–31392 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Licensing Opportunity and/or Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Use of Orally Active Derivatives of 1,3,5(10)-estratriene and Pharmaceutical Compositions Thereof

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health is seeking licensees and/or CRADA partners for the further development, evaluation, and commercialization of novel esters of estradiol and pharmaceutical compositions thereof. The invention claimed in U.S. Patent Application Serial No. 08/122,853 entitled "Orally Active Derivatives of 1,3,5(10)-estratriene" (Kim, H.K., Blye, R.P., and Bialy, G.), filed August 17, 1993, is available for either exclusive or non-exclusive licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) and/or further development under a CRADA for clinical and research applications described below in Supplementary Information.

To expedite the research, development, and commercialization of this new class of drugs, the National Institutes of Health is seeking one or more license agreements and/or CRADAs with pharmaceutical or biotechnology companies in accordance with the regulations governing the transfer of Government-developed agents. Any proposal to use or develop these drugs will be considered.

ADDRESSES: CRADA proposals and questions about this opportunity should be addressed to: Dr. Gordon Guroff, Deputy Scientific Director, National Institute of Child Health and Human Development, Building 49, Room 5A64, Bethesda, Maryland 20892 (301/496–4751).

Licensing proposals and questions about this opportunity should be addressed to: Ms. Carol Lavrich, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Rockville, Maryland 20852–3804 (301/496–7735, ext. 287).

Information about the patent application and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA.

DATES: There is no deadline by which license applications must be received. CRADA proposals must be received on or before March 22, 1995.

SUPPLEMENTARY INFORMATION: One facet of oral contraceptive technology which has received little attention over the last three decades is the development of new orally active estrogens with attractive pharmacologic profiles. These would include hormones with fewer side effects than those associated with the currently available estrogens, ethynylestradiol and its 3-methyl ether (mestranol), notably nausea, vomiting, alterations in liver function, and histopathology and clotting disorders. Some clinicians have suggested that the presence of the 17-ethynyl moiety, which protects the steroid from rapid metabolism by the liver (so-called "first-pass" effect) and thus confers oral activity, is also responsible for many of the side effects observed with these drugs.

In an effort to develop nonethynylated estrogens, NICHD has synthesized several estradiol nitrate esters which exhibit potent estrogenic activity in rats and rhesus monkeys following both oral, subcutaneous, and percutaneous administration. Using an increase in the uterine weight of immature rats (rat uterotropic test) as an endpoint, two of these esters were more than five times as potent as ethynylestradiol following oral administration. They also induce estrogen withdrawal bleeding in ovariectomized rhesus monkeys following both oral and percutaneous administration. They are very potent postcoital agents following oral administration to rats on days 0–4 of gestation.

The superiority of these esters to ethynylestradiol or its methyl ether as the estrogenic component of oral contraceptive tablets will depend upon clinical and histopathological findings from toxicity studies in animals and/or clinical observations in Phase I and II human studies. The estradiol nitrate esters also have considerable potential clinical utility as replacement estrogens in menopausal women. The most widely used therapeutic regimens involve oral administration of ethynylestradiol, estradiol or conjugated estrogens (principally estrone sulfate) either continuously or cyclically, with or without addition of a progestin, much of which depends on the presence or absence of the uterus.

Compounds of this series have been studied for estrogenic potency following oral, subcutaneous and topical administration and pharmacokinetic data are available on several analogs utilizing radioimmunoassays developed by the Government. Relative binding affinities to the rat and rabbit uterine estrogen receptor are currently being studied.

In an effort to expedite research, development, and commercialization of the novel estradiol esters, the National Institute of Child Health and Human Development seeks a CRADA partner(s) for joint exploration and possible commercialization. Any CRADA proposed for these purposes will be considered.

The CRADA aims will include the rapid publication of research results consistent with protection of proprietary information and patentable inventions as well as the timely exploitation of commercial opportunities. The CRADA partner will enjoy the benefits of first negotiation for licensing Government rights to any inventions arising under the agreement and will advance funds payable upon signing the CRADA to help defray Government expenses for patenting such inventions and other CRADA-related costs.

The role of the National Institute of Child Health and Human Development will be as follows:

1. Provide the collaborator with all biological data on compositions of matter covered by the agreement.
2. Provide samples of compositions of matter covered by the agreement.
3. Provide chemical data on compositions of matter covered by the agreement including synthetic routes, analytical methods employed, and purity.
4. Provide conformational analysis of compositions of matter covered by the agreement where possible.
5. Continue studies on the pharmacokinetics and biological activity of compositions of matter covered by the agreement.
6. Conduct studies to optimize formulations for administration of the compositions of matter covered by the agreement by various routes in rodents and primates.
7 Conduct Ames Test and other genetic toxicology on compositions of matter covered by the agreement scheduled for clinical evaluation.
8. Participate in meetings with the Food and Drug Administration for establishment of the drug safety studies required for Phase I, II, and III clinical investigations of any of the compositions of matter covered by the agreement and provide liaison with that Agency.

The role of the collaborator will be as follows:

1. Undertake studies to identify any unique properties of the compositions of matter covered by the agreement including pharmacological differences from ethynylestradiol and mestranol (ethynylestradiol-3-methyl ether) which might favor their use as the estrogenic component of combined oral contraceptives.
2. Undertake a broad spectrum of estrogen receptor binding studies.
3. Undertake acute, subacute, chronic, carcinogenicity, and reproductive toxicology studies necessary to proceed with the orderly evaluation of selected compositions of matter covered by the agreement in human subjects.
4. Undertake an orderly sequence of clinical investigations of selected compositions of matter covered by the agreement for their safety and efficacy as estrogens for employment in combined oral contraceptives, postcoital contraceptives and for therapeutic use in gynecic medicine.

Selection criteria for choosing the CRADA partner(s) will include but are not limited to the following:

1. The collaborator must present in their proposal a clear statement of their capabilities and experience with respect to the tasks to be undertaken. This would include experience in drug development, regulatory affairs, and marketing.
2. The proposal must contain a clear and concise outline of the work to be undertaken, a schedule of significant events, and outline of objectives to be accomplished in a timely manner, and such experimental details as will provide a basis for evaluation of competing submissions.
3. The proposal must contain the level of financial support the collaborator will supply for CRADA-related Government activities.
4. A willingness to cooperate with the NICHD in publication of research results consistent with the protection of proprietary information and patentable inventions which may arise during the period of the agreement.
5. Agreement to be bound by DHHS rules and regulations regarding the use of human subjects in clinical investigations, patent rights, ethical treatment of animals, and randomized clinical trials.
6. Agreement with provisions for equitable distribution of patent rights to any inventions developed under the CRADA(s). Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with an irrevocable, non-exclusive, royalty-free license to the Government (when a company employee(s) is the sole inventor) or an option to negotiate an exclusive or non-exclusive license to the company on terms that are appropriate (when the Government employee(s) is the sole inventor).

Dated: December 14, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–31395 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–P

Prospective Grant of Exclusive License: Neutralizing Monoclonal Antibodies for Respiratory Syncytial Virus

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the invention embodied in U.S. Patent Application SN 07/945,515 entitled "Neutralizing Monoclonal Antibodies for Respiratory Syncytial Virus" and related foreign patent applications to SmithKline Beecham Corporation, of Philadelphia, Pennsylvania. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license may be limited to the fields of treatment and prevention of RSV infection in humans. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent application describes human monoclonal antibodies which bind and neutralize respiratory syncytial virus (RSV) antigenic subgroups A and B. These monoclonal antibodies may be used alone or in mixtures to treat or prevent RSV infection. Cell lines secreting the monoclonals are also described.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the

contemplated license should be directed to: Robert Benson, Patent Advisor, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Box 13, Rockville, MD 20852. Telephone: (301) 496–7056, X267; Facsimile: (301) 402–0220. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH within sixty (60) days of this notice will be considered. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Dated: December 12, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–31394 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–P

Prospective Grant of Exclusive License: Method for Evaluating Chemotherapeutic Agents in Hollow Fibers In Vivo

AGENCY: National Institutes of Health, Public Health Service, DHHS

ACTION: Notice

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 08/058,154, entitled "Method for Evaluating Chemotherapeutic Agents in Hollow Fibers *In Vivo*," to Spectrum Medical Industries, Inc., having a place of business in San Diego, California. The patent rights in this application have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention relates to a method of screening the efficacy of chemotherapeutic agents *in vivo* using target cells grown in biocompatible, selectively permeable macrocapsules. Most conventional methods (i.e., subcutaneous tumor model, sub-renal tumor model, peritoneal model and the metastasis model) permit only one type of tumor cell or cell line to be screened per experiment per animal, with the animal subsequently sacrificed for analysis. The present method allows for placing samples of syngeneic or xenogeneic cells into laboratory animals using cells or cell lines grown in selectively permeable hollow fibers or dialysis tubing. The invention provides a rapid and reliable method to screen potential chemotherapeutic agents for therapeutic uses in cancer or other human diseases. Additionally, the method allows a single experimental animal to carry implants in multiple sites allowing simultaneous evaluation of a chemotherapeutic agent capacity to reach various physiologic compartments such as subcutaneous, intraperitoneal or intra-organ regions. The advantages of this system over the classical antitumor animal models include: 1) the requirement for a smaller amount of test agent to assess preliminary *in vivo* efficacy; 2) rapid turn-around time, 3) the ability to test potential activity against multiple tumor types simultaneously in the same experimental animal; 4) a reduction in the number of experimental animals required for assessing efficacy, 5) the possibility of assessing multiple treatment schedules in a short time frame, 6) the ability to recover the entire implant, 7) the lack of contamination of the implanted cells by host cell, and 8) the ability to screen a test agent against target cells cultivated in various physiologic compartments in the same laboratory animal.

The present invention can be used in transgenic animals to determine the effect of a transgenic or protein product thereof on a target cell line. Further, re-cultivating and re-screening the cells after analysis makes its possible to assess the regrowth potential of cells surviving treatment and then determine their susceptibility to a second treatment with the same or alternate chemotherapeutic agent(s).

The contemplated fields of use for licensing would be for 1) preclinical testing in animals of products for toxicity and efficacy, and 2) diagnostic testing in animals of human tissue specimens for resistance and sensitivity to alternative therapeutic regimes. Spectrum Medical Industries intends to make, use and sell products, falling within the scope of the patent application for the research and clinical diagnostic markets.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: John Fahner-Vihtelic, Office of Technology Transfer, National Institutes of Health, Suite 325, 6011 Executive Blvd., Rockville, Maryland 20852. Telephone: (301) 496–7735, extension 285, or fax (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent application. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: December 12, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–31393 Filed 12–21–94; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3763; FR–3676–N–03]

Announcement of Funding Awards for Fiscal Year 1994 Public Housing Development Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding awards for Fiscal Year 1994 under the public housing development program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Kevin E. Marchman, Deputy Assistant Secretary, Office of Distressed and Troubled Housing Recovery, U.S. Department of Housing and Urban Development, Room 4138, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–8812.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877 8339, or (202) 708–9300.

(Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The Public Housing Development program is authorized by sections 5 and 23 of the United States Housing Act of 1937 (42 U.S.C. 1437u); and section 7(d) of the Housing and Urban Development Act 42 U.S.C. 3535(d).

The purpose of the competition is to make funding available for grants under the Public Housing Development program as follows:

1 Replacement units for demolition disposition approvals;

2. Replacement units for HOPE 1 for section 5(h) homeownership transfers or sales;

3. Public housing required by litigation settlements (involving a lack of assisted or minority housing opportunities); unforeseen housing needs resulting from natural and other disasters; and

4. "Other" development applications intended to increase the public housing stock.

These Public Housing Development grants, totaling $407,543,111 million, will assist public housing agencies in the development and operation of lower income housing projects and financial assistance. Recipients were chosen in a national competition announced in a Notice of Funding Availability published in the **Federal Register** on May 24, 1994 (59 FR 26902).

In accordance with section 102(a)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the names, addresses, and amount of the awards are set forth in Appendix A to this notice.

Dated: December 14, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix A—List of Awardees for the Public Housing Development Program FY 1994

Area I: New England:	
Boston Housing Authority, 52 Chauncy, Boston, MA 02111	$2,327,100
Fort Fairfield Housing Authority, 255 Main, Ft Fairfield, ME 04742	963,100
Greenwich Housing Authority, PO Box 141, Greenwich, CT 06836	2,933,000
Johnston Housing Authority, 8 Forand Circle, Johnston, RI 02919	1,974,900
Laconia Housing Authority, 25 Union, Laconia, NH 03246	753,400
Pawtucket Housing Authority, 214 Roosevelt, Pawtucket, RI 02860	2,205,850
Pembroke Housing Authority, Killcommon Dr, Pembroke, MA 02359	443,100
S. Kingstown Housing Authority, 364 Curtis Corner, Peacedale, RI 12883	1,055,100
Warren Housing Authority, 20 Libby, Warren, RI 02885	2,930,900
Total New England Area	$15,586,450
Area II: New York/New Jersey:	
Lakewood Housing Authority, 317 Sampson, Lakewood, NJ 08701	$5,464,600
New York City Housing Authority, 250 Broadway, New York, NY 10007	24,687,500
Plattsburgh Housing Authority, 19 Oak, Plattsburgh, NY 12901	550,000
Woodbridge Housing Authority, 10 Bunns Ln., Woodbridge, NJ 07095	4,962,500
Total New York/New Jersey Area	$35,664,600
Area III: Mid-Atlantic:	
Altoona Housing Authority, 1100 Eleventh, Altoona, PA 16603	$1,783,250
Cumberland Co Housing Authority, 114 N Hanover, Carlisle, PA 17013	989,500
Delaware State Housing Authority, 18 The Green, Dover, DE 19903	1,971,950
Dover Housing Authority, 1266–76 Whiteoak, Dover, DE 19901	873,500
Franklin Redevel & Hsg Authority, PO Box 267, Franklin, VA 23851	981,300
Housing Opportunities Commission, 10400 Detrick Ave, Kensington, MD 20895	7,342,600
Lee Co Redevel & Hsg Authority, PO Box 665, Jonesville, VA 24263	1,256,500
Lehigh Co Housing Authority, 333 Ridge, Emmaus, PA 18049	2,099,500
Luzerne Co Housing Authority, 250 First Ave. Kingston, PA 18704	4,838,900
Monroe Co Housing Authority, 1055 W Main, Stroudsburg, PA 18360	4,114,650
Montgomery Co Housing Authority, 1875 New Hope, Norristown, PA 19401	4,945,450
Newport News Redevel & Hsg Authority, 227 27th, Newport News, VA 23607	1,875,050
Parkersburg Housing Authority, 1901 Cameron Ave., Parkersburg, WV 26101	1,045,300
Petersburg Redevel & Hsg Authority, 128 S Sycamore, Petersburg, VA 23804	2,224,650
Philadelphia Hsg Authority, 2012 Chestnut, Philadelphia, PA 19103	51,817,650
Richmond Redevel & Hsg Authority, 901 Chamberlayne, Richmond, VA 23261	7,474,900
Union Co Housing Authority, 1610 Industrial Rd. SU400, Lewisburg, PA 17837	1,029,200
Wilkes-Barre Housing Authority, S Wilkes-Barre, Wilkes-Barre, PA 18702	2,213,650
Wise Co Redevel & Hsg Authority, PO Box 630, Coeburn, VA 24230	1,242,300
Total Mid-Atlantic Area	$100,119,800
Area IV: Southeast:	
Atlanta Housing Authority, 739 W Peachtree, Atlanta, GA 30365	$4,014,800
Montezuma Housing Authority, PO Box 67, Montezuma, GA 31063	4,755,700
Nahunta Housing Authority, 101 Burton, Nahunta, GA 31510	759,400
Albany Housing Authority, PO Box 485, Albany, GA 31702	7,511,150
Prichard Housing Authority, 800 Hinson, Prichard, AL 36610	2,685,500
Bessemer Housing Authority, 1100 Fifth, Bessemer, AL 35020	10,859,950
Columbia Housing Authority, 1917 Harden, Columbia, SC 29204	4,110,200
Greenville Housing Authority, 511 Augusta Road, Greenville, SC 29603	4,471,100
Virgin Island Housing Authority, 402 Estate Anna, St. Thomas, VI 00801	29,276,250
Greensboro Housing Authority, PO Box 21287, Greensboro, NC 27420	3,926,750
MS Regional Housing Authority VI, Jackson, MS 39284	1,904,200
Pensacola Housing Authority, 1920 West Garden, Pensacola, FL 32523	7,054,300
Hialeah Housing Authority, 70 E. 7th Street, Hialeah, FL 33010	6,674,100
Crossville Housing Authority, 202 Irwin, Crossville, TN 38557	2,626,250
Lexington Housing Authority, 635 Ballard, Lexington, KY 40508	1,434,000
Total Southeast Area	$92,063,650

Appendix A—List of Awardees for the Public Housing Development Program FY 1994—Continued

Area V: Midwest:	
East St. Louis Housing Authority, 700 N. 12th St., East St. Louis, IL 62205	$7,987,400
Chicago Housing Authority, 22 W. Madison, Chicago 60602	8,735,750
Rockford Housing Authority, 330 15th St, Rockford, IL 61108	2,533,400
Lake County Housing Authority, 33928 N. Rt. 45, Grayslake, IL 60030	2,274,500
Lake Metropolitan Housing Authority, 200 W. Jackson, Painesville, OH 44077	2,754,200
Allen Housing Authority, 600 S. Main, Lima, OH 45804	2,930,900
Athens Housing Authority, 490 Richland, Athens, OH 45701	2,256,550
Springfield Housing Authority, 437 E. John, Springfield, OH 45505	4,513,050
Saginaw Housing Commission, 2811 Davenport, Saginaw, MI 48602	3,759,950
Grand Rapids Housing Authority, 1420 Fuller, Grand Rapids, MI 49507	4,701,650
Muskegon Housing Authority, 1080 Terrace, Muskegon, MI 49442	4,674,050
Evansville Housing Authority, 411 SE Eighth, Evansville, IN 47735	1,367,400
Marion Housing Authority, 601 S. Adams, Marion, IN 46953	1,452,600
Eau Claire County Housing Authority, 731 Oxford, Eau Claire, WI 54703	1,569,350
Minneapolis Housing Authority, 1001 N. Washington, Minneapolis, MN 55401	258,650
St. Louis Park Housing Authority, 5005 Minnetonka, St. Louis, Park, MN 55416	110,050
Bloomington Housing Authority, 2215 W. Old Shakopee, Bloomington, MN 55431	2,200,550
Total Midwest Area	$54,080,000
Area VI: Southwest:	
Alamogordo Housing Authority, 104 Avenida Amigos, Alamogordo, NM 88310	$1,893,450
Las Cruces Housing Authority, 926 S. San Pedro St., Las Cruces, NM 88001	1,591,400
Broken Bow Housing Authority, 710 E. 3rd, Broken Bow, OK 74728	1,853,950
Lockhart Housing Authority, 825 Red Wood, Lockhart, TX 78644	1,849,000
San Antonio Housing Authority, 818 S. Flores, San Antonio, TX 78295	2,646,800
Hidalgo County Housing Authority, 1800 N. Texas, Weslaco, TX 78596	3,005,200
Alamo Housing Authority, N. 9th St., Alamo, TX 78516	1,742,850
Cameron County Housing Authority, 65 Castellano Circle, Brownsville, TX 78520	2,438,250
Round Rock Housing Authority, 1505 Lance, Round Rock, TX 78664	994,300
Total Southwest Area	$18,015,200
Area VII: Great Plains:	
Iowa City Housing Authority, 410 E. Washington, Iowa City, IA 52240	$931,750
Lee's Summit Housing Authority, 111 S. Grand, Lee's Summit, MO 64063	4,279,050
Lawrence Housing Authority, 1600 Haskell, Lawrence, KS 66044	1,411,150
Omaha Housing Authority, 540 S. 27th, Omaha, NE 68105	17,242,200
Broken Bow Housing Authority, 825 S. Ninth, Broken Bow, NE 68822	342,400
Burwell Housing Authority, PO Box 490, Burwell, NE 68823	446,800
Douglas County Housing Authority, 5404 N. 107th, Omaha, NE 68134	413,300
Kearney Housing Authority, 2715 Avenue I, Kearney, NE 68847	861,250
Total Plains Area	$25,927,900
Area VIII: Rocky Mountain:	
Pueblo Housing Authority, 1414 No. Santa Fe, Pueblo, CO 81003	$958,750
Salt Lake City Housing Authority, 1776 SW Temple, Salt Lake City, UT 84115	1,459,300
Billings Housing Authority, 2415 First, Billings, MT 59101	774,450
Utah County Housing Authority, 240 E. Center, Provo, UT 84606	357,000
Salt Lake County Housing Authority, 1962 S. 200, Salt Lake City, UT 84115	1,338,800
Colorado Springs Housing Authority, Colorado Springs, CO 80901	1,025,950
Total Rocky Mountain Area	$5,914,250
Area IX: Pacific/Hawaii:	
Kern County Housing Authority, 525 Roberts, Bakersfield, CA 93308	$3,523,000
Los Angeles City Housing Authority, 515 Columbia, Los Angeles, CA 90017	4,660,600
Riverside County Housing Authority, 5555 Arlington, Riverside, CA 92504	4,923,300
Phoenix Housing Authority, 830 E. Jefferson, Phoenix, AZ 85034	2,773,300
Yuma County Housing Authority, 8450 W. Highway 95, Somerton, AZ 85350	1,860,400
Sacramento County Housing Authority, 630 I, Sacramento, CA 95812	3,543,250
Sacramento City Housing Authority, 630 I, Sacramento, CA 95812	3,091,100
Clark County Housing Authority, 5390 E. Flamingo Rd., Las Vegas, NV 89122	5,022,800
Mendocino County Housing Authority, 1076 N. State, Ukiah, CA 95482	2,731,750
Fresno City Housing Authority, PO Box 11985, Fresno, CA 93776	3,434,950
Madera Housing Authority, 205 N. G., Madera, CA 93637	4,479,450
Monterey County Housing Authority, 123 Rico, Salinas, CA 93907	7,406,061
Total Pacific/Hawaii Area	$47,449,950
Northwest/Alaska:	
Alaska Housing Fin. Corp., 624 W. Int'l Airport Rd., Anchorage, AK 99523	$5,564,050
Yamhill County Housing Authority, 414 N. Evans, McMinnville, OR 97128	958,150
Nampa Housing Authority, 1703 Third, Nampa, ID 83651	1,146,850
Coos-Curry Housing Authority, 1700 Monroe, North Bend, OR 97459	992,700
Kitsap County Housing Authority, 9265 Bayshore Dr. NW, Silverdale, WA 98383	1,170,050
Seattle Housing Authority, 120 Sixth, Seattle, WA 98109	3,580,800
Total Northwest/Alaska Area	$13,412,600
Total Funds Reserved	$408,234,400

[FR Doc. 94-31417 Filed 12-21-94; 8:45 am]
BILLING CODE 4210-33-P

[Docket No. N-94-3761; FR-3538-N-03]

Announcement of Funding Awards for the Vacancy Reduction Program; FY 1993 and FY 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under Vacancy Reduction Program. The announcement contains the names and addresses of the award winners and the amount of awards.

FOR FURTHER INFORMATION CONTACT: Mary Ann Russ, Director, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, room 4204, Washington, DC 20410, telephone (202) 708-1380. The TDD number for the hearing impaired is (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Vacancy Reduction Program is authorized as a set-aside by section 115(a) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992). Section 115(a) requires a percentage of the amounts available under section 14 of the United States Housing Act of 1937 in fiscal year 1993 and 1994 to be set aside for the Vacancy Reduction Program.

The purpose of the competition was to award grant funding for approximately $199,646,600 for certain public housing agencies (PHAs) required to develop and submit a plan regarding vacancies in units owned or operated by PHAs. The 1994 recipients announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on June 13, 1994 (59 FR 30482). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as follows:

Fiscal Years 1993 and 1994 Public and Indian Housing Recipients of Vacancy Reduction Funds

Program Name: Public and Indian Housing Vacancy Reduction Program (VRP)

Statute: Public Law 101-625, November 28, 1990

Funding recipient (name and address)	Amount reserved
Mr. Lee Jones, Executive Director, Little Rock Housing Authority, 1000 Wolf Street, Little Rock, AR 72202	$3,249,437
Mr. Joseph Johnson, Executive Director, Maricopa County Housing Authority, 3003 N. Central Park, Suite 700, Phoenix, AZ 85012-6596	1,301,600
Mr. Bryan Anderson, Executive Director, New Haven Housing Authority, 360 Orange Street, New Haven, CT 06509	4,784,720
Mr. Silvio Broccoli, Executive Director, Waterbury Housing Authority, 70 Lakewood Rd. 06740, Waterbury, CT 06704	348,000
Mr. W. James Rice, Executive Director, Meridan Housing Authority, 22 Church St., Box 911, Meridan, CT 06450	60,000
Mr. Clarence Craig, Executive Director, Connecticut Housing Authority, 150 Highland Street, Bridgeport, CT 06604	280,000
Mr. Jasper Burnette, Executive Director, Department of Public and Assisted Housing, 1133 N. Capitol Street, Washington, DC 20002	5,557,074
Mr. Ronnie Ferguson, Executive Director, Jacksonville Housing Department, 1300 Broad Street, Jacksonville, FL 32202	8,268,460
Mr. William Desue, Executive Director, Bradenton Housing Authority, 1300 5th Street, West Bradenton, FL 34205	347,200
Mr. Robert Sutton, Executive Director, Levy County Housing Authority, P.O. Box 38, Bronson, FL 32621-0038	82,692
Mr. J. Robert Day, Executive Director, Waycross Housing Authority, P.O. Box 1407, Waycross, GA 31501-1407	961,000
Mrs. Louise Brown, Executive Director, Baxley Housing Authority, P.O. Box 56, Baxley, GA 31513	694,000
Ms. Amy Knell, Executive Director, Fulton County Housing Authority, 10 Park Place South, S.E., Suite 240, Atlanta, GA 30303	240,000
Ms. Renee' Glover, Acting Executive Director, Atlanta Housing Authority, 739 West Peachtree Street, Atlanta, GA 31513	6,740,000
Ms. Kay West, Executive Director, Tifton Housing Authority, P.O. Box 12, Tifton, GA 31793	887,500
Mr. Eugene Gathers, Executive Director, Peoria Housing Authority, 100 S. Sheridan Street, Peoria, IL 61605	2,857,500
Mr. Ken Crutcher, Executive Director, Springfield Housing Authority, 200 N. Eleventh Street, Springfield, IL 62703	2,410,000
Mr. James Wilson, Executive Director, Alexander County Housing Authority, 100 Connell F, Smith Bldg., Cairo, IL 62914	1,347,571
Mr. Mark Stephenson, Executive Director, Rock Island Housing Authority, 111 20th Street, Rock Island, IL 61201	2,267,366
Mr. Vince Lane, Executive Director, Chicago Housing Authority, 22 West Madison St., 400A, Chicago, IL 60602	30,030,000
Mr. David Carr, Executive Director, Decauter Housing Authority, 1808 East Locust Street, Decauter, IL 62521	251,559
Mr. Paul Schuler, Executive Director, Madison County Housing Authority, 1609 Olive Street, Collinsville, IL 62234	1,098,400
Ms. Delores Andrew, Executive Director, Saline County Housing Authority, 927 West Barnett, Harrisburg, IL 62946	311,875
Mr. James Seed, Executive Director, Jackson County Housing Authority, 300 N. 7th Street, Murphysboro, IL 62966	1,328,420
Mr. Todd Gessner, Executive Director, Jefferson County Housing Authority, P.O. Box 1547, 1000 S. 9th St., Mount Vernon, IL 62864	290,000
Ms. Joan Davidson, Executive Director, Pope County Housing Authority, Rt. 3, Box 75, Golconda, IL 62938	136,375

Funding recipient (name and address)	Amount reserved
Mr. John Nelson, Executive Director, Indianapolis Housing Authority, 410 N. Meridian Street, Indianapolis, IN 46204	1,180,000
Mr. Kermit Gibson, Executive Director, Housing Authority of New Orleans 918 Carondolet Street, New Orleans, LA 70130	8,500,000
Mr. Preson Dejean, Executive Director, Crowley Housing Authority, P.O. Box 1347, Westwood Dr., Crowley, LA 70527	1,029,200
Mr. Wendell Bogan, Executive Director, Morgan City Housing Authority, P.O. Box 2923, Morgan City, LA 70381	964,350
Ms. Kay Doupnik, Executive Director, Clay Center Housing Authority, 114 E. Division Street, Clay Center, NE 68933	84,000
Ms. Anna Preston, Executive Director, Paris Housing Authority, P.O. Box 468, 2 Horton Dr., Paris, KY 40361	1,447,040
Mr David Cortiella, Executive Director, Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111	6,720,000
Ms. Betty Turner, Executive Director, Detroit Housing Authority, 2211 Orleans Street, Detroit, MI 48201	16,618,750
Mr. Richard Massa, Executive Director, Pontiac Housing Authority, 132 Franklin Blvd., Pontiac, MI 48341	472,000
Mr. Reginald Richardson, Executive Director, Flint Housing Authority, 3820 Richfield Road, Flint, MI 48506	803,500
Mr. Joe L. Matton, Executive Director, Muskegon Heights Housing Authority, 615 E. Hovey Avenue, Muskegon Heights, MI 49444	445,800
Ms. Cynthia Telfer, Executive Director, Ann Arbor Housing Authority, 727 Miller Avenue, Ann Arbor, MI 48103	50,000
Ms. Gwendolyn D. Tolbert, Executive Director, Ypsilanti Housing Authority, 601 Armstrong Drive, Ypsilanti, MI 48197	397,500
Mr. Victor DeLaCruv, Executive Director, St. Louis Housing Authority, 4100 Lindell Blvd., St. Louis, MO 63108	3,690,000
Mr. Paula Schwach, Executive Director, Kansas City Housing Authority, 299 Paseoa Blvd., Kansas City, MO 64106	7,033,550
Mr. Jack McCord, Executive Director, Mexico Housing Authority, 828 Garfield Ave., Box 484, Mexico, MO 65265	738,000
Mr. David Kayes, Executive Director, Slater Housing Authority, 14 Emerson Terrace, Slater, MO 65349–1622	60,000
Ms. Marilyn Howerter, Executive Director, Oshkosh Housing Authority, Rt. 1, Mesa Vue No. 21, Oshkosh, NE 69154	65,000
Mr. Michael Clark, Executive Director, Buffalo Housing Authority, 300 Perry Street, Buffalo, NY 14204–2299	4,330,000
Mr. Harold Lucas, Executive Director, Newark Housing Authority, 57 Sussex Avenue, Newark, NJ 07103	9,624,000
Mr. Benjamin Quattlebaum, Executive Director, Camden Housing Authority, 422–424 Dudley Street, Camden, NJ 08105	1,740,000
Ms. Patricia Rivera, Executive Director, Irvington Housing Authority, 624 Nye Avenue, Irvington, NJ 07111	1,444,964
Mr. Rudy Vasmina, Executive Director, Youngstown Housing Authority, 131 W. Boardman Street, Youngstown, OH 44503	126,000
Ms. Claire Freeman, Executive Director, Cuyahoga Housing Authority, 1441 West 25th Street, Cleveland, OH 44113	7,280,000
Mr. Roland Turpin, Executive Director, Dayton Housing Authority, 400 Wayne Avenue, Dayton, OH 45410–1106	7,910,000
Mr. Stanley Lowe, Executive Director, Pittsburgh Housing Authority, 200 Ross Street, Pittsburgh, PA 15219	2,000,000
Mr. John F. White, Executive Director, Philadelphia Housing Authority, 2012–18 Chestnut Street, Philadelphia, PA 19103	22,000,000
Mr. Bill Henderson, Executive Director, Chester Housing Authority, 1010 Madison Street, Chester, PA 19013	2,050,000
Ms. Mary Louise Battisti, Executive Director, Spartanburg Housing Authority, 325 S. Church Street, Spartanburg, SC 29306	686,246
Mr. Joe Garaffa, Executive Director, Memphis Housing Authority, 700 Adams Ave., P.O. Box 3664 Memphis, TN 38103	6,615,000
Mr. Daniel Strange, Executive Director, Waco Housing Authority, 1500 Proctor Street, Waco, TX 76707	4,107,000
Ms. Allison Cardile, Executive Director, Bonham Housing Authority, P.O. Box 548, Bonham, TX 75418	350,000
Ms. Debbie Davis, Executive Director, Olney Housing Authority, 302 W. Main Street, Olney, TX 76374	1,065,000
Ms. Mary Schott, Executive Director, Aransas Pass Housing Authority, 245 N. 13th Street, Aransas Pass, TX 78336	205,000
Mr. James Harper, Executive Director, Gladewater Housing Authority, P.O. Box 1009, 604 S. Tyler, Gladewater, TX 75647	255,951
Mr. Kent R. Gardner, Executive Director, Bristol Housing Authority, 650 Quarry Street, Bristol, VA 24201	660,000
Mr. Conrad Francois II, Executive Director, Virgin Islands Housing Authority, 402 Anas Retreat, St. Thomas, VI 00801	768,000
Total Amount Funded:	199,646,600

Dated: December 9, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–31418 Filed 12–21–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–1610–00]

Environmental Statements; Availability, etc.: Grass Creek Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for the Grass Creek Resource Management Plan for public review and comment.

SUMMARY: The draft Environmental Impact Statement (EIS) for the Grass Creek Resource Management Plan (RMP) describes and analyzes four alternative resource management plans, including the Bureau of Land Management's (BLM's) preferred alternative, developed through public scoping and in consultation with local Governments. The planning area includes portions of Big Horn, Hot Springs, Park, and Washakie counties in the Bighorn Basin of north central Wyoming. When completed, the Grass Creek RMP will provide the management direction for future land and resource management actions on approximately 968,000 acres of public land surface and approximately 1,171,000 acres of Federal mineral estate administered by the BLM.

The draft EIS focuses on resolving three key issues identified through public scoping and analysis of current BLM management in the Grass Creek planning area. These issues are:

1. Vegetation management
2. Special management area designations
3. Public land and resource accessibility and manageability

The proposed designation of three Areas of Critical Environmental Concern (ACECs) is addressed in the draft EIS. These are the Fifteenmile Creek Watershed proposed ACEC (274,300 acres), the Meeteetse Draw proposed ACEC (6,800 acres), and the Upper Owl Creek proposed ACEC (17,100 acres).

Management of the Fifteenmile Creek Watershed proposed ACEC would emphasize a cooperative approach to improving riparian and upland areas, and reducing the amount of sediment delivered to the Bighorn River. State and local Government, private landowners, grazing permittees, and other interested parties would collaborate in managing the area.

The Meeteetse Draw proposed ACEC would highlight the importance of Native American cultural values associated with this area. The primary emphasis of BLM's management would be to improve public education, interpretation, scientific research, and protection of Native American cultural values. Controlled management of this area would also allow Native Americans to have access to these sites for ritual purposes and aid in preserving aspects of their heritage.

The Upper Owl Creek proposed ACEC would be managed to maintain important wildlife habitat, protect rare plants, maintain scenic quality, enhance recreation, and reduce erosion and natural hazards associated with the area's landslide potential.

These proposed ACEC designations would highlight the three areas for management and funding, but would not increase the level of restrictions on land uses above that which would otherwise be appropriate for management. The special management designations also would not apply to State or private lands.

In accordance with the provisions of 38 CFR Part 800, parties who are interested in and who wish to be involved in future activity planning and implementation of management actions that may involve or affect the archaeological and historical resources addressed in the proposed plan, are requested to identify themselves. Through contacting the Worland District Office at the below address, you will be placed on a future contact list.

The coal screening process (including application of the coal unsuitability criteria under 43 CFR Part 3461) was not conducted for the planning effort. Any interest in coal exploration or leasing will be handled on a case-by-case basis. If an application for a coal lease is received sometime in the future, an appropriate land use environmental analysis will be conducted (which will include conducting the coal screening process) to determine whether or not the coal areas applied for are acceptable for development and leasing consideration. The RMP will be amended as necessary.

In the course of conducting the planning effort and preparing the Grass Creek RMP EIS, public lands along all waterways in the planning area were reviewed to determine their eligibility for inclusion in the National Wild and Scenic Rivers System. No public lands were found to meet the eligibility criteria.

The draft EIS contains socio-economic information on the population, employment, and income of the planning area and describes the impacts on the local economy of implementing each of the four alternatives analyzed in the EIS.

Wilderness management and recommendations on wilderness designation have been considered in previous documents and are not addressed in this draft EIS.

DATES: Written comments will be accepted for 90 days following the date the Environmental Protection Agency (EPA) publishes the filing of the draft EIS for the Grass Creek RMP in the **Federal Register**. This filing notice is expected to be published about mid or late December 1994. Open houses will be held in communities within the planning area to provide opportunities for the public to meet with the BLM and comment on the draft EIS. These open houses will be held during January 1995. Media releases will provide information on the locations and times of the meetings when these are determined.

ADDRESSES: Copies of the draft EIS for the Grass Creek Resource Management Plan are available from the BLM Worland District Office and the Grass Creek Resource Area Office at P. O. Box 119, 101 South 23rd Street, Worland, Wyoming 82401–0119. Comments and requests to be placed on the Grass Creek RMP mailing list should be sent to Bob Ross, RMP Team Leader, P. O. Box 119, Worland, Wyoming 82401–0119.

FOR FURTHER INFORMATION CONTACT: Joseph T. Vessels, Grass Creek Resource Area Manager or Bob Ross, RMP Team Leader at the above address or by telephone (307) 347–9871.

SUPPLEMENTARY INFORMATION: The Grass Creek Resource Area is responsible for managing the BLM-administered public lands in portions of Big Horn, Hot Springs, Park, and Washakie counties in Wyoming. Within the Grass Creek RMP planning area there are varied and intermingled land surface ownerships and overlapping mineral ownerships. Therefore, the administrative jurisdictions for land use planning and for managing the land surface and minerals are also varied, intermingled, and sometimes overlapping. For this reason, it is important to understand that the draft EIS does not address management of lands (about 302,000 acres) or minerals (about 8,000 acres) within the planning area that are privately-owned or owned by the State of Wyoming or local Governments. It also does not address those Federally-owned minerals within the planning area that are under Federal land surface managed by other agencies (about 4,700 acres).

The draft EIS for the Grass Creek RMP presents four alternative, multiple use resource management plans for managing the BLM-administered public lands in the planning area. Alternative A (continuation of current management) and three other alternatives that suggest different combinations and emphases for managing the various resource and land uses on the BLM-administered public lands, on the basis of needs, opportunities, and public demand. The four alternative plans focus on allocating public lands and resources among their valid uses and prescribing general management actions that would be taken. The preferred alternative is a combination of parts of alternatives A, B, and C and represents what BLM believes is the best balance between the

public lands and resource uses and environmental protection in the planning area. The various impacts that would be expected from implementing each of the alternatives is also presented in the draft EIS.

Dated: December 5, 1994.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 94–31460 Filed 12–21–94; 8:45 am]

BILLING CODE 4310–22–P

[ID–942–05–1420–00]

Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., December 13, 1994.

The plat representing the dependent resurvey of portions of the subdivision of section 9 and of lot 6 in section 4, and the survey of certain lots in section 9, and easements in sections 4 and 9, T. 9 N., R. 27 E., Boise Meridian, Idaho, Group No. 908, was accepted, December 13, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: December 13, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–31492 Filed 12–21–94; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–05–1420–00]

Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., December 13, 1994.

The plat representing the dependent resurvey of a portion of the subdivision of section 31, Township 8 South, Range 14 East, Boise Meridian, Idaho, Group No. 896, was accepted November 28, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: December 13, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–31493 Filed 12–21–94; 8:45 am]

BILLING CODE 4310–GG–M

[ES–960–4730–02; ES–046131, Group 60, Louisiana

Notice of Filing of Plat of Dependent Resurvey, Suspended

On Thursday, June 10, 1993, there was published in the **Federal Register**, Volume 58, on page 32546, a notice entitled, "Louisiana: Filing of Plat of Dependent Resurvey." Said notice referenced the filing of the plat of the dependent resurvey of the west boundary of Township 7 South, Range 9 East, Louisiana Meridian, Louisiana, accepted May 24, 1993.

This plat officially filed on July 22, 1993, is hereby suspended pending the consideration of a protest against the survey.

Dated: December 14, 1994.

Carson W. Culp, Jr.,

State Director.

[FR Doc. 94–31494 Filed 12–21–94; 8:45 am]

BILLING CODE 4310–FB–M

[NM–950–05–1420–00]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY. The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on January 23, 1995.

New Mexico Principal Meridian, New Mexico.

T. 19 N., R. 16 W., Accepted September 26, 1994, for Group 844 NM.

T. 18 N., R. 16 W., Accepted September 26, 1994, for Group 844 NM.

T. 17 N., R. 16 W., Accepted September 26, 1994, for Group 843 NM.

T. 31 and 32 N., R. 16 W., Accepted November 1, 1994, for Group 851 NM.

T. 17 N., R. 17 W., Accepted September 26, 1994, for Group 843 NM.

T. 20 N., R. 16 W., Accepted September 26, 1994, for Group 844 NM.

Indian Meridian, Oklahoma

T. 19 N., R. 13 W., Accepted October 6, 1994, for Group 38 OK.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A Statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

John P. Bennett,

Cadastral Survey/Geo Sciences Team.

[FR Doc. 94–31495 Filed 12–21–94; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

[PF.T–797197]

Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

Applicant: Steve Tully, USDA, Natural Resources Conservation Service Stillwater, OK.

The applicant requests a permit to include take activities for American burying beetle (Nicrophorus americanus) for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above

office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 94–31469 Filed 12–21–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Application(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended (16 U.S.C. 1531, et seq.)*:

Applicant: Mark D. Rohde, Kentwood, MI, PRT–788774

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by M.G. Wienand, "Longwood, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Texas A & M University, College Station, Tx, PRT–796331

The applicant requests a permit to import blood samples taken from 250 wild and captive Galapagos tortoise (*Geochelon elephantopus*), in Australia, Bermuda, Ecuador, New Zealand, Singapore, and Tahiti for the purpose of scientific research to enhance the survival of the species.

Applicant: Michel C. Bergerac, New York, NY, PRT–796661

The applicant requests a permit to import the sport-hunted trophy of one male (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by E.V. Pringle, "Huntely Glen", Bedford, Republic of South Africa for the purpose of enhancement of survival of the species.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420(c), Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: December 16, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–31420 Filed 12–21–94; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32622]

City of Los Angeles and City of Long Beach—Purchase Exemption—Union Pacific Railroad Company's San Pedro Branch

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343–11345 the purchase by the City of Los Angeles, CA, and the City of Long Beach, CA, from Union Pacific Railroad Company (UP) of 18.65 miles of rail line known as the San Pedro Branch, between mileposts 3.06 and 21.71 in Los Angeles County, CA, subject to employee protective conditions.

DATES: The exemption is effective on December 22, 1994. Petitions to reopen must be filed by January 11, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32622 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423 and (2) Petitioners' representative: Samuel M. Sipe, Jr., Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036–1795.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: December 15, 1994.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 94–31447 Filed 12–21–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–103 (Sub-No. 10X)]

Kansas City Southern Railway Company—Abandonment Exemption—In Jackson County, MO

Kansas City Southern Railway Company (KCS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.42 miles of rail line, known as the Independence Air Line Branch, in Kansas City and Independence, in Jackson County, MO. The trackage is from the west line of Kentucky Avenue at milepost 6.93E to the end at milepost 8.35E.[1]

KCS has certified that:

(1) no local traffic has moved over the line for at least 2 years;

(2) overhead traffic, if any, which previously moved over the line, has been rerouted;

(3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial

[1] The City of Independence (City) owns and maintains a power transmission line along the tracks and right-of-way lying between Kentucky and Independence Avenues. KCS states that, once the abandonment becomes effective, it will transfer the right-of-way to the City by quitclaim deed.

assistance (OFA) has been received, this exemption will be effective on January 21, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by January 3, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 11, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Jay M. Nadlman, 114 W. Eleventh St., Kansas City, MO 64105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

KCS has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 27, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 14, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94-31449 Filed 12-21-94; 8:45 am]

BILLING CODE 7035-01-P

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB-103 (Sub-No. 9X)]

The Kansas City Southern Railway Company—Abandonment Exemption—In Jasper County, MO and Cherokee County, KS

The Kansas City Southern Railway Company (KCS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon two rail branch lines as follows: (1) The Baxter Springs Branch from milepost 139.01 L at the connection with the KCS main line to the end of the line at milepost 148.51 L near Crestline, KS, a distance of 9.50 miles, in Jasper County, MO and Cherokee County, KS; and (2) the Waco Branch from milepost W 139.80 at the connection with the KCS main line to the end of the line at milepost W 142.9, in Waco, MO, a distance of 2.69 miles, in Jasper County, MO.

KCS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 21, 1995 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 3, 1995.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 11, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Jay M. Nadlman, 114 West Eleventh Street, Kansas City, MO 64105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

The Rails to Trails Conservancy (RTC) supports the abandonment and seeks issuance of a notice of interim trail use/rail banking (NITU) under 16 U.S.C. 1247(d) covering the involved lines. RTC has submitted a statement of willingness to assume financial responsibility for the trail in compliance with 49 CFR 1152.29. KCS consents to this request and is willing to negotiate with RTC.

While expressions of interest in interim trail use need not be filed until 10 days after the date the notice of exemption is published in the **Federal Register** [49 CFR 1152.29(b)(2)], the provisions of 16 U.S.C. 1247(d) (Trails Act) are applicable, and all of the criteria for imposing trail use/rail banking have been met. Accordingly, based on KCS' willingness to enter into negotiations with RTC, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If a mutually acceptable final agreement is reached, further Commission approval is not necessary. If no agreement is reached within 180 days, KCS may fully abandon the lines. *See* 49 CFR 1152.29(d)(1).

Issuance of this NITU does not preclude other parties from filing interim trail use/rail banking requests. Nor does it preclude KCS from negotiating with other parties in addition to RTC during the NITU negotiating period. If additional trail use requests are filed, KCS is directed to respond to them. Use of the rights-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

U.S.C. 10905. As stated in *Rail Abandonments—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) (Trails), offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use conditions.[4] Accordingly, if a formal expression of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this notice will be postponed 10 days beyond the effective date indicated here. In addition, the effective date may be further postponed at later stages in the OFA process. *See* 49 CFR 1152.27(e)(2) and (f). Finally, if the line is sold under the OFA procedures, the notice for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

KCS has filed an environmental report addressing the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 27, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, or other trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered:

1. Subject to the conditions set forth above, KCS may discontinue service, cancel tariffs for the lines on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice by date and docket number.

2. If an interim trail use/rail banking agreement is reached, then with respect to the rights-of-way, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify KCS from any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the rights-of-way.

3. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the rights-of-way

4. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, KCS may fully abandon the lines.

6. Provided no formal expression of intent to file an offer of financial assistance has been received, this notice of exemption and NITU will be effective on January 21, 1995.

Decided: December 15, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–31448 Filed 12–21–94, 8:45 am]

BILLING CODE 7035–01–P

[4] The statement in *Trails* that section 10905 does not apply to abandonment or discontinuance exemptions has since been superseded by our adoption of rules allowing OFAs in these exemption proceedings. *See* 49 CFR 1152.27

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–64]

Robert C. Davis, M.D., Revocation of Registration

On June 27, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to Robert C. Davis, M.D. (Respondent), an Order to Show Cause proposing to revoke Respondent's DEA Certificate of Registration, AD2917182, and to deny any pending applications for renewal of such registration. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4), based upon criminal convictions in the United States District Court, District of Utah. These criminal convictions included Medicaid, insurance and mail fraud counts, as well as some counts pertaining to prescribing controlled substances not for a legitimate medical purpose and not in the course of professional practice. The proposed action was also based upon Respondent's lack of state authorization to handle controlled substances in the State of Utah. 21 U.S.C. 824(a)(3).

The Order to Show Cause was sent to Respondent by registered mail and was received by him on July 5, 1994. Respondent filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner On August 3, 1994, the Government filed a motion for summary disposition based upon an order of the State of Utah, Department of Commerce, Division of Occupational and Professional Licensing (Licensing Board) which revoked Respondent's medical license and authority to handle controlled substances for an indefinite period, effective July 7, 1993. In his response to the Government's motion, Respondent argued that a hearing on this matter should be held because Respondent was appealing the criminal convictions on which the Licensing Board's revocation order was based and that Respondent would reapply for a medical license in the State of Utah if his convictions were overturned on appeal.

On August 19, 1994, in her opinion and recommended decision, the administrative law judge granted the Government's motion for summary disposition and recommended that Respondent's DEA Certificate of Registration, issued to him in Utah, be revoked based upon Respondent's current lack of state authorization to handle controlled substances in Utah. Neither party filed exceptions to the recommended decision.

On September 22, 1994, the administrative law judge transmitted the record to the Deputy Administrator. The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator finds that on July 7, 1994, the State of Utah, Department of Commerce, Division of Occupational and Professional Licensing issued an order revoking Respondent's medical license. As a result, he is not currently authorized by Utah to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* James H. Nickens, M.D., 57 FR 59847 (1992); Elliott F. Monroe,

M.D., 57 FR 23246 (1992); Bobby Watts, M.D., 53 FR 11919 (1988).

The administrative law judge granted the Government's motion for summary disposition. It is well-settled that when no question of fact is involved, or when the facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. Philip E. Kirk, M.D., 48 FR 32887 (1983); aff'd. sub nom *Kirk* v. *Mullen* 749 F.2d 297 (6th Cir. 1984); Alfred Tennyson Smurthwaite, N.D., 43 FR 11873 (1978); see also, *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

Respondent argues that the criminal convictions, which he maintains were the only basis of the Licensing Board's revocation order, could be overturned on appeal and that Respondent then would reapply and obtain his state medical license. This scenario is only speculation. Until the Licensing Board reinstates Respondent's medical license, the DEA does not have the statutory authority under the Controlled Substances Act to continue the registration of a practitioner unless that practitioner is currently authorized to handle controlled substances in the state where he is registered with the DEA.

The Deputy Administrator, having considered the entire record, adopts the administration law judge's opinion and recommended decision in its entirety. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AD2917182, previously issued to Robert C. Davis, M.D., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective December 12, 1994.

Dated: December 16, 1994

Stephen H. Greene,

Deputy Administrator

[FR Doc. 94-31406 Filed 12-21-94; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

December 19, 1994

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (P.L. 96-511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills ((202) 219-5095). Comments and questions about the ICRs listed below 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 10102, Washington, DC 20503 ((202) 395-7316).

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Uniform Health Insurance Claim Form; Explanation of Benefits.

OMB Number: 1215-0176.

Agency Number: UB-92.

Frequency: On occasion.

Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Form	Number of respondents	Average time per response	Hours
US-92	132,791	9 to 17 minutes	32,288
Explanation of benefit	10,671	7 minutes	1,225
Total burden hours			33,513

Description: The US-92 is used by providers to bill the Office of Workers Compensation Program for hospital based care provided to claimants.

Type of Review: Existing Collection in Use Without an OMB Control Number

Agency: Employment Standards Administration.

Title: Procedures for Handling of Discrimination Complaints Under Federal Employee Protection Statutes (29 CFR Part 24).

Frequency: On occasion.

Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour

Total Burden Hours: 100.

Description: Employees who believe they have been discriminated against by employers, in violation of whistleblower provisions in certain laws, for reporting unlawful practices that adversely affect the environment are required to place their allegations in writing so they may where appropriate, be investigated by the Department of Labor

Type of Review: *Revision*

Agency: Employment and Training Administration.

Title: Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations and as Fashion Models; Final Rule.

OMB Number: 1205-0310.

Agency Number: ETA 9035

Frquency: Recordkeeping; Reporting—Application Valid up to 3 years.

Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Number of Respondents: 85,000.

Estimated Time Per Respondent: 1.25 hours.

Total Burden Hours: 106,300.

Cross Reference: **Federal Register** of Tuesday, December 20 1994

Description: As noted in the Notice of Proposed Rulemaking, the public reporting burden for this collection of information is expected to increase, based upon the Department's operating experience, from an average of one hour per response to one and one-quarter hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and preparing the application. The reporting burden is expected to increase due to the proposed requirement that employers provide notice to H–1B nonimmigrants of the terms and conditions of employment. The employer will be required to attest that it has provided, or will provide, to each H–1B nonimmigrant a copy of the Labor Condition Application (LCA) under which they are employed no later than the date the H–1B nonimmigrant reports to work at the place of employment. This is the only amendment contained in the final rule which is expected to increase the reporting burden per response.

Further, at the request of a number of commenters, boxes have been added to Item 7(e), "Prevailing Wage Rate and Its Source." If the employer is relying on a prevailing wage determination obtained from a State Employment Security Agency (SESA), the employer will only be required to specify the rate and check the box marked "SESA," as opposed to writing the name of the agency. If the employer utilized some other source to determine the prevailing wage, the employer must specify the rate, check the box marked "Other," and specify such other source.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–31438 Filed 12–21–94; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Dance/Music Section) to the National Council on the Arts will be held on January 23–27, 1995. The panel will meet from 9:00 a.m. to 6:00 p.m. on January 23–26 and from 9:00 a.m. to 5:30 p.m. on January 27 in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on January 23 from 9:00 a.m. to 10:30 a.m. for a general program overview and on January 27 from 3:00 p.m. to 5:30 p.m. for a policy discussion.

Remaining portions of these meetings from 10:30 a.m. to 6:00 p.m. on January 23 and from 9:00 a.m. to 6:00 p.m. on January 24–26 and from 9:00 a.m. to 3:00 p.m. on January 27 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC, 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: December 14, 1994.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 94–31505 Filed 12–21–94; 8:45 am]

BILLING CODE 7537–01–M

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 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 meetings are 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 meetings 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 these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. Date: January 11, 1995
   Time: 9:00 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review Reference Materials applications in Ancient Studies, submitted to Division of Research Programs, for projects beginning after July 1, 1995.
2. Date: January 17, 1995
   Time: 9:00 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review Reference Materials applications in Asian, African & Near Eastern Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1995.
3. Date: January 19–20, 1995
   Time: 8:30 a.m. to 5:00 p.m.
   Room: 430
   Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program, submitted to the Division of Public Programs, for projects beginning after July 1, 1995.
4. Date: January 20, 1995
   Time: 9:00 a.m. to 5:00 p.m.
   Room: 315
   Program: This meeting will review

Reference Materials applications in American Studies I, submitted to the Division of Research Programs, for projects beginning after July 1, 1995

5. Date: January 23, 1995
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications for National Heritage Preservation Program Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1995.

6. Date: January 24, 1995
Time: 9:00 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review Reference Materials applications in European Studies I, submitted to the Division of Research Programs, for projects beginning after July 1, 1995.

7 Date: January 26, 1995
Time: 9:00 to 5:00 p.m.
Room: 315
Program: This meeting will review Reference Materials applications in American Studies II, submitted to the Division of Research Programs, for projects beginning after July 1, 1995.

8. Date: January 26–27, 1995
Time: 8:30 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review applications submitted to the Humanities Projects in Museums and Historical Organizations program, submitted to the Division of Public Programs, for projects beginning after July 1, 1995.

9 Date: January 27, 1995
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications for National Heritage Preservation Program Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1995.

10. Date: January 30, 1995
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1995.

11 Date: January 31, 1995
Time: 9:00 a.m. to 5:00
Room: 315
Program: This meeting will review Reference Materials applications in General Reference Works, submitted to the Division of Research Programs, for projects beginning after July 1, 1995.

David Fisher,
Advisory Committee Management Officer.
[FR Doc. 94–31416 Filed 12–21–94; 8:45 am]
BILLING CODE 7536–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (American Film Institute Section) to the National Council on the Arts will be held on January 17, 1995. The panel will meet from 10:00 a.m. to 5:00 p.m. in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 10:00 a.m. to 10:15 a.m. for introductory remarks.

The remaining portion of this meeting from 10:15 a.m. to 5:00 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of Section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to disability, please contact the Officer of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5439.

Dated: December 14, 1994.

Yvonne M. Sabine,
Director, Office of Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 94–31506 Filed 12–21–94; 8:45 am]
BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions Panel B Section) to the National Council on the Arts will be held on February 7–10, 1995. The panel will meet from 9:00 a.m. to 6:00 p.m. on February 7; from 8:30 a.m. to 7:00 p.m. on February 8–9; and from 8:30 a.m. to 5:30 p.m. on February 10 in Room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 4:30 p.m. to 5:30 p.m. on February 10 for a policy discussion.

Remaining portions of this meeting from 9:00 a.m. to 6:00 p.m. on February 7; from 8:30 a.m. to 7:00 p.m. on February 8–9; and from 8:30 a.m. to 4:30 p.m. on February 10 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5439.

Dated: December 16, 1994.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 94–31508 Filed 12–21–94; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions Panel A Section) to the National Council on the Arts will be held on January 24–27, 1995. The panel will meet from 9 a.m. to 6 p.m. on January 24; from 8:30 a.m. to 7 p.m. on January 25–26; and from 8:30 a.m. to 5:30 p.m. on January 27 in Room M14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:30 p.m. to 5:30 p.m. on January 27 for a policy discussion.

Remaining portions of this meeting from 9 a.m. to 6 p.m. on January 24; from 8:30 a.m. to 7 p.m. on January 25–26; and from 8:30 a.m. to 4:30 p.m. on January 27 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: December 16, 1994.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 94–31507 Filed 12–21–94; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting Advisory Panel (Commissioning Projects Section) to the National Council on the Arts will be held on January 23–27, 1995. The panel will meet from 9:00 a.m. to 6:30 p.m. on January 23–25; from 9:00 a.m. to 5:30 p.m. on January 26; and from 9:00 a.m. to 5:00 p.m. on Janaury 27 in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 2:00 p.m. to 5:00 p.m. on January 27 for a policy discussion and guidelines review.

Remaining portions of this meeting from 9:00 a.m. to 6:30 p.m. on January 23–25; from 9:00 a.m. to 5:30 p.m. on January 26; and from 9:00 a.m. to 2:00 p.m. on January 27 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington DC., 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC., 20506, or 202/682–5439.

Dated: December 16, 1994.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 94–31509 Filed 12–21–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 USC 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1993 and ending September 30, 1994.

Name and Title

Richard L. Ahearn—Regional Director, Region 3
Robert E. Allen—Associate General Counsel, Advice
Frank V. Battle—Deputy Director of Administration
Mary Joyce Carlson—Deputy General Counsel
Harold J. Datz—Chief Counsel to Board Member
David S. Davidson—Chief Administrative Law Judge
Peter B. Hoffman—Regional Director, Region 34
Susan Holik—Chief Counsel to Board Member
Gloria Joseph—Director of Administration
Barry J. Kearney—Deputy Associate General Counsel, Advice
Joseph E. Moore—Deputy Executive Secretary
Linda R. Sher—Acting Associate General Counsel, Enforcement Litigation
W. Garrett Stack—Associate General Counsel, Operations-Management
William Stewart—Chief Counsel to the Chairman
Elinor H. Stillman—Chief Counsel to Board Member
Berton B. Subrin—Director, Office of Representation Appeals
John C. Truesdale—Executive Secretary
Dennis P. Walsh—Chief Counsel to Board Member
Jeffrey D. Wedekind—Acting Solicitor

Dated: Washington, DC, December 16, 1994.

By Direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 94–31487 Filed 12–21–94; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by January 23, 1994. Copies of materials may be obtained at the NSF address or telephone number shown below.

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Contract, Policy, and Oversight, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, or by telephone (703) 306–1243.

Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: NSF 1995 Survey of Public Understanding of Science.

Affected Public: Individuals.

Respondents/Reporting Burden: 2,000 respondents: .366 hours per response.

Abstract: The data collected in this survey is needed for inclusion in the Congressionally-mandated report *Science and Engineering Indicators.* It will enable the NSF to provide information related to assessing the levels of public interest in, understanding of, and views of the impact of science and technology, to decisionmakers of government, private industry and academic institutions.

Dated: December 19, 1994.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 94–31442 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemical and Transport Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (#1190).

Date and Time: January 13, 1995—8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, room 580, Arlington, Virginia 22230, (703) 306–1370.

Type of Meeting: Closed.

Contact Person: Dr. M.C. Roco and Dr. Robert L. Powell, Program Directors, Fluid, Particulate, & Hydraulic Systems, CTS, room 525, National Science Foundation, 4201 Wilson Blvd., Arlington, VA. Telephone: (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial research.

Agenda: To review and evaluate nominations for the NSF Research Equipment Grants proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: December 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31476 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems: Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date and Time: January 10, 1995—9:00 a.m. to 3:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA. Telephone: (703) 306–1360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Civil and Mechanical Systems NSF Career proposals.

Reasons for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: December 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31478 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities (1193).

Date and Time: January 13, 1995; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370 and 390 Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Tse-yun Feng, Program Director, CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Postdoctoral proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31482 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for CISE Research Infrastructure Panel Meeting (1193).

Date and Time: January 20, 1995; 8:30 a.m.–5 p.m.

Place: Room 1150.

Type of Meeting: Closed.

Contact Person(s): Caroline Wardle, Program Director CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information

concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 18, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31472 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119—Committee of Visitors for RED).

Date and Time: January 12, 1995; 8:30 a.m. to 5:00 p.m. January 13, 1995; 8:30 a.m. to 5:00 p.m.

Place: Room 880, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Ms. Barbara Lovitts, Associate Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1652.

Purpose of Meeting: To provide oversight review of the Research in Teaching and Learning Program, RED.

Agenda: To carry out Committee of Visitors review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: December 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31481 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical & Communications Systems (1196).

Date & Time: January 10–11, 1995.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 580, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Chen-Ching Liu, Program Director, Power Systems Division of Electrical and Communications Systems, Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Faculty Early Career Development (Career) Program and Research Equipment Grants (REG) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: December 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31471 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications System; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and Time: January 19, 1995; 8:30 am to 5:00 pm.

Place: Room 370, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. William H. Carter, Program Director, Quantum Electronics, Waves and Beams, Division of Electrical and Communications Systems, NSF, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230, Telephone: (703) 306–1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Faculty Early Career Development (CAREER) Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b, (c)(4) and (6) the Government in the Sunshine Act.

Dated: December 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31473 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences: Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (#1756).

Date and Time: January 11, 1995—8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, Room 730, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Richard B. Lambert, Jr., Program Director, Physical Oceanography Program, Division of Ocean Sciences, Room 725, National Science Foundation, 4201 Wilson Blvd., Arlington, VA. Telephone: (703) 306–1583.

Purpose of Committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF Division of Ocean Sciences.

Agenda: To review and evaluate a proposal for Ocean Science Research in the Atlantic Ocean as part of the selection process for awards.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31470 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development #1199.

Date and Time: January 9 and 10, 1995—8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA. Rooms: 320 and 360.

Type of Meeting: Closed.

Contact Person: Betty Jones and Costello Brown, National Science Foundation, 4201

Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1640.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Programs for Partnerships for Minority Student Achievement and Comprehensive Regional Centers for Minorities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31475 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure (NCRI); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research (#1207).

Date and Time: January 12, 1995; 8:30 a.m. to 5:00 p.m.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mr. Daniel VanBelleghem, NCRI, National Science Foundation, Room 1175, Arlington, VA 22230 (703 306–1949).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for NSFNET Connections Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 19, 1994.

M. Rebecca Winkler,

Committee Management.

[FR Doc. 94–31480 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Social, Behavioral & Economic Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral & Economic Sciences (#1171).

Date and Time: January 9–10, 1995—8:00 a.m. to 6:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, Virginia 22230

Type of Meeting: Open.

Contact Person: Edward O. Murdy, Division of International Programs, Suite 935, National Science Foundation, 4201 Wilson Blvd., Arlington VA. Telephone: (703) 306–1707.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources in the areas of the social, behavioral and economic sciences.

Agenda: Role and direction of the NSF Directorate for Social, Behavioral and Economic Sciences.

Dated: December 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31477 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Social, Behavioral and Economic Sciences, Notice of Meeting; Committee of Visitors Meeting for Anthropology Programs

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Advisory Committee for Social, Behavioral and Economic Sciences (#1171).

Date and Time: January 12–13, 1995, 9:00 a.m.—5:00 p.m.

Place: Room 970, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contract Person: John E. Yellen, Acting Deputy Director, Division of Social, Behavioral, and Economic Research, National Science Foundation, 4201 Wilson Boulevard, Room 995 Arlington, VA 22230. Telephone: (703) 306–1759.

Purpose of Meeting: To provide oversight review of the anthropology program awards and declines.

Agenda: To review and evaluate anthropology award and decline practices.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential natural, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31474 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Systemic Reform; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Code: Special Emphasis Panel in Systemic Reform.

Date and Time: January 8, 1995 (7–9pm); January 9–12 (8am–2:15pm).

Place: NSF, 3rd Floor, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Janice Earle, Carolyn Mahoney, or Julia Wan, Program Directors, Statewide Systemic Initiatives, Room 875, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1682.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: A reverse site visit to review awards for future proposal funding for the Statewide Systemic Initiatives Program as part of the selection process for continuing awards.

Reason for Closing: The awards being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the awards. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 19, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–31479 Filed 12–21–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

In the Matter of All Reactor Licensees With Installed Thermo-Lag 330–1 Fire Barrier Material Receipt of Petitions for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by separate letters dated October 21, 1994, the GE Stockholders' Alliance and Dr. D.K. Cinquemani; by letter dated October 25, 1994, the Toledo Coalition for Safe Energy; and by letter dated October 26, 1994, R. Benjan (Petitioners)

request that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the use of Thermo-Lag by all reactor licensees and that their letters be treated as Petitions pursuant to § 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR).

Dr. Cinquemani and Toledo Coalition for Safe Energy request that the NRC immediately shut down all reactors where Thermo-Lag is used until it has been removed and replaced. GE Stockholders' Alliance requests shutdown of all reactors where Thermo-Lag is used until it has been removed and replaced with fire-retardant material meeting NRC standards. R. Benjan requests immediate shutdown of all reactors where Thermo-Lag is used.

As the bases for their requests, the Petitioners state, either individually or collectively, that

(1) the widespread use of Thermo-Lag, in more than 70 reactors, presents a safety crisis;

(2) the NRC has known since 1982 that Thermo-Lag fails NRC performance standards for material that protects vital electrical cables for ampacity rating and fire resistance;

(3) Thermo-Lag has failed not only NRC tests, but almost all other independent tests;

(4) Thermo-Lag is combustible, contrary to NRC regulations, and is an ineffective fire barrier;

(5) the use of Thermo-Lag could lead to shorts, to failure of the cables in an emergency, and to fire;

(6) Thermo-Lag is faulty in that fraudulent ampacity ratings allowed utilities to use smaller cable than permitted by design requirements, causing the cable to overheat and its insulation to deteriorate;

(7) the NRC has stated that fire at some nuclear power plants can contribute as much as 50 percent of the risk to a core meltdown, and a typical reactor will have three to four significant fires during its licensed lifetime;

(8) Thermal Science, Inc., the manufacturer of Thermo-Lag, and its president were indicted by Federal grand jury on seven criminal charges related to conspiracy to defraud the U.S. Government in regard to the effectiveness of Thermo-Lag; and

(9) the hourly fire watches at the Davis-Besse Nuclear Power plant operated by Toledo Edison do not replace fire barrier material and do not prevent fires.

The Petitions are being treated pursuant to 10 CFR 2.206 of the Commissions regulations and have been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on these petitions within a reasonable time. By letter dated December 15, 1994, the Director denied the requests of GE Stockholders' Alliance, Dr. Cinquemani, Toledo Coalition for Safe Energy, and R. Benjan for immediate suspension of the operating licenses of all reactors where Thermo-Lag is used.

Copies of the Petitions are available for inspection at the Commission's Public Document Room at 2120 L Street, NW, Washington, DC.

Dated at Rockville, Maryland, this 15th day of December 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–31444 Filed 12–21–94; 8:45 am]

BILLING CODE 7590–01–M

Atomic Energy of Canada, Limited Technologies Receipt of Application for Design Certification

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application from Atomic Energy of Canada, Limited Technologies dated September 30, 1994, filed pursuant to Section 103 of the Atomic Energy Act and 10 CFR Part 52, for the standard design certification of the CANDU 3U Pressurized Heavy Water Reactor Plant. A notice relating to the rulemarking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be published in the future.

The CANDU 3U is a 450 MWe pressurized heavy water reactor design. A unique feature that distinguishes the CANDU 3U from the current generation of light water reactors designed in the United States is the use of natural uranium fuel contained in a pressurized heavy water coolant system and a separate heavy water moderator system. The CANDU 3U application includes the entire power generation complex, except those elements and features considered site specific.

The staff has determined that the application does not contain all information required by 10 CFR 52.47. A docket number is being assigned to the application to facilitate public access to correspondence and review information. Although no formal review schedule will be established until an updated Safety Analysis Report and schedules for all information required has been received, the NRC staff will continue limited review of the application. This is consistent with the letter of September 30, 1994, " . . . that no major activity will be initiated by the NRC beyond the acceptance review . . . ."

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. Previous correspondence on this application is filed under Project number 679. The new docket established for this application is STN–52–005.

Dated at Rockville, Maryland, this 15th day of December 1994.

Dennis M. Crutchfield,

Associate Director for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 94–31445 Filed 12–21–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–387 & 50–388]

Susquehanna Steam Electric Station Units 1 & 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–14 & NPF–22 issued to Pennsylvania Power & Light Company for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would add the Special Test Exception 3/4.10.6, "Inservice Leak and Hydrostatic Testing," that allows the performance of pressure testing at reactor coolant temperature up to 212°F while remaining in OPERATIONAL CONDITION 4. This special test exception would also require that certain OPERATIONAL CONDITION 3 Specifications for Secondary Containment Isolation, Secondary Containment Integrity and Standby Gas Treatment System operability be met. This change would also revise the Index, Table 1.2, "OPERATIONAL CONDITIONS," and the Bases to incorporate the reference to the proposed special test exception.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the

amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1 Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are requested to allow inservice leak and hydrostatic testing, with the reactor in OPERATIONAL CONDITION 4 and the average reactor coolant temperature up to 212°F. The change to allow inservice leak and hydrostatic testing in OPERATIONAL CONDITION 4 will not increase the probability or the consequences of an accident. The probability of a leak in the reactor coolant pressure boundary during inservice leak and hydrostatic testing is not increased by considering the reactor in OPERATIONAL CONDITION 4. The hydrostatic or inservice leak test is performed water solid or near water solid, and temperatures less than or equal to 212°F. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, secondary containment will be operable and capable of handling airborne radioactivity from leaks that could occur during the performance of hydrostatic or inservice leak testing. Requiring the secondary containment to be operable will ensure that potential airborne radiation from leaks will be filtered through the Standby Gas Treatment System, thus limiting radiation releases to the environment. Therefore, the change will not significantly increase the consequences of an accident.

In the event of a large primary system leak, the reactor vessel would rapidly depressurize allowing the low pressure ECCS systems to operate. The capability of the systems that are required for OPERATIONAL CONDITION 4 would be adequate to keep the core flooded under this condition. Small system leaks would be detected by leakage inspections before significant inventory loss occurred. This is an integral part of the hydrostatic testing program. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Allowing the reactor to be considered in OPERATIONAL CONDITION 4 during hydrostatic or leak testing, with a reactor coolant temperature of up to 212°F, is an exception to certain OPERATIONAL CONDITION 3 requirements, including primary containment integrity and total Emergency Core Cooling System operability. The hydrostatic or inservice leakage test is performed water solid, or near water solid, and coolant temperature less than or equal to 212°F. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, the secondary containment will be operable and capable of handling airborne radioactivity from leaks that could occur during the performance of hydrostatic or inservice leakage testing.

The inservice leak or hydrostatic test conditions remain unchanged. The potential for a system leak remains unchanged since the reactor coolant system is designed for temperatures exceeding 500°F with similar pressures. There are no alternations of any plant systems that cope with the spectrum of accidents. The only difference is that a different subset of systems would be utilized for accident mitigation from those of OPERATIONAL CONDITION 3. Therefore, this change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change allows inservice leak and hydrostatic testing to be performed with a reactor coolant temperature up to 212°F and the reactor in OPERATIONAL CONDITION 4. Since the reactor vessel head will be in place, secondary containment integrity will be maintained and all systems required in OPERATIONAL CONDITION 4 will be operable in accordance with the Technical Specifications, the proposed change will not have any significant impact on any design bases accident or safety limit. The hydrostatic or inservice leak testing is performed water solid, or near water solid, and temperature less than or equal to 212°F. The stored energy in the core is very low and the potential for failed fuel and a subsequent increase in coolant activity would be minimal. The reactor pressure vessel would rapidly depressurize in the event of a large primary system leak and the low pressure injection systems required to be operable in OPERATION-CONDITION 4 would be adequate to keep the core flooded. This would ensure that the fuel would not exceed the 2200°F peak clad temperature limit.

Also requiring secondary containment integrity will assure that potential airborne radiation can be filtered through the SGTS. This will assure that offsite does remain well within the limits of 10 CFR 100 guidelines. Small system leaks would be detected by inspections before significant inventory loss could occur. Therefore, this special test exception will not involve a significant reduction in safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication data and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North,

11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 23, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors; (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The Petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the basis of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(l)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 21, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 19th day of December 1994.

For the Nuclear Regulatory Commission.

Chester Poslusny, Sr.,

Project Manager, Project Directorate I–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–31446 Filed 12–21–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328; Docket Nos. 50–259, 260 and 296; Docket Nos. 50–390 and 391]

In the Matter of Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Watts Bar Nuclear Plant, Units 1 and 2; Exemption

I

The Tennessee Valley Authority (TVA or the licensee) is the holder of Facility Operating License Nos. DPR–33, DPR–52, DPR–68, DPR–77, DPR–79 for the Browns Ferry Nuclear Plant Units 1, 2 and 3 (BFN) and the Sequoyah Nuclear Plant Units 1 and 2 (SQN), respectively. For the Watts Bar nuclear Plant Units 1 and 2 (WBN), TVA is the holder of Construction Permits CPPR–91 and CPPR–92, respectively, since Operating Licenses have not been issued. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission in effect now and hereafter.

The facilities consist of two pressurized water reactors at Sequoyah Nuclear Plant Units 1 and 2, located in Soddy Daisy, Tennessee; three boiling water reactors at Browns Ferry Nuclear Plant, Units 1, 2 and 3, located in Limestone County, Alabama; and two pressurized water reactors under construction at Watts Bar Nuclear Plant, Units 1 and 2, located at TVA's site on the west bank of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

II

Title 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), in part, states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area . . ."

TVA has proposed to implement an alternative unescorted access control system that would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated October 24, 1994, TVA requested an exemption from the requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Currently, unescorted access into the protected areas at the operating TVA plants is controlled through the use of a photograph on a badge/keycard (hereafter, referred to as "badge"). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both TVA employees and contractor personnel who have been granted unescorted access are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractors are not allowed to take these badges offsits.

Under the proposed biometric system, each individual who is authorized unescorted entry into protected areas would have the physical characteristics of his/her hand (i.e., hand geometry) registered, along with his/her badge number, in the access control system. When a registered user enters his/her badge into the card reader and places his/her hand onto the measuring surface, the system detects that the hand is properly positioned, and records the image. The unique characteristics of the hand image is then compared with the previously stored template in the access control computer system corresponding to the badge to verify authorization for entry.

Individuals, including TVA employees and contractors, would be allowed to keep their badge with them when they depart the site and, thus, eliminate the need to issue, retrieve and store badges at the entrance stations to the plant. Badges do not carry any information other then a unique identification number. All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access; i.e., visitors.

Based on a Sandia report entitled, "A Performance Evaluation of Biometrics Identification Devices" (SAND91 0276 UC—906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, TVA determined that the false-accept rate for the hand geometry system will be at least equal to the current photo-identification system in used at the TVA plants. The biometric system has been in use for a number of years at several sensitive Department of Energy facilities and, recently, at nuclear power plants.

TVA will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. When the changes are implemented, the respective Physical Security Plans will be revised to include implementation and testing of the hand geometry access control system and to allow TVA employees and contractors to take their badges offsite.

When implemented, TVA will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and hand geometry verification system. The numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected area.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide a positive verification process. The potential loss

of a badge by an individual as a result of taking the badge offsite would not enable an unauthorized entry into protected areas.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by TVA, i.e., contractors, who are authorized unescorted access into the protected areas at the Browns Ferry, Sequoyah, and Watts Bar Nuclear Plants can take their badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (59 FR 61351).

For further details with respect to this action, see the request for exemption dated October 24, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Athens Public Library, South Street, Athens, Alabama (for the BFN Plant), and at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402 (for the SQN and WBN Plants).

This exemption is effective upon issuance. It is expected to be implemented for each plant separately when modifications, procedures, and training are completed at the respective plant.

Dated at Rockville, Maryland this 15th day of December 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–31443 Filed 12–21–94; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of amendment and addition of new routine uses for existing system of records.

SUMMARY: This notice provides information for public comment on the Postal Service's proposal to amend USPS Privacy Act System 050.005—Finance Records—Accounts Receivable Files Maintenance. The Postal Service proposes to delete one category of individuals covered by the system, to make minor editorial changes for clarity, and to add four new routine uses.

The new routine uses will permit the Postal Service to disclose to other federal agencies certain information identifying Postal Service debtors and to implement new procedures that will facilitate recovery of those debts. The proposed new routine uses will enable the Postal Service to participate in a computer matching program with the Department of Defense to identify Postal Service debtors employed by other federal agencies, to initiate salary offset where appropriate, and to initiate income tax refund offset for non-federal employee debtors. In addition, a new routine use will enable the Postal Service to use the taxpayer address verification process of the Internal Revenue Service (IRS).

This notice complies with subsection (e)(11) of the Privacy Act, which requires agencies to publish advance notice of any new use of information in a system of records.

DATES: Any interested party may submit written comments on the proposed amendments. This proposal will become effective without further notice January 23, 1995, unless comments are received on or before that date that result in a contrary determination.

ADDRESSES: Written comments should be mailed or delivered to the Records Office, U.S. Postal Service, Room 8831, 475 L'Enfant Plaza, SW, Washington, DC 20260–5240. Copies of all written comments will be available for inspection and photocopying between 8:15 a.m. and 4:45 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Sheila Allen, Records Office, (202) 268–4869.

SUPPLEMENTARY INFORMATION: The Postal Service is expanding its debt recovery procedures in order to recover more of its delinquent debt. To do so, the Postal Service plans to participate in the federal salary offset program administered by the Financial Management Service, Office of the Treasury, and the federal income tax refund offset and taxpayer address verification programs administered by the IRS. The amendments proposed here are necessary to implement the new procedures in compliance with the Privacy Act of 1974, as amended. A full description of USPS Privacy Act System 050.005 was last published at 54 FR 43667, dated October 26, 1989, and amended at 57 FR 57516, dated December 4, 1992.

The Postal Service is modifying the name of this system of records to "Accounts Receivable Files," a more comprehensive name that better describes the system of records.

The Postal Service is deleting from Categories of Individuals Covered by the System those customers whose checks are returned by the bank. These types of debts are no longer included in the Accounts Receivable automated system as part of the system of records. Accordingly, each such customer's bank name and account number, date and amount of check, and identifying number from driver's license, passport, or military ID are being deleted from Categories of Records in the System.

The Postal Service is adding four new routine uses for USPS Privacy Act System 050.005. Proposed new routine use number 4 of this system provides for the disclosure of the names and social security numbers of Postal Service debtors to the Defense Manpower Data Center (DMDC) of the Department of Defense for conducting a computer matching program to identify and locate debtors who are federal employees in order to initiate salary offset procedures. Proposed new routine use number 5 provides for the disclosure of debtor-identifying information to any federal agency where the debtor is employed to enable that agency to collect the debt on behalf of the Postal Service through salary offset. Proposed new routine use number 6 provides for the disclosure of debtor-identifying information to the IRS through computer matching to obtain the current mailing addresses of non-federal employee taxpayers for locating the taxpayers to collect postal debts. Proposed new routine use number 7 provides for the disclosure of debtor-identifying information to the IRS to enable the IRS to collect the debt on behalf of the Postal Service through income tax refund offset.

Because the above disclosures each will assist in the recovery of Postal Service debt, these new routine uses are clearly compatible with the purposes for which records are maintained in USPS

Privacy Act System 050.005. The above-described amendments and the addition of these routine uses require submission of an altered system report; the report was submitted to the Office of Management and Budget and both houses of Congress 10 days before publication of this notice.

Accordingly, the Postal Service proposes amending USPS Privacy Act System 050.005 as shown below.

USPS 050.005

SYSTEM NAME:

Change to read:

Finance Records—Accounts Receivable Files, 050.005.

SYSTEM LOCATION:

Change to read:

Information Service Centers (Minneapolis, San Mateo, and St. Louis), postal facilities, and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Change to read:

Postal Service debtors such as the following: Contractors who fail either to provide equipment, supplies, or services to the Postal Service as agreed or to purchase property from the Postal Service as agreed; payees of money orders who make an erroneous payment, improper payment, or overpayment; employees or former employees who make an erroneous payment, improper payment, or overpayment; employees, former employees, or private parties who lose or damage Postal Service property through carelessness, negligence, or malice.

CATEGORIES OF RECORDS IN THE SYSTEM:

Change to read:

Debtor's name, address, telephone number, and social security number; invoice number; designation code; and location name.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Add the following:

4. Disclosure of information about individuals indebted to the Postal Service may be made to the Defense Manpower Data Center (DMDC) of the Department of Defense for conducting an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, for the purpose of identifying and locating such individuals in order to initiate collection of the debts under the Debt Collection Act of 1982 (Pub. L. 97–365) through salary and/or administrative offset procedures.

5. Disclosure of information about individuals indebted to the Postal Service may be made to any federal agency where the debtor is employed or receiving some form of remuneration for enabling that agency to collect the debt on behalf of the Postal Service by counseling to debtor for voluntary repayment, or by initiating administrative or salary offset procedures under the Debt Collection Act of 1982.

6. Disclosure of information about individuals indebted to the Postal Service may be made to the Internal Revenue Service (IRS) through computer matching to obtain the mailing address of a taxpayer for locating such taxpayer to collect a debt owed to the Postal Service pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3717, and 3718.

Note: Disclosure of a mailing address obtained from the IRS may be made only for debt collection, including to a debt collection agency in order to facilitate the collection of a federal claim under the Debt Collection Act of 1982. A mailing address may be provided to a consumer reporting agency for the limited purpose of obtaining a commercial credit report on the individual taxpayer. Any such address information obtained from the IRS will not be used or shared for any other purpose by the Postal Service.

7. Disclosure of information about individuals indebted to the Postal Service may be made to the IRS for effecting income tax refund cffset procedures against the debtor pursuant to 31 U.S.C. 3720A.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–31397 Filed 12–21–94; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–20772; 812–9192]

The Charles Allmon Trust, Inc., et al.; Notice of Application

December 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Charles Allmon Trust, Inc. (the "Trust") and Liberty Asset Management Company ("LAMCO").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The Trust and LAMCO, for themselves and on behalf of present and future sub-advisers of the Trust, request a conditional order of exemption from section 15(a) of the Act with respect to the portion of the Trust's assets subject to LAMCO's supervision. The requested order would let the Trust and LAMCO change or add sub-advisers, or continue the services of a sub-adviser following an assignment of its sub-advisory agreement, and delay shareholder approval of the new sub-advisory agreements with such sub-advisers until the Trust's next annual meeting of shareholders.

FILING DATES: The application was filed on August 22, 1994, and an amendment to the application was filed on November 3, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 9, 1995, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants: The Trust, 4405 East-West Highway, Bethesda, MD 20814; LAMCO, Federal Reserve Plaza, Boston, MA 02210.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a closed-end diversified management investment company whose shares are listed and traded on the New York Stock Exchange ("NYSE"). In accordance with NYSE rules, the Trust holds annual meetings of shareholders. LAMCO, an indirect wholly-owned subsidiary of Liberty Mutual Insurance Company, is a

registered investment adviser under the Investment Advisers Act of 1940.

2. From its inception in 1986 through May 27, 1994, the Trust's sole investment manager and administrator was Growth Stock Outlook Inc. ("GSO"). On May 27, 1994, following shareholder approval, the Trust entered into a fund management agreement with LAMCO. Under the terms of that agreement, LAMCO provides a "multi-manager" methodology of portfolio management with respect to an initial amount equal to 20% of the Trust's total net assets (the "Multi-Managed Assets"). The remainder of the Trust's assets are managed by GSO acting under a separate investment advisory agreement.

3. The Multi-Managed Assets may be increased or decreased as a result of investment income, gains or losses on such assets, and dividends, distributions and operating expenses payable on such assets. In addition, under the terms of an Asset Acquisition and Fund Management Transition Agreement dated February 9, 1994, among LAMCO, GSO and GSO's principal stockholder, it is contemplated that, subject to certain conditions that must be met prior to the Trust's 1996 annual meeting of shareholders, a new fund management agreement may be entered into with LAMCO with respect to all the assets of the Trust.

4. LAMCO has allocated the Multi-Managed Assets on an approximately equal basis among three independent investment management firms (the "Sub-Advisers") acting under identical sub-advisory agreements with the Trust and LAMCO approved by shareholders at their May 27, 1994 meeting. LAMCO selected and recommended the Sub-Advisers using certain specific criteria. In that regard, each of the present and future Sub-Advisers must consistently employ a distinct, identifiable investment style that differs from those of the other Sub-Advisers. Further, the range of styles must be sufficiently broad so that at least one of them may be expected to be in favor in all reasonably foreseeable market conditions. Finally, each Sub-Adviser's longer-term investment performance must be satisfactory when compared to other investment management firms employing a similar style. The goal of this multi-manager methodology as applied to the Multi-Managed Assets is to produce better investment performance over time with less volatility than that of the average single-manager fund with the same investment objective and policies.

5. LAMCO continuously reviews the performance of the Sub-Advisers to identify the presence of factors or conditions that would tend to neutralize the effect of the multi-management methodology as applied to the Multi-Managed Assets, such as a departure by a Sub-Adviser from its investment style, a deterioration in its investment performance relative to that of other investment management firms employing similar styles, or an adverse change in its personnel or organization. Based upon its review, LAMCO recommends appropriate changes in Sub-Advisers.

6. Each new sub-advisory agreement would affect no more than approximately one-third of the Multi-Managed Assets. Accordingly, no more than approximately one-third of 20% of the Trust's total net assets currently will be affected by any one Sub-Adviser change. In the future, because the amount of the Trust's total net assets represented by the Multi-Managed Assets may increase or decrease in a manner described in paragraph 3 above, any one Sub-Adviser change may affect a greater or lesser amount of the Trust's total net assets, but never more than approximately one-third of the Trust's total net assets.

7. In addition, each new sub-advisory agreement would contain substantially the same terms and conditions as the existing sub-advisory agreements for the Multi-Managed Assets. A new Sub-Adviser's fee can be no higher than that provided in the Trust's three existing sub-advisory agreements. In the event that fees under the new sub-advisory agreement are less than in the existing agreements, the difference will be passed on to the Trust through a corresponding reduction in the fund management fee payable to LAMCO.

8. None of the Sub-Advisers has any affiliation with the Trust or LAMCO other than as Sub-Adviser. The responsibility of the Sub-Advisers under their respective sub-advisory agreements is limited to the discretionary investment management of the respective portions of the Multi-Managed Assets assigned to them by LAMCO from time to time, and related record keeping and reporting. The Multi-Managed Assets are and will be allocated and periodically rebalanced so as to maintain an approximately equal allocation of such assets among the Sub-Advisers.

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract, whether with such registered company or with an investment adviser of such registered company, which has been approved by the majority vote of the outstanding voting securities of such registered company. Section 15(a)(4) also requires that the investment advisory contract provide, in substance, for its automatic termination in the event of its assignment.

2. Rule 15a–4 under the Act permits an investment adviser to an investment company to act under an agreement not approved by shareholders for up to 120 days after the termination of an investment advisory agreement resulting from certain specified events. Applicants claim, however, that rule 15a–4 does not provide adequate relief to the Trust. For one thing, a change in Sub-Advisers may occur more than 120 days before the next regularly scheduled annual meeting, resulting in the necessity of a special meeting of shareholders. In addition, rule 15a–4 does not apply at all to an investment advisory agreement entered into following a termination of the prior agreement caused by an assignment in which the investment adviser or its controlling person receives an economic benefit.

3. Applicants submit that requiring shareholder approval consistent with section 15(a) before changing a Sub-Adviser or before continuing the services of an existing Sub-Adviser following an assignment of its sub-advisory agreement results in substantial delay or expense to the Trust, without any corresponding benefit in terms of shareholder protection.

4. Applicants assert that, because of the lack of affiliation between LAMCO and the Sub-Advisers (unlike conventionally structured single-manager investment companies), LAMCO has no interest other than the efficient and effective functioning of the Trust's multi-manager methodology and the enhancement of the Trust's investment performance when recommending the replacement or addition of a Sub-adviser or the continuation of the services of the Sub-Adviser following an assignment of its sub-advisory agreement. Furthermore, Applicants represent that neither LAMCO nor any of its affiliates will be parties to the acquisition or other transaction giving rise to the termination and assignment of the sub-advisory agreement and, consequently, will not receive any economic benefit in connection with such transaction.

5. Applicants also assert that the terms and conditions of the Trust's

"employment" of its Sub-Advisers will in effect have already been approved by shareholders because any new sub-advisory agreements will be identical in all material respects to the existing agreements which have been approved by shareholders, with no increase in expense to the Trust.

6. Applicants further assert that, in view of the limited function of the Sub-Advisers and the fact that no more than approximately one-third of the Multi-Managed Assets will be affected by any one Sub-Adviser change, addition or continuation, the Trust's shareholders are significantly less dependent on any one Sub-Adviser than are the shareholders of a conventionally structured single manager fund. As a result, the need for the protection provided by the shareholder approval requirement of section 15(a) is correspondingly less.

7. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are necessary or approximate in the public interest and consistent with the protection of investors and the purposes fairly intended by he policy and provisions of the Act. Applicants submit that the requested exemptive relief from section 15(a) would be consistent with the standards set forth in section 6(c) of the Act and would be in the best interests of the Trust and its shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each new sub-advisory agreement will be submitted for ratification and approval to the vote of the Trust's shareholders no later than at the regularly scheduled annual meeting of shareholders of the Trust next following the effective date of the new sub-advisory agreement, and its continuance after such meeting will be conditioned on approval by the required majority vote of such shareholders.

2. The Trust will continue to hold annual meetings of its shareholders, whether or not required to do so by the rules of the NYSE or otherwise.

3. The directors of the Trust, in addition to approving the new sub-advisory agreement in accordance with the requirements of section 15(c) of the Act, will specifically determine that entering into the new sub-advisory agreement in advance of the next regular annual meeting of shareholders of the Trust and without prior shareholder approval is in furtherance of the multi-manager methodology as applied to the Multi-Managed Assets and is in the best interests of the Trust and its shareholders.

4. The new sub-advisory agreement involved will, when entered into, affect no more than approximately one-third of the Multi-Managed Assets.

5. The new Sub-Adviser will have no affiliation with the Trust or LAMCO other than as Sub-Adviser, and will have no duties or responsibilities with respect to the Trust beyond the investment management of the portion of the Multi-Managed Assets allocated to it by LAMCO from time to time and related record keeping and reporting.

6. The new sub-advisory agreement will provide for a portfolio management fee no higher than that provided in the Trust's existing sub-advisory agreements with respect to the Multi-Managed Assets, and, except for the provisions relating to shareholder approval referred to in condition 1 above, will be on substantially the same other terms and conditions as such existing agreements. In the event that the new sub-advisory agreement provides for sub-advisory fees at rates less than those provided in the existing sub-advisory agreements, the difference will be passed on to the Trust and its shareholders through a corresponding voluntary reduction in the fund agreement fee payable by the Trust to LAMCO.

7. The appointment of the new or successor Sub-Adviser will be announced by press release promptly following the directors' action referred to in condition 3 above, and a notice of the new sub-advisory agreement, together with a description of the new or successor Sub-Adviser, will be included in the Trust's next report to shareholders.

8. LAMCO will provide overall supervisory responsibility for the general management and investment of the Multi-Manager Assets, subject to the Trust's investment objectives and policies and any directions of the Trust's directors. In particular, LAMCO will (i) provide overall investment programs and strategies for the Multi-Managed Assets, (ii) recommend to the Trust's directors investment management firms for appointment or replacement as Sub-Advisers for the Multi-Managed Assets, (iii) allocate and reallocate the Multi-Managed Assets among the Sub-Advisers, and (iv) monitor and evaluate the investment performance of the Sub-Advisers, including their compliance with the Trust's investment objectives, policies and restrictions.

9. In the case of a new sub-advisory agreement with an existing Sub-Adviser or its successor following an "assignment," as that term is defined in the Act and the rules thereunder, of the Trust's sub-advisory agreement with that Sub-Adviser, the Sub-Adviser (or its successor) or LAMCO will pay the incremental cost of including the proposal to approve or disapprove ratification of the new sub-advisory agreement in the proxy material for the Trust's next annual meeting of shareholders.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-31402 Filed 12-21-94; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-20774; 811-3860]

Wood Island Total Return Fund, Inc.; Notice of Application

December 15, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Wood Island Total Return Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 2, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 9, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Fourth Floor, 80 East Sir Francis Drake Boulevard, Larkspur, California 94939.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942-0574, or Robert A. Robertson, Branch Chief, at (202) 942-0564

(Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant Representations

1. Applicant, a California corporation and an open-end management investment company, registered under the Act on September 7, 1983. On September 30, 1993, applicant filed a registration statement to register its shares under the Securities Act of 1933. The registration statement became effective on September 30, 1983, and the initial public offering of its shares commenced promptly thereafter.

2. On October 12, 1994, subject to shareholder approval, applicant's board of directors unanimously determined that it was in the best interest of the shareholders to liquidate. The decision of the board was based primarily on the small size of the applicant; the resulting high ratio of expenses to average net assets and the difficulty in achieving the diversification and investment objectives. Accordingly, on or about October 24, 1994, proxy materials were distributed to shareholders. On November 1, 1994, the holders of a majority of the shares voted to take all necessary and advisable actions to effect the winding-up and dissolution of applicant's business. On November 18, 1994, all of applicants' outstanding shares were redeemed and payments were made at applicant's net asset value.

3. Distributions to all securityholders in complete liquidation of their interests have been made. Applicant incurred $894 in total brokerage commissions with respect to sales of its portfolio securities.

4. On October 24, 1994, there were issued and outstanding 196,764 shares of common stock having a net asset value of $9.08 per share and $1,786,617 in the aggregate.

5. Liquidation expenses of approximately $6,800 for transfer agency, accounting, custody, tax reporting and legal fees will be borne by Wood Island Associates, Inc., applicant's investment adviser.

6. As of the date of this application, applicant has no debts or liabilities and is not a party to any litigation or administrative proceeding. Applicant is neither engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

7. Applicant has filed all documents required to terminate its existence as a California corporation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-31403 Filed 12-21-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35)

DATES: December 15, 1994.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M-4, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366-735.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on December 15, 1994:

DOT No: 4016
OMB No: 2133-515
Administration: Maritime Administration
Title: Determination of Fair and Reasonable Guideline Rates for Carriage of Dry Bulk Preference Cargoes in Less than Shipload Lots on U.S.-flag Liner Vessels
Need for Information: Section 901(b)(1) of the Merchant Marine Act of 1936, as amended, requires that at least 50 percent of Government-sponsored cargo be shipped on U.S.-flag vessels to the extent such vessels are available at fair and reasonable rates.
Proposed Use of Information: The information will be used to calculate fair and reasonable guideline rates for U.S.-flag commercial vessels carrying preferences cargoes.
Frequency: On occasion, annually
Burden Estimate: 176 hours
Respondents: Ship operators
Form(s): None
Average Burden Hours Per Response: 5 hours and 30 minutes reporting

DOT No: 4017
OMB No: 2137-034
Administration: Research and Special Programs Administration
Title: Hazardous Materials Shipping Papers
Need for Information: The Department of Transportation has the legal authority under the Transportation Act of 1974 (Public Law 93-33) to establish criteria for the transportation of hazardous materials in commerce.
Proposed Use of Information: Shipping papers are used in transportation to identify the presence of hazardous materials, their quantity, and identification. The information will be used to promote transportation safety by assuring that carriers are properly loaded and to identify hazardous cargo to emergency response personnel in case of incident.
Frequency: Each shipment (hazardous materials)
Burden Estimate: 6,288,750 hours
Respondents: Shippers and carriers

Form(s): None
Average Burden Hours Per Response: 2 minutes and 25 seconds reporting.

DOT No: 4018
OMB No: 2137–510
Administration: Research and Special Programs Administration
Title: RAM Transportation Requirements
Need for Information: Title 49 CFR Parts 173.22(c), 177.825 and 173, Subpart I, prescribe the information collection and recordkeeping requirements for the transportation of radioactive materials.
Proposed Use of Information: The data will be used to maintain a centralized source for information as to which routes have been designated by various states for use in transporting radioactive materials.
Frequency: On occasion
Burden Estimate: 12,711 hours
Respondents: State governments, carriers and shippers of radioactive materials
Form(s): None
Average Burden Hours Per Response: 14 hours and 18 minutes reporting; 6 hours and 25 minutes recordkeeping

DOT No: 4019
OMB No: 2137–575
Administration: Research and Special Programs Administration
Title: Bulk Packaging Marking Requirements
Need for Information: The Hazardous Materials Regulations (49 CFR Parts 171–80) authorize the general marking requirements for bulk packaging.
Proposed Use of Information: The information will be used to communicate appropriate hazard warning to emergency response personnel.
Frequency: Each bulk package of hazardous materials
Burden Estimate: 247,000 hours
Respondents: Shippers and carriers
Form(s): None
Average Burden Hours Per Response: 5 minutes reporting

DOT No: 4020
OMB No: New
Administration: Federal Aviation Administration
Title: Advisory Circular 36–G, Noise Levels for U.S. Certificated and Foreign Aircraft
Need for Information: Title 14 CFR Part 36 prescribes aircraft noise certification standards.
Proposed Use of Information: The information will be used to verify/supplement existing FAA data for use in the publication of AC 36–G, the revised version of AC 36–1F.
Frequency: One time
Burden Estimate: 375 hours
Respondents: Aircraft manufacturers
Form(s): None
Average Burden Hours Per Response: 5 hours reporting

DOT No: 4021
OMB No: 2130–511
Administration: Federal Railroad Administration
Title: Designation of Qualified Persons
Need for Information: Title 49 CFR Part 215 prescribes freight car safety standards. Railroads are required to designate qualified persons to inspect freight cars and take necessary remedial action relative to repairs or movement for repairs of defective railroad freight cars.
Proposed Use of Information: The information will be used to verify that all freight car inspections are conducted by qualified persons, thus preventing unsafe movement of defective equipment.
Frequency: On occasion
Burden Estimate: 50 hours
Respondents: Railroads
Form(s): None
Average Burden Hours Per Response: 2 minutes recordkeeping

DOT No: 4022
OMB No: 2138–023
Administration: Research and Special Programs Administration
Title: Part 291 Domestic Cargo Transportation
Need for Information: Pursuant to 14 CFR 291.42, air carriers holding section 418 certificates, that do not submit Form 41 reports, must file Form 291–, Statement of Operations and Statistics Summary for Section 418 Operations.
Proposed Use of Information: The data from Form 291– will be used to monitor the domestic all-cargo industry and the individual carriers continuing fitness.
Frequency: Annually
Burden Estimate: 16 hours
Respondents: Domestic all-cargo air carriers
Form(s): RSPA Form 291–
Average Burden Hours Per Response: 4 hours reporting

DOT No: 4023
OMB No: 2130–504
Administration: Federal Railroad Administration
Title: Special Notice for Repairs
Need for Information: Section 29 of 45 USC provides inspectors with the authority to immediately remove locomotives from service when they are found unsafe for service.
Proposed Use of Information: The information will be used to determine if proper repairs have been made to freight cars, locomotives, or tracks which were found unsafe and were removed from service.
Frequency: On occasion
Burden Estimate: 25 hours
Respondents: Railroads
Form(s): FRA-F–180.8 and FRA-F–180.8A
Average Burden Hours Per Response: 5 minutes reporting

Issued in Washington, D.C. on December 15, 1994.

Paula R. Ewen,
Chief, Information Management Division.

[FR Doc. 94–31466 Filed 12–21–94; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of 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 January 6, 1995.

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. and applicant	Modification of exemption
11156–X El Dorado Chemical Company, St. Louis, MO (See Footnote 8)	11156

Application No. and applicant	Renewal of exemption
7051–X Advance Research Chemicals, Inc., Catoosa, OK	7051
7218–X Structural Composites Industries, Pomona, CA (See Footnote 1)	7218
7277–X Structural Composites Industries, Pomona, CA (See Footnote 2)	7277
8162–X Structural Composites Industries, Pomona, CA (See Footnote 3)	8162
8718–X Structural Composites Industries, Pomona, CA (See Footnote 4)	8718
8814–X Structural Composites Industries, Pomona, CA (See Footnote 5)	8814
10019–X Structural Composites Industries, Pomona, CA (See Footnote 6)	10019
10791–X Con-Quest Products, Inc., Elk Grove Village, IL (See Footnote 7)	10791

[1] To modify exemption to provide for pressure cycling at a maximum rate of 10 cycles per minute and allow for filament material to be accepted by manufacturer's certification for non-specification cylinders.

[2] To modify exemption to provide for pressure cycling at a maximum rate of 10 cycles per minute and allow for filament material to be accepted by manufacturer's certification for non-specification cylinders.

[3] To modify exemption to provide for pressure cycling at a maximum rate of 10 cycles per minute and allow for filament material to be accepted by manufacturer's certification for non-specification cylinders.

[4] To modify exemption to provide for pressure cycling at a maximum rate of 10 cycles per minute on non-DOT specification cylinders and allow filament material to be accepted by manfacturer's certification.

[5] To modify exemption to provide for pressure cycling at a maximum rate of 10 cycles per minute on non-DOT specification cylinders and allow filament material to be accepted by manfacturer's certification.

[6] To modify exemption to provide for pressure cycling at a maximum rate of 10 cycles per minute on non-DOT specification cylinders and allow filament material to be accepted by manfacturer's certification.

[7] To modify exemption to provide for additional design changes to specially design packaging used to transport various classes of hazardous wastes.

[8] To modify exemption to provide for additional design changes to specially design packaging used to transport various classes of hazardous wastes.

Application No. and applicant	Parties to exemption
5403–P HydroChem Industrial Services, Inc., Houston, TX	5403
6614–P Sierra Chemical Co., Sparks, NV	6614
6691–P SheSam Inc. T/A Wilson Supply, Cumberland, MD	6691
6691–P ILL–MO Products Company, Jacksonville, IL	6691
7616–P Wheeling & Lake Erie Railway Company, Brewster, OH	7616
8451–P EG&G Star City Inc., Miamisburg, OH	8451
9275–P Lerner, Columbus, OH	9275
9275–P The Limited Stores, Columbus, OH	9275
9346–P Stolthaven (Chicago) Inc., Chicago, IL	9346
9579–P Intermountain IRECO, Inc., Gillette, WY	9579
9723–P ADCOM Express, Inc., Tinley Park, IL	9723
9723–P RESNA Industries, Inc., Bakersfield, CA	9723
10307–P Tosco Refining Company, Concord, CA	10307
10441–P S&W Waste, Inc., South Kearny, NJ	10441
10441–P Advanced Environmental Technology Corporation, Flanders, NJ	10441
10441–P California Advanced Environmental Technology Corp., Hayward, CA	10441
10979–P Southchem, Inc., Durham, NC	10979
11189–P Hyundai Motor America, Fountain Valley, CA	11189
11254–P Western Atlas International, Houston, TX	11254
11335–P Union Tank Car Company, East Chicago, IN	11335

This notice of receipt of applications for modifications 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 December 16, 1994.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 94–31440 Filed 12–21–94; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 94–23]

Independent Regulatory Appeals Process

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is requesting comments on its guidelines that permit national banks to appeal certain OCC decisions and actions. This Action is required by the Riegle Community Development and Regulatory Improvement Act of 1994. The OCC intends to use the comments in evaluating whether changes to the proposed guidelines are appropriate.

DATES: Comments must be received by January 23, 1995.

ADDRESSES: Comments may be submitted to Docket Number 94–23, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: Heidi Thomas, Legislative Counsel, Legislative and Regulatory Activities Division, 202–874–5090, or P. Michael Yuenger, Office of the Chief National Bank Examiner, 202–874–5350, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION:

Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (12 U.S.C. 4806) (the Act), which was signed into law on September 23, 1994, requires the OCC, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Reserve Board [Federal banking agencies) and the National Credit Union Administration to establish an independent internal appellate process. This process must be available to review material supervisory determinations made at insured depository institutions or credit unions that the agency supervises. Section 309(c) of the Act (12 U.S.C. 4806(c)) requires that each Federal banking agency must provide public notice and opportunity for comment on its proposed guidelines for this appellate process by December 22, 1994, and

establish this process by March 22, 1995.

The Act defines "independent appellate process" in section 309(f)(2) (12 U.S.C. 4806(f)(2)) as a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In addition, this Act defines "material supervisory determinations" in section 309(f)(1) (12 U.S.C. 4806(f)(1)) to include determinations relating to (1) examination ratings, (2) the adequacy of loan loss reserve provisions, and (3) loan classifications on loans that are significant to an institution. This definition expressly excludes determinations to appoint a conservator or receiver for an insured depository institution or a decision to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831o).

In addition, section 309(g) (12 U.S.C. 4806(g)) expressly provides that the Act's requirement to establish an appeals process does not affect the authority of the banking agencies to take enforcement or supervisory actions against an institution. Finally, section 309(b) (12 U.S.C. 4906(b)) of the Act requires that appeals be heard and decided expeditiously and that appropriate safeguards exist for protecting the appellant from retaliation by agency examiners.

Existing OCC Appeals Process

The OCC's existing procedures for national banks to appeal agency decisions and actions were published in Banking Circular No. 272, dated June 11, 1993. These procedures have been modified and clarified in the proposed guidelines to be consistent with the requirements of the Act. Until these guidelines are published in final form in the **Federal Register**, the current OCC appeals policy as set forth in Banking Circular No. 272 remains in effect. The OCC's appeals policy does not supersede any existing appeals procedures available under current law.

The OCC's appeals process provides that a national bank may file its appeal either with the District Administrator or Deputy Comptroller of the OCC District in which the bank is headquartered (or the Deputy Comptroller for the appropriate program in Washington, D.C. if the bank is a multinational bank or under special supervision), or directly with the Ombudsman. The proposed guidelines clarify that the term national bank includes a Federal branch or agency of a foreign bank.

The District Administrator or Deputy Comptroller normally does not directly or indirectly participate in making reviewable supervisory decisions nor report directly or indirectly to the agency official who made the reviewable decision. In addition, the national bank may always file its appeal with the Ombudsman who is outside the bank supervision area, reporting only to the Comptroller. Therefore, the OCC believes that its appeals process complies with the Act's requirement that appeals be heard by an agency official who does not report directly or indirectly to the agency official who made the material supervisory determination under review.

However, to further assure that the appeals process remains completely independent, the OCC has added a provision to require the District Administrator or Deputy Comptroller to transfer an appeal to the Ombudsman if the District Administrator or Deputy Comptroller directly or indirectly participated in making the decision under review or reports directly or indirectly to the agency official who made the decision under review. In addition, the OCC has added a provision to require the Ombudsman to transfer an appeal to the Senior Deputy Comptroller for Bank Supervision Policy if the Ombudsman should be recused from reviewing the decision under appeal.

The OCC also is proposing to extend the period of time in which the District Administrator, Deputy Comptroller, or Ombudsman must make a decision on an appeal. Currently, the OCC's policy requires that the District Administrator or the Deputy Comptroller, in the absence of any extenuating circumstances, issue a written response within 20 calendar days of the filing of an appeal, and that the Ombudsman issue a written response within 30 calendar days of the filing of an appeal. In addition, the Ombudsman must issue a written response to a second-tier appeal, which is an appeal by a national bank of an appeal decision made by a District Administrator or Deputy Comptroller, within 15 calendar days of the filing of that second-tier appeal. The OCC is proposing to extend the time period for deciding all first-tier appeals to 45 days, and all second-tier appeals to 30 days. Based on the OCC's current experience with the appeals process, it has found that some additional time may be necessary. The OCC believes that the time periods in the proposed guidelines complies with the Act's requirement that an appeal be heard and decided expeditiously.

The Act also requires that the appeals process contain appropriate safeguards for protecting the appellant from retaliation by agency examiners. Currently, the OCC takes steps to ensure that banks are not unfairly treated because of their appeal, although these steps are not part of the OCC's written appeals process. Specifically, the Ombudsman makes periodic informal inquiries after a decision on an appeal is made to determine whether the bank believes the OCC has taken action against it in retaliation for its appeal. If a bank indicates that such retaliatory action has occurred, the Ombudsman initiates an investigation.

To ensure that these procedures are followed for each appeal, the OCC proposes to include the Ombudsman's follow-up-inquiries in its guidelines. Specifically, the OCC proposes that the Ombudsman contact the appellant bank to inquire whether the bank believes that OCC examiners have taken actions against it in retaliation for its appeal within (1) six months after the date the Ombudsman, Deputy Administrator or Deputy Comptroller issues a final written response to an appeal, and (2) six months after the date of completion of the first examination following an appeal. In addition, national banks that believe they are the subject of retaliation because of their appeal may, at any time, seek redress with the Ombudsman.

Finally, the OCC proposes to change its definition of appealable matters to expressly comply with the definition of "material supervisory determinations" as provided in section 309(f)(1) of the Act (12 U.S.C. 4806(f)(1)). The OCC's current process permits national banks to seek review of all agency decisions and actions except those involving the appointment of receivers and conservators. Also expressly excluded are preliminary examination conclusions communicated to the national bank prior to the issuance of either a Final Report of Examination or other written communication from the OCC. The OCC believes that, until these preliminary conclusions become final, they are not "material supervisory determinations" for purposes of the appellate procedures. Also, consistent with the Act, the OCC proposes to continue to exclude enforcement-related actions or decisions from actions covered by the guidelines. The OCC proposes to clarify that enforcement-related actions include decisions to take prompt corrective action pursuant to section 38 of the FDI Act (12 U.S.C. 1831o) and, thus, are not appealable under these guidelines.

To be consistent with the Act, the OCC proposes to add the definition of "material supervisory determination" to its discussion of appealable matters. The OCC appeals policy still includes

decisions and actions in addition to those specifically identified by the Act as material supervisory determinations, unless otherwise excluded.

Issues for Comment

The OCC requests comments on all aspects of its appeals process. In particular, the OCC requests comments on the following issues:

1. Do the guidelines adequately provide independence in the appeals process?
2. Do the guidelines adequately provide that appeals are heard and decided expeditiously?
3. Do the guidelines adequately protect appellant banks from retaliation by OCC examiners?
4. Is the scope of appealable matters appropriate?
5. To what extent should the Ombudsman be bound by existing OCC policies?

National Bank Appeals Process

The following is the OCC's Proposed Appeals Process:

I. Policy

The OCC is responsible for fostering the safety and soundness of the national banking system, monitoring, and enforcing national banks' compliance with laws, and encouraging competitiveness, integrity, and stability of financial services. In fulfilling this mission, it is the OCC's policy to maintain open and ongoing communication with the institutions it supervises and to foster the fair and equitable administration of the supervisory process.

If a disagreement arises during the supervisory process, the OCC will resolve the dispute fairly and expeditiously in an informal, amicable manner. If disagreements cannot be resolved through informal discussions, national banks and Federal branches and agencies of foreign banks (collectively referred to as "national banks" for purposes of these guidelines) are encouraged, and the examiner involved in the dispute should specifically encourage the national bank, to seek a further review of the OCC decisions or actions that are in dispute.

These guidelines establish a mechanism through which a national bank can seek such a review. A critical element in this appeals process is the Ombudsman. The Ombudsman is outside the bank supervision area and reports directly to the Comptroller of the Currency. With the prior consent of the Comptroller, the Ombudsman may supersede any agency decision or action during the resolution of an appealable matter.

The procedures established in these guidelines provide national banks a fair and expeditious review of agency decisions and actions while ensuring that no one is disadvantaged by the filing of an appeal. If a national bank has a question as to whether it should make use of this appeal authority, it should contact the Ombudsman.

II. Procedures

A. Filing An Appeal

A national bank may seek review of appealable matters by filing an appeal with either its immediate supervisory office or with the OCC's Ombudsman. All communications with the Ombudsman may be sent to 1000 Louisiana Street, Suite 950, Houston, Texas 77002–5008. The choice of where to file is a matter within the sole discretion of the bank, except as indicated below; all appealable matters can be received in either location. However, in cases where the District Administrator or Deputy Comptroller directly or indirectly participated in making the decision under review or directly or indirectly reports to the agency official who made the decision under review, the District Administrator or Deputy Comptroller must transfer the appeal to the Ombudsman. In addition, in cases where the Ombudsman should be recused from reviewing the decision under appeal, the Ombudsman shall transfer the appeal to the Senior Deputy Comptroller for Bank Supervision Policy in the OCC's Washington DC Office. The procedures for filing an appeal under the two options are outlined below.

1. Supervisory Office Appeals. If a disagreement concerning an OCC supervisory decision or action cannot be resolved informally, a national bank may file an appeal with its immediate supervisory office. Community banks and regional banks seeking appeal under this option should file such appeals with the District Administrator or Deputy Comptroller of the OCC District in which the bank is headquartered. Banks in the Multinational Banking or Special Supervision programs using this option should file appeals with the Deputy Comptroller for the program in the Washington Office. In cases where the District Administrator or Deputy Comptroller directly or indirectly participated in making the decision under review or directly or indirectly reports to the agency official who made the decision under review, the District Administrator or Deputy Comptroller must transfer the appeal to the Ombudsman after advising the appellant.

An appellant national banks must submit information in writing fully describing the matter in dispute and setting forth its basis for requesting an appeal. Upon receipt of an appeal, the appropriate District Administrator or Deputy Comptroller, or a designee who has not directly or indirectly participated in making the decision in dispute nor is directly or indirectly responsible to the agency official who made the decision under review, will contact the OCC employee(s) involved in the matter under appeal. The OCC employee(s) shall submit written or oral information concerning the basis of the appeal. If requested by a senior official of the national bank filing the appeal, the appropriate District Administrator or Deputy Comptroller shall arrange a meeting or a telephone call to more fully discuss the appeal and related issues.

In the absence of any extenuating circumstances, the appropriate District Administrator or Deputy Comptroller shall issue a written response within 45 calendar days of the filing of the appeal. Immediately after the response is issued, the District Administrator or Deputy Comptroller shall forward to the Ombudsman copies of all relevant materials considered in the preparation of the response, including all written submissions by the bank.

If the national bank disagrees with the response from the District Administrator or Deputy Comptroller, a senior official of the bank may further appeal the matter to the Ombudsman. The bank must file written notice of this second-tier appeal within 15 calendar days of receiving the response from the appropriate District Administrator or Deputy Comptroller.

After receipt of a second-tier appeal, the Ombudsman shall review all materials considered by the appropriate District Administrator or Deputy Comptroller in the preparation of the initial response. The Ombudsman shall contact the national bank to ensure that the OCC is in possession of all relevant materials. If requested by either OCC management involved in the dispute or a senior official of the national bank filing the appeal, the Ombudsman shall arrange a meeting or a telephone call to more fully discuss the appeal and related issues. In the absence of any extenuating circumstances, the Ombudsman shall issue a written response to the second-tier appeal within 30 calendar days of the filing of that appeal.

2. Appeals to the Ombudsman When disagreements concerning OCC

supervisory decisions and actions cannot be resolved informally and a national bank chooses not to file an appeal with its immediate supervisory office, a national bank may file an appeal directly with the Ombudsman. In cases where the Ombudsman should be recused from reviewing the decision under appeal, the Ombudsman shall transfer the appeal to the Senior Deputy Comptroller for Bank Supervision Policy in the OCC's Washington DC office. In such cases, the procedures outlined below will apply.

National banks filing appeals with the Ombudsman must submit information in writing fully describing the matter in dispute. After receipt of an appeal, the Ombudsman shall contact the OCC management official involved in the dispute. That management official shall submit written materials and relevant OCC documents pertaining to the bases of the appeal within 10 calendar days of the notice from the Ombudsman. The Ombudsman shall contact the national bank to ensure that the OCC is in possession of all relevant materials. If requested by either OCC management involved in the dispute or a senior official of the national bank filing the appeal, the Ombudsman shall arrange a meeting or a telephone call to more fully discuss the appeal and related issues. In the absence of any extenuating circumstances, the Ombudsman shall issue a written response to the appeal within 45 calendar days of the filing of the appeal by a national bank.

B. Follow-up by Ombudsman

After the Ombudsman receives a decision on an appeal, the Ombudsman shall contact every appellant bank to inquire whether the bank believes OCC examiners have taken actions against the bank in retaliation for its appeal. The Ombudsman shall make these contacts (1) six months after the date the Ombudsman, Deputy Administrator or Deputy Comptroller issues a final written response to an appeal, and (2) six months after the date of completion of the first examination of the appellant bank following its appeal. A national bank may, of course, contact the Ombudsman at any time during or after the appeal if the bank reasonably believes that an OCC examiner is taking action against it in retaliation for its appeal. Upon identifying or learning of any possible retaliatory actions, the Ombudsman shall investigate the complaint; such investigations must be completed within 30 days. If the Ombudsman determines that retaliation has occurred, the Ombudsman shall forward the complaint to the District Administrator, Deputy Comptroller, or Inspector General for appropriate action.

C. Appealable Matters

Except as otherwise provided, a national bank may seek a review of any agency decision or action, including a material supervisory determination. A material supervisory determination includes a determination relating to:

- Examination ratings;
- The adequacy of loan loss reserve provisions; and
- Loan classifications on loans that are significant to an institution.

A national bank may not appeal:

- Appointments of receivers and conservators;
- Preliminary examination conclusions communicated to the national bank prior to the issuance of either a final Report of Examination or other written communication from the OCC; and
- Enforcement-related actions or decisions, including decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. § 1831o).

An enforcement-related action or decision commences, and therefore becomes unappealable, when the national bank receives notice from the OCC indicating its intention to pursue available remedies under applicable statutes or published enforcement-related policies of the OCC. Such policies include OCC's Policy for Corrective Action (PPM 5310–3)(REV), Civil Money Penalty Policy (PPM 5000–7)(REV), and Securities Enforcement Policy (PPM 5310–5). These policies are available on request from the OCC's Communications Division, 250 E. Street, SW., Washington DC 20219–0001, 202–874–4700. For purposes of these guidelines only, remarks in a Report of Examination do not constitute notice of intent to pursue enforcement remedies.

The appeals process established by these guidelines does not supersede any existing appeals procedures available under current law. Matters which are subject to an existing appeals process designed specifically for the issue in dispute, such as re-review of Shared National Credit findings (Banking Circular 189), and reconsideration of decisions on corporate applications (12 CFR 5.13(d)), are appealable to the Ombudsman when the agency decision is final under the specifically designed procedures.

III. Effect of Filing An Appeal

As a general rule, the filing of an appeal with either the national bank's immediate supervisory office or with the Ombudsman serves to stay all agency decisions and actions until the appeal is resolved. In the appropriate circumstances, however, the Ombudsman may put the disputed agency decision or action into effect while the appeal is still pending.

Dated: December 19, 1994.

Eugene A. Ludwig

Comptroller of the Currency

[FR Doc. 94–31545 Filed 12–21–94; 8:45 am]

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Thursday
December 22, 1994

Part II

Environmental Protection Agency

40 CFR Part 261 et al.

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dye and Pigment Industries; Hazardous Waste Listing Determination Policy; and CERCLA Hazardous Substance Designation and Reportable Quantities; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[SWH–FRL–5122–5]

RIN 2050–AD80

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dye and Pigment Industries; Hazardous Waste Listing Determination Policy; and CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA). EPA is listing, as hazardous, five wastes generated during the production of dyes and pigments because certain ways of disposing of these wastes may present a risk to human health and the environment. EPA also is proposing not to list as hazardous six other wastes from this industry, and to defer action on three wastes due to insufficient information. The proposal would add the toxic constituents found in the wastes to the list of constituents that serve as a basis for classifying wastes as hazardous. This action also describes EPA's policy on making listing determinations, and the risk-based criteria used by the Agency.

This action is proposed under the authority of Sections 3001(e)(2) and 3001(b)(1) of the Hazardous and Solid Waste Amendments of 1984 (HSWA), which direct EPA to make a hazardous waste listing determination for dye and pigment wastes. If finalized, this regulation would regulate these wastes as hazardous wastes under Subtitle C of RCRA. Additionally, this action proposes to designate the wastes proposed for listing as hazardous substances subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA is not taking action at this time to adjust the one-pound statutory reportable quantities (RQs) for these substances.

DATES: EPA will accept public comments on this proposed rule and on EPA's hazardous waste listing determination policy until March 22, 1995. Comments postmarked after this date will be marked "late" and may not be considered. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by January 5, 1995.

ADDRESSES: The official record of this proposed rulemaking is identified by Docket Number F–94–DPLP–FFFFF and is located at the following address. The public must send an original and two copies of their comments to: EPA RCRA Docket Clerk, Room 2616 (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The Docket Number for comments on EPA's discussion of its listing determination policy (see Section I.B) is F–94–LCN–FFFFF. The public must send an original and two copies of their comments on EPA's policy discussion to the above address. Such comments must be submitted separately from comments on the dye and pigment listing determinations, and must reference Docket Number F–94–LLCN–FFFFF. Copies of materials relevant to this proposed rulemaking are located in the docket at the address listed above. The docket is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

Requests for a hearing should be addressed to Mr. David Bussard at: Characterization and Assessment Division, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, toll-free, at (800) 424–9346 or at (703) 920–9810. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323 in the Washington, DC metropolitan area. For technical information on the RCRA hazardous waste listings, contact: Wanda Levine, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7458.

For technical information on the CERCLA aspects of this rule, contact: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 603–8760.

SUPPLEMENTARY INFORMATION: The contents of the preamble to this proposed rule are listed in the following outline:

I. Background
A. Statutory and Regulatory Authorities
B. EPA's Hazardous Waste Listing Determination Policy
II. Today's Action
A. Summary of Today's Action
1. Confidentiality Claims
2. Summary of Listing Determinations and Deferrals
3. Request for Comment on the Effect of Enforceable EPA/Industry Agreements on Plausible Mismanagement Analysis and Subsequent Listing Determinations
B. Dye and Pigment Industries Overview
C. Description of the Process Wastes Identified in Comparison to those Specified in the Settlement Agreement
D. Description of Health and Risk Assessments
E. Waste-Specific Listing Determination Rationales
III. Waste Minimization
IV. Applicability of Land Disposal Restrictions Determinations
A. Request for Comment on the Agency's Approach to the Development of BDAT Treatment Standards
B. Request for Comment on the Agency's Approach to the Capacity Analyses in the LDR Program
V. Compliance Dates
A. Notification
B. Interim Status and Permitted Facilities
VI. State Authority
A. Applicability of Rule in Authorized States
B. Effect on State Authorizations
VII. CERCLA Designation and Reportable Quantities
VIII. Economic Impact Analysis
IX. Executive Order 12866
X. Regulatory Flexibility Act
XI. Paperwork Reduction Act

I. Background

A. Statutory and Regulatory Authorities

These regulations are proposed under the authority of Sections 2002(a) and 3001(b) and 3001(e)(2) of the Solid Waste Disposal Act, 42 U.S.C. 6912(a), and 6921(b) and (e)(2), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These statutes commonly are referred to as the Resource Conservation and Recovery Act (RCRA) and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992(k) (42 U.S.C. 6901–6992(k)).

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a) is the authority for the CERCLA aspects of this rule.

Section 3001(a) of RCRA, 42 U.S.C. 6921(a), requires EPA to promulgate criteria for identifying characteristics of hazardous wastes and for listing hazardous wastes. Section 3001(b) of RCRA requires EPA to promulgate regulations, based on these criteria, identifying and listing hazardous wastes which shall be subject to the requirements of the Act.

Hazardous waste is defined at Section 1004(5) of RCRA, 42 U.S.C. 6903(5). There are two types of hazardous waste. First, hazardous wastes are those solid wastes which may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness. In addition, hazardous wastes are those solid wastes which may pose a substantial present or potential hazard to human health or the environment when improperly managed.

EPA's regulations establishing criteria for listing hazardous wastes are codified at Title 40 of the Code of Federal Regulations (CFR) § 261.11 (40 CFR 261.11). Section 261.11 states three criteria for identifying characteristics and for listing wastes as hazardous.

First, wastes may be classified as "characteristic" wastes if they have the properties described at 40 CFR 261.21–24 which would cause them to be classified as having the characteristics of ignitability, corrosivity, reactivity or toxicity.

Second, wastes may be classified as acutely hazardous if they are fatal to humans at low doses, lethal in animal studies at particular doses designated in the regulation, or otherwise capable of causing or significantly contributing to an increase in serious illness.

Third, wastes may be listed as hazardous if they contain hazardous constituents identified in Appendix VIII of 40 CFR part 261 and the Agency concludes, after considering eleven factors enumerated in 40 CFR 261.11(a)(3), that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed. Such wastes are designated as toxic wastes. A substance is listed in Appendix VIII if it has been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms.

Wastes listed as hazardous are subject to federal requirements under RCRA for persons who generate, transport, treat, store or dispose of such waste. Facilities that must meet the hazardous waste management requirements, including the need to obtain permits to operate, commonly are referred to as Subtitle C facilities. Subtitle C is Congress' original statutory designation for that part of RCRA that directs EPA to issue those regulations for hazardous wastes as may be necessary to protect human health or the environment. Thus, facilities like incinerators or landfills that are required to comply with RCRA requirements for hazardous waste are referred to as Subtitle C incinerators or landfills.

Subtitle C is codified as Subchapter III of Chapter 82 (Solid Waste Disposal) of Volume 42 of the United States Code (42 U.S.C. 6921 through 6939(e)). EPA standards and procedural regulations implementing Subtitle C are found generally at 40 CFR parts 260 through 272.

Solid wastes that are not hazardous wastes may be disposed of at facilities that are overseen by state and local governments. These are the so-called Subtitle D facilities. Subtitle D is Congress' original statutory designation for that part of RCRA that deals with federal assistance to state and regional planning efforts for disposal of solid waste.

Subtitle D is codified as Subchapter IV of Chapter 82 (Solid Waste Disposal) of Volume 42 of the United States Code (42 U.S.C. 6941 through 6949(a)). EPA regulations affecting Subtitle D facilities are found generally at 40 CFR parts 240 thru 247, and 255 thru 258.

Section 3001(e)(2) of RCRA (42 U.S.C. 6921(e)(2)) requires EPA to determine whether to list as hazardous wastes generated by various chemical production processes, including the production of dyes and pigments.

In June of 1991, EPA entered into a proposed consent decree in a lawsuit filed by the Environmental Defense Fund, *et al.* (*EDF* v. *Reilly*, Civ. No. 89–0598 (D.D.C.), hereinafter referred to as the settlement agreement), in which the Agency agreed to publish a proposed determination as to whether or not to list as hazardous certain wastes from the production of dyes and pigments by November 30, 1994 and to promulgate a final decision by November 30, 1995.

There are three major classes of dyes and pigments: Azo/benzidine, anthraquinone, and triarylmethane. The settlement agreement specifies that the listing is to address the azo, monoazo, diazo, triazo, polyazo, azoic, and benzidine categories of the azo/benzidine dye and pigment class; the anthraquinone and perylene categories of the anthraquinone dye and pigment class; and the triarylmethane, triphenylmethane, and pyrazolone categories of the triarylmethane dye and pigment class. The settlement agreement also specifies that the listing is to address the following types of wastes where they are found: spent catalysts, reactor still overheads, vacuum system condensate, process waters, spent adsorbent, equipment cleaning sludge, product mother liquor, product standardization filter cake, dust collector filter fines, recovery still bottoms, treated wastewater effluent, and wastewater treatment sludge.

As part of its regulations implementing Section 3001(e) of RCRA, EPA published a list of hazardous wastes that includes hazardous wastes generated from non-specific sources and a list of hazardous wastes from specific sources. These lists have been amended several times, and are published in 40 CFR 261.31 and 40 CFR 261.32, respectively. In this action, EPA is proposing to amend 40 CFR 261.32 to add five wastes from specific sources generated during the production of dyes and pigments.

Those hazardous constituents that are proposed to be included in Appendix VII to part 261, Basis for Listing Hazardous Waste, also are proposed to be added to Appendix VIII of Part 261, the list of Hazardous Constituents, if not already included in this list.

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in 40 CFR 261.21 through 261.24), are also hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA Section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). Accordingly, the Agency is proposing to list the proposed wastes in this action as CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4. EPA is not taking action at this time to adjust the one-pound statutory RQs for these substances.

B. EPA's Hazardous Waste Listing Determination Policy

EPA believes that it should provide the public with a better understanding of the basis for EPA's listing decisions. Accordingly, EPA presents here the general approach the Agency uses for determining whether to list a waste as hazardous pursuant to 40 CFR 261.11(a)(3). This presentation focuses on selection of waste management scenarios used in assessing risk and the use of information on risk levels in making listing determinations. These elements are an important part of EPA's general listing policy and critical aspects to the dyes and pigments listing determination. It is important to note that this discussion presents EPA's general listing policy and is not a rulemaking. The Agency may take action at variance with this general policy. The Agency is seeking comment on its policy in order to get input from the public, not in order to promulgate binding rules for listing determinations.

The Agency will review any comments received and may revise its policy based on such comments. However, the Agency does not intend to respond to comments submitted.

The listing criteria described here focus on several aspects of the Agency's listing determination process. The discussion is not intended to cover all potential aspects of these determinations. For example, analyzing population risk is not included in this presentation. The Agency solicits comment on how population risks could be included as a factor in listing determinations. The Agency's approach to calculating distributions of individual risk values when determining "high end" risk and the Agency's position on how far into the future it will consider risk are not covered in today's notice. The Agency solicits comment on these factors and their use in listing determinations.

Currently, risk levels (including carcinogen risk, non-carcinogen risk as determined by hazard quotient (HQ), and ecological risk) provide one of the principal bases for a listing determination. However, risk levels themselves do not represent the sole basis for a listing. Other factors generally are weighed in making a listing decision. The Agency's listing decision policy uses a "weight-of-evidence" approach in which calculated risk information is a key factor. Available risk values are assessed with all other data available to determine whether a waste is or is not a hazardous waste.

The criteria for listing wastes as hazardous are described in 40 CFR 261.11. They are presented in two basic parts: Numeric criteria for acutely hazardous wastes (defined by 40 CFR 261.11(a)(2)); and criteria for toxic wastes (defined by 40 CFR 261.11(a)(3)) containing toxic constituents listed in Appendix VIII to Part 261 (where 11 factors are considered in determining "substantial present or potential hazard to human health and the environment").

Of these 11 factors, seven deal with risk (constituent toxicity, concentration, waste quantity, migration potential, persistence, degradation product potential, and bioaccumulation potential) and are integrated into the risk values generated. The other four factors (plausible management, damage cases, coverage of other regulatory programs, and other factors as may be appropriate) are individual factors that also are considered in a listing determination. Waste quantity (specifically, "de minimis" amounts of waste) also can be a special consideration in making a listing determination for a lower volume wastestream.

1. Selection of Waste Management Scenarios (261.11(a)(3)(vii))

As noted above, one of the many factors that the Agency takes into account is the "plausible types of improper management to which the waste could be subjected." 40 CFR 261.11(a)(3)(vii). Exposures to wastes (and therefore the risks involved) will vary by waste management practice.

It is important to note that a management scenario need not be in use currently to be considered plausible by EPA since disposal practices can and do change over time. Potential future waste management practices are projected and considered in the risk analysis, if appropriate. The Agency often projects risks from management that reasonably *could* be employed.

a. Factors for Projecting a Plausible Waste Management Scenario. There are a number of disposal scenarios for wastes not hazardous under RCRA that are common across industries. These include municipal and industrial unlined landfills for solid materials, tanks and unlined surface impoundments for liquids, and boilers for organic solids and liquids. The Agency will presume that these scenarios are plausible unless circumstances unique to a particular industry show that one or more is not plausible for that industry.

The Agency notes that there may exist certain disposal scenarios not common across industries that could present a greater risk than the risk from the common plausible management scenarios mentioned above. An example might be land-spreading sludge from wastewater treatment facilities. These less common scenarios generally will be considered plausible only when information on an industry indicates that these disposal methods currently are being practiced, or there is good reason to believe they might be practiced in the future.

In determining whether one of the common disposal scenarios is not plausible, the Agency will consider factors such as the following:

- Availability of waste management practices.

There may be practical constraints to the type of waste management practices available to a category of waste generators. For example, if facilities in an industry have only a limited amount of land available to them, then building large surface impoundments to handle wastewaters may be highly unlikely and would not be considered plausible.

- Coverage of the Characterization Program.

Where all, or at least a large percentage, of facilities in an industrial category can be characterized with respect to waste management practices, the Agency may be able to do a more refined analysis of the plausibility of facilities switching from their current waste management practice to a higher risk waste management practice. The Agency may determine it more appropriate to estimate risk based on current management practices where our analysis shows that it is unlikely that facilities would switch to another management practice.

- Effect of Other Regulatory Programs.

Other regulatory programs, for example, the water pollution control program or air pollution regulatory requirements, can impose legal, technical, or practical restraints on waste management practices. If these requirements restrict certain practices (*e.g.*, water treatment requirements technically and practically might preclude treatment in surface impoundments) the Agency can use this information to consider eliminating that disposal practice from consideration.

- Management Costs.

Often, the cost of different management scenarios can be a determinative factor in dictating the plausibility of waste management scenarios. In the absence of other potential cost factors, such as liability, the plausibility that a facility would choose a waste management scenario increases as the expense of that management practice decreases. Conversely, it is more implausible to assume that a firm would chose management activities that impose a higher cost (where cost includes the likelihood of future potential liabilities.) Cost can be a consideration the Agency uses in choosing which management scenario to project as a scenario to analyze for determining potential risk of waste management.

These factors are presented as examples; there may be others appropriate to specific industries. In characterizing the risks for a wastestream where more than one disposal scenario is plausible, the Agency will use the results of the risk assessment for the plausible scenario that presents the highest risks.

Note that EPA considers the extent to which the plausible management scenario calculated to cause the highest risk is practiced, or could be practiced. Management practices the Agency believes probably would occur infrequently may be less determinative

in the final listing determination process. As the probability that generators would use a management practice increases, the greater the weight that set of risk values has in the final listing determination.

2. Risk Levels in Making Listing Decisions

As noted earlier, the Agency's listing determination policy utilizes a "weight-of-evidence" approach in which risk is a key factor. Risk measurements used include carcinogen risk, non-carcinogen risk as determined by hazard quotient (HQ), and ecological risk. However, risk levels themselves do not necessarily represent the sole basis for a listing. There can be uncertainty in calculated risk values and so other factors are considered in conjuction with risk in making a listing decision.

a. Use of Risk Levels in a Listing Decision. EPA's current listing determination procedure (illustrated in Figure 1) uses as an initial cancer-risk "level of concern" a calculated risk level of 1×10^{-5} (one in one hundred thousand) and/or HQs (and/or environmental risk quotients [EQs]) of 1 at any one point in time. Note that individual risks can occur at different points in time. For example, a category of wastestream that is both burned in a boiler by one facility but placed in a landfill by another would be projected to cause exposure through both the air and the drinking water pathways. It is likely that risks from each source will occur at different times, since air exposures would probably occur sooner than groundwater exposures. The Agency will take the timing factor into account when analyzing risk. In accordance with EPA policy, risks from individual carcinogens generally are added together. Listing decisions from this risk level of concern generally will be as follows.

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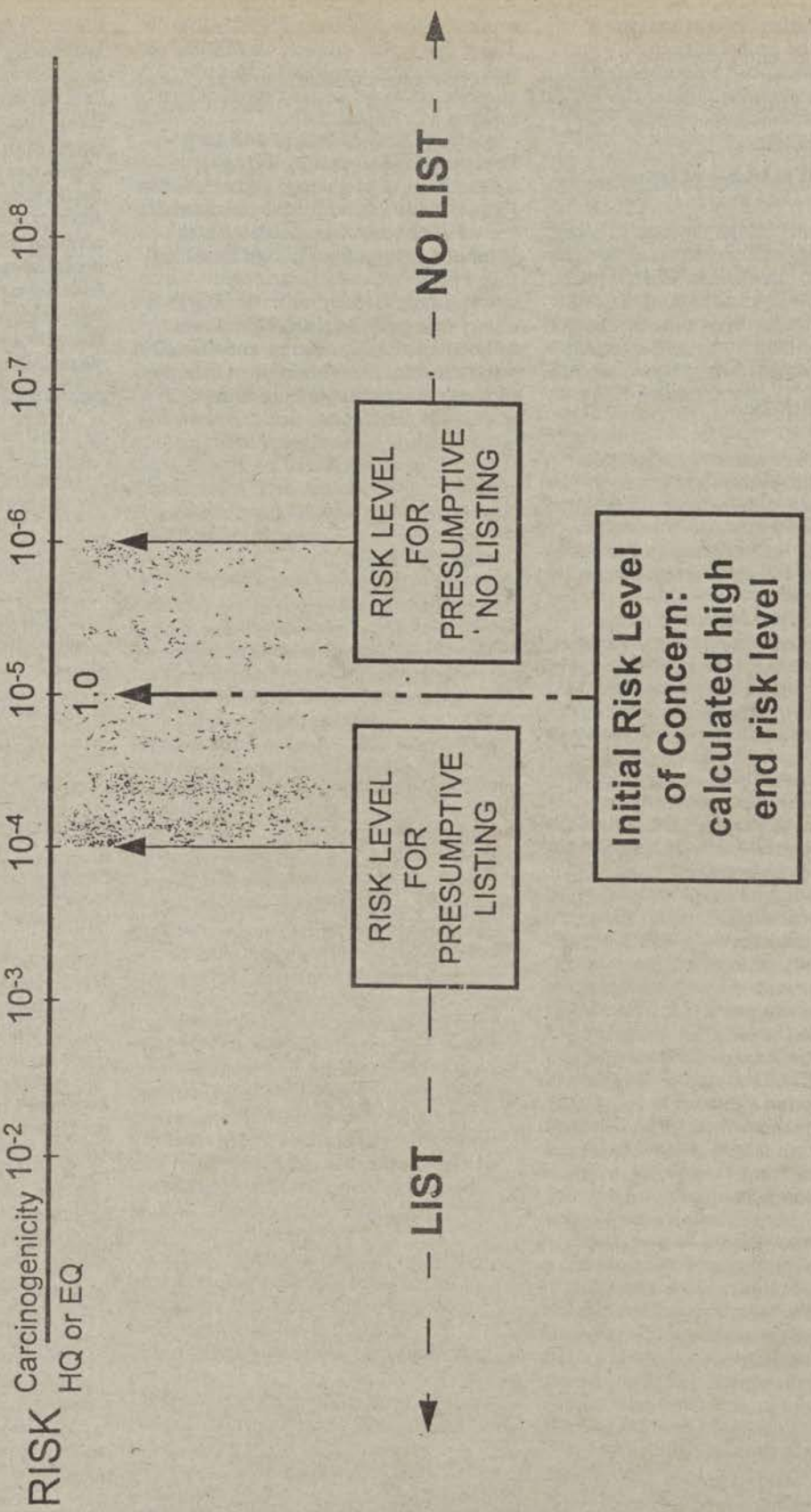
Figure 1



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(1) Wastestreams for which the calculated high-end individual cancer-risk level is 1×10^{-5} or higher generally are considered initial candidates for a list decision.

(2) Wastestreams for which these risks are calculated to be 1×10^{-4} or higher, or 1 or higher HQs or EQs for any individual non-carcinogen, or non-carcinogens that elicit adverse effects on the same target organ, generally will be considered to pose a substantial present or potential hazard to human health and the environment and generally will be listed as hazardous waste. Such wastestreams fall into a category presumptively assumed to pose sufficient risk to require their listing as hazardous waste. However, even for these wastestreams there can in some cases be factors which could mitigate the high hazard presumption. These additional factors, explained below, also will be considered by the Agency in making a final determination.

(3) Wastestreams for which the calculated high-end individual cancer-risk level is lower than 1×10^{-5} generally are considered initial candidates for a no-list decision.

(4) Wastestreams for which these risks are calculated to be 1×10^{-6} or lower, and lower than 1.0 HQs or EQs for any non-carcinogens, generally will be considered not to pose a substantial present or potential hazard to human health and the environment and generally will not be listed as hazardous waste. Such wastestreams fall into a category presumptively assumed not to pose sufficient risk as to require their listing as hazardous waste. However, even for these wastestreams, in some cases, there can be factors that could mitigate the low hazard presumption. These also will be considered by the Agency in making a final determination.

(5) Wastestreams where the calculated high-end individual cancer-risk level is between 1×10^{-4} and 1×10^{-6} fall in the category for which there is a presumption of candidacy for either listing (risk $>10^{-5}$) or no listing (risk $<10^{-5}$). However, this presumption is not as strong as when risks are outside this range. Therefore, listing determinations for wastestreams falling into this range would always involve assessment of the additional factors discussed below.

b. Additional Factors.

The following factors will be considered in making listing determinations, particularly for wastes falling into the risk range between 1×10^{-4} and 1×10^{-6}:

(1) Certainty of waste characterization;

(2) Certainty in risk assessment methodology;

(3) Coverage by other regulatory programs;

(4) Waste volume;

(5) Evidence of co-occurrence;

(6) Damage cases showing actual impact to human health or the environment; and

(7) Presence of toxicant(s) of unknown or unquantifiable risk.

(1) Certainty of Waste Characterization

EPA compiles data on the amounts and composition of each wastestream. Different sources of variability in these data, variability between facilities, between production processes, between samples, and in analytical methodologies, exist. All such variability sources may influence the Agency's decision on how much weight to place on data collected as a basis for a listing decision.

Budget constraints or sample availability constraints may limit the size of the database for any one wastestream. In such cases, the Agency generally assumes that the sample(s) taken are representative of each like wastestream from that category of generator and that the data, generated following a QA/QC plan, are "good" data. However, EPA will take uncertainty of the data into account in the listing process.

The Agency sometimes relies on analytical measurements that fall below the level of an analyst's ability to quantify with certainty the concentration of the constituent involved (these measurements are referred to as "estimated" or "J-values" in listing determinations). Analytical methods used by the Agency have been developed with a goal of obtaining quantitative measurements (*i.e.*, ±25% uncertainty or less) at levels of regulatory concern. Frequently, analytical measurements may detect the presence of constituents of concern at levels at or below the analytical method's limit of quantitation. However, for some highly toxic substances measurements of constituents below the limit of quantitation may be of toxicological significance and, therefore, potential regulatory significance.

The *limit of quantitation* is defined as the level above which results may be obtained with a specified degree of confidence. In the case of methods which use mass spectrometric measurements, quantitative uncertainty is assigned to measurements below the limit of quantitation (although a positive determination of presence is certain) as follows:

- The uncertainty of measurements at the limit of detection (3 times the standard deviation estimation [σ]) approaches ±100% ($3\sigma\pm3\sigma$).
- At the point of reliable detection ($6\sigma\pm3\sigma$), the uncertainty of measurement approaches ±50%.
- In the area of accurate quantitation (10σ to 12σ), uncertainty approaches ±30% to ±25%, based on the 99% confidence level of the measurement uncertainty.

In other words, when the analyte signal is 10 or more times larger than the standard deviation of the measurements, there is a 99% probability that the true concentration of the analyte is ±30% of the calculated concentration.[1]

Although the uncertainty of analytical measurements increases as the limit of detection is approached, the calculated concentrations obtained may represent the best available measurement of the analyte present.

It is the Agency's policy on listing determinations that measurements in the range below the level of quantification but above the level of detection will be used at the reported quantitation level for risk analysis purposes. However, the Agency generally will consider the uncertainty associated with measurements below the quantitation level and assess the impact of that level of uncertainty on a listing decision. Increasing uncertainty of a measurement may increase the importance of other factors in making a listing determination.

(2) Certainty in Risk Assessment Methodology

Uncertainty can exist in the methodologies and data used to conduct both the toxicity assessments and the fate and transport exposure models employed in risk assessments. Toxicity assessment methods sometimes rely on animal or cellular models to predict a chemical's effect on humans or animals. Direct toxicity testing of a chemical is not always available. For some of these chemicals, structure/activity relationships can be used to predict the toxicity of the substance involved. In these cases, the Agency considers what degree of uncertainty can exist in that analysis when making listing determinations. Similarly, some fate/transport models make use of an increased amount of input data or can involve actual verification. For those models, uncertainty in exposure

[1] Keith, L.H., Environmental Sampling and Analysis: A Practical Guide (Chelsea, MI: Lewis Publishers, 1992). See Figure 12, page 110, for the relationship of limit of detection, reliable detection limit, and limit of quantitation.

analysis is decreased. The Agency weighs the relative uncertainty of the predictive models when generating risk assessments and making listing determinations.

(3) Coverage by Other Regulatory Programs

Listing decisions can be strongly influenced by the effect of other regulatory requirements on the wastestreams involved. Where another Federal or State program or other RCRA requirements clearly will provide the type of control needed to eliminate the risk associated with a certain type of waste management, a RCRA listing may be considered unnecessary or redundant.

• Other Federal or State programs.

If other Federal or State programs clearly regulate risk associated with the wastestream, listing may not be necessary to eliminate risk. For example, if the Office of Air and Radiation within EPA has issued an NESHAP to control emissions of a constituent, it may be unnecessary to consider risk from inhalation of that constituent in making listing determinations. In some cases, another regulatory program may be in the process of developing such regulatory requirements. If this program is under statutory requirements or Court Order, EPA may consider these regulatory requirements to be forthcoming and, in some cases, may defer to them in listing determinations, even where such regulatory coverage is several years away. If this program is under no statutory or legal deadline, no deference typically will be given to projected future regulatory coverage from other programs.

(4) Waste Volume

Waste volume is, in fact, part of a risk-level calculation. Risk is projected based on the volume of waste involved. However, volume of waste is also a factor EPA may consider when the projected risk falls in a marginal risk range.

(5) Evidence of Co-occurrence

Virtually all wastestreams EPA assesses are complex mixtures of constituents. Where possible, the Agency calculates potential risk for all measured pollutants. Where more than one risk value for carcinogenicity is calculated, concern about overall wastestream effects increases and the Agency will consider that risk additive. However, where sampling and analysis data show compelling evidence that the constituents cannot or do not occur together in the wastestream or at the receptor, the Agency generally will only consider the risk associated with individual constituents.

(6) Damage Cases

For each listing determination, EPA seeks data on damage cases. These are cases in which some prior waste management practice has resulted in environmental harm. Where there has been a clear case of harm, the data suggest the management of that waste has already damaged human health or the environment in some way, and that such damage could occur again. Depending on the number and severity of the damage cases and the potential for these damages to happen again, adverse damage cases may provide a "stand alone" reason for listing the waste.

Where damage cases appear to contradict the risk analysis, EPA will try to determine the reason and use that assessment in the overall listing decision.

(7) Unknown or Unquantified Risk

Not all constituents in a complex wastestream can be analyzed for risk. Hazard data may not be available either directly or through mechanisms such as structure/activity relationships, or they may be in a form which is not considered usable by EPA. In the cases where some constituents are present but no risk levels can be assigned to them, the Agency considers the potential for these constituents to be hazardous.

As stated above, use of these additional factors is not limited to cases in which the risk levels fall between 10^{-4} and 10^{-6}. Pursuant to EPA's listing determination policy "weight-of-evidence" approach, the Agency will consider these factors, as appropriate, even where risk levels fall in the presumptive list or presumptive no-list levels.

II. Today's Action

A. Summary of Today's Action

1. Confidentiality Claims

The hazardous waste listings proposed here are based in part upon data claimed as confidential by certain dye and pigment manufacturers. Although EPA intends to publish information derived from these data claimed as confidential (to the extent relevant to the proposed listing), the Agency is unable to do so at the present time. Therefore, this proposed rule is being published without some of the information that supports the Agency's proposal. Where that information is missing from text, it is noted in the text. Whenever EPA is unable to include pertinent data in a table, the following statement appears in a footnote: "Relevant data are not included at the present time due to business confidentiality concerns." EPA is pursuing avenues to allow publication of the information, and intends to supplement the public record prior to issuing a final listing.

2. Summary of Proposed Listing Determinations and Deferrals

In today's notice, EPA is proposing to add five wastes generated during the production of dyes and pigments to the lists of hazardous wastes in 40 CFR 261.32. A summary of the waste groupings proposed for listing are provided below with their proposed corresponding EPA Hazardous Waste Numbers.

K162 Wastewater treatment sludge from the production of azo pigments.
K163 Wastewaters from the production of azo pigments.
K164 Wastewater treatment sludge from the production of azo dyes, excluding FD&C colorants.
K165 Wastewaters from the production of azo dyes, excluding FD&C colorants.
K166 Still bottoms or heavy ends from the production of triarylmethane dyes or pigments.

The Agency has determined that these wastes meet the criteria for listing set out in 40 CFR 261.11. Section II.E. of this preamble presents waste characterization, waste management, and risk assessment data, which are the bases for the Agency's proposal to list or not to list the wastes studied in this rulemaking.

Upon promulgation of these proposed listings, all wastes meeting the listing descriptions would become hazardous wastes and would require treatment, storage, or disposal at permitted facilities. Residuals from the treatment, storage, or disposal of the wastes included in this proposed listing also would be classified as hazardous wastes pursuant to the "derived-from" rule (40 CFR 261.3(c)(2)(i)). For example, ash or other residuals from treatment of the listed wastes would be subject to the hazardous waste regulations. Also, 40 CFR 261.3(a)(2)(iv) (the "mixture" rule) provides that, with certain limited exceptions, any mixture of a listed waste and a solid waste is itself a RCRA hazardous waste.

However, when these wastes are recycled as described in 40 CFR 261.2(e)(1)(iii) or 261.4(a)(8), they are not solid wastes and are not subject to hazardous waste regulations. For example, if a waste is collected and returned in a closed-loop fashion to the

same process, the waste is not regulated. To meet the exemption, the manner in which a material is recycled must meet the three key requirements outlined in the rules and in 50 FR 639 (January 4, 1985): (1) The material must be returned to the original process from which it was generated without first being reclaimed; (2) the production process to which the materials are returned must use raw materials as principal feedstocks; and (3) the material must be returned as a substitute for raw material feedstock in the original production process. (The regulations contain other recycling exclusions as well, but the provisions referenced above are the principal ones most likely to be applicable to the wastes at issue in this proposal.) EPA is proposing to amend Appendix VII and Appendix VIII to 40 CFR part 261 to add constituents contained in the above wastestreams which were found to pose risk.

The Agency requests comments on the proposed listing of the above wastes, and on the option of not listing these wastes.

This action also proposes not to list as hazardous six wastestreams generated during the production of dyes and pigments:

- Wastewaters from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).
- Wastewater treatment sludge from the production of triarylmethane pigments using aniline as a feedstock.
- Wastewaters from the production of triarylmethane pigments using aniline as a feedstock.
- Wastewaters from the production of anthraquinone dyes and pigments.
- Wastewaters from the production of FD&C colorants.
- Dusts and dust collector fines from the manufacture of dyes and pigments.

The Agency requests comments on the proposal not to list the above wastes and on the option of listing these wastes.

Because the Agency does not have sufficient sampling information on which to base a proposed listing determination, the Agency proposes to defer a determination of whether to list wastewater treatment sludge from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock), as well as spent filter aids, diatomaceous earth, or adsorbents from azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants. The Agency intends to obtain such sampling information and issue a supplemental notice making a proposed determination on whether to list the wastes as hazardous. The Agency also is deferring a proposed listing determination for wastewater treatment sludge from the production of anthraquinone dyes and pigments due to lack of health effects information on two constituents, leucoquinizarine and 1-aminoanthraquinone, that were found in the wastestream. The Agency requests any information that commenters may have on the toxicology of these constituents, including the existence of any toxic analogs for leucoquinizarine and 1-aminoanthraquinone. EPA will evaluate carefully all public comments and information received in response to this notice. Particular notice will be paid to any data which tend to support or refute a finding of risk to human health and the environment. Based on comments received, EPA may choose, rather than deferring, to promulgate a final determination to either list or not list wastewater treatment sludge from the production of anthraquinone dyes and pigments as hazardous under RCRA.

The Agency also requests comments on the data used in this proposal, the methodology and assumptions used in the risk assessment, the waste groupings chosen by the Agency and other analyses supporting the proposed listings.

3. Request for Comment on the Effect of Enforceable EPA/Industry Agreements on Plausible Mismanagement Analysis and Subsequent Listing Determinations

The Agency is interested in innovative ways of conducting listing determinations that could assure environmental protection with less cost than full regulation as a hazardous waste. One approach on which the Agency seeks comment involves enforceable agreements between EPA and the regulated community.

The Agency is seeking comment on whether enforceable agreements between EPA and industry that restrict the use of certain waste management practices could affect the Agency's plausible mismanagement analysis and, in turn, affect the Agency's listing determination. Specifically, the Agency seeks comment on whether EPA should pursue such agreements with respect to either the dye and pigment wastes that the Agency is proposing to list in this notice (or, additionally those it proposes not to list). The Agency seeks comment on whether the Agency should decide not to list such wastes (or retain a no-list decision) if the agreements ensure that the wastes will not be managed in a manner that poses unacceptable risk.

A decision not to list based on such enforceable agreements could be based on the view that management practices that are prohibited in an enforceable agreement are not "plausible" because facilities within an industry covered by an enforceable agreement are unlikely to violate that agreement; *i.e.*, use a risky management practice, especially if the agreement were to contain monetary or other sanctions for a breach or violation. Waste management practices that are not plausible because they are prohibited by such an agreement arguably need not be considered by the Agency in determining whether the waste poses "a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed." (*See* discussion of selection of waste management scenarios at I.B.1.) Thus, if a waste does not pose an unacceptable risk if managed in accordance with an enforceable agreement, the Agency could determine that the waste should not be listed as hazardous. The Agency requests comment on the use of such an approach as part of the listing determination for wastes generated during the production of dyes and pigments, including those proposed to be listed and/or proposed not to be listed in today's notice.

For such an approach to be workable, the EPA believes that the following basic principles must apply:

(1) All of the companies that generate the wastestream at issue must be party to the agreement;

(2) To ensure that the agreement will adequately deter prohibited waste management practices, the agreement should be enforceable in court and should contain provisions requiring payment of sufficient penalties or damages if the agreement is violated;

(3) The agreement should eliminate management practices that pose an unacceptable risk;

(4) The agreement should contain provisions that would account for new entrants; and

(5) The agreement should promote waste minimization.

Section 7003 of RCRA may provide EPA with authority under appropriate circumstances to enter into such agreements on consent. Section 7003(a) of RCRA authorizes EPA to issue orders requiring such action as may be necessary upon receipt of evidence that the past or present handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to human health or the environment. EPA also has the authority to settle claims under RCRA section 7003 by entering into a consent decree

or agreement. In addition, the Agency has inherent authority to enter into contracts that are not prohibited by law. See generally, *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110 (1954). Such inherent authority also may be available to enter into such agreements.

EPA believes that such an approach may be feasible for the wastes generated during the production of dyes and pigments because such wastes are generated by a relatively small number of facilities, and the likelihood of expansion in this industry does not appear to be great. Such an approach may not be feasible in an industry with a greater number of facilities or in an industry that is expanding. Additionally, it may not be a valid approach for an industrial sector in which the wastes generated are so hazardous, move off-site in such a fashion, or require such detailed controls that EPA wants the full regulatory controls and civil and criminal authorities that follow from full Subtitle C regulation.

The Agency requests comments on the feasibility of entering into and enforcing such agreements with industry. The Agency also requests comment on how such agreements would account for entrance into the market of new facilities that generate the waste at issue (*e.g.*, add new elements to the agreement, issue unilateral order under RCRA Section 7003). The Agency also requests comment on alternative innovative approaches to listing determinations.

B. Dye and Pigment Industries Overview

The dye and pigment industries are comprised of three separate industries, represented by three different trade associations. The Color Pigment Manufacturers Association (CPMA) represents pigment manufacturers, the Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry (ETAD) represents dye manufacturers, and the International Association of Color Manufacturers (IACM) represents food, drug, and cosmetic (FD&C) colorants manufacturers.

Dyes are intensely colored or fluorescent organic substances that impart color to a substrate by selective absorption of light.[2] When a dye is applied, it penetrates the substrate in a soluble form, after which it may or may not become insoluble. Dyes are retained in the substrate by physical absorption, salt or metal-complex formation, solution, mechanical retention, or by the formation of ionic or covalent chemical bonds.[3]

Dyes are used to color fabrics, leather, paper, ink, lacquers, varnishes, plastics, cosmetics, and some food items. Dye manufacture in the U.S. includes more than 2,000 individual dyes, the majority of which are produced in quantities of less than 50,000 pounds. In 1990, total U.S. dye production was 258 million pounds. In 1991, there were approximately 33 manufacturing plants operated by 20 companies that produce either azo, anthraquinone, or triarylmethane dyes.[4]

Pigments possess unique characteristics that distinguish them from dyes and other colorants. Pigments are colored, black, white, or fluorescent particulate organic or inorganic solids, usually insoluble in, and essentially physically and chemically unaffected by, the vehicle or substrate in which they are incorporated. The primary difference between pigments and dyes is that during the application process, pigments are insoluble in the substrate. Pigments also retain a crystalline or particulate structure and impart color by selective absorption or by scattering of light. With dyes, the structure is temporarily altered during the application process, and imparts color only by selective absorption.[5]

Pigments are used in a variety of applications; the primary use is in printing inks. There are fewer pigments produced than dyes, though pigment batches are generally larger in size. The U.S. total 1990 pigment production volume of approximately 415 million pounds is composed of 300 million pounds of inorganic pigments and 115 million pounds of organic pigments.[6] In 1991, there were approximately 27 domestic manufacturing plants operated by 20 companies[7] producing organic pigments subject to the settlement agreement.

FD&C colorants are dyes and pigments that have been approved by the Food and Drug Administration (FDA) for use in food items, drugs, and/or cosmetics. Typically, FD&C colorants are azo or triarylmethane dyes and are similar or identical to larger-volume dye products not used in food, drugs, and cosmetics. Manufacture of FD&C colorants is identical to that for the corresponding dye or pigment, except that the colorant undergoes additional purification. Each FD&C colorant batch is tested and certified by the FDA. In 1991, there were approximately 7 domestic manufacturing plants operated by 5 companies[8] producing FD&C colorants subject to the EDF settlement agreement.

This proposal addresses the three chemical classes of organic dyes and pigments specified in the settlement agreement: azos, anthraquinones, and triarylmethanes.

Azos are the largest and most versatile chemical class. The various azo chemical structures are readily synthesized, typical product application methods are not complex, and a broad range of colors can be produced with excellent fastness properties. Azo colorants are used in essentially all organic dye applications, including textiles, paper, inks, coatings, plastics, and leather.

Pyrazolones are a subset of azo dyes and pigments, named for the substituted pyrazolones that are used as coupling agents. The pyrazolone subclass is comprised mainly of yellow, orange, and red azo dyes and pigments.

Pyrazolone dyes and pigments are used primarily in textiles and plastics, respectively.

Despite high costs, anthraquinones are an important group of dyes due to superior fastness. They have applications on cotton, cellulose, and synthetic fibers. They have good affinity for the substrate, level dyeing power, and excellent fastness. Anthraquinone pigments are chemically identical to the corresponding dyestuffs and also exhibit high fastness properties. They are used primarily in automotive paints. There are many more anthraquinone dyes than pigments. Most anthraquinone dyes have not been developed into pigments due to technical constraints, as well as competition from less expensive substitutes.

Perylene pigments, a subset of the anthraquinone chemical class, provide an economical alternative to heavy metal-containing red pigments. Their excellent thermal stability and fastness properties meet the standards for automotive finishes and other high-quality coatings.

Triarylmethanes are characterized by their brilliancy of hue, intensity of color, and low fastness properties. Triarylmethane dyes typically are used in the textile industry and in the production of pigments. Pigments typically are used in the production of printing and duplicating inks.

[2] "Pigments—A Primer," reprinted from American Ink Maker, June 1989, Color Pigment Manufacturers Association.

[3] Kirk-Othmer Encyclopedia of Chemical Technology—Volume 8, "Dyes and Dye Intermediates."

[4] 1992 RCRA Section 3007 Questionnaire Data.

[5] "Pigments—A Primer," reprinted from American Ink Maker, June 1989, Color Pigment Manufacturers Association.

[6] CPMA meeting presentation, August, 1991.

[7] 1992 RCRA Section 3007 Questionnaire Data.

[8] 1992 RCRA Section 3007 Questionnaire Data.

C. Description of the Process Wastes Identified in Comparison to Those Specified in the Settlement Agreement

Based on the Agency's study of the dye and pigment industries, EPA has concluded that many of the dye and pigment processes within each of the three chemical classes generate very similar wastestreams. Because of the similarity of wastestreams associated with the manufacture of each class of dye or pigment (*i.e.*, azo, anthraquinone, and triarylmethane), EPA combined closely related wastestreams into "waste groupings," and proposed one hazardous waste listing description and waste code for each of these groupings. Although, given time and resource constraints, EPA was not able to sample wastestreams generated from the production of each distinct product within a particular waste grouping, the sampling data and raw material and process chemistry information that EPA collected support the waste groupings EPA has established.

The constituents and their concentrations in a waste will determine, in turn, the nature of the toxicity of the waste. EPA is required to consider the nature and toxicity of a waste in making listing determinations pursuant to 40 CFR 261.11. Given that similarities between wastes will result in a similar listing determination pursuant to the factors in EPA's regulations, it is reasonable to group wastes for the purpose of making listing determinations. Further, grouping similar waste matrices (*i.e.*, wastewaters or sludges) will facilitate the development of land disposal treatment standards (see 40 CFR part 268).

Listing determinations were made on each waste grouping. For example, all wastewaters resulting from the production of azo pigments are proposed to be listed as K163 hazardous wastes. Other wastewater groupings for which listing determinations were made include wastewaters resulting from the production of azo dyes, excluding FD&C colorants (proposed as K165), wastewaters resulting from the production of anthraquinone dyes and pigments, and wastewaters resulting from the production of FD&C colorants.

In addition, wastewaters generated from the production of triarylmethane dyes and pigments are grouped together under one waste grouping due to the similarity of these wastes, with the exception of wastewaters from the production of triarylmethane pigments using aniline as a feedstock. Wastewaters from the production of triarylmethane pigments using aniline as a feedstock were found to be significantly different in chemical composition from other triarylmethane dye and pigment processes and, therefore, were placed in a separate waste grouping.

Triarylmethane pigments using aniline as a feedstock are manufactured at two facilities in the country. Only two triarylmethane products are made at each of these facilities and one is used as an intermediate for the second. The process used in manufacturing these pigments is a batch process but is operated throughout the year. Only two primary reactants are used at these facilities, unlike other dye and pigment operations where hundreds of raw materials often are used at one site. As a result, these reactants are present in the wastewater at high concentrations.

Thus, wastewaters from the production of triarylmethane dyes and pigments were divided into two categories for purposes of making a listing determination: (1) Wastewaters from the production of triarylmethane dyes and pigments, excluding triarylmethane pigments using aniline as a feedstock, and (2) wastewaters from the production of triarylmethane pigments using aniline as a feedstock.

The wastewater categories include mother liquors generated from product filtration, filter washwaters, equipment and floor cleaning washwaters, break waters, spent scrubber waters, and other process waters. Treated wastewater effluent also is captured by these wastewater groupings. Although EPA did not sample wastewater following treatment, treated wastewater would be expected to contain the same or fewer hazardous constituents and the same or lower concentrations of such constituents than untreated wastewater. Thus, if not listed before treatment, such wastewater is presumed not to meet the Agency's criteria for listing after treatment. Furthermore, any wastewater listed as hazardous before treatment would continue to be regulated as hazardous waste after treatment.

Wastewater treatment sludges were grouped in a similar manner to wastewaters. Wastewater treatment sludges generated from the dye and pigment industries include any sludges generated during the pretreatment or treatment of dye and pigment wastewaters. This includes pretreatment sludge generated from filtration and precipitation in equalization and neutralization basins, sludges from powdered activated carbon or other adsorbent treatments, and primary and secondary biological treatment sludges. Sludge groupings defined for purposes of listing determinations include wastewater treatment sludge from the production of azo pigments (proposed as K162), wastewater treatment sludge from the production of azo dyes, excluding FD&C colorants (proposed as K164), wastewater treatment sludge from the production of anthraquinone dyes and pigments, wastewater treatment sludge from the production of triarylmethane dyes and pigments, excluding triarylmethane pigments using aniline as a feedstock, and wastewater treatment sludge from the production of triarylmethane pigments using aniline as a feedstock. These groupings are justified because, as was true within the wastewater grouping, the sludges covered by each sludge waste group exhibit similarities in constituent concentrations.

Distillation bottoms from dye and pigment manufacturing are generated during raw material and solvent recovery operations. The Agency determined that still bottoms from dye and pigment manufacturing are generated only during recovery operations associated with the manufacture of triarylmethane dyes and pigments. Therefore, the following waste grouping was developed to address distillation bottoms from the dye and pigment industries: Still bottoms or heavy ends from the production of triarylmethane dyes or pigments (proposed as K166).

The Agency grouped spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants into one waste grouping because these wastes all adsorb unreacted raw materials, by-products, and impurities and are generated in physically similar forms. Because the constituent composition of these filter aids varies depending on raw materials used, the Agency does not, at this time, have sufficient data to fully characterize this waste grouping. To further support a listing determination on these wastestreams, the Agency intends to collect additional information which will allow assessment of these wastes either as a single waste grouping or, alternatively, as several separate groupings.

Dusts and dust collector fines are generated primarily during drying, grinding, and blending operations used in manufacturing both dyes and pigments. These wastestreams were grouped because they all are comprised primarily of product dust.

Product standardization filter cake probably is generated during a final purification step following product standardization. Information obtained during the industry study does not confirm the existence or description of

this wastestream. However, filter cakes generated during product purification are comprised of spent filter aids, diatomaceous earth, or other adsorbent, along with product impurities and, therefore, will be characterized with the spent filter aids wastestream described above.

Information relevant to this discussion is not included at the present time due to business confidentiality concerns.

Therefore, the Agency is including the spent catalyst wastestreams with the spent filter aids, diatomaceous earth, or adsorbents used in the manufacture of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants waste group. The Agency did not encounter any traditional catalysts (*i.e.*, chemicals used to enhance a reaction without being consumed) used in dye and pigment manufacturing.

Vacuum system condensate, reactor still overhead, and equipment cleaning sludge, are not generated in dye and pigment manufacturing.

The following table summarizes each of the wastestreams identified in the settlement agreement, and describes their coverage in the listing determinations proposed in today's rulemaking:

TABLE II–1.—SETTLEMENT AGREEMENT WASTESTREAMS

Wastestreams identified in the settlement agreement	Coverage in today's proposed rulemaking
Product mother liquor	Addressed as a wastewater for each industry segment, including azo, anthraquinone, and triarylmethane dyes and pigments (K163, K165).
Process waters	
Treated wastewater effluent	
Wastewater treatment sludge	Addressed as wastewater treatment sludge for each industry segment, including azo, anthraquinone, and triarylmethane dyes and pigments (K162, K164).
Recovery still bottoms	Still bottoms from triarylmethane dyes and pigments (K166).
Spent filter aids	Addressed for the industries as a whole.
Dust collector fines	Addressed for the industries as a whole.
Product standardization filter cake	Not explicitly generated.
Spent catalysts	Not explicitly generated but included with spent filter aids.
Vacuum system condensate	Not generated by these industries.
Reactor Still Overhead	
Equipment Cleaning Sludge	

D. Description of Health and Risk Assessments

In determining whether waste generated from the production of dyes and pigments meets the criteria for listing a waste as hazardous as set out at 40 CFR 261.11, the Agency evaluated the potential toxicity and intrinsic hazard of constituents present in the wastestreams, the fate and mobility of these chemicals, the likely exposure routes, the current waste management practices, and plausible management practices. A quantitative risk assessment was conducted for those constituents and wastestreams where the available information made such an assessment possible.

1. Human Health Criteria and Effects

The Agency uses health-based levels, or HBLs, as a means for evaluating the level of concern of toxic constituents in various media. In the development of HBLs, EPA first must determine exposure levels that are protective of human health and then apply standard exposure assumptions to develop media-specific levels. EPA uses the following hierarchy for evaluating health effects data and health-based standards in establishing chemical-specific HBLS:

a. Use the Maximum Contaminant Level (MCL) or proposed MCL (PMCL) as the HBL for the ingestion of the constituent in water, when it exists. MCLs are promulgated under the Safe Drinking Water Act (SWDA) of 1974, as amended in 1986, and consider technology and economic feasibility as well as health effects.

b. Use Agency-verified Reference Doses (RfDs) or Reference Concentrations (RfCs) in calculating HBLs for noncarcinogens and verified carcinogenic slope factors (CSFs) in calculating HBLs for carcinogens. Agency-verified RfDs, RfCs, and CSFs and the bases for these values are presented in the EPA's Integrated Risk Information System (IRIS).

c. Use RfDs, RfCs, or CSFs that are calculated by standard methods but not verified by the Agency. These values can be found in a number of different types of Agency documents and EPA uses the following hierarchy when reviewing these documents: Health Effects Assessment Summary Tables (HEAST); Human Health Assessment Group for Carcinogens; Health Assessment Summaries (HEAs) and Health and Environmental Effects Profiles (HEEPs); and Health and Environmental Effects Documents (HEEDs).

d. Use RfDs or CSFs that are calculated by alternative methods, such as surrogate analysis, including structure activity analysis, and toxicity equivalency.

All HBLs and their bases for this listing determination are provided in a document entitled "Dye and Pigment Waste Listing Support Health Effects Background Document" (RTI,1994), which can be found in the RCRA docket for this rule at EPA Headquarters (see **ADDRESSES** section).

Acute toxicity data such as lethal doses for the oral and dermal routes and lethal concentrations for the inhalation route also were evaluated for all analytes in the record samples. These data also are presented in the Health Effects Background Document prepared for this rule.

Use of Metabolic Products

There are three compounds commonly identified in the record samples for which EPA has found no reliable health effects data. These compounds are: Acetoacet-*o*-anisidide (AAOA), acetoacet-*o*-toluidide (AAOT), and acetoacetanilide (AAA). Because of the lack of health effects data on these compounds, the Agency explored the use of metabolic pathway information to develop toxicologic values. This approach involves the use of health effects information for compounds expected to follow a similar metabolic pathway to those of the three chemicals of concern to estimate toxicity.

The metabolic pathways for the class of compounds identified as aromatic amines have been extensively studied, and acetylation and N-hydroxylation have been identified as initial metabolic

reactions of this class of compounds. Using this information, the Agency proposes to use the toxicity of aniline to represent the toxicity of AAA and the toxicity of 2-aminotoluene to represent the toxicity of AAOA and AAOT. The Agency has assumed a direct quantitative relationship between the constituents of concern (*i.e.*, AAOA, AAOT, AAA) and these compounds (*i.e.*, aniline, 2-aminotoluene) that follow a similar metabolic route.

In humans as much as 60 percent of aniline that is absorbed is oxidized in a dose-dependent manner to give *o*- and *p*-aminophenol, the first step in amide formation for this pathway. The metabolites of these products include acetylated arylamines, and are responsible for the toxicity of aniline.

Acetoacetanilide (AAA) is a structural analog of aniline and the metabolic pathways are expected to be similar. Since the acetyl group is already part of AAA, initial acetylation may be considered complete.

Because the metabolic conversions occur on a molar basis and the doses in laboratory studies are reported as parts per million, the difference in molecular weight must be considered. Also, since only 60 percent of the aniline is expected to be metabolized by the acetylation pathway and AAA is acetylated in its original form, the toxicity of AAA is expected to be proportionally greater than the toxicity of aniline. Therefore, the HBL for AAA is estimated to be 0.003 mg/L as compared to 0.006 mg/L for aniline.

Acetoacet-*o*-toluidide (AAOT), and acetoacet-*o*-anisidide (AAOA) are structural analogues of 2-aminotoluene, and the metabolic pathways are expected to be similar to those previously described for aniline. Since the acetyl group is already part of AAOT and AAOA, initial acetylation may be considered complete.

Because the metabolic conversions occur on a molar basis and the doses in laboratory studies are reported as parts per million, the difference in molecular weight must be considered. Also, since only 25 percent of the aminotoluene is expected to be metabolized by the acetylation pathway, and AAOT and AAOA are acetylated in their original forms, their toxicities are expected to be proportionally greater than the toxicity of 2-aminotoluene. Therefore, the HBLs for AAOT and AAOA are estimated to be 0.00004 mg/L and 0.00005 mg/L, respectively, as compared to 0.0001 mg/L for 2-aminotoluene.

2-Methoxyaniline also has been identified in the azo pigment wastestream. 2-Aminotoluene has been selected as the surrogate for the toxicity of 2-methoxyaniline, because of the structural similarity of the compounds and the similarity of metabolic mechanisms described above. The Agency requests comment on the use of metabolic pathway information to determine health effects, and on alternate approaches.

2. Coeluting Compounds

A number of compounds detected in the wastes generated from dye and pigment manufacture coelute (*i.e.*, overlap) on the Gas Chromatography/Mass Spectrometry (GC/MS) curve, making it impossible to confirm the concentration and, in some cases, the presence of the individual coeluting compounds. For example, the three constituents, 2- and 4-aminoaniline, and 2-methoxyaniline, coelute on the GC/MS curve. The coelution is such that the presence of 2- and 4-aminoaniline is indistinguishable, yet the presence of 2-methoxyaniline can be verified. This occurs because the curve for 2-methoxyaniline contains an extra peak in addition to the peaks that overlap with 2- and 4-aminoaniline. However, the individual contributions to the total concentration found in the waste can not be established.

Because the contributions from the individual contaminants can not be established, the Agency assumed that any of the three contaminants could be present at 100 percent of the concentration detected. The Agency evaluated all coeluting compounds independently in the risk assessment and used the highest risk calculated for the compounds to ensure the risk was not underestimated.

However, 2-methoxyaniline is the expected contaminant in wastes generated from facilities that manufacture azo pigments using acetoacet-*o*-anisidide (AAOA) as a raw material because 2-methoxyaniline is an expected hydrolysis product of AAOA (refer to Section II.E, Wastewater Treatment Sludge from the Production of Azo Pigments, K162, for a discussion on the hydrolysis of AAOA). Therefore, for wastes generated from the manufacture of azo pigments using AAOA as a raw material, the Agency conducted the risk assessment for these coeluting compounds based on toxicity information for 2-methoxyaniline (see discussion of metabolic products, above, and the Dye and Pigment Waste Listing Support Health Effects Background Document for discussions on the toxicity surrogate used for 2-methoxyaniline).

A second set of coeluting compounds consists of the three isomers 2-, 3-, and 4-aminotoluene. The presence of the three isomers was confirmed when detected, and the combined concentration of the three compounds was quantified. Because the contributions from the individual contaminants can not be established, any one of the coeluting contaminants could be present at 100 percent of the concentration detected. Therefore, the Agency evaluated coeluting compounds with health-based levels independently in the risk assessment and used the highest risk calculated by the constituents, in this case 2-aminotoluene, to ensure that risk was not underestimated. The volume of 2-aminotoluene consumed as a raw material, based on 1991 RCRA Section 3007 Questionnaire data, is approximately 9 times that of the other isomers. In addition, aromatic amines with substitutions in the 2- and 4-positions of the aromatic ring are used in the manufacture of azo dyes much more frequently than those substituted in the 3- position. Therefore, any impurities or breakdown products from aromatic amines are likely to be substituted in the 2- and 4- positions.

1,2-diphenylhydrazine and azobenzene also coelute on the GC/MS curve. Both compounds are likely oxidation products of aniline, and may be present in the waste as reaction by-products. In addition to the uncertainty in establishing concentrations for each of the two compounds, the chemical pathway from aniline to these oxidation products suggests that either contaminant may be present at all or part of the concentration detected. The Agency evaluated these coeluting compounds independently and used the highest risk calculated by the compounds to ensure the risk was not underestimated.

As with azobenzene and 1,2-diphenylhydrazine, diphenylamine and N-nitrosodiphenylamine coelute on the GC/MS curve and are likely by-products resulting from the oxidation of aniline. As stated above, the Agency evaluated these coeluting compounds independently and used the highest risk calculated by the compounds to ensure the risk was not underestimated.

The Agency requests comments on the approach used to assess risk when compounds that coelute were detected in the wastestream, and on alternative approaches that commenters may develop.

3. Risk Analysis

Risk Characterization Approach

The risk characterization approach follows the recent EPA Guidance on Risk Characterization (Habicht, 1992)

and Guidance for Risk Assessment (EPA Risk Assessment Council, 1991). The guidance specifies that EPA risk assessments will be expected to include (1) the central tendency and high-end portions of the risk distribution, and (2) important subgroups of the populations such as highly susceptible groups or individuals, if known. In addition to the presentation of results, the guidance also specifies that the results portray a reasonable picture of the actual or projected exposures with a discussion of uncertainties. These documents are available in the public docket for this action (see ADDRESSES section).

Individual Risk

Individual risk descriptors are intended to convey information about the risk borne by individuals within a specified population and subpopulations. These risk descriptors are used to answer questions concerning the affected population, and the risk for individuals within a population of interest. The approach used in this analysis for characterizing baseline individual risk included: (1) Identifying and describing the population of concern for an exposure route; (2) determining the sensitivity of the model parameters used in the risk estimation; (3) estimating central tendency and high-end values for the most sensitive parameters in the risk estimation procedures; and (4) calculating individual risk for likely exposure pathways that provides a characterization of the central tendency and high-end risk descriptor.

Risk Assessment

The results of the risk assessment are presented in waste-specific risk tables in each of the basis for listing sections (Section II.E.). The risk tables include the following information: Constituents of concern; estimated human health risk associated with the current and plausible management scenarios; high, low, and average concentrations of constituents found in this wastestream; the number of samples in which the constituent was detected; notes regarding "J-values" (see Section II.B on Data Uncertainties); and industry-submitted data.

In addition to those compounds presented in the waste-specific risk tables, the Agency's characterization data include a number of compounds identified as present in the waste but for which no health benchmarks exist. In addition, other compounds which do have health benchmarks have been identified in these wastes but were dropped from further consideration following the risk screening because the risks were projected to be below levels of concern. The risk tables presented in this preamble do not contain these additional constituents. The complete list of constituents found in each of the wastes generated from the manufacture of dyes and pigments, an explanation of the risk screening process, and an explanation of EPA's development of the target analyte list are presented in the Listing and Health Effects Background Documents for this proposed rule, which are located in the RCRA Docket for this rulemaking (See ADDRESSES section).

The analysis of risk was developed using both the input of derived or measured toxicological information and the modeling of exposure from baseline (or current) waste management practices and other plausible management scenarios. Pursuant to the Agency's regulations on listing hazardous wastes, EPA considers the "plausible types of improper management to which the waste could be subjected", 40 CFR 261.11(a)(3)(vii). Thus, plausible management is one of the waste management scenarios used by EPA to assess the risks to human health and the environment from the disposal of the wastes under consideration.

The choice of "plausible management" depends on a combination of factors which are discussed in Section II.A, "EPA's Listing Determination Process." The following discussion explains the plausible management scenarios used to assess risk for each of the waste groups addressed in this proposal. The Agency requests comment on its choice of plausible management scenarios and on the possibility of using alternative plausible management scenarios.

Sludges and Other Solid Materials

The plausible management scenario used to assess risks for the wastewater treatment sludges from the production of azo dyes and pigments (K162 and K164), and still bottoms or heavy ends from the production of triarylmethane dyes and pigments (K166) was disposal in an on-site monofill. Disposal in an on-site monofill for these waste categories results in the highest adverse exposure of sensitive individuals or populations. For wastewater treatment sludges from azo dye production (K164), this plausible management scenario (*i.e.*, on-site monofill) currently is practiced.

The Agency determined that disposal in an on-site monofill is a plausible management scenario for wastewater treatment sludges from azo pigment production (K162) and still bottoms or heavy ends from the production of triarylmethane dyes and pigments (K166), for the following reasons:

- On-site monofills have been used by industry to dispose of wastewater treatment sludge from the manufacture of dyes and pigments;
- Most of the still bottoms generated from the production of triarylmethane dyes and pigments are high-volume wastestreams for which on-site monofills are a plausible management option; and
- On-site monofills can be a lower-cost disposal option.

Therefore, there is a potential for monofills to be constructed and used in the future, by either dye or pigment manufacturers to dispose of wastewater treatment sludges or other high-volume solid wastes.

For wastewater treatment sludge from the production of triarylmethane pigments using aniline as a feedstock, the plausible management was determined to be the current management, blending with non-hazardous fuel. Currently, 100% of this waste is sent off-site for non-hazardous fuel blending. The Agency believes that this waste will continue to be managed in this manner because the relatively high organic content of the waste gives the material value as a fuel ingredient. Therefore, generators of the waste have an economic incentive to continue fuel blending. For comparison purposes, the Agency also projected the risks from managing this wastestream in a municipal landfill (from release of contaminants into ground water) and in an on-site boiler (from release of contaminants into the air).

The primary exposure pathway considered from disposal of solid materials in both unlined municipal landfills (evaluated as the baseline management practice for K162, K164, and K166) and monofills (evaluated as plausible management practices for K162, K164, and K166) is direct ingestion of drinking water from residential wells near the disposal site. Because of the widespread practice of daily cover, indirect air pathways and surface erosion and runoff were not evaluated for municipal landfills. For on-site monofills, however, the presumption of no daily cover was used, and risks associated with indirect pathways were evaluated.

In addition to estimating potential risks from waste disposed in an unlined municipal landfill, the Agency evaluated risks from municipal landfills meeting the minimum requirements for a Subtitle D landfill (56 FR 50978, 1991). These requirements include daily cover, flexible membrane liner, leachate collection system, clay liner, and final

cap and cover. The results of these analyses can be found in the Risk Assessment for Dye and Pigment Waste Listing Determination. This document is available in the RCRA public docket (see ADDRESSES section).

A dilution factor based on the ratio of the volume of the waste to the volume of co-disposed municipal waste and daily cover was used to estimate the concentrations of the constituents of concern in the landfill. The concentrations of the constituents measured in the waste were multiplied by this dilution factor to determine the concentration of the constituents in the landfill. The concentrations of the constituents in the landfill leachate were estimated using Toxicity Characteristics Leaching Procedure (TCLP) data submitted by industry for selected constituents (3,3'-dichlorobenzidine, aniline, 4-chloroaniline, and 2- and 4-aminotoluene), or when TCLP data were not available, by using a soil-water partitioning equation.

EPA used the following linear partition equation (Dragan, 1988) with an adjustment to relate sorbed concentration to total waste concentration.

$C_L = C_W/[Foc * Koc + O * S/Bd]$

where C_L=leachate concentration
C_W=waste concentration
Foc=fraction organic carbon
Koc=organic carbon partitioning coefficient
O=porosity
S=fraction water content
Bd=bulk density

The physical properties of the waste used in this equation (*i.e.*, bulk density, fraction organic carbon) were obtained either from the Agency's record samples when available, or from the 1991 RCRA Section 3007 Questionnaire responses.

The volume of leachate and rate of ground-water recharge were estimated using the HELP model. The HELP model uses site-specific precipitation values and standard assumptions for the characteristics of municipal waste to estimate infiltration and recharge rates. For the evaluation of dye and pigment wastes in municipal landfills, annual precipitation rates for sites near all dye and pigment facilities were ranked. Charlotte, North Carolina was selected as representative of the median precipitation value for the areas near dye and pigment facilities, and Charleston, South Carolina, was selected as representative of sites with high annual rainfall potential. The default meteorologic conditions for these locations in the HELP model were used to determine the infiltration and recharge rates used in the ground-water modeling.

The distance to the receptor wells near the municipal landfill used in the ground-water modeling were obtained from the survey of well distances conducted for the Background Document for EPACML: Finite Source Methodology (EPA, 1992). The value selected as representative of the average condition is the 50th-percentile value for well distance (438 m), and the value for the high-end (close) condition (48 m) is the 95th-percentile value.

The Agency used the MULTIMED groundwater model to simulate the subsurface dilution and attenuation of the leachate constituents in order to estimate the concentration of constituents at the hypothetical residential wells. The Agency then calculated risks to an individual, assuming the residents using this well on average consume 1.4 L/day of contaminated water, or 2 L/day for higher consumptions. Values of 9 or 30 years were used for the average and high-exposure duration estimates. The formulae used and a more detailed discussion of the application of these models to the waste samples can be found in the Risk Assessment for Dye and Pigment Waste Listing Determination, available in the RCRA public docket (see ADDRESSES section).

For on-site monofills, the leaching analysis was the same as for municipal landfills except that the waste concentrations are not diluted in the monofill.

The distance to the nearest receptor wells near the on-site landfill used in the ground-water modeling were obtained from a telephone survey of 9 city planning offices and a review of site visit reports and site maps. The value selected as representative of the average condition is the 50th-percentile value for well distance (163 m) and the value for the high-end (close) condition (16 m) is the closest value. The Risk Assessment for Dye and Pigment Waste Listing Determination for this rulemaking contains a more detailed discussion of these values. This document is available in the RCRA public docket (see ADDRESSES section).

In addition to direct ingestion of contaminated drinking water, additional pathways were evaluated depending on the characteristics of the waste and management practices evaluated. These pathways included inhalation pathways from airborne particulates and volatiles released from the monofills, and indirect exposure pathways such as the ingestion of vegetables grown in soil contaminated by runoff from the on-site landfill and/or dermal exposure due to direct contact with contaminated soil. The algorithms used for the estimation of risks due to indirect exposures were taken from the Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustion Emissions (U.S. EPA, 1990) as modified by the September 24 draft of Addendum: Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustion Emissions. Working Group Recommendations (U.S. EPA, 1993) and the Risk Assessment Guidance for Superfund (RAGS): Volume I—Human Health Evaluation Manual (Part B, Development of Risk-base Preliminary Remediation Goals) (U.S. EPA, 1991), and Dermal Exposure Assessment: Principles and Applications. Interim Report (U.S. EPA 1992) for dermal exposures to water. These documents are available in the public docket for this rule (see ADDRESSES section).

The air pathways were evaluated using the CHEMDAT 7 air emission model to determine the emission rates for volatile constituents from the landfill, tanks, and storage bins. The Fugitive Dust Model (FDM) was used to determine the emission rates for particulates. These emissions were coupled with dispersion coefficients to determine the ambient air concentrations and the rate of deposition of the waste constituents onto the nearby soil, vegetable gardens, watersheds, and water bodies. The distances to air receptors are assumed to be similar to those used for the ground-water wells. The meteorologic locations used for the air modeling were selected by a procedure similar to that used to select the ground-water locations. The annual average wind speed, temperature, and precipitation values for 34 sites near dye and pigment facilities were evaluated to determine three sites believed to represent a range of conditions to be examined in greater detail. Hourly meteorological data for five years were ranked for these three sites to select the location and year of the data to be used in the air modeling. For the average case, Huntington, West Virginia was selected. For the high-end case, Charlotte, North Carolina was selected.

An on-site boiler (as the plausible management scenario) also was evaluated for exposure through the air pathway for still bottoms generated from the production of triarylmethane dyes and pigments (K166), and for wastewater treatment sludge from the production of triarylmethane pigments using aniline as a feedstock. The boiler was characterized as a small non-hazardous boiler based upon Agency

information and industry-supplied data in the RCRA Section 3007 Questionnaire data. The meteorologic data used to characterize the dispersion were determined based upon a distribution of meteorologic data collected for sites near existing dye facilities. These data are ranked by year and location, and the 50th- and 90th-percentile year and location were selected for the central and high-end dispersion modeling. The air dispersion was estimated using the COMPDEP model to estimate air concentrations and wet and dry deposition of the constituents on nearby soil, vegetables and water bodies. The air concentrations and deposition data also were used to evaluate indirect exposures.

Wastewaters

For wastewater streams (K163, K165, and wastewaters from the production of triarylmethane dyes and pigments) the Agency determined that treatment in surface impoundments represents the plausible management scenario because, since surface impoundments currently are in use or planned at several dye facilities, and waste management practices in the dye and pigment industries are generally similar, the Agency believes that pigment manufacturers may employ surface impoundments in the future. In addition, facilities currently manufacturing dyes also could manufacture pigments in the future and manage wastewaters from pigment production in surface impoundments.

The baseline management practice evaluated for these wastewater streams (*i.e.*, K163, K165, and wastewaters from the production of triarylmethane dyes and pigments) was treatment in tanks. Thus, for wastewaters, the modeling included direct and indirect exposures to volatile emissions from surface impoundments and tanks and direct and indirect exposures to contaminants that may leach into ground water from unlined surface impoundments. The air emissions from tanks were estimated using the CHEMDAT 7 air emission model and the dispersion of these emissions was estimated using the Industrial Source Complex Model-Long Term, Version 2 (ISCLT2) air dispersion model. The meteorologic locations used for estimating the emissions and dispersions were the same locations selected for use with air models for volatile emissions from landfills. Very few inhalation health-based levels are available for constituents found in dye and pigment wastewaters. Risk from direct inhalation exposure to wastes disposed in surface impoundments was estimated to be less than one-in-a-million for all constituents. Results from air emission modeling for tanks are presented in the Risk Assessment Background Document for the Proposed Rule in the RCRA Docket at EPA Headquarters (see **ADDRESSES** section).

Since the constituents in these wastes are highly soluble, leaching from unlined impoundments was evaluated. The concentration of the constituents in the leachate was assumed to be equal to the concentration in the wastewater.

To estimate the concentration of constituents at the hypothetical residential well, the Agency attempted to use the MULTIMED model to simulate the subsurface attenuation and dilution of the surface impoundment leachate. However, there are limitations of the MULTIMED model that preclude its use in this analysis. These include the large volume of leachate estimated to be released from the surface impoundment and a conservative approach to predict the horizontal transport of the leachate within the aquifer. This resulted in an infiltration rate that is so high that it overwhelms the aquifer and dilution was not expected. Therefore, to evaluate risk for those wastewaters that the Agency is proposing to list, the Agency assumed for this proposal that a dilution and attenuation factor (DAF) of 100 is achievable during migration to the nearest drinking water well. The Agency's toxicity characteristic (TC) rule (55 FR 11798, 1990) adopts a DAF of 100 to estimate the subsurface fate and transport between an unlined landfill and a receptor drinking water well. For purposes of the risk analyses, the concentrations in the residential wells near the on-site disposal facility were estimated to be equal to 0.01 times the concentrations measured in the wastewater. The residents using this well are assumed on average to consume 1.4 L/day or 2L/day of contaminated water for an exposure duration of 9 years or 30 years.

The Agency believes that it is more reasonable to use the TC rule approach to support a proposed determination to list, rather than developing a model more sophisticated than the MULTIMED model because the Agency believes a more sophisticated analysis would suggest greater estimated risks than the analysis using a DAF of 100 for the following reasons. First, the DAF of 100 was derived for the TC rule for a range of municipal landfill leachate volumes that are generally lower than leachate volumes from surface impoundments. Surface impoundment DAFs are expected to be lower (and risks subsequently higher) compared to landfill DAFs as a result of both the liquid in the impoundment and subsequent increase in hydraulic head. Second, in the TC analysis, the location of the receptor well was varied anywhere within the extent of the contaminant plume. For listing determinations, the Agency generally assumes that the well is located on the centerline of the plume. This assumption would lead to a lower DAF and higher risks. Thus, because the use of the TC DAF of 100 underestimates risk, use of the TC to estimate risk can support a proposal to list. A more sophisticated model would show only higher risk numbers. The wastewaters that the Agency proposes not to list were evaluated using MULTIMED and creating a bounding estimate. The Agency believes that it is reasonable to use the MULTIMED model to support this proposed determination not to list certain wastewaters because it overestimates risks.

Ecological Risks

In addition to evaluating the risk to human health, the analysis also estimates risks to fish and wildlife from exposure to dye and pigment wastes. The concentrations of contaminants of concern in water bodies near dye and pigment waste facilities were estimated using the indirect exposure methodology and a few high-end input parameters. As a screening analysis, the estimated surface-water concentrations were compared with the National Ambient Water Quality Criteria (NAWQC), or LC_{50} values for bluegill and/or rainbow trout if NAWQC were not available. The risks to terrestrial and avian species were evaluated by comparing the waste concentration with the oral rat LD_{50}, dermal rabbit LD_{50}, any available avian LD_{50} values, and if available, a Lowest Observed Adverse Effects Level (LOAEL). Aniline from the manufacture of triarylmethane pigment using aniline as a reactant was the only compound identified as a potential risk to the aquatic or terrestrial environment by this method. Details of these analyses are presented in the Risk Assessment for Dye and Pigment Waste Listing Determination available in the public docket (see **ADDRESSES** section).

The Agency requests comments on methodology used by the Agency in selecting plausible mismanagement scenarios and assessing risks and on the plausible management scenarios selected for the wastestreams generated from the manufacture of dyes and pigments.

E. Waste-Specific Listing Determination Rationales

1. Wastes From the Production of Azo Pigments

a. Wastewater treatment sludge from the production of azo pigments (K162).

Summary

EPA is proposing to list as hazardous wastewater treatment sludges from the production of azo pigments. This wastestream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous and is capable of posing a substantial present or potential hazard to human health or the environment. Based on ingestion of contaminated ground water, EPA calculated high-end individual cancer-risk levels for six hazardous constituents that are equal to or exceed 1E–4 for carcinogens or have HQs equal to or greater than 1 for non-carcinogens for the plausible management practice, an on-site monofill. The combined carcinogenic risk for multiple co-existing constituents in this wastestream is projected to be 6E–3 for the on-site monofill. In addition, a combined risk of 1E–4 for multiple co-existing contaminants were identified for the baseline management practice, a municipal landfill. Calculated risks exceeding 1E–4 also were identified from exposure to four contaminants through ingestion of contaminated vegetables or through dermal contact with contaminated soil. Three additional contaminants pose calculated individual risks between 1E–4 and 1E–6 for the on-site monofill, and 4 contaminants pose calculated risks between these levels for the municipal landfill. Six contaminants pose calculated individual risks between 1E–4 and 1E–6 from exposures through indirect pathways.

TABLE II–2.—WASTE CHARACTERIZATION AND RISK ESTIMATES—K162—WASTEWATER TREATMENT SLUDGE FROM THE PRODUCTION OF AZO PIGMENTS

Constituents of concern	Baseline management		Plausible management		Waste characterization				
	Municipal landfill***		On-site monofill***		Avg. conc.	High conc.	Low conc.	# of pts	Notes
	Central tendency	High end	Central tendency	High end					
Aniline	Risk<1E–6	Risk=1E–6	Risk=1E–5	Risk=6E–5	f.n.	f.n.	f.n.	f.n.	
2- & 4-Aminoaniline/ 2-Methoxyaniline*.	Risk=6E–6	Risk=3E–5	Risk=3E–6	Risk=3E–4	7.17	.....	.....	1 of 5	J, S
2- & 4-Aminotoluene**	Risk<1E–6	Risk<1E–6	Risk=1E–5	Risk=3E–5	1.3	1.5	1.2	3 of 8	j(3), I(3)
Acetoacet-*o*-anisidide (AAOA)	Risk=2E–6	Risk=8E–6	Risk=3E–4	Risk=1E–3	0.67	.....	.....	1 of 5	S
Acetoacet-*o*-toluidide (AAOT)	Risk=1E–5	Risk=6E–5	Risk=6E–4	Risk=4E–3	f.n.	f.n.	0.31	4 of 5	J(1), S
Acetoacetanilide (AAA)	Risk=7E–6	Risk=3E–5	Risk=1E–4	Risk=6E–4	f.n.	f.n.	0.14	5 of 5	(J)(1), S
1,3-Dinitrobenzene	HQ <1	HQ <1	HQ=5	HQ=7	1.05	1.6	0.72	3 of 16	J(3), I(3)
3,3'-Dimethyl-benzidine.	Risk<1E–6	Risk<1E–6	Risk=3E–6	Risk=1E–5	1.9	2.4	1.3	2 of 16	J(2), I(2)
Nitrobenzene	HQ <1	HQ <1	HQ=10	HQ=14	f.n.	f.n.	f.n.	f.n.	J
2,4-Dinitrophenol	HQ <1	HQ <1	HQ=1	HQ=1	0.74	.....	.....	1 of 16	J
Combined Carcinogen Risk	Risk=3E–5	Risk=1E–4	Risk=8E–3	Risk=6E–3					

* Risk estimates based on surrogate for 2-methoxyaniline.
** Risk estimates based on 2-aminotoluene.
*** Exposure through ingestion of contaminated water.
f.n. Relevant data are not included at the present time due to business confidentialty concerns.
Notes:
All concentrations are in mg/kg.
J(#)—samples where estimated concentrations are below quantitation limits, "(#)" indicates number of samples that are "J" values.
I(#)—includes data supplied by industry, "(#)" indicates number of samples that are industry-supplied.
S—Toxicity estimated based on metabolic similarity to chemical analog.

TABLE II–3.—K162—RISK VALUES FOR DISPOSAL IN A MONOFILL (OTHER THAN DRINKING CONTAMINATED GROUND WATER)

Constituent	Vegetable ingestion		Soil dermal contact		Soil ingestion	
	Central	High end	Central	High end	Central	High end
1,3-Dinitrobenzene.						
2-Aminoaniline	R=4E–5	R=4E–5				
2-Aminotoluene	R=3E–6	R=2E–5				
4-Aminotoluene	R=1E–6	R=1E–6				
2,4,6-Trichlorophenol	R=1E–6	R=2E–6				
3,3'-Dichlorobenzidine	R=2E–3	R=7E–3	R=7E–5	R=2E–4	R=9E–6	R=3E–5
3,3'-Dimethylbenzidine	R=4E–3	R=5E–3	R=3E–5	R=3E–5	R=5E–6	R=6E–6
Acetoacet-*o*-anisidine	R=3E–5	R=3E–5				
Acetoacet-*o*-toluidine	R=3E–4	R=5E–4				
Acetoacetanilide	R=ER–5	R=2E–4				
Aniline	R=1E–5	R=1E–5				
Total Carcinogen Risk	R=6E–3	R>9E–3	R=1E–4	R=2E–4	R=1E–5	R=4E–5

Discussion

The volume reported by the industry in the 1991 RCRA Section 3007 Questionnaire data for wastewater treatment sludge from the manufacture of azo pigments (K162) is not included at the present time due to business confidentiality concerns. Over 99% of this wastestream currently is disposed in Subtitle D municipal landfills. Therefore, the Agency used disposal in a municipal landfill as the baseline management practice. In addition, as explained under Section II.D, Description of Health and Risk Assessments, the Agency evaluated on-site monofilling as a plausible management scenario.

The projected risks of increased cancer or hazard quotient above one for exposure to this waste are presented in Table II–2. The data presented in this table represent 16 samples collected from 4 azo pigment-manufacturing facilities. Eleven of the 16 samples were collected and analyzed by industry, and were submitted to EPA for evaluation. The 11 industry samples were analyzed using Gas Chromatography/Mass Spectrometry (GC/MS), Method 8270B in EPA's "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846, Third Edition) but were not analyzed using High Pressure Liquid Chromatography/Thermospray/Mass Spectrometry (HPLC/TS/MS), Method 8321 in SW–846. EPA has reviewed the quality of these industry submitted data and has found that these data meet the Agency's data quality objectives and, therefore, qualify for inclusion in the waste assessment. Inclusion of these industry data, however, does bias the industry's characterization toward one facility (*i.e.*, of 16 data points, 11 were submitted by one facility, and 2 were collected by the Agency at that same facility). The five EPA-collected samples, representing four facilities, were analyzed using both methods, a process which encompasses more analytes. Therefore, several analytes, specifically acetoacetanilide (AAA), acetoacet-*o*-toluidide (AAOT), and acetoacet-*o*-anisidide (AAOA), were detected in some or all of the EPA samples, but were not analyzed in the industry samples.

The calculated risks from ingesting contaminated ground water associated with disposing these sludges in on-site monofills are very high. Three of the compounds that exceed risk levels of 1E–4 are common raw materials used as coupling agents in the manufacture of azo pigments: acetoacetanilide (AAA), acetoacet-*o*-anisidide (AAOA), and acetoacet-*o*-toluidide (AAOT). These three compounds were expected to be present in the waste, and consistently were found in the samples collected by the Agency.

The three coupling compounds present in this waste, AAA, AAOA, and AAOT, are predicted to pose very high risks via ground-water ingestion when managed in an on-site monofill. As shown in Table II–2, the calculated risks posed by these compounds range from 1E–3 to 6E–4. These risks were calculated using metabolic product structural-activity relationships (SAR) for these compounds. A detailed discussion of the SAR for these compounds, and the estimation of toxicities for AAA, AAOA, and AAOT is presented earlier in this preamble, under Section II.C, Description of Health and Risk Assessments, and in the Health Assessment Background Document for this proposed rule, which is located in the RCRA Docket for this rulemaking (See **ADDRESSES** section).

These three compounds are high-volume couplers used in the manufacture of azo pigments. Based on RCRA Section 3007 Questionnaire data, AAA is the third highest-volume reactant in the pigment industry, with over 8200 metric tons used in 1991. AAOT and AAOA also are used in high volumes; their 1991 use volumes were 2600 and 850 Mtons, respectively.

AAA, AAOT, and AAOA were found in 85% of the wastewater systems where they are used. When detected in the wastewater system, the compound was found either in the wastewater or in the sludge. Table II–4 presents the number of wastewater systems where each of the three coupling compounds were detected. Table II–4 also shows the number of samples in which the three coupling compounds were detected relative to the number in which the compounds were expected.

TABLE II–4

	WWT System	Wastewater	Sludge
AAA	5 of 5 systems	4 of 4 samples	5 of 5 samples.
AAOA	2 of 4 systems	3 of 3 samples	1 of 2 samples.
AAOT	4 of 4 systems	1 of 4 samples	4 of 4 samples.

Amides (*e.g.*, AAA, AAOT, and AAOA) hydrolyze to form free acids and amine salts under acidic conditions. Measurements of pH values of process wastewaters at several pigment production facilities revealed that these acidic conditions are encountered frequently. The hydrolysis products for AAA, AAOT, and AAOA are aniline, 2-aminotoluene, and 2-methoxyaniline, respectively. The unreacted amide raw materials and the amines expected from hydrolysis of these amides both have been identified in untreated wastewaters and wastewater biological treatment sludges.

Two sets of coeluting compounds were observed from the analysis of wastewater treatment sludge from the production of azo pigments. The first set of coeluting compounds produced one data point, shown in Table E1, for which the mass spectrum indicates the presence of 2-methoxyaniline, along with the potential presence of 2- and 4-aminoaniline (for a discussion of coeluting compounds and risk assessments conducted on these compounds, please refer to the section entitled "Coeluting Compounds" in Section II.D). 2-Methoxyaniline is expected as a contaminant in the wastewater treatment sludge from the facility that generated the sample because that facility manufactures azo pigments using acetoacet-*o*-anisidide (AAOA) as a raw material, and, as stated above, 2-methoxyaniline is an expected hydrolysis product of AAOA. In addition, the facility from which this sample was collected uses 2-aminoaniline as a reactant in the manufacture of azo dyes.

For this wastestream, the Agency conducted the risk assessment for these coeluting compounds based on toxicity information for 2-methoxyaniline because this contaminant is expected to be present from azo pigment production. Since there currently is no HBL for 2-methoxyaniline, the Agency based the risk assessment on the toxicity of a surrogate compound. 2-Aminotoluene is a structural analog of 2-methoxyaniline and is being used as a toxicity surrogate. The resulting high-end individual cancer-risk level for 2-methoxyaniline was calculated to be 2E–3 for the on-site monofill management scenario.

The second set of coeluting compounds consists of the two isomers 2- and 4-aminotoluene. The two isomers were detected in 3 out of 8 sludge samples from azo pigment manufacturing operations, and the combined concentration of the two compounds was quantified. The calculated high-end individual cancer-risk level, based on the toxicity of 2-aminotoluene, is 3E–5 for the on-site monofill management scenario.

In addition to the substantial calculated risks (*i.e.*, exceeding 1E–4 for carcinogens) posed by raw materials used in azo pigment manufacturing and their break-down products, four additional contaminants were found in the wastestream at concentrations that are projected to pose very high risks (HQs of 1 or greater for non-carcinogens) through ingestion of contaminated ground water under plausible management in an on-site monofill. 1,3-Dinitrobenzene, nitrobenzene, and 2,4-dinitrophenol were found at concentrations that resulted in calculated high-end HQs of 7, 9, and 1 . respectively.

In addition to assessing the risks associated with the individual constituents found in the waste, the Agency considers the combined risk of constituents that co-exist in the wastestream. In the case of wastewater treatment sludges generated from the manufacture of azo pigments, all of the diazotization and coupling reactants and breakdown products previously discussed in this section (*i.e.*, AAA, AAOT, AAOA, aniline, 2-aminotoluene, and 2-methoxyaniline) are assumed to co-exist in the wastestream. The reactants are used in numerous large-volume pigments which are manufactured on a frequent basis. Since this sludge is a commingled wastestream representing production from the entire plant, the constituents are likely to be present simultaneously in the waste. Therefore, the combined risk of these individual constituents, which is projected to be very high (*i.e.*, 8E–3 at the high end), also was considered in making this listing determination.

In addition to the very high risks posed by the plausible management practice (a monofill), the calculated risks posed by the current management practice (a municipal landfill) are also high. The combined additive high-end risk for the reactants and breakdown products previously discussed in this section (*i.e.*, AAA, AAOT, AAOA, aniline, 2-aminotoluene, and 2-methoxyaniline) is projected to be 1E–4 for the municipal landfill management practice. Therefore, EPA concludes that even if the Agency considered current management and did not consider plausible management, this wastestream would present a substantial risk to human health and the environment, and should be listed as hazardous.

Three additional constituents (*i.e.*, aniline, 3,3′-dimethylbenzidine, and 2-aminotoluene) were found in the wastewater treatment sludge from azo pigment operations at concentrations that are projected to pose risks within the Agency's risk range of concern (*i.e.*, 1E–4 to 1E–6 for carcinogens) using the on-site monofill management scenario. Four constituents (*i.e.*, AAOA, AAOT, AAA, and the coeluting compounds 2-aminoaniline and 2-methoxyaniline) were found in this waste at concentrations that pose risks between 1E–4 and 1E–6 for carcinogens for the municipal landfill scenario. In addition, six constituents pose risks within this range of potential concern through indirect pathways.

Based on an analysis of the risks associated with both current and plausible management practices, EPA is proposing to list wastewater treatment sludge from the production of azo pigments as a hazardous waste, designated as EPA Hazardous Waste Number K162.

For the reasons stated above, the Agency is proposing to add the following constituents to Appendix VII to Part 261—Basis for Listing: Aniline, 2-aminoaniline, 4-aminoaniline, 2-methoxyaniline, 2-aminotoluene, 4-aminotoluene, acetoacet-*o*-anisidide, acetoacet-*o*-toluidide, acetoacetanilide, 1,3-dinitrobenzene, 3,3′-dimethylbenzidine, nitrobenzene, and 2,4-dinitrophenol.

In addition, acetoacet-*o*-anisidide, acetoacet-*o*-toluidide, acetoacetanilide, 2-aminoaniline, 4-aminoaniline, 2-methoxyaniline, and 1,3-dinitrobenzene are proposed to be added to Appendix VIII to Part 261—Hazardous Constituents.

b. Wastewaters from the production of azo pigments (K163).

Summary

The Agency is proposing to list wastewaters from the production of azo pigments as hazardous wastes. This waste meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous and is capable of posing a significant present or potential hazard to human health or the environment. Based on ingestion of contaminated ground water, EPA calculated high-end individual risk levels for three carcinogens that exceed 1E–4 for disposal in an unlined on-site surface impoundment, the plausible management scenario. The calculated combined carcinogenic risk for these constituents is 3E–4 from exposure to contaminated ground water for the surface impoundment management scenario. To further support this listing, four additional contaminants pose individual risks between 1E–4 and 1E–6 for the surface impoundment scenario.

Discussion

Data from the RCRA Section 3007 Questionnaire show that the 1991 volume reported by the industry for the wastewater stream from azo pigment production is 9,914,662 metric tons, or approximately 7.2 million gallons per day. Over 75% of wastewaters from azo pigment manufacturing currently are pretreated and discharged to a publicly owned treatment works (POTW). Most of these wastewaters are treated in equalization and neutralization tanks prior to discharge to a POTW. A smaller percentage of these wastewaters is subjected to aerobic biological treatment in tanks, with subsequent NPDES discharge to a surface water.

As explained under Section II.D, Description of Health and Risk Assessments, the risk assessment for these wastewaters was performed using treatment in tanks as the current, or baseline, management practice, and treatment in surface impoundments as a plausible management scenario. The risks of increased cancer for exposure to this waste are presented in Table II–5. The data presented in this table represent six samples collected from four azo pigment manufacturing facilities.

TABLE II–5.—WASTE CHARACTERIZATION AND RISK ESTIMATES K163—WASTEWATERS FROM THE PRODUCTION OF AZO PIGMENTS

Constituents of concern	Baseline management		Plausible management scenario		Waste characterization				
	Treat in tanks***		Treat in SI***						
	Central tendency	High end	Central tendency	High end	Avg. conc.	High conc.	Low conc.	# of pts	Notes
2- & 4-Aminoaniline/2-Methoxyaniline*.	All		Risk=5E–5	Risk=1E–4	f.n.	4.75	f.n. (J)	2 of 6	J(1)
2-, 3-, & 4-Aminotoluene**.	Constituents		Risk=1E–5	Risk=2E–5	0.54	2.1	f.n. (J)	4 of 6	J(3)
Aniline	Dropped		Risk=2E–6	Risk=4E–6	f.n.	f.n.	f.n.	4 of 5	
Acetoacet-*o*-anisidide (AAOA).	After		Risk=5E–6	Risk=1E–5	f.n.	0.18	0.021(J)	3 of 6	J(1), S
Acetoacet-*o*-toluidide (AAOT).	Bounding		Risk=5E–5	Risk=1E–4	2.06			1 of 6	S
Acetoacetanilide (AAA).	Risk		Risk=4E–6	Risk=7E–6	f.n.	f.n.	f.n.	4 of 6	S
2,4- & 2,6-Dimethylaniline.	Assessment		Risk=5E–5	Risk=1E–4	f.n.			f,n,	
Combined Carcinogen Risk.			Risk=2E–4	Risk=3E–4					

* Risk estimates based on surrogate for 2-methoxyaniline.
** Risk estimates based on 2-aminotoluene.
*** Exposure through ingestion of contaminated groundwater.
f.n. Relevant data are not included at the present time due to business confidentiality concerns.
Notes:
All concentrations are in mg/l.
J(#)—Samples where estimated concentrations are below quantitation limits, '(#)' indicates number of samples that are 'J' values.
S—Toxicity estimated based on metabolic similarity to chemical analog.

The calculated risks associated with managing these wastewaters in surface impoundments are very high. Three constituents are considered to pose a substantial potential hazard to human health and the environment (*i.e.*, risks exceed 1E–4). Calculated risks for each of these three compounds are 1E–4.

Three of the constituents that have been projected to pose a risk greater than 1E–6, namely, acetoacetanilide (AAA), acetoacet-*o*-toluidide (AAOT), and acetoacet-*o*-anisidide (AAOA), are high-volume coupling reactants used in the manufacture of azo pigments. As explained above for K162, these constituents are dominant raw materials in the azo pigment manufacturing industry and generally are present in the wastewater treatment systems at these sites. As shown in Table II–5, the risks calculated by these compounds range from 1E–4 to 1E–6. As stated for K162, these risks were calculated using metabolic product structural-activity relationships (SAR) for these compounds, an approach which is discussed in detail in Section II.D of this preamble, and in the Listing Background Document for this proposed rule, which is located in the RCRA Docket for this rulemaking (See **ADDRESSES** section).

Table II–4, presented earlier, shows that AAA and AAOA were detected in all of the wastewater samples collected from facilities that use these reactants. AAOT was found only in one of four wastewater samples, but it was found in all four of the sludge samples collected from facilities using the compound. The Agency believes that the latter compound generally is present in the wastewater treatment system at facilities that use AAOT as a raw material but that it may be preferentially partitioning to the sludge.

In addition to the high risks calculated by the three reactants, AAA, AAOA, and AAOT, the hydrolysis products of these compounds, aniline, 2-aminotoluene, and 2-methoxyaniline, also were detected in the waste at concentrations that pose significant risk (*i.e.*, risks ranging from 1E–4 to 4E–6). Discussions addressing hydrolysis pathways and conditions for these compounds, and the issue of coeluting compounds associated with the hydrolysis products, were presented earlier in this preamble (see discussion of K162, and Section II.D).

In addition to the primary raw materials and breakdown products presented above, the combined 2,4- and 2,6-isomers of dimethylaniline, which also are suspected raw material breakdown products, were detected in this waste at concentrations that pose a very high risk (*i.e.*, a risk of 1E–4).

Along with risks associated with the individual constituents found in the waste, the Agency considers the combined risks of constituents that co-exist in the wastestream. In the case of wastewaters generated from the manufacture of azo pigments, all of the reactants and breakdown products previously discussed in this section (*i.e.*, AAA, AAOT, AAOA, aniline, 2-aminotoluene, and 2-methoxyaniline) are assumed to co-exist in the wastestream. The reactants are used in producing numerous large-volume pigments that are manufactured on a frequent basis. Since this wastewater stream represents several commingled wastestreams from throughout the plant, the constituents are likely to be present simultaneously in the waste. Therefore, the combined risks of these individual constituents, which are projected to be very high under the surface impoundment mismanagment scenario

(i.e., 3E–4 at the high end), also were considered in making this listing determination.

Based on the calculated risks associated with the plausible management practice for this waste (treatment in surface impoundments), EPA is proposing to list wastewaters from the production of azo pigments as a hazardous waste, designated EPA Hazardous Waste Number K163. However, the Agency recognizes that if wastewater treatment sludges from the production of azo pigments (K162) are listed as proposed, the available options for wastewater management may change and the surface impoundment scenario may not be plausible for the following reason: wastewaters that are managed in an impoundment will generate sludges through precipitation. In the event that K162 sludges were listed and the wastewaters were not, the sludges generated in a Subtitle D wastewater impoundment would be hazardous wastes and the surface impoundment would become subject to RCRA Subtitle C regulation. The Agency is requesting comment on whether the use of Subtitle D surface impoundments to manage wastewaters would be a plausible management scenario if the wastewaters were not listed but the wastewater treatment sludges were listed as hazardous wastes. The Agency also is requesting comment on the need to list K163 wastewaters, given that the plausibility of the management scenario on which the risk assessment was based may be affected by the final outcome of the K162 sludge listing.

For the reasons stated above, EPA proposes to add the following constituents to Appendix VII to Part 261—Basis for Listing: Aniline, 2-aminoaniline, 4-aminoaniline, 2-methoxyaniline, 2-aminotoluene, 3-aminotoluene, 4-aminotoluene, acetoacet-*o*-anisidide, acetoacet-*o*-toluidide, acetoacetanilide, 2,4-dimethylaniline, and 2,6-dimethylaniline.

In addition, 2-aminoaniline, 4-aminoaniline, 2-methoxyaniline, 3-aminotoluene, acetoacet-*o*-anisidide, acetoacet-*o*-toluidide, acetoacetanilide, 2,4-dimethylaniline, and 2,6-dimethylaniline are proposed to be added to Appendix VIII to Part 261—Hazardous Constituents.

2. Wastes from the production of azo dyes.

a. Wastewater treatment sludge from the production of azo dyes, excluding FD&C colorants (K164).

Summary

EPA is proposing to list wastewater treatment sludge from the production of azo dyes, excluding FD&C colorants, as a hazardous waste. This wastestream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous and is capable of posing a substantial present or potential risk to human health or the environment. Based on ingestion of contaminated ground water, EPA calculated high-end individual cancer risk levels for five constituents which exceed 1E–4 for carcinogens and have HQs of 1 or greater for non-carcinogens for the plausible management practice, an on-site monofill. Four additional contaminants further support the listing by posing individual risks between 1E–4 and 1E–6. Risks between 1E–4 and 1E–6 also were identified for six contaminants from exposure to these constituents through other exposure pathways.

Discussion

The majority of wastewater treatment sludge from the production of azo dyes is biological treatment sludge. The information on volume and the percentage of this waste volume disposed of at Subtitle D municipal landfills, as reported in the 1992 RCRA Section 3007 Questionnaire, is not included at the present time due to business confidentiality concerns.

TABLE II–6.—WASTE CHARACTERIZATION AND RISK ESTIMATES, K154—WASTEWATER TREATMENT SLUDGE FROM THE PRODUCTION OF AZO DYES

Constituents of concern	Baseline management #		Plausible management scenario				Waste characterization				
	Municipal landfill ****		On-site monofill ****		Vegetable ingestion		Avg. conc.	High conc.	Low conc.	# of pts	Notes
	Central tend.	High end	Central tend.	High end	Central tend.	High end					
2-&4 Aminoaniline/ 2-Methoxyaniline*.	R=4E–6	R=2E–5	R=2E–4	R=5E–4	R=4E–5	R=4E–5	7.17	.....	.....	1 of 7	J
Aniline	R<1E–6	R<1E–6	R=2E–6	R=1E–5	R=2E–6	R=2E–6	f.n.	f.n.	14	f.n.	
Diphenylamine/ N-Nitrosodiphenylamine**.	R<1E–6	R<1E–6	R<1E–6	R=2E–6			f.n.	f.n.	f.n.	f.n.	I
3,3'-Dimethoxybenzidine.	R<1E–6	R<1E–6	R=4E–6	R=2E–5	R=3E–6	R=3E–6	f.n.	f.n.	f.n.	f.n.	
4–Methylphenol	R<1E–6	R<1E–6	HQ = 2	HQ = 3			9.5	.....	.....	1 of 7	
1,3–Dinitrobenzene.	HQ < 1	HQ < 1	HQ = 34	HQ = 45			1.05	1.6	0.72	3 of 8	J
2–Methoxy-5-nitroaniline.	R<1E–6	R<1E–6	R<1E–6	R=2E–6	R=5E–6	R=5E–6	0.92	.....	.....	1 of 10	J(3),I(3)
2,4–Dinitrophenol.	HQ < 1	HQ < 1	HQ = 1	HQ = 2			0.74	.....	.....	1 of 18	J,I
2- & 4-Aminotoluene***.	R<1E–6	R=1E–6	R=3E–5	R=1E–4	R=1E–5	R=2E–5	1.3	1.5	1.2	3 of 11	J(5),I(9)

TABLE II–6.—WASTE CHARACTERIZATION AND RISK ESTIMATES, K154—WASTEWATER TREATMENT SLUDGE FROM THE PRODUCTION OF AZO DYES—Continued

Constituents of concern	Baseline management #		Plausible management scenario				Waste characterization				
	Municipal landfill ****		On-site monofill ****		Vegetable ingestion						
	Central tend.	High end	Central tend.	High end	Central tend.	High end	Avg. conc.	High conc.	Low conc.	# of pts	Notes
Combined Carcinogenic Risk.	R=4E–6	R=2E–5	R=2E–4	R=7E–4							

Underestimates risks due to disposal in on-site monofill, not included in estimate.
* Risk numbers based on 2-aminoaniline.
** Risk numbers based on N-nitrosodiphenylamine.
*** Risk numbers based on 2-aminotoluene.
**** Exposure through ingestion of ground water.
f.n. Relevant data are not included at the present time due to business confidentiality concerns.
Notes:
All concentrations are in mg/kg.
J(#)—Samples where estimated concentrations are below quantitation limits, '(#)' indicates number of samples that are 'J' values.
I(#)—Includes data supplied by industry, '(#)' indicates number of samples that are industry-supplied.
S—Toxicity estimated based on metabolic similarity to chemical analog.

As discussed earlier under Section II.D, Description of Health and Risk Assessments, the Agency conducted the risk assessment on these wastestreams using both a current, or baseline management scenario, and a plausible management scenario. Information relating to this discussion is not included at the present time due to business confidentiality concerns.

Therefore, the Agency conducted the risk assessment on two current management scenarios, a municipal landfill, and a monofill, with the monofill representing the plausible management practice.

The risk projections associated with this wastestream are presented in Table II–6. The data presented in this table represent 18 samples collected from four azo dye manufacturing facilities. Eleven of the 18 samples were collected and analyzed by industry, and were submitted to EPA for evaluation.

The risks associated with disposing these sludges in monofills are projected to be very high. Five constituents found in the waste are predicted to pose individual high-end cancer-risk levels equal to or exceeding 1E–4 or HQs equal to or exceeding 1 for non-carcinogens, through ingestion of contaminated ground water or vegetables. The five constituents pose carcinogenic risks ranging from 1E–4 to 5E–4 and non-carcinogenic hazards from 2 to 45 times above the RfDs for the monofill management scenario.

There are two cases of coeluting constituents for this wastestream. As shown in Table II–6, there is one data point for which the mass spectrum indicates the presence of 2-methoxyaniline along with the potential presence of 2- and 4-aminoaniline. As discussed in Section II.D, EPA based the risk assessment for this set of coeluting compounds on 2-aminoaniline. The calculated high-end individual cancer-risk level for 2-aminoaniline is 5E–4 for the monofill management scenario.

The second set of coeluting compounds consists of the three isomers 2-, 3-, and 4-aminotoluene. The presence of the three isomers was confirmed in four out of six wastewater samples collected from azo dye manufacturing operations, and the combined concentration of the three compounds was quantified. The calculated high-end individual cancer-risk level, based on the toxicity of 2-aminotoluene, is 1E–4 for the monofill management scenario (See Section II.D of this preamble, Coeluting Compounds, for more details on the Agency's approach to risk assessment for coeluting compounds).

In addition to the two sets of coeluting compounds used as raw materials in azo dye manufacturing, three compounds, 1,3- dinitrobenzene, 4-methylphenol, and 2,4-dinitrophenol were found at concentrations that are projected to pose a substantial risk to human health and the environment. The risks presented by these compounds are calculated to have high-end HQs of 45, 3, and 2, respectively.

Aniline is a high-volume dye reactant present in the wastewater treatment sludge at multiple facilities, according to RCRA Section 3007 questionnaire data. Aniline is the fourth highest-volume reactant used in the dye industry, according to data provided in the 1991 RCRA Section 3007 Questionnaires, with a 1991 use volume of 4860 metric tons. Based on the aniline concentrations found in the waste, the Agency has calculated a high-end individual cancer-risk level for this constituent at 1E–5.

Aniline was found in over 70% of the samples of wastewater treatment sludge from azo dye production. However, 11 of the 13 aniline data points, which were all from one facility, were dropped prior to the risk assessment because the facility reported that aniline found in the wastewater treatment sludges is associated with non-dye operations. This facility consumes larger volumes of aniline in their non-dye operations than in the manufacture of azo dyes. It is likely that aniline from dye operations contributed to the presence of the constituent in the waste; however, the Agency could not determine the extent of this contribution.

In studying the wastewater treatment systems from azo dye manufacturing operations as a whole, the Agency found aniline to be present in all systems from which samples were collected. In addition, aniline was consistently present in the wastewaters for all samples collected. Furthermore, even though aniline would be expected to biodegrade in the wastewater treatment system, aniline was present in 2 out of 5 samples from the wastewater treatment sludge. Because the wastewater treatment sludge presents a complex matrix for chemical analysis, the detection limits obtained for the wastewater treatment sludges were high Therefore, the Agency believes that, given the consistent presence of aniline in the wastewater, and the detection of aniline in 2 out of 5 sludge samples

(with 11 data points dropped for the reasons stated earlier), aniline typically is present in wastewater treatment sludges from azo dye manufacturing operations. Based on the aniline concentrations found in the two data points that remain after 11 data points were dropped, the Agency has determined that the risk posed by aniline in this wastestream is significant.

An additional high-volume raw material used in the manufacture of azo dyes, 3,3'-dimethoxybenzidine, was found to be present in the wastewater treatment sludge from azo dye operations at concentrations that result in calculated high-end individual cancer-risk level of 2E–5. Based on data from the 1991 RCRA Section 3007 Questionnaire, 1719 metric tons of 3,3'-dimethyoxybenzidine were used in the manufacture of azo dyes in 1991.

In addition to the risks posed by the individual hazardous constituents found in the waste, some of the contaminants are co-occurring in this wastestream. The Agency found that sludge samples collected from each of the four azo dye manufacturing facilities generally contain one or more toxic raw materials simultaneously. Therefore, some individual carcinogens are co-occurring in the waste and the calculated risks are assumed to be additive. Given the waste characterization and risk assessment results, along with toxicity information on other raw materials used in the production of azo dyes (*i.e.*, aromatic amines), the Agency believes that wastewater treatment sludges from azo dye manufacturing typically contain one or more toxic raw materials at concentrations that pose a significant risk.

In addition to the azo dye raw materials that were found in the wastestream at concentrations that pose a high risk, two additional constituents, 2-methoxy-5-nitroaniline, and the two coeluting compounds diphenylamine and N-nitrosodiphenylamine, were found in the wastewater treatment sludge from azo dye operations at concentrations that pose carcinogenic risks above 1E–6 (See Section II.D for treatment of coeluting compounds).

The results from the assessment of exposure pathways other than drinking contaminated ground water resulting from management in an on-site monofill also are presented in Table II–6. Calculated high-end individual cancer-risk levels between 1E–4 and 1E–6 were identified for six contaminants through indirect exposure pathways (contaminated vegetable ingestion) if airborne dusts are not controlled.

In addition to the risks posed by the monofill management practice, the calculated risk posed by municipal landfill disposal also is within EPA's range of potential concern, 1E–6 to 1E–4, for two sets of coeluting compounds, 2- and 4-aminoaniline/2-methoxyaniline, and 2- and 4-aminotoluene. The Agency also considered the risks posed by these contaminants for a municipal landfill when making the listing decision.

Based on an analysis of the risks associated with the current management practices, a monofill and municipal landfill, EPA is proposing to list as hazardous wastewater treatment sludge from the production of azo dyes, excluding FD&C colorants, designated EPA Hazardous Waste Number K164.

For the reasons stated above, the Agency is proposing to add the following constituents to Appendix VII to Part 261—Basis for Listing: 2-aminoaniline, 4-aminoaniline, 2-methoxyaniline, aniline, diphenylamine, N-nitrosodiphenylamine, 3,3'-dimethoxybenzidine, 4-methylphenol, 1,3-dinitrobenzene, 2-methoxy-5-nitroaniline, 2,4-dinitrophenol, 2-aminotoluene, and 4-aminotoluene.

In addition, 2-aminoaniline, 4-aminoaniline, 2-methoxyaniline, N-nitrosodiphenylamine, 4-methylphenol, 1,3-dinitrobenzene, and 2-methoxy-5-nitroaniline are proposed to be added to Appendix VIII to Part 261—Hazardous Constituents.

b. Wastewaters from the production of azo dyes, excluding FD&C colorants (K165).

Summary

The Agency is proposing to list wastewaters from the production of azo dyes, excluding FD&C colorants, as hazardous. This wastestream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous and is capable of posing a substantial present or potential hazard to human health or the environment. Based on ingestion of contaminated ground water, EPA calculated a high-end individual risk level of 1E–4 for one hazardous constituent for the plausible management scenario, treatment in an unlined surface impoundment. Two additional constituents are estimated to pose risks between 1E–4 and 1E–6 for the surface impoundment scenario.

Discussion

Based on response data from the 1991 RCRA Section 3007 Questionnaire, the volume reported by the industry for wastewaters from azo dye production, excluding FD&C colorants, was 6,295,779 metric tons per year, or 4.6 million gallons per day. Approximately 58% of wastewaters from azo dye production, excluding FD&C colorants currently are pretreated and discharged to a POTW. Over 40% of these wastewaters are treated in aerobic biological tank systems, with subsequent NPDES discharge to a surface water. Approximately 5% of the wastewaters from azo dye operations excluding FD&C colorants are treated in biological treatment systems that use surface impoundments.

As discussed earlier under Section II.D, Description of Health and Risk Assessments, the risk assessment for these wastewaters was performed using treatment in tanks as the current, or baseline, management practice, and treatment in surface impoundments as a plausible management scenario. For this waste, however, the worst-case management scenario, treatment in a surface impoundment, is also one of the current management practices. The calculated risks of increased cancer or hazard quotient above one for exposure to this waste are presented in Table II–7. The data presented in this table represent seven samples collected from five azo dye-manufacturing facilities.

TABLE II–7—WASTE CHARACTERIZATION AND RISK ESTIMATES K165—WASTEWATERS FROM THE PRODUCTION OF AZO DYES, EXCLUDING FD&C COLORANTS

Constituents of concern	Baseline management		Plausible Management		Waste Characterization				
	Treat in tanks***		Treat in SI***						
	Central tendency	High end	Central tendency	High end	Avg. conc.	High conc.	Low conc.	# of pts	Notes
2- & 4-Aminoaniline/2-Methoxyaniline*.	Insignificant risk for any constituent.	.....	Risk=6E–6	Risk=1E–5	f.n.	4.75	f.n.	3 of 8	
2-, 3-, & 4-Aminotoluene**.	.....	.....	Risk=6E–5	Risk=1E–4	f.n.	f.n.	0.048 (J)	6 of 8	J(2)
Aniline	.....	.....	Risk=<1E–6	Risk=2E–6	f.n.	f.n.	0.063	5 of 5	
Combined Carcinogenic Risk.	.....	.....	Risk=6E–5	Risk=1E–4					

* Risk estimates based on 2-aminoaniline.
** Risk estimates based on 2-aminotoluene.
*** Exposure through ingestion of contaminated ground water.
f.n. Relevant data are not included at the present time due to business confidentiality concerns.
Notes:
All concentrations are in mg/l.
J(#)—Samples where estimated concentrations are below quantitation limits, '(#)' indicates number of samples that are 'J' values.
S—Toxicity estimated based on metabolic similarity to chemical analog.

The risk associated with the wastewaters in tanks is estimated to be below levels of concern. However, the risks associated with managing these wastewaters in surface impoundments are calculated to be high. One constituent found in the waste is considered capable of posing a substantial present or potential risk to human health or the environment (*i.e.*, risks are 1E–4 or higher for carcinogens, or 1 or higher HQs for non-carcinogens). The constituent poses a risk 1E–4.

As was the case with wastewater treatment sludge from the production of azo dyes, excluding FD&C colorants, the wastewaters were found to contain high concentrations of aniline, a high-volume dye reactant that poses an unacceptable risk at such levels. In fact, aniline was present in each of the seven wastewater samples from azo dye production. However, two of the seven aniline data points, which were both from one facility, were dropped prior to the risk assessment because the facility reported that aniline found in the wastewater is associated with non-dye operations. This facility consumes larger volumes of aniline in their non-dye operations than in the manufacture of azo dyes. It is likely that aniline from dye operations contributed to the presence of the constituent in the waste; however, the Agency could not determine the extent of this contribution.

Based on the aniline concentrations represented by the five remaining data points, the Agency has determined that the risks posed by aniline in this wastestream are 2E–6).

The presence of three coeluting isomers, 2-, 3-, and 4-aminotoluene, was confirmed in four out of six wastewater samples collected from azo dye manufacturing operations, and the combined concentration of the three compounds was quantified (refer to earlier discussion under Section II.D.2, Coeluting Compounds, for a discussion on the coelution of 2-, 3-, and 4-aminotoluene). The calculated high-end individual cancer-risk level, based on the toxicity of 2-aminotoluene, is 1E–4 for the surface impoundment management scenario.

The second set of coeluting compounds consists of 2- and 4-aminoaniline, and 2-methoxyaniline. EPA based the risk assessment for this set of coeluting compounds on 2-aminoaniline, as discussed in Section II.D.2. The resulting calculated high-end individual cancer-risk level is 1E–5 for the surface impoundment management scenario.

Based on the risks associated with the plausible management practice for this waste, EPA is proposing to list wastewaters from the production of azo dyes, excluding FD&C colorants, as a hazardous waste, designated EPA Hazardous Waste Number K165. However, the Agency recognizes that if wastewater treatment sludges from the production of azo dyes (K164) are listed as proposed, the available options for wastewater management may change and surface impoundments may not be used. Wastewaters that are managed in an impoundment will generate sludges through precipitation. In the event that K164 sludges were listed and the wastewaters were not, the sludges generated in a Subtitle D wastewater impoundment would be hazardous wastes and the surface impoundment would become subject to RCRA Subtitle C regulation. The Agency is requesting comment on whether it would be plausible to use a Subtitle D surface impoundment to manage wastewaters if the wastewaters were not listed and the wastewater treatment sludges were listed as hazardous wastes. The Agency also is requesting comment on the need to list K165 wastewaters, given that the plausibility of the worst-case management scenario on which the risk assessment was based may be affected by the K164 sludge listing.

For the reasons stated above, EPA proposes to add the following constituents to Appendix VII to Part 261—Basis for Listing: 2-aminoaniline, 2-methoxyaniline, 2-aminotoluene, 3-aminotoluene, 4-aminotoluene, and aniline.

In addition, 2-aminoaniline, 4-aminoaniline, 2-methoxyaniline and 3-aminotoluene are proposed to be added to Appendix VIII to Part 261—Hazardous Constituents.

3. Wastes from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).

a. Wastewater treatment sludge from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).

Summary

EPA is proposing to defer the decision on whether to list wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock) due to insufficient waste characterization data. The Agency is planning to collect additional information on this wastestream. EPA then will publish a supplemental notice with a proposed determination on whether to list this waste.

Discussion

This waste is generated from the treatment of wastewaters from triarylmethane dye and pigment manufacturing. These wastewaters often are commingled with wastewaters from the manufacture of other dyes and pigments. As a result, the wastewater treatment sludges typically are managed also as a commingled wastestream from the production of triarylmethane and any other dyes or pigments manufactured at the site. Based on the RCRA Section 3007 Questionnaire data, the 1991 volume reported by the industry for this wastestream is 1,404 metric tons.

Wastewater treatment sludge from the production of triarylmethane dyes and pigments is generated at only five facilities. The Agency's sampling program, which was conducted in support of this listing determination, included wastewater treatment sludge from one of the five facilities generating this waste. However, the facility was not manufacturing triarylmethane dyes or pigments during the time of the sampling activities. Therefore, the resulting absence of constituents attributable to the triarylmethane operations was not unexpected.

In conclusion, based on insufficient characterization data, the Agency proposes to defer a listing decision on wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock). The Agency is proposing to conduct additional sampling on this wastestream and will publish a supplemental notice with a proposed listing determination.

b. Wastewaters from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).

Summary

EPA is proposing not to list wastewaters from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock) because the constituents in this waste were observed at concentrations that present low risk levels (*i.e.*, calculated at less than 1E–6 for carcinogens and lower than 1 HQ for non-carcinogens) through ingestion of contaminated ground water, and no other hazardous constituents attributed to triarylmethane dye or pigment production were detected.*

Discussion

Volume information reported by the industry in the 1992 RCRA Section 3007 Questionnaire for the wastewater stream from triarylmethane dye and pigment production is not included at the present time due to business confidentiality concerns. Wastewaters from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock) often are commingled with wastewaters from the manufacture of azos and other dyes and pigments.

TABLE II–8.—WASTE CHARACTERIZATION AND RISK ESTIMATES WASTEWATERS FROM THE PRODUCTION OF TRIARYLMETHANE DYES AND PIGMENTS (EXCLUDING TRIARYLMETHANE PIGMENTS USING ANILINE AS A FEEDSTOCK)

Constituents of concern	Baseline management		Plausible management		Waste characterization				
	Treat in Tanks*		Treat in SI*		Avg. conc.	High conc.	Low conc.	# of pts	Notes
	Central tendency	High end	Central tendency	High end					
f.n.	No HBL		No HBL		f.n.			1 of 3	
4–Nitroaniline	No HBL		No HBL		0.016			1 of 3	J
f.n.	All remaining constituents were dropped following bounding on baseline management								
4–Methylphenol									
f.n.									
f.n.									
N,N'-Dimethylaniline									
f.n.									

* Exposure through ingestion of contaminated ground water.

f.n. Relevant data are not included at the present time due to business confidentiality concerns.

Notes:

All concentrations are in mg/l.

J(#)—samples where estimated concentrations are below quantitation limits, '(#)' indicates number of samples that are 'J' values.

Information on the percentage of these wastewaters currently pretreated and discharged to a POTW, and on the percentage treated in a biological treatment system and discharged to a surface water under the NPDES system is not included at the present time due to business confidentiality concerns. As discussed earlier under Section II.D, Description of Health and Risk Assessments, the risk assessment for these wastewaters was performed using treatment in tanks and surface impoundments as the baseline and plausible management practices, respectively.

The Agency believes that the three wastewater samples collected from the manufacture of triarylmethane dyes and pigments are representative of the industry, in part, because wastewater samples were collected from the two largest triarylmethane dye producers in the country. Furthermore, the chemical analyses conducted on this waste encompassed the most important raw materials used in the manufacture of triarylmethane dyes and pigments, and these compounds were not detected at concentrations that pose a significant risk. For example, N,N-dimethylaniline is a large volume raw material used in the manufacture of triarylmethane dyes and pigment, and was analyzed using the Gas Chromatography/Mass Spectrophotometry analytical method.

In addition to the GC/MS analysis, specific analyses were conducted in order to look for two additional toxic raw materials for triarylmethane dyes and pigments; chloranil and another raw material that cannot be identified due to business confidentiality concerns. As shown in Table II–8, N,N-dimethylaniline and the other raw material that cannot be identified were not found in these wastewaters at concentrations that pose a significant risk, and chloranil was not detected at all in the wastewaters.

Table II–8 presents eight constituents, obtained from three wastewater samples which were collected at three out of 14 facilities that manufacture triarylmethane dyes or pigments. These eight compounds are the constituents that were found to be attributable to the triarylmethane processes, and six of the eight compounds were dropped following the risk assessment screening (see the Listing and Risk Assessment for Dye and Pigment Waste Listing Determination Background Documents for this proposed rule, located in the RCRA Docket for this rulemaking (see ADDRESSES section) for the process used in identifying attributable constituents and for the process used for dropping compounds after risk screening, respectively). Because these compounds are not expected to bioaccumulate, the maximum measured concentrations of those constituents with HBLs in this wastestream were compared to their HBLs, and the ratio of concentrations to HBL values was less than 1, indicating that the concentrations of these compounds in the waste are not expected to pose a risk to human health or the environment. The two remaining constituents, 4-nitroaniline and a constituent that cannot be identified at the present time due to confidentiality concerns, were detected at low concentrations and do not have HBLs needed to conduct a risk assessment. The risks posed by these two constituents, however, were assessed using surrogate compounds. Neither of the compounds are expected to be potential carcinogens. Furthermore, the Agency selected surrogate compounds that are structurally similar to the compounds detected in the waste, and are estimated, by means of structural activity relationships (SARs), to be more toxic than the subject compounds. Nitrobenzene was selected as a surrogate for 4-nitroaniline. Surrogate information on the second constituent cannot be included at the present time due to business confidentiality concerns. The ratios of concentration to HBL (HQ) determined by this analysis were also less than 1, indicating that, if the contaminant concentrations found in the waste were actually present in drinking water, the risks posed by ingesting the drinking water would be insignificant. More detailed discussions on the risk assessment screening and surrogate compounds are presented in the Dye and Pigment Listing Support Health Effects Background Document, which is located in the RCRA Docket for this rulemaking (see ADDRESSES section).

In conclusion, because the constituents in this waste were observed at concentrations that present low risk levels, and no other hazardous constituents attributed to triarylmethane dye or pigment production were detected, the Agency is proposing not to list wastewaters from the manufacture of triarylmethane dyes and pigments as hazardous.

4. Wastes from the production of triarylmethane pigments using aniline as a feedstock.

Triarylmethane pigments using aniline as a feedstock currently are produced at two domestic facilities. These facilities each produce a single product which is manufactured throughout the year using aniline as the major feedstock. The two processes are markedly different from other dye and pigment processes in the industry. Most dye and pigment processes manufacture numerous products on a batch basis, using different raw materials for each product. The wastes generated from typical dye manufacturing plants vary in composition over time due to the constant changes in raw materials. In contrast, triarylmethane pigments using aniline as a feedstock are generated at facilities that are dedicated to the manufacture of one product continuously throughout the year, and use only two raw materials, aniline and formaldehyde, at the site. In addition, aniline is used in excess in the process. These differences have a significant impact on the compositions of the waste. Such wastes were expected, and found, to contain high concentrations of aniline. The listing Background Document, found in the RCRA docket (see ADDRESSES section) for this proposed rulemaking, contains details on the process for manufacturing triarylmethane (TAM) pigments using aniline as a feedstock.

a. Wastewater treatment sludge from the production of triarylmethane pigments using aniline as a feedstock.

Summary

The Agency is proposing not to list as hazardous wastewater treatment sludges from the production of triarylmethane pigments using aniline as a feedstock. If this wastestream were managed by disposal in a municipal landfill (the plausible management scenario used for other wastewater treatment sludges), it would meet the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous and would be capable of posing a substantial present or potential hazard to human health or the environment. However, as discussed in Section II.D, Description of Health and Risk Assessments, the Agency has determined that management in a municipal landfill is not plausible for this wastestream. Despite this determination, for comparison purposes the Agency calculated the risks associated with disposal in a municipal landfill and with diposal in an on-site boiler. If, based on comments, the Agency determines that it is not reasonable to use fuel blending as the plausible management scenario, the Agency probably would determine that plausible management is disposal in a municipal landfill for the ground-water pathway, and is disposal in an on-site boiler for the air pathway. Disposal in an on-site monofill, which was established as the plausible management scenario for other wastewater treatment sludges (*i.e.*, K162 and K164), is not a practical option for this wastestream due to its low volume relative to the capacity of a monofill, and so is not feasible economically.

Based on ingestion of contaminated ground water due to releases from a municipal landfill, EPA calculated high-end individual cancer-risk levels of 1E–4 and 8E–5 for the constituents benzidine and aniline, respectively The coeluting compounds 1,2-diphenylhydrazine and azobenzene are calculated to pose risks between 1E–6 and 1E–5. Therefore, the combined carcinogenic risk for multiple co-existing constituents in this wastestream would be 2E–4, assuming disposal in a landfill. However, the risks associated with the current and plausible management practice, blending with non-hazardous fuel, are insignificant for any constituent. Thus, the Agency is proposing not to list it as hazardous.

Discussion

Wastewater treatment sludge from the production of triarylmethane pigments using aniline as a feedstock currently is generated at only one facility. This waste is generated from a filter press that is used as part of the wastewater pretreatment system. The waste is generated at a rate of approximately 18 metric tons per year.

EPA has summarized the risk projections associated with this sludge

in Table II–9. The data presented in this table represent one sample from one facility. Unlike earlier wastestreams, health benchmarks exist for all the contaminants detected in this wastestream (with the exception of one coeluting compound, which is discussed later in this section). Additional compounds which do have health benchmarks, however, have been identified in these wastes, but were dropped from further consideration following the risk screening. The complete list of compounds found in this and other wastestreams is presented in the Listing Background Document for this proposed rule, which is located in the RCRA Docket for this rulemaking (see **ADDRESSES** section).

Details on the risk assessment are provided in Section II.D of this preamble, Description of Health and Risk Assessments, and in the Listing Background Document for this proposed rule, located in the RCRA Docket for this rulemaking (see **ADDRESSES** section).

TABLE II–9.—WASTE CHARACTERIZATION AND RISK ESTIMATES WASTEWATER TREATMENT SLUDGE FROM THE PRODUCTION OF TRIARYLMETHANE PIGMENTS USING ANILINE AS A FEEDSTOCK

Constituents of concern	Plausible management		Other management				Waste characterization				
	Off-site non-haz fuel blending**		On-site boiler**		Municipal landfill***						
	Central tendency	High end	Central tendency	High end	Central tendency	High end	Avg. conc.	High conc.	Low conc.	# of pts	Notes
1,2-Diphenylhydrazine/Azobenzene*.	Insignificant risk for any constituent.	.....	Risk <1E–6	Risk <1E–6	Risk =5E–6	Risk =2E–5	370(J)			1 of 1	J
Aniline	.....	.....	HQ<1	HQ<1	Risk =2E–5	Risk =8E–5	31000			1 of 1	
Benzidine	.....	.....	Risk <1E–6	Risk <1E–6	Risk =2E–5	Risk =1E–4	6.3			1 of 1	
Combined carcinogen risk.	Insignificant risk for any constituent.	.....	Risk <1E–6	Risk <1E–6	Risk =5E–5	Risk =2E–4					

* Risk numbers based on HBL for 1,2-diphenylhydrazine.
** Inhalation exposure through air pathway.
*** Exposure through ingestion of contaminated ground water.
Notes:
All concentrations are in mg/l.
J(#)—Samples where estimated concentrations are below quantitation limits, '(#)' indicates number of samples that are 'J' values.

As shown in Table II–9, benzidine is present in this wastestream at concentrations that pose a substantial risk to human health and the environment (*i.e.*, equal to or greater than 1E–5 for carcinogens) for the municipal landfill management scenario. Benzidine was found to be present in several wastestreams from the manufacture of triarylmethane pigments using aniline as a feedstock, including wastewaters from both facilities that manufacture these pigments. The Agency believes that benzidine is either a raw material contaminant or a reaction by-product from the process.

Large quantities of aniline, typically in excess, are used as a raw material to this process. As a result, this wastestream was found to contain over three percent aniline. The calculated high-end individual cancer-risk level for aniline is 8E–5 for the landfill scenario.

In addition to benzidine and aniline, the waste was found to contain two other hazardous constituents that are believed to be by-products of the reaction and pose a significant risk at the concentrations detected for the municipal landfill management scenario. Two additional compounds presented in Table II–9, 1,2-diphenylhydrazine and azobenzene, coelute on the mass spectrum (see Section II.D, Description of Health and Risk Assessments, for a discussion on the Agency's approach to risk assessment for coeluting compounds). Both compounds are likely oxidation products of aniline, and may be present in the waste as reaction by-products. In addition to the uncertainty in establishing concentrations for each of the two compounds, the chemical pathway from aniline to these oxidation products suggests that either contaminant may be present at all or part of the concentration detected. The Agency conducted the risk assessment using the health-based levels for 1,2-diphenylhydrazine and azobenzene, independently. For disposal in a municipal landfill, the calculated high-end individual cancer-risk level for these coeluting compounds, based on the toxicity of 1,2-diphenylhydrazine, is 2E–5.

In addition to assessing the risks associated with the individual constituents found in the waste, the Agency considers the combined risk of constituents that co-exist in the wastestream. In the case of this wastewater treatment sludge, all of the constituents discussed above (*i.e.*, aniline, benzidine, and 1,2-diphenylhydrazine/azobenzene) are believed to co-exist in the wastestream. The processes that produce triarylmethane pigments using aniline as a feedstock are operated continuously all year. As a result, the constituents detected in the wastestream are likely to be present simultaneously in the waste. Therefore, the combined calculated risk of these individual constituents, for the municipal landfill scenario would be 2E–4 at the high end.

However, the risks associated with the current and plausible management practice for this wastestream (blending with non-hazardous fuel for combustion) are insignificant. As discussed in Section II.D, Description of Health and Risk Assessments, the Agency believes that the fuel blending

will continue. The relatively high organic content of the waste gives the material value as a fuel ingredient and, therefore, generators of this waste have an economic incentive to continue fuel blending. Therefore, the Agency is proposing not to list the wastestream as hazardous. If the NPDES program requirements were to change (*i.e.*, become more stringent) then those triarylmethane pigment producers that currently do not generate a sludge could be forced to generate a sludge due to their efforts to meet new NPDES requirements. In that case, the plausible management scenario would change, and other practices, such as landfilling, would become possible. The Agency may reopen this listing decision should this occur, and will use the risk levels associated with this management scenario to make a revised listing determination.

b. Wastewaters from the production of triarylmethane pigments using aniline as a feedstock.

Summary

The Agency is proposing not to list as hazardous wastewaters from the production of triarylmethane pigments using aniline as a feedstock. As shown in Table II–10, these wastewaters contain an average aniline concentration of 200 ppm. In addition, the wastewaters contain the same hazardous by-products found in the wastewater treatment sludge. Although this wastestream, if managed in surface impoundments, would meet the criteria set out in 40 CFR 261.11(a)(3) for listing a waste as hazardous and would be capable of posing a substantial present or potential risk to human health or the environment if released into the environment, the Agency has determined that management in surface impoundments is not plausible for this wastestream. The Agency believes this because 100% of this wastestream is managed in exempt tanks. The Agency has no reason to believe that this management practice will change. Risk associated with treatment in tanks is insignificant and, thus, the Agency is proposing not to list this waste as hazardous. However, for comparison purposes, the Agency has calculated the risks associated with disposal of this wastestream in a surface impoundment. If, based on comments, the Agency determines that it is not reasonable to assume that management in tanks is the correct plausible management scenario, the Agency probably would determine that management in a surface impoundment is the appropriate plausible management scenario.

Discussion

These wastewaters are generated from filtrations of process intermediates and products, flushing operations, equipment washdowns, floor washings, and process operations. Based on response data from the 1991 RCRA Section 3007 Questionnaire, a total of 757,080 metric tons, or 0.4 million gallons per day, of wastewater from the production of triarylmethane (TAM) pigments is generated. Information on generation relevant to this discussion is not included at the present time due to business confidentiality concerns. All of the wastewaters generated from TAM pigment production (using aniline as a feedstock) are treated in tanks prior to discharge to a POTW. The data presented in Table II–10 represent three samples collected from two TAM pigment-manufacturing facilities.

TABLE II–10.—WASTE CHARACTERIZATION AND RISK ESTIMATES WASTEWATERS FROM THE PRODUCTION OF TRIARYLMETHANE PIGMENTS USING ANILINE AS A FEEDSTOCK

Constituents of concern	Plausible management		Other management				Waste Characterization				
	Treat in tanks **		Treat in SI ***		Treat in SI ***		Avg. conc.	High conc.	Low conc.	# of pts	Notes
	Central tendency	High end	Central tendency	High end	Central tendency	High end					
1,2-diphenylhydrazine/Azobenzene*.	Insignificant risks for any constituent.	.....			Risk=5E–6	R=1E–5	f.n.	f.n.	0.093 (J)	f.n.	J(2)
Aniline	.....	.....			Risk=7E–5	R=1E–4	f.n.	f.n.	108	f.n.	
Benzidine	.....	.....			Risk=1E–4	R=3E–4	f.n.	f.n.	0.006	f.n.	
Combined Carcinogenic Risk	.....	.....			Risk=2E–4	R=5E–4					

* Risk numbers based on HBL for 1,2-diphenylhydrazine.
** Inhalation exposure through air pathway.
*** Exposure through ingestion of ground water.
f.n. Relevant data are not included at the present time due to business confidentiality concerns.
Notes: All concentrations are in mg/l.
J(#)—Samples where estimated concentrations are below quantitation limits, '(#)' indicates number of samples that are 'J' values.

As discussed earlier under Section II.D, Description of Health and Risk Assessments, the plausible management scenario selected for wastewaters usually is treatment in surface impoundments.

The risks associated with disposing these wastewaters in surface impoundments would be very high. Two hazardous constituents (aniline and benzidine) are present in the waste at concentrations that would pose substantial risks to human health and the environment (*i.e.*, greater than 1E–4 for carcinogens) for treatment in a surface impoundment. Large quantities of aniline, used in excess, are used as a raw material in this process. As a result, very high concentrations of aniline are present in the process waters. Even after recovery operations, EPA found high concentrations of aniline (in this case, an average of 200 ppm) remaining in the wastewater effluent discharged to the POTW.

Benzidine was found to be present in several wastestreams from the manufacture of triarylmethane pigments using aniline as a feedstock, and is believed to be either a raw material

contaminant or a reaction by-product. The risks posed by benzidine at the concentrations present in these wastewaters are 3E–4, using a surface impoundment management scenario.

The coeluting constituents, 1,2-diphenylhydrazine and azobenzene, which are likely by-products arising from the oxidation of aniline are present in the waste at a concentration resulting in a calculated risk level of 1E–5, based on the toxicity of 1,2-diphenylhydrazine (see Section II.D, Description of Health and Risk Assessments, for a discussion on the Agency's approach to risk assessment for coeluting compounds). The mass spectrum representing these two coeluting compounds was identified in all three wastewater samples collected from triarylmethane pigment operations.

However, based on the insignificant risks associated with the current and plausible management practice for this wastestream (treatment in tanks), EPA is proposing not to list wastewaters from the production of TAM pigments as hazardous. Although this wastestream would be hazardous if used for spray irrigation or handled in surface impoundments, the Agency does not believe that such management is plausible. The facilities generating the wastewater already are 100% invested in treating the waste in tanks prior to sending it to a POTW. In addition, this is not a strongly expanding segment of the industry, so the Agency does not anticipate more facilities starting up similar operations. Further, there is a general bias under most State industrial waste programs against allowing surface impoundments to be built. Thus, based on the risk associated with treatment in tanks, the Agency is proposing not to list this wastestream as hazardous.

c. Still bottoms or heavy ends from the production of triarylmethane dyes or pigments (K166).

Summary

The Agency is proposing to list still bottoms or heavy ends from the production of triarylmethane dyes or pigments as hazardous. This wastestream meets the criteria set out at 40 CFR 261.11(a)(3) for listing a waste as hazardous and is capable of posing a substantial present or potential risk to human health or the environment. Based on ingestion of contaminated ground water, EPA calculated high-end individual risk levels (greater than 1E–4) for carcinogens under both the baseline and plausible management scenarios. Two carcinogens pose high-end risks exceeding 9E–3 for the plausible management scenario of disposal in an on-site monofill. These two constituents pose very high levels of risk (greater than 1E–3) for the baseline management practice of disposal in a municipal landfill. In addition, one of these constituents has an HQ of 6 for the air pathway associated with management in an on-site boiler, a practice which is both a baseline management practice and a plausible management scenario.

Discussion

This wastestream includes distillation bottoms from the production of triarylmethane dye and pigments, which are generated from solvent and raw material recovery operations (*i.e.*, recovery of aniline, dimethylaniline, or other solvents).

TABLE II–11.—WASTE CHARACTERIZATION AND RISK ESTIMATES K166—STILL BOTTOMS OR HEAVY ENDS FROM THE PRODUCTION OF TRIARYLMETHANE PIGMENTS USING ANILINE AS A FEEDSTOCK

Constituents of concern	Baseline management				Plausible management				Waste characterization				
	On-site boiler		Municipal landfill		On-site boiler		On-site monofill		Avg. conc.	High conc.	Low conc.	# of pts	Notes
	Central tend.	High end	Central tend.	High end	Central tend.	High end	Central tend.	High end					
1,2-diphenylhydrazine/Azobenzene *.	R=2E–6	R=6E–5	R=6E–4	R=2E–3	R=7E–6	R=1E–5	R>9E–3	R>9E–3	f.n.	f.n.	1700	2 of 2 .	
Aniline	HQ<1 no air HBL	HQ=6 no air HBL	R=2E–3 R<1E–6	R=7E–3 R<1E–6	HQ=3 no air HBL	HQ=6 no air HBL	R>9E–3 R=1E–6	f.n. R=6E–6	f.n. 580	19000	2 of 2	1 of 2 .	J
N-nitrosodiphenylamine/Diphenylamine **.													
Combined Carcinogen Risk.	R=2E–6	R=6E–5	R=2E–3	R=9E–3	R=2E–5	R=6E–5	R>9E–3	R>9E–3					

* Risk numbers based on HBL for 1,2-diphenylhydrazine.
** Risk numbers based on HBL for N-nitrosodiphenylamine.
f.n. Relevant data are not included at the present time due to business confidentiality concerns.
Notes:
All concentrations are in mg/kg.
J(#)—Samples where estimated concentrations are below quantitation limits, '(#)' indicates number of samples that are 'J' values

Information relevant to this discussion is not included at the present time due to business confidentiality concerns.

Process waters from the manufacture of triarylmethane dyes and pigments containing high levels of aniline or other raw materials and solvents sometimes are sent to a distillation column for recovery of the material for reuse in the process. As expected, the bottoms generated from the distillation contain high concentrations of the material being recovered. The concentrations of aniline present in two samples collected exemplify the concentrations of solvent contaminants anticipated in these wastes. Information on the concentration of aniline observed is not presented at his time due to business confidentiality concerns.

Based on data from the RCRA Section 3007 Questionnaire, four facilities generated a total of 1700 metric tons of this waste in 1991.

EPA has summarized the risk projections associated with this waste in Table II–11. The data presented in this table represent two samples from two facilities. These samples were collected from the two largest generators of this wastestream, both of which recover aniline from the wastewater. One of the remaining two facilities recovers other aniline derivatives (*i.e.*, N,N-dimethylaniline and N,N-diethylaniline) that are used as raw materials and solvents in the production of triarylmethane dyes. The second facility recovers chlorobenzene used as a solvent in the production of triarylmethane dyes and generates a still bottom waste that is reported to contain 50% chlorobenzene. This waste is already listed as F002, based on the use of the solvent chlorobenzene. Based on an evaluation of the processes generating these wastes and the contaminants reported to be present by industry, the Agency believes the risks posed are similar to those assessed in Table II–11. The data used to characterize these wastestreams, assess the risks posed by these wastes, and make a proposed listing determination on the waste grouping were obtained from the two samples collected by EPA and the 1991 RCRA Section 3007 Questionnaire responses. Waste management information relevant to this discussion are not included at the present time due to business confidentiality concerns.

As discussed earlier in Section II.D, Description of Health and Risk Assessments, the Agency conducted the risk assessment on these wastestreams using the two most widely used practices, the on-site boiler and municipal landfill as the current management scenario, and an on-site boiler (for the air pathway) and on-site monofill (for the ground-water pathway) as the plausible management scenario.

The risk posed by the presence of aniline in the concentrations found in the waste is estimated to be very high (*i.e.*, greater than 9E–3 for the ground-water pathway, and HQ=6 for the air pathway). Due to the imperfect nature of any recovery process, it is not unexpected that large quantities of aniline, or any other raw material or solvent being recovered, would be present in these still bottoms. Aniline was found in very high concentrations (*i.e.*, the low concentration was 1.9%) in both distillation bottom samples collected from triarylmethane pigment production. Information on the high concentration value is not included at the present time due to business confidentiality concerns.

In addition to aniline, the two sets of coeluting constituents present in the wastewater treatment sludge and wastewaters from these operations (*i.e.*, 1,2-diphenylhydrazine and azobenzene, and N-nitrosodiphenylamine and diphenylamine) also are present in the distillation bottoms (K166). These compounds are all likely by-products arising from the oxidation of aniline. The MS curve representing 1,2-diphenylhydrazine and azobenzene was identified in both distillation bottom samples collected from triarylmethane pigment operations. For the reasons discussed in Section II.D, the Agency conducted the risk assessment for these coeluting compounds independently. The resulting high-end individual cancer-risk level for this first set of coeluting compounds is greater than 9E–3. Likewise, the risk assessment for N-nitrosodiphenylamine and diphenylamine was conducted independently, as discussed in Section II.D. The resulting high-end individual cancer-risk level for this second set of coeluting compounds is 6E–6.

In addition to assessing the risks associated with the individual constituents found in the waste, the Agency considers the combined risks of constituents that co-exist in the wastestream. In the case of still bottoms from the production of triarylmethane dyes and pigments, all of the constituents are believed to co-exist in the wastestream. The distillation columns generating this residual process the same wastestream with each dye or pigment batch. As a result, the constituents detected are likely to be present simultaneously in the waste. The risk of each individual constituent is high, and the combined risks of these constituents are very high (greater than 9E–3 for the ground-water pathway and 6E–5 for the air pathway), both of which were considered in making this listing determination.

In addition to the very high risks posed by the plausible management practice (on-site boiler for the air pathway and on-site monofill for the ground-water pathway), the risks posed by the baseline management practice (on-site boiler for the air pathway and municipal landfill for the ground-water pathway) are also very high. Specifically, the risks posed by the current management practices are greater than 9E–3 for the ground-water pathway, and 6E–5 (carcinogens) and HQ=6 (non-carcinogens) for the air pathway.

In summary, the calculated risks associated with managing these still bottoms in on-site boilers, municipal landfills, and on-site monofills are all very high, based on each of the individual hazardous constituents in the wastestream and the combined risks due to carcinogens found in the wastestream as a whole. Therefore, based on the risks associated with both current management and plausible management practices for this waste, EPA is proposing to list as hazardous still bottoms or heavy ends from the production of triarylmethane dyes or pigments, designated EPA Hazardous Waste Number K166.

For the reasons stated above, the Agency is proposing to add the following constituents to Appendix VII to Part 261—Basis for Listing: 1,2-diphenylhydrazine, azobenzene, aniline, diphenylamine, and N-nitrosodiphenylamine.

In addition, azobenzene and N-nitrosodiphenylamine are proposed to be added to Appendix VIII to Part 261—Hazardous Constituents.

5.Wastes from the production of anthraquinone dyes and pigments.

a. Wastewater treatment sludge from the production of anthraquinone dyes and pigments.

Summary

EPA is proposing to defer the proposed listing determination for wastewater treatment sludges from the production of anthraquinone dyes and pigments at this time. Based on analysis of the sludge samples collected by the Agency, no constituents attributable to anthraquinone processes were detected. However, data supplied by industry indicate the presence of two constituents on the target analyte list for which no health-based levels and no adequate surrogates exist. Based on this discrepancy and the need to identify

surrogates for risk analysis, the Agency believes a deferral is appropriate for this wastestream.

Discussion

This sludge is generated from the treatment of wastewaters from anthraquinone dye and pigment manufacturing. Volume information reported by industry in the 1992 RCRA 3007 Questionnaire data is not included at the present time due to business confidentiality concerns.

Wastewater treatment sludge from the production of anthraquinone dyes and pigments is generated at 11 facilities. Sludge generated from 9 of the 11 facilities, which represents over 98% of the anthraquinone dye and pigment production volume, is commingled with wastewater treatment sludge from the production of azo pigments and/or dyes. Over 98% of the commingled sludge currently is managed in municipal landfills or is disposed in on-site monofills. Small fractions of the commingled sludge are managed under Subtitle C. Waste management and waste volume information relevant to this discussion is not included at the present time due to business confidentiality concerns.

Of the 11 facilities that generate this waste, the Agency collected samples from the three largest contributors to the wastestream and from one small contributor. Several compounds used in anthraquinone dye or pigment operations were expected to be present in the waste, based on facility production schedules, and were not detected. In addition, analysis of these samples did not produce any other contaminants attributable to anthraquinone dye or pigment operations (refer to the Background Document for this rulemaking located in the RCRA Docket for this rule (see **ADDRESSES** section) for the methodology used in identifying contaminants attributable to a process).

Several compounds used in the manufacture of anthraquinone dyes and pigments were dropped from the Agency's target analyte list for dye and pigment wastes, due to the absence of any health effects information and because of low usage rates (*i.e.*, the compound was used at only 1 or 2 facilities). Examples of anthraquinone-related compounds dropped from the target analyte list for these reasons include: 1-chloroanthraquinone, 1,4-dihydroxyanthraquinone-2-sulfonic acid, 1-amino-2-chloro-4-hydroxyanthraquinone, and 1-amino-4-bromo-2-anthraquinonesulfonic acid.

As stated above, the Agency's analysis of wastewater treatment sludge samples collected from anthraquinone dye and pigment operations did not produce any contaminants attributable to anthraquinone dye or pigment operations. However, industry data submitted on 11 sludge samples confirmed the presence of two target analytes, 1-aminoanthraquinone, and leucoquinizarine, at average concentrations of 1.5, and 1.4 ppm, respectively. Each of the two analytes was detected in three of the 11 samples.

The Agency did not find HBLs for either of the two compounds detected in this wastestream, 1-aminoanthraquinone and leucoquinizarine. In addition, the Agency was not able to identify any appropriate surrogate compounds to represent the toxicity of these compounds. If one or both of these compounds are potential carcinogens and behave in a similar manner to the potential carcinogen, 1-amino-2-methyl-anthraquinone, then the risk posed by the presence of the compounds in the waste would need to be examined further. The Agency is concerned about using this limited surrogate information as a basis for listing this waste as hazardous.

In summary, the Agency is proposing to defer a listing determination for wastewater treatment sludge from the manufacture of anthraquinone dyes and pigments at this time, and is requesting data on the toxicity of 1-aminoanthraquinone and leucoquinizarine or information on suitable surrogates for these compounds. EPA also would be interested in submission of further characterization data. EPA will evaluate carefully all public comments and information received in response to this notice. Based on comments or data received, the Agency, rather than deferring, may choose to promulgate a final determination to either list or not to list this waste as hazardous under RCRA.

b. Wastewaters from the production of anthraquinone dyes and pigments.

Summary

EPA is proposing not to list wastewaters from the production of anthraquinone dyes and pigments as hazardous. This wastestream is not considered to pose significant risks to human health and the environment, based on the analysis of samples of the waste. Several compounds used in the manufacture of anthraquinone dyes and pigments were expected to be present in the waste but were not detected. Only one compound attributable to anthraquinone processes, 3-aminoacetanilide, was detected in the waste, at low concentrations. Health effects information on this constituent does not currently exist, and risk estimates conducted using methylenephenylenediamine as a surrogate indicate no significant risks.

Discussion

Based on response data from the RCRA Section 3007 Questionnaire, the 1991 volume reported by the industry for wastewaters from anthraquinone dye and pigment production was 3,988,166 metric tons, or approximately 2.9 million gallons per day, generated at 25 facilities. Most of the wastewater currently is treated and discharged to a surface water under the NPDES system; the remainder is discharged to a POTW (with 5% pretreated prior to discharge). Additional information on volumes and waste managment is not included at the present time due to business confidentiality concerns.

Of the 25 facilities that generate this waste, the Agency collected a total of seven samples from the four largest contributors to the wastestream and from one small contributor. Information relevant to this discussion is not included at the present time due to business confidentiality concerns.

As stated above, several compounds used in anthraquinone dye and pigment operations were expected to be present in the waste, based on facility production schedules, and were not detected. In addition, only one compound attributable to anthraquinone dye and pigment production was detected in the waste (refer to the Background Document for this rulemaking located in the RCRA Docket for this rule (see **ADDRESSES** section) for the methodology used in identifying contaminants attributable to a process). This compound, 3-aminoacetanilide, was present in five of the seven samples collected, at an average concentration of 0.15 ppm. However, health effects information needed to assess the risk posed by this constituent does not currently exist. In order to estimate the potential risk from 3-aminoacetanilide, the Agency performed a risk assessment using methylenephenylenediamine as a surrogate compound. The Agency selected a surrogate compound that is structurally similar to the compound detected in the waste (*i.e.*, 3-aminoacetanilide), and is estimated, by means of structural activity relationships (SARs), to be more toxic than the subject compound. This assessment produced a groundwater concentration, prior to dilution and attenuation, of 1.5 times the HBL. Thus, the concentration at the receptor well, following dilution and attenuation,

would be expected to be less than the HBL. More detailed discussions on the risk assessment screening and surrogate compounds are presented in Section II.D of this preamble, Description of Health and Risk Assessments, and the Listing Background Document for this proposed rule, which is located in the RCRA Docket for this rulemaking (see ADDRESSES section).

In conclusion, because the one compound attributable to anthraquinone dye or pigment production detected in this waste is present in low concentrations, does not have health data needed to assess risk, and does not indicate a risk using surrogate toxicity data, the Agency is proposing not to list wastewaters from the manufacture of anthraquinone dyes and pigments as hazardous.

6. Wastewaters from the production of FD&C colorants.

Summary

EPA is proposing not to list wastewaters from the production of FD&C colorants as hazardous wastes. This wastestream is not considered to pose significant risks to human health and the environment, based on the analysis of samples of the waste. Only three constituents attributable to FD&C colorant processes were detected in the waste, and these do not present a risk at the concentrations observed.

Discussion

Based on the 1991 RCRA Section 3007 Questionnaire data, the volume reported by the industry for the wastewater stream from FD&C colorant production is 3,557,563 metric tons per year, or 2.6 million gallons per day. Information on the percentage of these wastewaters that are currently pretreated and discharged to a POTW and other waste management information relevant to this discussion is not included at the present time due to business confidentiality concerns.

The Agency collected three samples of wastewaters generated from FD&C operations and did not find any hazardous constituents present at concentrations that pose a risk above EPA's initial risk "level of concern" (*i.e.*, 1E–5 for carcinogens, and HQ of 1 or greater). The Agency believes that the samples of wastewaters from the manufacture of FD&C colorants are representative of the industry. In fact, wastewater samples were collected from the two largest-volume FD&C colorant producers in the country, in addition to one smaller manufacturer.

Several of the raw materials used in the manufacture of FD&C colorants were dropped from the Agency's target analyte list for analysis of dye and pigment wastes because the few existing health studies on these compounds indicate that the compounds are non-toxic. In addition, many of the raw materials used in the manufacture of FD&C colorants are compounds that contain sulfonic acid functional groups, for which analytical methods do not exist. Examples of FD&C raw materials dropped from the target analyte list for these reasons include *p*-toluidine-*m*-sulfonic acid, and sulfanilic acid.

The sulfonic acid functional group imparts water solubility to a compound, which generally results in lower toxicity. However, several of these materials may pose a risk when present in the wastestream without the sulfonic acid functional group. For example, without sulfonic acid functional groups, the two compounds listed above (*p*-toluidine-*m*-sulfonic acid and sulfanilic acid) are represented by *p*-toluidine, and aniline, respectively. In these cases, the precursors to the FD&C reactants (*i.e.*, prior to sulfonation) remained as target analytes even when the sulfonated compounds were not on the list. Information relevant to this discussion is not included due to business confidentiality concerns. (Refer to the Dye and Pigment Listing Background Document, located in the RCRA Docket for this proposed rulemaking (see ADDRESSES section), for details on the development of the target analyte list.)

From the three FD&C wastewater samples collected, the following three constituents were observed that are attributable to FD&C colorant production: Aniline, 3-hydroxyphenol, and phenol. During the risk assessment screening, the Agency found that the three constituents present in the waste (*i.e.*, aniline, 3-hydroxyphenol, and phenol) do not pose a risk at the concentrations detected. In fact, the ratios of maximum measured concentration in the wastestream to the HBL were less than 1 for aniline and phenol. Since there currently is no HBL available for 3-hydroxyphenol, the concentration of 3-hydroxyphenol was compared to that of a surrogate. 3-Hydroxyphenol is not expected to be a potential carcinogen. Furthermore, the Agency selected a surrogate compound that is structurally similar to the compound detected in the waste, and is estimated, by means of structural activity relationships (SARs), to be more toxic than the subject compound. Therefore, phenol was selected as a surrogate for this 3-hydroxyphenol, and the resulting ratio of concentration to HBL was also less than 1. This indicates that if the contaminant concentrations found in the waste were actually present in drinking water, the risks posed by ingesting the drinking water would be insignificant.

In conclusion, because the constituents in this wastestream were observed at concentrations that present insignificant risks, and no other hazardous constituents attributed to FD&C colorant production were detected, the Agency is proposing not to list wastewaters from the manufacture of FD&C colorants as hazardous.

7. Dusts and dust collector fines from the manufacture of dyes and pigments.

Summary

The Agency is proposing not to list dusts and dust collector fines from the manufacture of dyes and pigments because, based on an evaluation of current management and plausible management, this waste does not pose a substantial potential hazard to human health and the environment.

Discussion

Dusts and dust collector fines are generated during drying, grinding, and blending operations that occur during the manufacture of dyes and pigments. Dust collectors and baghouses generally are used to capture and collect the dust. The total volume of this wastestream reported in response to the 1991 RCRA Section 3007 Questionnaire is 143 metric tons. According to questionnaire data, some of the dusts and fines reported by the industry are recovered and recycled back to the manufacturing process or sold to shoe-polish manufacturers as a raw material. Information on the percentage handled in this manner is not included at the present time due to business confidentiality concerns. There is a distinct economic incentive for these facilities to continue reusing or selling dusts and fines in this way. This handling of dusts and fines is not expected to present any significant risk to human health and the environment.

Seventeen percent of the reported waste volume is generated by a facility that currently manages dusts and fines in a Subtitle C landfill and the Agency believes that this facility will continue to manage dusts and fines in such a manner. The dusts and fines generated at this facility from organic pigments covered by this listing determination are mixed with dusts and fines from inorganic pigments that contain lead and chromium. The entire volume of dusts and fines, comprised of the commingled organic and inorganic products dusts and fines, is characteristically toxic for both lead and chromium and, therefore, is a hazardous waste as defined by 40 CFR 261.24. It

is impractical for the facility to separate the dusts and fines covered by this listing determination from these characteristic inorganic dusts and fines and, thus, the facility manages the dusts and fines covered by this listing determination in a Subtitle C landfill. Analysis of existing plant design shows that dusts and fines are comingled in ductwork that is structured such that these wastes are mixed. Without significant re-design and construction, segregation of the wastes is impossible. The Agency does not believe that it is plausible for the facility to discontinue the practice of combining all of its dusts and fines wastes and disposing of such wastes at a Subtitle C facility given the physical arrangement of this facility. Management of this waste in a Subtitle C landfill is not expected to pose any significant level of risk to human health or the environment.

Information on the volume and the percentage of total volume disposed of in Subtitle D landfills is not included at the present time due to business confidentiality concerns.

The Agency believes the potential risks posed by the plausible management practices for this volume do not warrant a hazardous waste listing for dusts and fines.

Although, due to resource constraints, the Agency was unable to collect information on the characteristics of these dusts and fines, the Agency estimated a worst-case risk by estimating the risk associated with disposal of dusts and fines in a Subtitle D landfill based on the physical/chemical properties of a mobile dye product and the toxicological properties of a dye constituent known to be one of the most toxic and mobile dye or pigment waste constituents. This analysis demonstrated that the risk is below the initial level of concern associated with disposal of this waste in a Subtitle D landfill. Management of this waste in an on-site monofill was determined to be not plausible because the volumes generated would not justify an on-site monofill. For further information see the background document on risk assessment, available in the public docket for this rule.

The Agency requests comment on the approach used to determine risk posed by plausible management of the wastes and requests comment on the proposed determination not to list this waste.

9. Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants.

Summary

The Agency is proposing to defer a determination on whether to list spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants as hazardous due to insufficient waste characterization data. The Agency is planning to collect additional information on this wastestream. EPA then will publish a supplemental notice with a proposed determination on whether to list this waste.

III. Waste Minimization

In the Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990), Congress declared pollution prevention the national policy of the United States. The act declares that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled or reused in an environmentally safe manner wherever feasible; pollution that cannot be prevented/reduced or recycled should be treated; and disposal or release into the environment should be chosen only as a last resort. This section first provides a general discussion of some generic pollution prevention and waste minimization techniques that facilities may wish to explore and second discusses and requests comment on ways in which the hazardous waste listing determination program itself could be structured to better promote pollution prevention and waste minimization.

A. Generic Approaches to Waste Minimization

Waste minimization practices fall into three general groups: change in production practices, housekeeping practices, and practices that employ the use of equipment that by design promote waste minimization. Some of these practices/equipment listed below conserve water, others reduce the amount of product in the wastestream, while others may prevent the creation of the waste altogether. EPA acknowledges that some of these practices/equipment may lead to media transfers or increased energy consumption. This information is presented for general information, and is not being proposed as a regulatory requirement. Production practices include:

- Triple-rinsing raw material shipping containers and returning the rinsate directly to the reactor;
- Scheduling production to minimize changeover cleanouts;
- Segregating equipment by individual product or product "families;"
- Packaging products directly out of reactors;
- Steam stripping wastewaters to recovery reactants or solvents for reuse;
- Using raw material drums for packaging final products; and
- Dedicating equipment for hard to clean products. Housekeeping practices include:
- Performing preventive maintenance on all valves, fittings, and pumps;
- Promptly correcting any leaky valves and fittings;
- Placing drip pans under valves and fittings to contain leaks; and
- Cleaning up spills or leaks in bulk containment areas to prevent contamination of storm or wash wasters.

Equipment promoting waste minimization by reducing or eliminating waste generation include:

- Low-volume/high-pressure hoses for cleaning;
- Drum triple-rinsing stations;
- Reactor scrubber systems designed to return captured reactants to the next batch rather than to disposal;
- Material storage tanks with inert liners to prevent contamination of water blankets with contaminants which would prohibit its use in the process; and
- Enclosed automated product handling equipment to eliminate manual product packaging.

Waste minimization measures can be tailored to the needs of individual industries, processes, and firms. This approach may make it possible to achieve greater pollution reduction with less cost and disruption to the firm.

Defined process control and good housekeeping practices often can result in significant waste volume or toxicity reduction. Evaluations of existing processes also may point out the need for more complex engineering approaches (*e.g.*, waste reuse, secondary processing of distillation bottoms, and use of vacuum pumps instead of steam jets) to achieve waste minimization objectives. Simple physical audits of current waste generation and in-plant management practices for the wastes also can yield positive results. These audits often turn up simple non-engineering practices that can be implemented successfully.

B. Waste Minimization Approaches in the Listing Program

Section 1003 of the Hazardous and Solid Waste Amendments of 1984 says that one of RCRA's goals is to promote protection of human health and the environment and to conserve valuable

material and energy resources by "minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling, and reuse and treatment." Section 1003 further provides that it is a national policy of the United States that, whenever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. To further EPA's waste minimization goals, the Waste Minimization Branch (WMB) in EPA's Office of Solid Waste (OSW) established the RCRA Waste Minimization Action Plan to integrate source reduction and recycling into the National RCRA Program, and RCRA activities into the Agency's Pollution Prevention Strategy.

As described in that plan, EPA's program for evaluating which wastes should be listed as hazardous is an example of a regulatory program that can provide opportunities for encouraging and promoting real waste minimization. When a wastestream is listed as hazardous, it enters the hazardous waste management system. The requirements of that system can be costly and there are currently only limited ways for a waste entering the system to get out. Once it is listed as a hazardous waste, it remains a listed hazardous waste even after treatment and safe disposal, unless delisted pursuant to 40 CFR 260.20 and 260.22. Other than levels at which wastes typically are delisted, there is no target for a generator to shoot for which would allow their waste to be considered non-hazardous even if waste minimization actions are taken that ensure the waste is not likely to pose a hazard to human health and the environment. However, if a waste minimization-based exemption to the listing could be provided, generators would have the regulatory and economic incentive to meet the exemption. When the exemption is tailored to encourage and reward waste minimization efforts, then the generator could obtain the benefit of not generating a listed hazardous waste while furthering national waste minimization goals.

The Agency notes that there are several important considerations in developing listing determinations that encourage waste minimization. First, waste minimization-based listings must promote actual waste minimization and clearly not increase risk. In addition, the listings must be enforceable.

1. Actual Waste Minimization Must Occur. The Agency is interested in taking comment on developing listings that encourage reductions in volumes, reductions in concentrations of constituents of concern (without diluting constituents in an effort to reduce concentration), reductions in environmental loading of constituents of concern, and/or the removal of constituents of concern (or process derivatives of concern) from the manufacturing process, and/or the beneficial reuse, recycling, or reclamation of the wastestreams themselves, provided human health and the environment is protected. A waste minimization-based listing, for example, must be crafted so as not to result simply in cross-media transfer, and so as not to leave uncontrolled wastes reduced in volume or concentration, but still posing a significant hazard. The Agency believes that generators must make a commitment that waste minimization in fact would occur, and that a real investment in waste minimization techniques, equipment, and process changes would be carried out.

2. No Increase in Risk Can Occur. A waste minimization-based listing (or variable level) must protect human health and the environment and not increase risk. A hazardous waste listing achieves the goal of minimizing risk by placing a wastestream in the hazardous waste management system. Any exemption which takes a wastestream out of this system must be shown to provide an equivalent decrease in risk as that provided by the listing itself. It would be unacceptable, for example, for waste minimization actions simply to result in cross-media transfer of wastes. Chemical substitution that fails to reduce the risks posed by a wastestream is another example of a practice that would not be considered to be waste minimization. Another specific concern involves the possible presence of other constituents in a wastestream for which the waste was not specifically listed but which also may pose risk to human health or the environment. A waste minimization-based listing must consider the impact of letting the entire wastestream out of the hazardous waste management system.

3. Enforceability. The Agency is particularly concerned about the enforceability of waste minimization-based variance to a listing. In particular, the Agency has concerns about the following factors:

- The amount of testing or monitoring required,
- Ease by which a State inspector could check compliance,
- How a generator would demonstrate compliance with the waste minimization-based exemption,
- The likelihood that a State agency would adopt a waste minimization approach in its listing regulations, and
- The ability of a State agency to oversee an exemption.

Any waste minimization-based listing must account for these concerns. (Many of these issues now are being considered in EPA's deliberations on the Hazardous Waste Identification Rule.)

C. Specific Approaches to Waste Minimization

The Agency can and has used different regulatory mechanisms to promote waste minimization in the listing program. The discussion below will describe several options the Agency has identified as an approach to tailoring listings that encourages generators to use waste minimization practices. This approach could apply to any listing determination. Also included in this discussion are specific references to today's proposed listing determination for dyes and pigments.

Quantity-Based Listings

A potential method of structuring a waste listing to promote waste minimization would be to establish a quantity-based exemption for the wastes listed. Under such an approach, the listing of a specific wastestream would be accompanied by a quantity-based exemption for the specific wastestream involved. Quantity can refer to either a concentration of constituents in a waste (measured or calculated) or the mass of constituents released to the environment. The Agency believes that this approach would encourage waste minimization because a facility would have to meet a risk-based quantitation target for a wastestream in order to qualify for the exemption, thereby requiring reductions in the mass or concentration (or both) of the constituents of concern. In reducing mass loading or concentration (or both) of the wastes, the Agency's waste minimization goals are achieved.

A concentration basis is easier to measure and track than a limit based on loading or mass. Setting a limit based on loadings or mass addresses total loadings to the environment and recognizes waste minimization efforts that result in reductions in both mass of pollutant and volume of total wastestream. However, a mass loading approach poses significantly more burden in terms of monitoring and compliance and may not take into account concentrations of constituents in a waste. The Agency requests comment on the use of production or mass-based limits, and on possible monitoring approaches.

A variation on this approach is an adaptation of the "headworks rule" (40 CFR 261.3(a)(2)(iv)(A)–(E)) to a listing. The original rule, promulgated on November 17, 1981 (46 FR 56582) allows for calculated amounts of certain spent solvents, commercial chemical products, petroleum refining wastes, and laboratory residuals to be sent to a facility's wastewater treatment plant, and for the wastewaters and sludges (beyond the headworks) to be exempted from the mixture rule. The Agency also proposed in the March 1, 1994 carbamates listing proposal (59 FR 9808–9864) to provide a similar exemption to a wastewater proposed for listing in the same notice.

Under the "headworks" exemption approach (e.g., 40 CFR 261.3(a)(2)(iv)(H)), the wastewaters and treatment sludges would be exempt from the listing as long as the industry could show that the total quantity of hazardous constituents that pose risk in a wastestream, divided by the undiluted wastewater flow for wastewaters on an average weekly basis from the particular product process subject to the listing was less than a calculated quantity. The calculated quantity would be based on a risk assessment.

The Agency would have to be able to determine the relationship between the amount of raw material used and the presence of particular constituents in the wastestream. The Agency requests comment on whether determining such a relationship is feasible for the dye and pigment industries. To qualify for such an exemption, the facility would have to use existing inventory records of raw materials that go into the process. The facility can subtract the quantity of materials that, in fact, do not go into the wastewater treatment system, either by chemical reaction or material recovery techniques (*i.e.*, distillation, reuse, reverse osmosis, etc.). The facility may not subtract any quantity assumed to volatilize. The quantity of material left then would be converted to resulting levels of constituents expected to be generated based on quantity of raw material used. The levels of constituents then would be divided by the average weekly flow of the wastewaters into the headworks of the wastewater treatment system at the time the process is being run to determine total concentrations of constituents in wastewater. If the total concentration of constituents of concern is less than the amount calculated based on the risk assessment, the wastewaters and treatment sludges would qualify for the exemption. This approach has the advantage of determining concentrations in a mathematical, rather than an analytical way. The disadvantage is that it requires collection of process flow data and specific plant chemistry information.

The Agency realizes that constituent loading into the wastewater treatment system may have to be reduced significantly (up to two to three orders of magnitude in many cases) in order to qualify for an exemption of this sort. Therefore, the Agency solicits comment on whether such levels are achievable, and what other calculation methods may exist (such as one based on production mass).

Such an exemption would apply only after the wastewaters have arrived at the headworks of a facility's wastewater treatment system. The Agency would not allow it to apply to wastewaters before they reach the headworks. Generators who wish to qualify for such an exemption would be required to use flow statistics for the period in which the processes generating the wastewaters are being run. Finally, such an exemption would apply only to wastewater flow for that wastestream, not to flow figures from unrelated processes that serve only to dilute the wastewaters.

In addition, generators would be required to keep records of average weekly flow in the production processes, especially when the processes generating the listed wastewaters are run. When land disposal restrictions are applied to a waste subject to such an exemption, generators would need to comply with 40 CFR 268.7(a)(6), which states that the generator who has produced a waste subject to an exemption in 40 CFR 261.2–261.6 must keep a notification in the facility's file stating that such a waste has been generated, the fact that it is restricted, and the disposition of the waste.

The Agency seeks comment on the recordkeeping burden that accompanies its implementation. The Agency realizes that facilities that would wish to take advantage of such an exemption would be required to allow compliance personnel to examine process records (reaction rates, reactants, process flows, etc.) to verify that a facility is able to achieve the exemption. Therefore, the Agency solicits comments on this topic as well.

A quantity-based exemption in a listing determination bears a strong relationship to another ongoing Agency project which seeks to establish an exit from the hazardous waste management program. The Hazardous Waste Identification Rule (HWIR) project is an effort, in part, to set exit criteria for any listed hazardous waste so that materials which clearly fail to pose a threat to human health and the environment can exit the Subtitle C system. The HWIR concept, as currently envisioned, would be expected to be similar to that of a quantity-based exemption for a specific listed hazardous waste: a risk- based exemption process that employs analysis of multiple exposure pathways to determine a safe exit or exemption level. A principal difference between the HWIR concept under discussion and a quantity-based listing could be that HWIR is meant to apply to all listed wastestreams, while a quantity-based listing could be targeted to a specific wastestream in a listing determination. In that sense, a listing exemption could be considered to be more tailored to the known exposure routes of a specific wastestream and may be able to generate an exemption level which is specific to that wastestream. For example, if the listing determination analysis shows a wastestream in a listing can be managed only in tanks, then the exemption analysis could be focused on the exposure pathways affected only by tanks. The exemption levels for that wastestream could be tailored to those exposure routes (air pathways) and could be different than HWIR exit criteria. The Agency solicits comment on the advantages and disadvantages of a quantity-based exemption in listing determinations to a more generic exit level like that being contemplated in the HWIR project discussions.

Relationship to the Definition of Solid Waste

The Agency has observed in the dye and pigment and other industries that material recovery may be discouraged due to restrictions placed on materials designated as "solid and then hazardous" waste, as defined by RCRA. Over the past two years, the Agency's Definition of Solid Waste Task Force in the Office of Solid Waste examined possible modifications to the definition of solid waste to encourage environmentally sound recycling. A final report of the Task Force was issued on September 19, 1994.

An example in the dye and pigment industries of using as a product a material that ordinarily would be a waste involves the blending and sale of collected dusts and fines as inexpensive black pigments useful to shoe polish manufacturers.

D. Waste Minimization and the Dye and Pigment Industries

The dye and pigment industries have expended considerable effort to cooperate with the Agency on a voluntary waste minimization program, coordinated through ETAD. As part of

this effort, waste minimization, recycle, and reuse practices in the dye and pigment industries were described for all aspects of production in the "Pollution Prevention Guidance Manual for the Dye Manufacturing Industry" (EPA/741/B–92–001).

The Agency is interested in options to modify today's proposed listing determinations to support and enhance the voluntary waste minimization efforts already initiated by the dye and pigment industries. The Agency requests comment on the feasibility of the waste minimization-based listing approaches described above for the dye and pigment industries. EPA also solicits ideas and comments on other possible approaches to tailor the hazardous waste listings and promote waste minimization in the dye and pigment industries. In particular, the Agency requests comment on other approaches that may provide more flexibility for waste minimization and better assure that constituent reductions would be achieved through waste minimization (rather than through treatment).

EPA specifically requests comment on the feasibility of developing the quantity-based listing approach described above for the dye and pigment industries. The quantity-based approach is based on the Agency's experience with other industries in which production is continuous. Because of the batch nature of production and the multiplicity of chemicals involved in the dye and pigment industries, the quantity-based listing approach may be more difficult for this industry. The Agency requests comment on how these issues (*i.e.*, batch processes, multiple chemicals) might be addressed in a quantity-based listing approach or other waste minimization-based option.

The Agency also solicits comment on whether certain of the dye and pigment wastestreams are better candidates for waste minimization, and whether a waste minimization-based listing approach should target these wastes. Finally, EPA requests comment on the testing and monitoring needed to ensure proper implementation of a waste minimization listing approach. Based on the comments the Agency receives on the above issues, EPA may issue a supplemental proposal addressing a waste minimization-based listing approach for the dyes and pigments industry.

IV. Applicability of the Land Disposal Restrictions Determinations

A. Request for Comment on the Agency's Approach to the Development of BDAT Treatment Standards

RCRA requires EPA to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR part 261 after November 8, 1984, within six months of the date of identification or final listing (RCRA Section 3004(g)(4), 42 U.S.C. 6924(g)(4)). EPA also is required to set "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA Section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Land disposal of wastes that meet treatment standards thus established by EPA is not prohibited. The wastes being proposed for listing in this action would be subject to this requirement once a final rule is promulgated.

A general overview of the Agency's approach in performing analysis of how to develop treatment standards for hazardous wastes can be found in greater detail in Section III.A.1 of the preamble to the final rule that set land disposal restrictions (LDR's) for the Third Third wastes (55 FR 22535, June 1, 1990). The framework for the development of the entire Land Disposal Restrictions program was promulgated November 7, 1986. (51 FR 40572).

While the Agency prefers source reduction/pollution prevention and recycling/recovery over conventional treatment, inevitably, some wastes (such as residues from recycling and inadvertent spill residues) will be generated. Thus, standards based on treatment using "best demonstrated available technology" (BDAT) will be required to be developed for these wastes if a final rule listing them as hazardous is promulgated.

Treatment standards typically are established based on the performance data from the treatment of the listed waste or wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. Treatment standards are established for both wastewater and nonwastewater forms on a constituent-specific basis. The constituents selected for regulation under the Land Disposal Restrictions Program are not necessarily limited to those identified as present in the listings proposed in this action, but include those constituents or parameters that will ensure that the technologies are operated properly.

Although data on waste characteristics and current management practices for wastes proposed in this action have been gathered as part of the administrative record for this rule, the Agency has not completed its evaluation of the usefulness of these data for developing specific treatment standards or assessing the capacity to treat (or recycle) these wastes.

Some treatment technologies previously promulgated for newly identified hazardous organic wastes are: chemical oxidation, wet air oxidation, activated sludge, steam stripping, activated carbon, solvent extraction, pyrolysis, thermal desorption, UV photolysis, ozonation, and incineration. A current description of these technologies and what types of wastes they are used to treat is available as a background document and can be obtained by contacting NTIS (National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703)487–4650) and requesting document PB91–160556, "Treatment Technology Document," L. Rosengrant, dated January, 1991, USEPA–OSW.

EPA intends to propose treatment standards for K162 through K166 in a separate rulemaking. However, EPA specifically is soliciting comment and data on the following as they pertain to the proposed listing of dye and pigment industries wastes K162 through K166 as described in this action:

(1) Technical descriptions of treatment systems that are or could be used potentially for these wastes;

(2) Descriptions of alternative technologies that currently might be available or anticipated as applicable;

(3) Performance data for the treatment of these or similar wastes (in particular, constituent concentrations in both treated and untreated wastes, as well as equipment design and operating conditions);

(4) Information on known or perceived difficulties in analyzing treatment residues or specific constituents;

(5) Quality assurance/quality control information for all data submissions;

(6) Factors affecting on-site and off-site treatment capacity;

(7) Information on the potential costs for set-up and operation of any current and alternative treatment technologies for these wastes;

(8) Information on waste minimization approaches.

B. Request for Comment on the Agency's Approach to the Capacity Analyses in the LDR Program

In the land disposal restrictions determinations, the Agency must demonstrate that adequate treatment or recovery capacity exists to manage a newly listed waste with BDAT standards before it can restrict the waste from further land disposal. The Agency performs capacity analyses to determine if sufficient alternative treatment or recovery capacity exists to accommodate the volumes of waste that will be affected by the land disposal prohibition. If adequate capacity exists, the waste must be treated to meet the BDAT standard before land disposal. If adequate capacity does not exist, RCRA Section 3004(h) authorizes EPA to grant a national capacity variance from the effective date of the treatment standard for the waste for up to two years or until adequate alternative treatment capacity becomes available, whichever is sooner.

To perform capacity analyses, the Agency needs to determine the volume of the listed waste that will require treatment prior to land disposal. The volume of waste requiring treatment depends, in turn, on the waste management practices employed by the listed waste generators. Data on waste management practices for these wastes were collected during the development of this proposed rule. However, as the regulatory process proceeds, generators may decide to minimize or recycle their wastes or otherwise alter their management practices. Thus, EPA will update and monitor changes in management practices because these changes will affect the final volume of waste requiring commercial treatment capacity. Therefore, EPA needs information on current and future waste management practices for these wastes, including the volume of waste that are recycled, mixed with or co-managed with other waste and discharged under Clean Water Act provisions; and the volume and types of residuals that are generated by various management practices applicable to newly listed and identified wastes (*e.g.*, treatment residuals).

The availability of commercial treatment capacity for these wastes determines whether or not a waste is granted a capacity variance under RCRA Section 3004(h). EPA continues to update and monitor changes in available commercial treatment capacity because the commercial hazardous waste management industry is extremely dynamic. For example, national commercial treatment capacity changes as new facilities come on-line, as new units and new technologies are added at existing facilities, and as facilities expand existing units. The available capacity at commercial facilities also changes as facilities change their commercial status (*e.g.*, changing from a fully commercial to a limited commercial or captive facility). To determine the availability of capacity for treating these wastes, the Agency needs to consider currently available data, as well as the timing of any future changes in available capacity.

For previous land disposal restriction rules, the Agency performed capacity analyses using data from national surveys, including the 1987 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey) and the 1987 National Survey of Hazardous Waste Generators (the Generator Survey). However, these surveys cannot be used to determine the volumes of dye and pigment wastes requiring treatment since these wastes were not included in the surveys. Additionally, these surveys may not contain adequate information on currently available capacity to treat newly identified wastes because the data reflect 1986 capacity and do not include facility expansions or closures that have occurred since then. Although adjustments have been made to commercially available capacity to account for changes in waste management through 1992, this was not done on a consistent basis across all waste management practices.

EPA gathered data on waste generation, characteristics and management practices for the listing determination of dye and pigment wastes in the RCRA Section 3007 Questionnaire of 1991. The Agency has compiled the capacity-related information from the survey responses and is soliciting any updated or additional pertinent information.

To perform the necessary capacity analyses in the land disposal restrictions rulemaking, the Agency needs reliable data on current waste generation, waste management practices, available alternative treatment capacity, and planned treatment capacity. The Agency will need the annual generation volumes of waste by each waste code including wastewater and nonwastewater forms, and soil or debris contaminated with these wastes and the quantities stored, treated, recycled, or disposed due to any change of management practices. EPA also requests data from facilities capable of treating these wastes on their current treatment capacity and any plans they may have in the future to expand or reduce existing capacity. Specifically, the Agency requests information on the determining factors involved in making decisions to build new treatment capacity. Waste characteristics such as pH level, BTUs, anionic character, total organic carbon content, constituents concentration, and physical form also may limit the availability of certain treatment technologies. For these reasons, the Agency requests data and comments on waste characteristics that might limit or preclude the use of any treatment technologies.

V. Compliance Dates

A. Notification

Under RCRA Section 3010, any person generating, transporting, or managing a hazardous waste must notify EPA (or an authorized State) of its activities. Section 3010(a) allows EPA to waive, under certain circumstances, the notification requirement under Section 3010 of RCRA. If these hazardous waste listings are promulgated, EPA is proposing to waive the notification requirement as unnecessary for persons already identified within the hazardous waste management universe (*i.e.*, persons who have an EPA identification number under 40 CFR 262.12). EPA is not proposing to waive the notification requirement for waste handlers who have neither notified the Agency that they may manage hazardous wastes nor received an EPA identification number. Such individuals will have to provide notification under RCRA Section 3010.

B. Interim Status and Permitted Facilities

Because HSWA requirements are applicable in authorized States at the same time as in unauthorized States, EPA will regulate EPA Hazardous Wastes Nos. K162 through K166 until States are authorized to regulate these wastes. Thus, once this regulation becomes effective as a final rule, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized States.

VI. State Authority

A. Applicability of Rule in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings proposed in this notice) take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States still must adopt HSWA-related provisions as State law to retain final authorization, the Federal HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Because this proposal (with the exception of the actions proposed under CERCLA authority) will be promulgated pursuant to the HSWA, a State submitting a program modification is able to apply to receive either interim or final authorization under Section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under Section 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations currently are scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's state authorization regulations (40 CFR part 271) requires that States with final authorization modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this proposed regulation, if it is adopted as a final rule, will be determined by the date of promulgation of a final rule in accordance with 40 CFR 271.21(e)(2). If the proposal is adopted as a final rule, Table 1 at 40 CFR 271.1 will be amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this proposed rule. These State regulations have not been assessed against the Federal regulations being proposed to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law.

It should be noted that authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.21(e). This proposed rule, if promulgated, would expand the scope of the Federal program by adding additional listed wastes. Therefore, States would be required to modify their programs to retain authorization to implement and enforce these regulations.

VII. CERCLA Designation and Reportable Quantities

All hazardous wastes listed under RCRA and codified in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the characteristics of a RCRA hazardous waste (as defined in Sections 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. See CERCLA Section 101(14)(C). CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). RQs are the minimum quantity of a hazardous substance that, if released, must be reported to the National Response Center (NRC) pursuant to CERCLA Section 103. In this action, the Agency is proposing to list the proposed wastes in this action as CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4, but is taking no action to adjust the one-pound statutory RQs for these substances.

Reporting Requirements. Under Section 102(b) of CERCLA, all hazardous substances newly designated under CERCLA will have a statutory RQ of one pound unless and until adjusted by regulation. Under CERCLA Section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or exceeds its RQ immediately shall notify the NRC of the release as soon as that person has knowledge thereof. The toll-free number of the NRC is 1–800–424–8802; in the Washington, DC metropolitan area, the number is (202) 426–2675. In addition to this reporting requirement under CERCLA, Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires owners or operators of certain facilities to report the release of a CERCLA hazardous substance to State and local authorities. Immediately after the release of a RQ or more, EPCRA Section 304 notification must be given to the community emergency coordinator of the local emergency planning committee for each area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

If this proposal is promulgated as a final rule, releases equal to or greater than the one-pound statutory RQ will be subject to the requirements described above, unless and until the Agency adjusts the RQs for these substances in a future rulemaking.

VIII. Economic Impact Analysis

This section of the preamble summarizes the costs and benefits of the dye and pigment hazardous waste listings. Based upon the EIA, the Agency estimates that the listing of the five dye and pigment production wastes discussed above may result in nationwide, pre-tax, annualized costs of approximately $18.1 million for compliance in commercial Subtitle C landfills. The possible future costs of this listing including compliance with land disposal restrictions (LDRs) range from $20.3 to $70.7 million per year. The $70.7 million represents off-site incineration of non-wastewaters, while the $20.3 million assumes facilities with large non-wastewater waste volumes will construct on-site incinerators. A complete discussion of the EIA is available in the regulatory docket entitled "Costs and Economic Impact Analysis of Listing Hazardous Wastes from the Organic Dye and Pigment Industries," November 28, 1994.

A. Compliance Costs for Listings

The remainder of this section briefly describes (1) the universe of dye and pigment production facilities and volumes of the seven dye and pigment production wastes proposed to be listed, (2) the methodology for determining incremental cost and economic impacts to regulated entities, (3) the potential remedial action costs, and (4) economic impacts. Results of the analysis are summarized in Table VIII–1.

1. Universe of Dye and Pigment Production Facilities and Waste Volumes

In order to estimate costs for the EIA, it first was necessary to estimate the total annual generation of dye and pigment production wastes affected by this action. As described in Section II.B of this preamble, the portion of the dye and pigment industry producing products affected by this listing is composed of 33 manufacturers operating 49 facilities producing dyes and pigments. In 1992, U.S. sales of all organic dyes and pigments totalled 403 million lbs., with a value of $1,691 million. Total annual product volumes and waste quantities generated by these affected facilities were derived from a 1991 survey of the dye and pigment production industries. The production volume and, hence, waste volume for dyes and pigments varies year to year depending on which colors are popular. A season in which dark colors are in fashion will produce higher volumes of waste; it is not known which colors were predominant in the study year.

2. Method for Determining Cost and Economic Impacts

This section details EPA's approach for estimating the incremental compliance cost and the economic impacts attributable to the listing of dye and pigment production wastes. Because the dye and pigment production industries are moderately small (33 manufacturers currently operating 49 facilities), EPA was able to collect facility-specific information and estimate incremental costs at the wastestream level. For ten of the 49 facilities, however, some of the waste generation data were missing. In these cases, waste generation amounts were estimated. The information used in this analysis was collected in 1992 through RCRA Section 3007 Questionnaires, engineering site visits, and sampling and analysis of wastestreams.

Approach to the Cost Analysis

EPA's approach to the cost analysis for this rule was to compare the cost of current management practices, as reported in the RCRA Section 3007 Questionnaire by dye and pigment production facilities, with the projected cost of management to comply with the RCRA Subtitle C hazardous waste program. An additional analysis included the future cost to the industry of complying with land disposal restrictions. This difference in cost, when annualized,[9] represents the incremental annual compliance costs attributable to the rule.

Baseline or Current Management Scenario

Relying on survey responses and engineering site visits, EPA was able to determine the current (*i.e.*, 1991) management practices for the handling and disposal of dye and pigment production wastes. Current management practices varied among facilities and wastestreams, and included such practices as on-site monofilling, off-site incineration, on-site destruction in boilers, and off-site landfilling in municipal, industrial or Subtitle C landfills. These current management practices at each facility represent the baseline scenario of the analysis.

As part of the survey, EPA asked each facility to identify current costs for the management of dye and pigment production wastes. For this analysis, EPA relied on the industry's own waste-specific estimates concerning the cost of current management. EPA realizes that future events, such as waste minimization efforts, may change waste generation volumes and, thus, future waste management costs.

Post-Regulatory Management Scenarios

In estimating the cost of compliance with the listing of dye and pigment production wastes as RCRA hazardous wastes, EPA assessed the potential waste management on the part of industry to the listing and also assessed the management cost in response to LDRs.

Initial waste management, excluding land disposal restrictions, assumes all non-wastewaters will be sent to off-site Subtitle C landfills. Wastewaters are assumed to be handled in tanks, at an estimated cost of $18.1 million/yr. It is important to note that 81 to 95 percent of the total, annual, incremental compliance costs result from listing the non-wastewaters. The non-wastewaters comprise less than one percent of the quantity of the affected wastes.

There were two possible management strategies examined for the dye and pigment industries following the promulgation of LDRs. The first strategy, the higher-cost response, is waste management, including land disposal restrictions, with all non-wastewaters being sent to off-site incinerators. Wastewaters are assumed to be handled in newly-constructed treatment impoundments, which makes this strategy an upper-bound estimate ($70.7 million/yr) because the other option for wastewaters, handling in tanks, is marginally less expensive.

The second strategy for waste management assumes facilities with high waste volumes will construct on-site incinerators in which to treat their non-wastewaters, with the remaining facilities sending their wastes to off-site incinerators ($20.3 million/yr). Wastewaters are assumed to be handled in newly constructed treatment impoundments.

3. Potential Remedial Action Costs

In addition to dye and pigment production wastes, this listing can affect the management of soils, ground water, and other remedial materials. The Agency's "contained in" policy defines certain remediation wastes "containing" a listed hazardous waste as a RCRA hazardous waste. It is possible that areas of past dye and pigment waste management, spills, or disposal, which met the proposed listing description at the time they were placed on the land, still may have contaminant concentrations which exceed "contained in" levels. A person who disturbs such material can become a generator of RCRA hazardous waste. The likelihood of this imposing an additional burden is moderate because at least 9 of the 49 dye and pigment production facilities already are permitted TSDFs. Releases from all solid waste management units at these TSDFs, including those that in the future may be found to contain a waste meeting the dye and pigment listing descriptions, already are covered by facility-wide clean-up rules under 40 CFR 264.101. This issue will be more likely to arise from historical off-site management at facilities that were not TSDFs. The pre-tax, incremental cost of corrective action liabilities has been estimated at less than $8.8 million.

[9] Costs are discounted at a pre-tax rate of 4 percent over a 20-year period.

TABLE VIII–1.—TOTAL, INCREMENTAL, PRE-TAX, ANNUALIZED SOCIAL COSTS FOR THE DYE AND PIGMENT INDUSTRY FOR THE LISTING ACTION, AND LAND DISPOSAL RESTRICTIONS INCLUDING OFF-SITE INCINERATION AND ON-SITE INCINERATION BY EACH POST-REGULATORY WASTE CODE

Waste code	Total annualized costs for listing[10] ($ millions)	Total annualized costs for LDR off-site incineration[11] ($ millions)	Total annualized costs for LDR on-site incineration[12] ($ millions)
K162	2.77	24.76	5.83
K163	2.64	2.66	2.64
K164	8.50	38.98	7.38
K165	0.62	0.70	0.62
K166	3.50	3.53	3.53
RCRA	0.03	0.06	0.31
Total[13]	18.05	70.69	20.31

[10] The listing estimate assumes non-wastewaters will be managed in Subtitle C landfill and wastewaters will be handled in tanks.
[11] This upper-bound estimate assumes non-wastewaters are incinerated off-site and wastewaters are handled in newly constructed treatment impoundments.
[12] This lower-bound estimate which includes LDRs assumes the construction of on-site incinerators for facilities with non-wastewater volumes over 635 MT/yr. Wastewaters are handled in newly constructed treatment impoundments.
[13] Numbers may not add due to rounding.

4. Economic Impacts

The following economic impacts potentially are *overestimated* as a result of inconsistencies in the reporting in the RCRA Section 3007 Questionnaire responses. Some facilities were found to have reported production quantities on a pure product basis while reporting the average selling price per pound on a dilute product basis. This results in an underestimation of revenues, as a result of reduced production volumes, and an overestimation of economic impacts. In addition, some of the volume of several of the wastestreams is for co-managed wastes. The values of production for the co-generated products were not available and, thus, further underestimated revenues which resulted in overestimated economic impacts. Economic impacts were evaluated based on incremental, annualized compliance costs discounted at an after-tax rate of 7 percent over a 20-year period. Of the 49 facilities 9 facilities may incur potential "significant economic impacts" (*i.e.*, bear compliance costs that would require product cost increases of at least 5 percent) with one of these facilities facing product-line discontinuation. Sixteen of the 49 facilities are estimated to incur potential significant impacts assuming possible future costs for the high-cost LDR alternative. Economic ratios indicate potential closure or product-line discontinuation for 4 of the 16 significantly affected facilities. Under the low-cost LDR alternative, 15 of the 49 facilities are estimated to incur potential significant economic impacts. Two of the 15 significantly affected facilities are estimated to incur closure or product-line discontinuation.

5. Benefits of Listings

One objective of a population analysis is to estimate the number of cancer cases that could be avoided as a result of the implementation of the proposed rule. People drinking contaminated water from residential wells located near the source of contamination, people eating home-grown vegetables contaminated by blowing dust or vapors, and people breathing air contaminated by a disposal unit are the potentially exposed population for this rule. The Agency did not estimate the population risks from current practices or the incremental risk reduction from future actions as a result of the proposed regulation; however, preliminary analysis suggests that the incremental risk in terms of cancer cases avoided is expected to be near zero.

One benefit associated with this rulemaking is to place wastestreams the Agency has determined could pose a risk to human health and the environment into the hazardous waste management system. When wastestreams are placed in this system, the risk associated with their disposal is minimized by the requirements of this system.

The Agency, however, has historical information that shows damage to ground water and other sensitive environments has occurred during the management of wastes from the dye and pigment manufacturing operations. At ten dye and pigment facilities, the quality of ground water has been adversely affected by waste management activities, typically unlined waste trenches, aeration basins, and impoundments. One dye company had to purchase the deeds to three nearby residences and a gas station because VOC-contaminated ground water originating from the plant had contaminated surrounding drinking water wells. At another dye facility, a contaminated ground-water plume migrated under residential houses bordering the site. The residential wells, used for swimming pools and irrigation systems in the neighborhood, were condemned because of chemical contamination. Ground water was contaminated from land treatment of dye wastewater being sprayed onto a field, and passing through a layer of clay. Soil contamination near drum storage pads or drum wash areas has been documented at 7 dye facilities. As a result, the leachate from these soils possibly contributed to the ground-water contamination associated with many of the sites. Concentrations of volatile and semi-volatile organic compounds have been found in soils surrounding an on-site landfill at a dye facility. Finally, dye and pigment facilities are found on the Superfund National Priority List; further evidence that mismanagement of dye and pigment wastes have the potential to yield threats of concern to human health. In summary, although difficult to quantify precisely, a benefit of today's proposal is the prevention of additional or similar incidents occurring from similar management practices of dye and pigment wastes that potentially could degrade the quality of ground water or other sensitive natural resources.

In addition to the reduction of human health risk associated with the mismanagement of dye and pigment wastes proposed for listing in this rulemaking, there are a number of other benefits that are even more difficult to quantify.

The Subtitle C management framework for generators and permitted treatment storage and disposal facilities

establishes standards for hazardous waste handling, management, and remediation that: Reduce ecological risks, reduce natural resource damage, reduce the likelihood and severity of accidents, improve worker safety, promote facility-wide remedial programs, insure that adequate financial assurance is established to handle protective closure of waste management units, increase public participation, improve information availability on waste quantity and movement, ensure minimum uniform national standards, and create incentives for pollution prevention.

Ecological and Natural Resource Damage Reduction

The risk assessment for this listing has focused on the human health risks associated with plausible management of dye and pigment wastes. An additional concern, given the proximity of several facilities to surface waters and their associated wetland systems, is the potential for ecological damages to biota inhabiting surface waters and wetlands. In some cases migration to the surface water may be occurring via groundwater. EPA requests comments regarding the potential for ecological damages associated with the wastes proposed for listing in today's rulemaking.

In addition to direct ecological and human health damage there is evidence from EPA's contaminant fate and transport modelling and case studies of ground water, surface water, and soil degradation. While use of and human exposure to these natural resources may not be occurring now, their use in the future could be limited if they are contaminated. The Subtitle C waste management program will limit future releases and prevent natural resource damages. These benefits have not been quantified.

Reduce the Likelihood and Severity of Accidents

An important component of the Subtitle C system for both generators and permitted treatment, storage and disposal facilities is the need to establish waste analysis plans, contingency plans, emergency procedures, inspection programs, construction quality assurance and personnel training programs. In addition, permitted facilities also must have in place inspection programs and location standards. The costs of these programs have been included in the cost analysis, but the benefits are difficult to quantify. These Subtitle C programs may reduce risk to workers and nearby populations by reducing the chance of contaminant releases, accidental exposures, and catastrophic failures. In the event that accidents occur, these Subtitle C provisions increase the likelihood of quick action and ensure protection of human health and the environment. There are other programs that require similar planning (*e.g.*, OSHA, Section 112(r) of the Clean Air Act) and indirectly affect hazardous waste handling; RCRA regulatory provisions deal directly with accident prevention standards associated with the handling of hazardous wastes.

Promote Facility-Wide Remedial Programs

Those facilities that choose to obtain Part B permits for the treatment, storage and disposal of hazardous wastes will have the responsibility of ensuring that adequate corrective action programs are in place to control releases from all solid waste management units. The cost analysis included an evaluation of the cost of facility-wide corrective action while the risk assessment focused only on the risks associated with hazardous waste management units. Although difficult to quantify, there are risk-reduction benefits associated with the cleanup of releases from the solid waste management units in addition to those benefits associated with the handling of listed waste.

Financial Assurance To Insure Protective Closure of Waste Management Units

Permitted facilities are required to support financial mechanisms which ensure that adequate funds are available to close hazardous waste treatment, storage and disposal units in a manner that ensures long-term protection of human health and the environment. The costs of those financial assurance requirements have been included in the cost analysis; however, the benefits are difficult to quantify. Financial assurance has the benefit of insuring that owners and operators of hazardous waste facilities have sufficient financial resources to close their facilities in an environmentally-protective manner.

Increase Public Participation and Improve Information Availability

The Subtitle C system has the benefit of providing the information needed to empower local communities and waste managers, those most affected by and able to improve substandard waste management practices. The public participation provisions of the Subtitle C system ensure that information is provided to stakeholders regarding the risks to human health and the environment of a new or expanding waste management facility. Biennial reporting, required of all large quantity generators of hazardous waste, allows for more informed waste management decisions and capacity management. Finally, the manifest system, which is used to track the movement of wastes, ensures protective handling of hazardous wastes as they move in commerce.

IX. Executive Order 12866

Executive Order 12866 requires that regulatory agencies determine whether a new regulation constitutes a significant regulatory action. A significant regulatory action is defined as an action likely to result in a rule that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

EPA estimated the costs of the proposed listings and evaluated the other factors above to determine if this proposed rule making would be a major regulation as defined by the Executive Order. Today's proposed rule is estimated to have an annualized incremental cost of less than $19 million. Based on EPA's analysis of the other factors, today's proposed rule is considered a significant regulatory action because of the novel policy issues contained herein. As a significant regulatory action, it has been submitted to and reviewed by the Office of Management and Budget.

X. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be affected by the regulation. If affected small entities are identified, regulatory alternatives that mitigate the potential impacts must be considered. Small entities as described in the Act are only those "businesses, organizations and

governmental jurisdictions subject to regulation."

For SIC 2865, Cyclic Crudes and Intermediates, the Small Business Administration defines small entities as those firms employing less than or equal to 750 employees. Based on this employment cutoff, approximately 61 percent, or 20 of the 33 affected dye and/or pigment manufacturers (*i.e.*, companies) are considered small entities. Under the listing alternative, which assumes disposal of wastewater treatment sludges/solids in an off-site commercial Subtitle C landfill and management of wastewaters in tanks, 7 of the 33 affected companies are estimated to incur potential significant economic impacts. Four of the 7 companies estimated to incur potential significant economic impacts are small entities. Although small entities are predominant in the affected industry, the proposed listings do not adversely affect small entities to a greater extent than large entities.

Under the Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act, the Agency is committed to considering regulatory alternatives in rulemakings when there are any estimated economic impacts on small entities. The Agency obtained firm level employment data for the purpose of identifying and evaluating economic impacts on small entities. The statutory requirements of the RCRA program do not provide legal avenues to grant relief from the proposed listings to small entities. Because of statutory restrictions, the Agency is unable to exempt small entities or develop options to reduce economic impacts on small entities. The Agency must identify waste streams for listing without regard to the size of the entity being regulated. However, the possibility of enforceable agreements described previously may ameliorate the impact of listing on small entities.

XI. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Facilities will have to comply with the existing Subtitle C record keeping and reporting requirements for the newly listed wastestreams.

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rule makings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–120 (ICR no. 1573, Part B Permit Application); 2050–120 (ICR 1571, General Facility Standards); 2050–0028 (ICR 261, Notification to Obtain an EPA ID); 2050–0034 (ICR 262, Part A Permit Application); 2050–0039 (ICR 801, Hazardous Waste Manifest); 2050–0035 (ICR 820, Generator Standards); and 2050–0024 (ICR 976, Biennial Report).

Release reporting required as a result of listing wastes as hazardous substances under CERCLA and adjusting the reportable quantities (RQs) has been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has been assigned OMB control number 2050–0046 (ICR 1049, Notification of Episodic Release of Oil and Hazardous Substances).

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: December 5, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In § 261.32, the table is amended by adding the subgroup "Organic dyes and pigments," and adding to this subgroup the following wastestreams:

§ 261.32 Hazardous wastes from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
* * *	* * *	*
Organic dyes and pigments:		
* * *	* * *	*
K162	Wastewater treatment sludge from the production of azo pigments	(T)
K163	Wastewaters from the production of azo pigments	(T)
K164	Wastewater treatment sludge from the production of azo dyes, excluding FD&C colorants.	(T)
K165	Wastewaters from the production of azo dyes, excluding FD&C colorants	(T)
K166	Still bottoms or heavy ends from the production of triarylmethane dyes or pigments	(T)
* * *	* * *	*

Appendix VII to Part 261 [Amended]

3. Appendix VII to Part 261 is amended by adding the following wastestreams in alphanumeric order (by the first column) to read as follows:

APPENDIX VII—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazardous waste No.	Hazardous constituents for which listed
* * *	* * * * * * *
K162	Aniline, 2-aminoaniline, 4-aminoaniline, 2-methoxyaniline, 2-aminotoluene, 4-aminotoluene, acetoacet-o-anisidide, acetoacet-o-toluidide, acetoacetanilide, 1,3-dinitrobenzene, 3,3'dimethylbenzidine, nitrobenzene, 2,4-dinitrophenol.
K163	2-aminoaniline, 4-aminoaniline, 2-methoxyaniline, 2-aminotoluene, 3-aminotoluene, 4-aminotoluene, aniline, acetoacet-o-anisidide, acetoacet-o-toluidide, acetoacetanilide, 2,4-dimethylaniline, 2,6-dimethylaniline.
K164	2-aminoaniline, 4-aminoaniline, 2-methoxyaniline, aniline, diphenylamine, N-nitrosodiphenylamine, 3,3'-dimethoxybenzidine, 4-methylphenol, 1,3-dinitrobenzene, 2-methoxy-5-nitroaniline, 2,4-dinitrophenol, 2-aminotoluene, 4-aminotoluene.
K165	2-aminoaniline, 4-aminoaniline, 2-methoxyaniline, 2-aminotoluene, 3-aminotoluene, 4-aminotoluene, aniline.
K166	1,2-diphenylhydrazine, azobenzene, aniline, diphenylamine, N-nitrosodiphenylamine.
* * *	* * * * * * *

Appendix VIII to Part 261 [Amended]

4. Appendix VIII to Part 261 is amended by adding the following hazardous constituents in alphabetical order to read as follows:

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* * *	* * *	*	*
Acetoacetanilide	Butanamide, 3-oxo-N-phenyl-	102–01–2	
Acetoacet-o-anisidide	Butanamide, N-(2-methoxyphenyl)-3-	92–15–9	
Acetoacet-o-toluidide	Butanamide, N-(2-methylphenyl)-3-oxo-	93–68–5	
* * *	* * *	*	*
2-Aminoaniline	Benzenediamine, 1,2-	95–54–5	
4-Aminoaniline	Benzenediamine, 1,4-	106–50–3	
* * *	* * *	*	*
3-Aminotoluene	Benzenamine, 3-methyl-	108–44–1	
* * *	* * *	*	*
Azobenzene	Azobenzene	103–33–3	
* * *	* * *	*	*
2,4-Dimethylaniline	Benzenamine, 2,4-dimethyl-	95–68–1	
2,6-Dimethylaniline	Benzenamine, 2,6-dimethyl-	87–62–7	
* * *	* * *	*	*
1,3-Dinitrobenzene	Benezene, 1,3-dinitro-	99–65–0	
* * *	* * *	*	*
2-Methoxyaniline	Benzenamine, 2-methoxy-	90–04–0	
* * *	* * *	*	*
2-Methoxy-5-nitroaniline	Benzenamine, 2-methoxy-5-nitro	99–59–2	
* * *	* * *	*	*
4-Methylphenol	Phenol, 4-methyl-	106–44–5	
* * *	* * *	*	*
N-Nitrosodiphenylamine	N-Nitrosodiphenylamine	86–30–6	
* * *	* * *	*	*

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

5. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

6. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* *	*	*	* *
December 22, 1994	Listing Wastes from the Production of Dyes and Pigments.	[Insert Federal Register page in numbers].	[Insert effective date].
* *	*	*	* *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

7. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

8. Section 302.4 is amended by adding the following entries to Table 302.4 to read as follows. The appropriate footnotes to Table 302.4 are republished without change.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code+	RCRA Waste No.	Category	Pounds (Kg)
* * *	*		*			*	*
K162 Wastewater treatment sludge from the production of azo pigments	.....	.....	1*	4	K162		
K163 Wastewaters from the production of azo pigments	.....	.....	1*	4	K163		
K164 Wastewater treatment sludge from the production of azo dyes, excluding FD&C colorants	.....	.....	1*	4	K164		
K165 Wastewaters from the production of azo dyes, excluding FD&C colorants	.....	.....	1*	4	K165		
K166 Still bottoms or heavy ends from the production of triarylmethane dyes or pigments	.....	.....	1*	4	K168		
* * *	*		*			*	*

+—Indicates the statutory source as defined by 1, 2, 3, and 4 below.
4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.
1*—Indicates that the 1 pound RQ is a CERCLA statutory RQ.

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federal register

Thursday
December 22, 1994

Part III

Department of the Interior

Bureau of Indian Affairs

Tribal Consultation on Streamlining and Restructuring the Bureau of Indian Affairs; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Streamlining and Restructuring the Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of Tribal Consultation Meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct eleven consultation meetings to obtain oral and written comments concerning proposals to streamline, downsize, and restructure the BIA. The consultation will include information and discussion on:

1. NPR objectives;
2. The Federal Workplace Restructuring Act Requirements; and
3. The implications of the final report of the Joint Tribal/BIA/DOI Advisory Task Force on Reorganization of the Bureau of Indian Affairs.

DATES: January 9, 16, 17, 19, 20, 23, 25, 26, 27, 30, and 31, 1995, at locations listed in the **ADDRESSES** section of this notice. All meetings will begin at 9:00 A.M. and continue until 4:00 P.M. (local time).

ADDRESSES: Location sites, specific dates, and contact officials for the meetings are as follows:

Location	Local contact	Telephone
January 9, 1995: Minnesota, Minneapolis	Denise Homer	(612) 349–3631
January 16, 1995: Virginia, Arlington	Carol Bacon	(703) 235–3006
January 17, 1995: Nevada, Las Vegas	Walt Mills	(602) 379–6600
January 19, 1995: Oregon, Portland	Stan Speaks	(503) 231–6702
January 20, 1995: California, Sacramento	Ron Jaeger	(916) 484–4682
January 23, 1995: Montana, Billings	Pat Hayes	(406) 657–6315
January 25, 1995: South Dakota, Aberdeen	Don Whitener	(605) 226–7343
January 26, 1995: Alaska, Anchorage	Niles Cesar	(907) 586–7177
January 27, 1995: Oklahoma, Oklahoma City	Bill Collier	(405) 247–6673
January 30, 1995: New Mexico, Albuquerque	Joe Little	(505) 766–3170
January 31, 1995: New Mexico, Window Rock	Wilson Barber	(505) 863–8314

FOR FURTHER INFORMATION CONTACT: Diane Maybee or Deborah Maddox at the Office of the Assistant Secretary—Indian Affairs, MS–4160–MIB, 1849 C Street NW, Washington, DC 20240 or at (202) 219–2432 or (202) 219–3250.

SUPPLEMENTARY INFORMATION: The primary purpose of consultation is to provide information and to discuss options available to the Department of the Interior under the NPR, the Federal Workplace Restructuring Act, and other reorganization or downsizing directives. A packet of information for the January meetings will be distributed to Federally recognized Indian Tribes by the Bureau area office local contact person. The packets will also be available at each meeting. Some of the parameters imposed by the Office of Management and Budget and the Department of the Interior have been set forth in a tribal leader letter which was issued on November 10, 1994.

Written comments should be mailed in sufficient time to be received on or before January 31, 1995, to the Bureau of Indian Affairs, Office of the Assistant Secretary—Indian Affairs, MS–4160–MIB, 1849 C Street, NW., Washington, DC 20240, Attn: Diane Maybee. Written comments may be hand delivered to Room 4658 at the same address. Comments may also be telefaxed to the BIA at (202) 208–3575.

Following the consultation, the Bureau will finalize its streamlining implementation plan which incorporates the consultation comments, the mandates of the Office of Management and Budget, as well as the Department of the Interior and the Congress. To the extent feasible and under the constraints of existing federal mandates to downsize and streamline, the BIA will make a good faith effort to integrate and incorporate tribal concerns and recommendations into the final implementation plan which must be submitted to the Department of the Interior by February 28, 1995.

Travel to the consultation sessions will be paid by the tribal participants.

Dated: December 16, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–31405 Filed 12–21–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
December 22, 1994

Part IV

Department of the Interior

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the United Houma Nation, Inc.; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the United Houma Nation, Inc.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary proposes to decline to acknowledge that the United Houma Nation, Inc. c/o Mrs. Laura N. Billiot, Star Route, Box 95–A, Golden Meadow, Louisiana 70357, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the tribe does not meet three of the seven mandatory criteria set forth in 25 CFR 83.7. Therefore, the United Houma Nation does not meet the requirements necessary for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.10(i), any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 180 calendar days from the date of publication of this notice. As stated in the new regulations, 25 CFR 83.10(i), interested and informed parties who submit arguments and evidence to the Assistant Secretary must also provide copies of their submissions to the petitioner.

ADDRESSES: Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1849 C Street, N.W., Washington, DC 20240, Attention: Branch of Acknowledgment and Research, Mail Stop 2611–MIB.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The petitioner maintains that they are the descendants of the historical Houma Indian tribe. There is no evidence supporting this contention. The historical Houma Indian tribe continued to live near present-day Donaldsonville, Louisiana throughout the years the petitioner's antecedent community first formed on the lower bayous (between 1810 and 1830). There are no documented genealogical, social, or political connections between this tribe of Indians and the petitioner. There is also no evidence that the petitioner, as a group, descends from any other historical tribe, or from historical tribes which combined and functioned as a single autonomous entity.

There is no evidence that the petitioner's ancestors constituted a social community, Indian or non-Indian, before 1830. Because of this, the petitioner has also failed to meet criterion 83.7(b), maintenance of social community, and criterion 83.7(c), exercise of political influence, prior to 1830. Lacking the evidence for an ancestral community prior to 1830, there is, of course, no evidence for the exercise of political influence prior to 1830. The Federal acknowledgment criteria 83.7 (b) and (c) require the petitioner to provide evidence that they fulfill criteria 83.7 (b) and (c) *from the time of first sustained contact with Europeans* to the present.

The migration of the UHN ancestors, the majority of whom were non-Indian (primarily French, Acadian, German, and African) frontiersmen, to the founding Bayou Terrebonne settlement (north of present-day Montegut) started in the 1790's. Among the settlers on Bayou Terrebonne, some of whom became ancestors of the UHN, were the three Indian progenitors of the group. They moved there independently of each other; there is no indication that they were related to each other socially, politically, or genealogically, before moving to the bayou settlement. The tribal affiliation of the three Indian progenitors is not certain. One was quite possibly a Biloxi medal chief; the other two are identified in the earliest historical records only as "Indian women," with no specific tribal affiliation mentioned. There is no evidence that these three individuals descend from the same historical tribe or from historical tribes which combined and functioned as a single autonomous entity.

It is important to note that, for the first two generations that the founding UHN community was forming on Bayou Terrebonne (1790 to 1830), the petitioner's Indian ancestors and their descendants tended to marry non-Indians. In spite of this early marital pattern, and the fact that there are more non-Indian than Indian progenitors for the petitioner, the available evidence indicates that about 84% of the UHN's current members have Indian ancestry. The Indian ancestry originates from the three individual Indian progenitors mentioned above, the result of six generations of group endogamy between 1830 to 1950. It is not the result of descent, as a group, from a historical tribe.

By 1830, the petitioner's ancestors, the majority of whom were non-Indian, formed an identifiable separate and distinct community on Bayou Terrebonne. From 1830 to 1940, the limited evidence submitted by the petitioner indicates that they tended to marry each other more frequently than they married outsiders. The strongest evidence for social community from 1830 to 1880, however, is that more than half of the petitioner's ancestors lived in an isolated, exclusive settlement.

In the 1840's, the petitioner's ancestors started forming satellite settlements further south along Bayou Terrebonne, on Bayou Lafourche, and on other bayous toward the west. No contemporary descriptions of the petitioner's settlements between 1840 and 1880 were found. But based on the geographical isolation of the community on Bayou Terrebonne, we conclude that the petitioner did maintain a distinct settlement which encompassed 50% or more of its members, from 1830 to 1880. Under the revised regulations for Federal acknowledgment, this is considered sufficient evidence that the petitioner meets both criteria 83.7 (b) and (c) for that period as a single community.

By 1880, the limited evidence presented by the petitioner suggests that its members' ancestors had divided into several (six or more), socially and politically distinct, satellite communities, and no longer lived in a single community. From 1880 to 1940, the petitioner's ancestors maintained social integrity in these satellite communities, based on the evidence that 50% or more of them lived in geographical isolation. Within these relatively isolated communities, there is some limited evidence that political influence was exercised through the extended kinship structure, by elders known as *noncs* 'uncles' and *tantes* 'aunts'. This system of political influence may have been used effectively to control the behavior of individual community members, though the evidence is limited and sketchy.

From 1880 to 1940, there were some individuals who provided leadership on an *ad hoc* basis for individual communities, but never for the petitioner as a whole. One of the issues that brought forth leaders was in the fight to establish separate Indian schools for the children of UHN ancestors. Because the petitioner appears to have been composed of separate communities from 1880 to 1940, each of which may

have had its own leaders, rather than a single community with a comprehensive authority, the petitioner has not met criteria 83.7 (b) and (c) from 1880 to 1940, as a whole.

From 1940 to the present, the petitioner's members have emigrated from the lower bayou communities in greater numbers, especially to the suburbs of New Orleans. There has also been a continuous increase in out-marriage from 1940 to the present. Currently, two-thirds of the UHN members reside outside of the lower bayou communities. There is no evidence that indicates a social or political relationship between those who have emigrated and those who continue to reside in the bayou communities. There is also no evidence that the emigrants are related socially or politically among themselves. There is some limited evidence that emigrants from specific bayou communities may maintain political and social relations with relatives who remain in their natal bayou communities. Therefore, the petitioner has not met criteria 83.7 (b) and (c) from 1940 to the present as a whole.

The petitioner has not proven that it descends from a historical Indian tribe. In fact, there is no evidence for an antecedent community, Indian or non-Indian, prior to 1830. Since the UHN did not exist as a community until 1830, they are not a political community which is derived from a tribe existing at first sustained contact with Europeans until the present, and have not existed as a distinct political community derived from such a tribe since first settlement by Europeans in the area.

There is the possibility, though not well-documented at this time, that some or all of the component communities on the lower bayous may meet criteria 83.7 (b) and (c) from 1880 to the present, as separate communities. But the petitioner has not established any connection to a historical tribe prior to 1830. Nor did the petitioner submit its petition as a confederation, but rather as a single entity. For these combined reasons, there is no need to further evaluate the continued existence of separate communities from 1880 to the present, at this time.

There remains the possibility, however, that if the required connection is made to a historical tribe, the Assistant Secretary may wish to investigate further the possibility of acknowledging all or several of the component communities that comprise the UHN. This issue would only need to be investigated if the connection to a historical tribe is proven.

Since 1900, the petitioner's community has been identified consistently by anthropologists, state and Federal government representatives, residents of south Louisiana who are not members of the petitioning group, missionaries, journalists, and others, as "Indian" or by other terms which indicate at least some Indian ancestry. There is no evidence that anyone denied that the UHN were an Indian community since 1900. They therefore meet criterion 83.7(a), identification by outsiders as an Indian community since 1900.

The petitioning group has provided a copy of its governing document, which describes its membership criteria. Evidence indicates that the group is following its membership criteria satisfactorily.

No evidence was found that any of the members of the UHN are members of any federally recognized tribe.

No evidence was found that the petitioner or its members are the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship.

Based on this preliminary factual determination, we conclude that the UHN does not meet criteria b, c, and e in 25 CFR 83.7. Since the UHN does not meet all of the seven mandatory criteria, we conclude that the UHN should not be granted Federal acknowledgment under 25 CFR part 83.

As provided by 25 CFR 83.10(h) of the revised regulations, a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and other interested parties, and is available to other parties upon written request. Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, Bureau of Indian Affairs, 1849 C Street, NW., Washington, DC 20240, Attention: Branch of Acknowledgment and Research, Mail Stop 2611–MIB.

After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after the expiration of the 180-day response period described above, the Assistant Secretary—Indian Affairs will publish the final determination of the petitioner's status in the **Federal Register** as provided in 25 CFR 83.10(1).

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–31374 Filed 12–21–94; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
December 22, 1994

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary, Indian Affairs, Department of the Interior, through her delegated authority, has approved the Slots Only Compact Between the Moapa Band of Paiute Indians and the State of Nevada, which was executed on August 30, 1994.

DATES: December 22, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: December 9, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–31375 Filed 12–21–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
December 22, 1994

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Policy Development and Research

NOFA for Community Outreach Partnership Centers (COPC); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N-94-3836; FR-3825-N-01]

NOFA for Community Outreach Partnership Centers (COPC)

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1995.

SUMMARY: This NOFA announces the availability of $7.125 million to implement the second year of a demonstration program to make grants to public and private nonprofit institutions of higher education to assist in establishing or carrying out research and outreach activities addressing the problems of urban areas. These funds shall be used to establish and operate Community Outreach Partnership Centers (COPC).

The NOFA contains information concerning:

(1) The principal objectives of the competition, the funding available, eligible applicants and activities and factors for award;

(2) The application process, including how to apply and how selections will be made; and

(3) A checklist of application submission requirements.

DATES: Application kits may be requested on or after December 27, 1994.

Applications must be physically received by the Office of University Partnerships, in care of the Division of Budget, Contracts, and Program Control, in Room 8230 by 4:30 p.m. Eastern Standard Time on [insert date that is 80 days after publication in the **Federal Register***].*

The above-stated application deadline is *firm* as to *date, hour* and *place*. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: To obtain a copy of the application kit, contact: HUD USER, ATTN: COPC, P.O. Box 6091, Rockville, Maryland 20850. Requests for application kits must be in writing, but requests may be faxed to: 301-251-5747 (this is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code) and must refer to "Document FR-3825."

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships in the Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 8110, Washington, DC 20410. Telephone Number (202) 708-1537 voice; (202) 708-1455 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2535-0084.

I. Purpose and Substantive Description

A. Authority

This competition is authorized under the Community Outreach Partnership Act of 1992 (42 U.S.C. 5307 note; hereafter referred to as the "COPC Act"). The COPC Act is contained in section 851 of the Housing and Community Development Act of 1992 (P.L. 102-550, approved October 28, 1992) (HCD Act of 1992). Section 801(c) of the HCD Act of 1992 authorizes $7.5 million for each year of the 5-year demonstration to create Community outreach Partnership Centers as authorized in the COPC Act. The Act also required HUD to establish a national clearinghouse to disseminate information about the program.

The Community Outreach Partnership Centers program was transferred to the Office of Policy Development and Research on August 15, 1994, as part of the Departmental reorganization which created the Office of University Partnerships. This new Office is responsible for four of the Department's grant programs for institutions of higher education—Community Outreach Partnership Centers program, Joint Community Development program, Community Development Work Study program, and the Doctoral Dissertation Grant program. In addition, the Office is responsible for a variety of new outreach initiatives to involve these institutions in local community development and revitalization partnerships.

B. Allocation and Form of Award

The competition in this NOFA is for $7.125 million to fund the second year of the Community Outreach Partnership Centers (COPC) Program authorized as indicated above. HUD has made $7.5 million available for the program for FY 1995. $210,000 has been taken off the top to correct a mathematical error in the funding of one of last year's grantees and $165,000 has been taken off the top to fund the clearinghouse in FY 1995. Thus, $7.125 million is available under this NOFA.

Each grant made under the COPC program will be for a maximum two year period of performance. The maximum size of any grant will be $750,000, while the minimum will be $250,000. HUD has the authority to reduce the grant amount. Several applications were disqualified last year because they exceeded the maximum amount. Each applicant must submit an application within this range. Institutions of higher education which received COPC grants in FY 1994 are not eligible to receive another COPC grant under this funding round.

C. Description of Competition

The Congress has mandated that the Department carry out "a 5-year demonstration to determine the feasibility of facilitating partnerships between institutions of higher education and communities to solve urban problems through research, outreach and the exchange of information."

The COPC Act stipulates that grants are to go to public and private institutions of higher education to establish and operate Community Outreach Partnership Centers (COPC). These COPCs shall: "(A) Conduct competent and qualified research and investigation on theoretical or practical problems in large and small cities; and (B) Facilitate partnerships and outreach activities between institutions of higher education, local communities, and local governments to address urban problems."

The specific problems that grants under the COPC program must focus on are "problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, community organizing, and other areas deemed appropriate by the Secretary."

Furthermore, the COPC Act states: "The Secretary shall give preference to institutions of higher education that undertake research and outreach activities by bringing together knowledge and expertise in the various

disciplines that relate to urban problems."

Local COPC programs must combine research with outreach, work with communities and local governments and address the multi-dimensional problems that beset urban areas. The Department is mindful that, for some institutions, such a comprehensive approach may be beyond the current capacity of the institution. Because HUD is interested in funding as wide a range of eligible institutions as possible, it is making a change in the focus of the program. This year applications do not have to be comprehensive in their approach to local problems. However, while single purpose applications (e.g., assisting the homeless, small business development) will not be eligible, a less than comprehensive scope, addressing three or more urban problems will be acceptable (see Selection Factor #1 for the comprehensive list of urban problems that the program can cover).

To be most effective during the term of the demonstration, the assisted research must have a clear near-term potential for solving specific, significant urban problems. The selected institutions must have the capacity to apply their research results and to work with communities and local institutions, including neighborhood groups, in applying these results to specific real-life urban problems.

D. Eligible Applicants

Applicants for this competition must be public or private nonprofit institutions of higher education granting four year degrees and accredited by a national or regional accrediting agency recognized by the Department of Education. Consortia of institutions are eligible to apply. The Department is interested in expanding the outreach capacity of not only colleges and universities but also junior, technical, and community colleges. While some four-year colleges will want to apply directly for a COPC, others may not feel they have the credentials or the capacity to operate a COPC. Two-year colleges by themselves are not eligible, but they can apply with a school offering a four-year program. But both four-year and two-year colleges by themselves have strengths they could bring to a COPC. Thus, a selection factor has been added to encourage the creation of such consortia. If the application is submitted on behalf of a consortium of institutions, one institution must be designated as the legal applicant. Each institution may be part of only one consortium or submit only one application, although the application can include various schools within the institution.

While the program focuses on "urban" problems, applicants do not have to be located in or assist urban areas.

E. Program Requirements

Grantees must meet the following program requirements:

1. *Responsibilities.* In accordance with section 851(h) of the HCD Act of 1992, each COPC shall:

"(a) Employ the research and outreach resources of its sponsoring institution of higher education to solve specific urban problems identified by communities served by the Center;

(b) Establish outreach activities in areas identified in the grant application as the communities to be served;

(c) Establish a community advisory committee comprised of representatives of local institutions and residents of the communities to be served to assist in identifying local needs and advise on the development and implementation of strategies to address those issues;

(d) Coordinate outreach activities in communities to be served by the Center;

(e) Facilitate public service projects in the communities served by the Center;

(f) Act as a clearinghouse for dissemination of information;

(g) Develop instructional programs, convene conferences, and provide training for local community leaders, when appropriate; and

(h) Exchange information with other Centers."

The clearinghouse function in (f) above refers to a local or regional clearinghouse for dissemination of information and is separate and distinct from the functions in (h) above, which relate to the provision of information to the National Clearinghouse which, as mentioned in section I.A. above will serve all funded COPCs.

2. *Match.* Grantees must meet the following match requirements:

(a) *Research Activities.* 50 percent of the total project costs of establishing and operating research activities.

(b) *Outreach Activities.* 25 percent of the total project costs of establishing and operating outreach activities.

This non-Federal share may include cash or the value of non-cash contributions, equipment and other allowable in-kind contributions as detailed in Attachment E of OMB Circular No. A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit organizations.

Because there was confusion last year about the calculation of the match, an example is provided.

Assume that the total project cost for a COPC was $1 million, with $250,000 for research and $750,000 for outreach. Note that this project meets the requirement that no more than 25 percent of the total project costs be for research. The total amount of the match required to be provided would be $312,500. The research match would be $125,000 ($250,000 X 50 percent) and the outreach match would be $187,500 ($750,000 X 25 percent). The Federal grant requested would be $687,500 ($1 million minus the match of $312,500). In calculating the match, administrative costs should be applied to the appropriate attributable outreach or research component.

3. *Administrative.* The grant will be governed by the provision of OMB Circulars A–110 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations), A–122 (Cost Principles for Nonprofit Organizations), and A–133 (Audits of Institutions of Higher Education and other Nonprofit Institutions), as implemented at 24 CFR part 45.

F. Eligible Activities

Eligible activities include:

1. Research activities which have practical application for solving specific problems in designated communities and neighborhoods. Such activities may not total more than one-quarter of the total project costs contained in any grant made under this NOFA (including the required 50 percent match).

2. Outreach, technical assistance and information exchange activities which are designed to address specific problems in designated communities and neighborhoods. Such activities must total no less than three-quarters of the total project costs contained in any grant made under this NOFA (including the required 25 percent match).

Examples of outreach activities include, but are not limited to:

(a) Job training and other training projects, such as workshops, seminars and one-on-one and on-the-job training;

(b) Design of community strategies to resolve urban problems of communities and neighborhoods;

(c) Innovative use of funds to provide direct technical expertise and assistance to local community groups and residents to help them resolve local problems such as homelessness and housing discrimination;

(d) Assistance in business start-up activities for low-and moderate-income individuals and organizations, including business start-up training and technical expertise and assistance, mentor programs, assistance in

developing small loan funds, business incubators, etc; and

(e) Assistance to communities to improve consolidated housing and community development plans and remove impediments to design and implementation of such plans.

3. Funds for faculty development including paying for course time or summer support to enable faculty members to work on the COPC.

4. Funds for stipends for students (which can not cover tuition and fees) when they are working on the COPC.

5. Activities to carry out the "Responsibilities" listed under Section I.E.1.

G. Ineligible Activities

Ineligible activities are:

1. Research activities which have no clear and immediate practical application for solving urban problems or do not address specific problems in designated communities and neighborhoods.

2. Any type of construction, rehabilitation, or other physical development costs.

3. Costs used for day-to-day administration of regular programs of institutions of higher education, local governments or neighborhood groups.

II. Selection Criteria/Rating Factors

A. Rating Factors

As a result of a year of experience under the program, the Department has decided to streamline and revise the selection criteria. Changes are noted in the discussion of specific factors. HUD will use the following criteria to rate and rank applications received in response to this NOFA. The factors and maximum points for each factor are provided below. The maximum number of points is 100.

Rating of the "applicant" or the "applicant's organization and staff", unless otherwise specified, will include any sub-contractors, consultants and sub-recipients which are firmly committed to the project.

(1) (10 points) The demonstrated research and outreach resources available to the applicant for carrying out the purposes of the COPC Act. In rating this factor, HUD will consider the extent to which the applicant's organization and staff have recent, relevant and successful experience in:

(a) Undertaking research activities in specific communities which have clear near-term potential for practical application to significant urban problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning and community organizing, and

(b) Undertaking outreach activities in specific communities to solve or ameliorate the impact of significant urban problems. Under this factor, HUD will also evaluate the capability of the applicant to provide leadership in solving community problems and in making national contributions to solving long-term and immediate urban problems. In the FY 1994 competition, research and outreach resources and local and national prominence were three separate selection factors.

(2) (10 points) The demonstrated commitment of the applicant to supporting research and outreach programs by providing matching contributions for the Federal assistance received. In rating this factor, HUD will provide an increasing number of points for increasing amounts of contributions beyond the statutory 50 percent for research and 25 percent for outreach. Maximum points will be awarded for applications that secure 50 percent more than the amount of match required. Points will also be awarded based on the tangibility of the match, with cash and services being rated higher than indirect contributions.

(3) (10 points) The extent of need in the communities to be served by the applicant. HUD will consider the extent to which the proposal clearly delineates a need or needs in the specific communities or neighborhoods (including colonias, where appropriate), that can be resolved through the activities of a COPC. The applicant must demonstrate how these needs were determined and how the COPC will help resolve these needs.

(4) (10 points) The demonstrated ability of the applicant to disseminate results of research and successful strategies developed through outreach activities to other COPC and communities served through this demonstration program. In rating this factor, HUD will evaluate the past experience of the applicant's staff and the scope and the quality of the applicant's proposal to disseminate information on its own and other COPC research results and strategies to: (a) local communities in its area and (b) other communities and COPC through the National Clearinghouse.

(5) (35 points) The projects and activities that the applicant proposes to carry out under the grant. This factor has two sub-factors: (a) effectiveness of the research strategy (10 points), and (b) effectiveness of the outreach strategy (25 points).

(a) In rating the effectiveness of the research strategy, HUD will consider the extent to which the applicant's proposal outlines a clear research agenda related to local needs that can be successfully carried out within the period of this grant; and

(b) Demonstrates how the research to be undertaken will fit into the outreach strategy and activities. In rating the effectiveness of the outreach factor, HUD will consider the extent to which:

(i) The application identifies a clear outreach agenda related to locally-identified needs that can be successfully carried out within the period of this grant;

(ii) The outreach agenda includes design of a community strategy to resolve community and neighborhood problems; and

(iii) The outreach program provides for on-site or a frequent presence in the communities and neighborhoods to be assisted through outreach activities.

(6) (10 points) The extent of neighborhood and neighborhood based organization participation in the planning and implementation of the COPC. In rating this factor, HUD will consider whether:

(a) One or more effective community advisory committees comprised of representatives of local institutions and a balance of racial/ethnic, gender and income mix of residents of the communities (and, where appropriate, colonias) to be served has been or will be formed to participate in identifying local needs to be addressed by the COPC and to form a partnership with the COPC to develop and implement strategies to address those needs;

(b) There is a plan for involving the community advisory committee(s) in the execution of the research and outreach agenda; and

(c) The outreach agenda includes training projects for local community leaders, when appropriate.

(7) (5 points) The application is submitted by a consortium composed of a variety of different kinds of post-secondary institutions. Maximum points will be awarded to consortia composed of universities, colleges and junior, technical or community colleges.

(8) (10 points) The overall concept and organization of the application. In rating this factor, HUD will consider:

(a) The interrelatedness of the components of the application, such as the relationship of the research capacity to dissemination and outreach activities; and

(b) The likelihood that the project can be initiated and completed within the two year grant period, as measured by such elements as sufficient staff,

realistic schedules, the quality of supervision and project management, and the likelihood that other related commitments essential to the project will be in place.

B. Selection Process

Applications for funding under this NOFA will be evaluated competitively and points will be awarded as specified in the Rating Factors section described above. Applications will be reviewed by a combination of external peers and internal reviewers. After assigning points based upon the factors all applications will be listed in rank order. Applications will then be funded in rank order until all available funds have been expended. However, in order to be funded, an applicant must receive a minimum score of 70. HUD reserves the right to fund all or portions of the proposed activities identified in each application, based upon the eligibility of the proposed activities.

If two or more applications have the same number of points, the application with the most points for rating factor (6) shall be selected. If there is still a tie, the application with the most points for rating factor (7) shall be selected.

If the amount of funds remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine (based upon the proposed activities) if it is feasible to fund part of the application and offer a smaller grant to the applicant. If HUD determines that given the proposed activities a smaller grant amount would make the activities infeasible, or if the applicant turns down the reduced grant amount, HUD shall make the same determination for the next highest ranking application until all applications with scores of at least 70 points or available funds have been exhausted.

If HUD receives an insufficient number of applications to exhaust all funds, or if funds remain after HUD approves all approvable applications, HUD may negotiate increased amounts of grant awards up to an additional $250,000. Increased grants will be offered in rank order to applicants with scores of at least 70 points.

C. Geographic Distribution

HUD reserves the right to make selections out of rank order to provide for a geographic distribution of funded COPCs. The geographic balance that HUD will use, if it decides to implement this option, will be based on a combination of two adjacent standard HUD regions (e.g., Southwest and Southeast Regions, Great Plains and Midwest Regions, etc.). If the rank order does not yield at least one fundable COPC within each two region combination, then HUD may select the highest ranking application from such a combination, as long as the minimum score of 70 is achieved.

It is HUD's intent to fund at least one COPC that serves the colonias, as defined by Section 916(d) of the Cranston-Gonzalez National Affordable Housing Act, as long as the applicant receives a minimum score of 70.

III. Application Process

A. Obtaining Applications

To obtain a copy of the application kit, contact: HUD USER, ATTN: COPC, P.O. Box 6091, Rockville, Maryland 20850. Requests for application kits must be in writing, but requests may be faxed to: 301–251–5747 (this is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code) and must refer to "Document FR–3825." HUD strongly recommends the use of the fax transmission option to promote accuracy and expedite HUD response time.

B. Application Deadline

To be considered for funding, the application package must be physically received by the Office of University Partnerships, Office of Policy Development and Research, Department of Housing and Urban Development, in care of the Division of Budget, Contracts, and Program Control, Room 8230, 451 Seventh Street, SW., Washington, DC 20410 by 4:30 p.m. Eastern Standard Time on February 15, 1995. The application deadline is firm as to date, hour and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

IV. Checklist of Application Submission Requirements

A. Application Content

The application kit contains instructions which must be followed in submitting an application. The following is a checklist of the application contents that will be specified in the Request for Grant Applications (the technical term for the application kit):

(1) Transmittal letter signed by the Chief Executive Officer of the institution;

(2) OMB Standard Form 424 (Application for Federal Assistance), Form 424B (Non-Construction Assurances) and Budget Summary;

(3) Executive summary of the proposed COPC;

(4) Statement of Work (no more than 15 pages) which must incorporate all eligible activities proposed in the application and detail how the proposed work will be accomplished. Following a task-by-task format, the Statement of Work must:

(a) Delineate the tasks and sub-tasks involved in each of the areas for which the COPC is responsible, including research activities, outreach/technical assistance activities, community advisory committee activities, local/regional clearinghouse activities, and other activities necessary to carry out the responsibilities delineated under Program Requirement #1, Responsibilities, outlined above.

(b) Indicate the sequence in which the tasks are to be performed, noting areas of work which must be performed simultaneously.

(c) State the intermediate and end products to be developed by task and sub-task.

(d) Provide a framework for, and be consistent with, the Project Management Work Plan requirements.

(5) Narrative summary of Project Management Work Plan.

(6) Narrative statement addressing each of the rating factors in Section II of this NOFA.

B. Certifications and Exhibits

Applications must also include the following:

(1) Drug-Free Workplace Certification.

(2) Form SF-LLL, Disclosure of Lobbying Activities, if applicable.

(3) Form HUD–2280, Applicant/Recipient Disclosure/Update Report.

V. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or

errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

VI. Other Matters

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures in this document relate only to the provision of research, training and technical assistance which do not result in physical change and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, the notice solicits participation in an effort to provide assistance to institutions of higher education for establishing and carrying out research and outreach activities addressing the problems of urban areas. The COPCs established under this notice will work with local communities to help resolve urban problems. The notice does not impinge upon the relationships between the Federal government and State or local governments.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. The assistance to be provided by the funding under this NOFA is expected to help local residents to become self-sufficient by improving living conditions and standards. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act is codified at 24 CFR part 4, and applies to this funding competition. The requirements of the rule continue to apply until the announcement of 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 Field counsel, or Headquarters counsel for the program to which the question pertains.

Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

The rule implementing section is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of the regulation.

Any questions about the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 TDD: (202) 708–1112. These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Protection of Human Subjects

45 CFR, part 46, Subtitle A on the protection of human subjects does not apply to the COPC program because the research activities to be conducted under the program are only incidentally regulated by the Department solely as part of it's broader responsibility to regulate certain types of activities whether research or non-research in nature.

Authority: 42 U.S.C. 5307 note.

Dated: December 5, 1994.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 94–31419 Filed 12–21–94; 8:45 am]

BILLING CODE 4210–62–P

federal register

Thursday
December 22, 1994

Part VII

Department of Education

34 CFR Part 685
William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

William D. Ford Federal Direct Loan Program

RIN 1840–AC11

AGENCY: Department of Education.

ACTION: Final standards, criteria, and procedures.

SUMMARY: The Secretary of Education issues final standards, criteria, and procedures governing the alternative repayment and income contingent repayment (ICR) plans under the William D. Ford Federal Direct Loan (Direct Loan) Program for the academic year beginning July 1, 1994.

These standards, criteria, and procedures apply to loans under the Federal Direct Stafford/Ford Loan Program, the Federal Direct Unsubsidized Stafford/Ford Loan Program, the Federal Direct PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Direct Loan Program.

EFFECTIVE DATE: December 22, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Edelstein, Room 3012, ROB–3, 600 Independence Avenue, SW, Washington, D.C., 20202, telephone: (202) 708–9406. 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 Student Loan Reform Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under the Higher Education Act of 1965, as amended (HEA). *See* Subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders. Borrowers under the Direct Loan Program are provided a range of repayment options, including an ICR plan.

The HEA directs the Secretary to consult with members of the higher education community and to publish a notice of standards, criteria, and procedures for the program's first year in lieu of issuing regulations using the Department's usual procedures. The Secretary's representatives have consulted with representatives of students, colleges, universities, proprietary schools, and educational associations, as well as representatives of the financial aid community, in developing this notice. In particular, the Secretary's representatives have had extensive consultations with the other members of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee established to develop proposed regulations for the second and subsequent years of the program. See the Secretary's announcement of his intention to establish this Committee at 58 FR 68619 (December 28, 1993). The Secretary, in consultation with the above-discussed members of the higher education community, has determined that this notice is reasonable and necessary to the successful implementation of the first year of the program.

This notice modifies the provisions of the ICR plan and the alternative repayment plan for the 1994–95 academic year.

I. Background

On July 1, 1994, the Secretary published a final regulation governing the Direct Loan Program for the 1994–95 academic year. That regulation prescribes the formula used to determine the repayment amounts under the ICR plan for borrowers whose loans enter repayment during the 1994–95 academic year.

On August 18, 1994, the same formula was published in a Notice of Proposed Rulemaking relating to the 1995–96 and subsequent years of the Direct Loan Program. The Secretary received 98 comments on that NPRM, most of which include discussion of the ICR plan. In response to those comments, the Secretary made several changes to the ICR plan for the 1995–96 and subsequent academic years. The changes provide borrowers with better repayment terms than are currently available for the 1994–95 academic year. For example, the limit on the amount of interest that will be capitalized (or added to principal) was reduced from 50 percent of the original principal to 10 percent of the original principal, thereby reducing the cost of borrowing significantly for some borrowers whose monthly payments are lower than the amount of interest accrued. The new ICR formula also lowers the required monthly payment for many borrowers who have lower incomes.

This notice extends the revised ICR formula and its benefits, including the reduced level of capitalization, to borrowers whose loans enter repayment in the 1994–95 academic year. This notice also reduces the level of capitalization of interest on loans repaid under the alternative repayment plan for borrowers whose loans enter repayment in the 1994–95 academic year. Finally, this notice establishes a 30-year maximum repayment period for the alternative repayment plan.

The Secretary believes that it is desirable for all Direct Loan borrowers who choose the ICR plan to be subject to the same formula during the first years of this new program. As of this date, no Direct Loan borrowers have entered repayment under the ICR formula published on July 1, 1994, but some Direct Loan borrowers will enter income contingent repayment before the 1994–95 academic year is over. This notice provides that the revised ICR plan will apply to those borrowers.

The Secretary believes that applying one formula to all borrowers allows the Secretary to publish materials that clearly explain the repayment options to borrowers without having to discuss multiple formulas. Furthermore, having a single formula during the initial years of this program simplifies the administration of the program for schools and promotes a clear understanding of the repayment provisions.

II. Summary of Contents

Section 685.208 Repayment Plans

The Secretary has established the maximum repayment period allowable under the alternative repayment plan at 30 years. Further, under the alternative plan, interest that accrues and is not paid will be capitalized annually until the outstanding principal is 10 percent greater than the original principal amount.

Section 685.209 Income Contingent Repayment Plan

The Secretary has significantly modified the income contingent repayment (ICR) plan provisions. The Secretary is lowering the limit on interest capitalization that may occur when interest accrues, but is not paid, from 50 percent greater than the original principal amount to 10 percent greater than the original principal amount. Also, monthly payments will be limited to 20 percent of discretionary income (AGI minus the poverty level appropriate to the family size). This change eliminates the need for the previous family size offset of $7 and provides a new cap on the amount of income assessed. The Secretary is including years of repayment under the 10-year standard repayment plan and the 12-year extended repayment plan as years eligible for determining the 25-year period for loan forgiveness. The monthly repayment amount below which no payment is required under the formula calculation is $15. Under the

12-year standard amortization cap, the minimum payment is $15 (that is, a borrower must pay at least $15 each month). The 12-year standard amortization cap calculation has been modified to provide for the recalculation of the cap following periods of negative amortization because these periods result in an increase in the outstanding loan balance. The payback rate for married borrowers paying jointly under ICR will be calculated on the outstanding debt at the time the borrowers are approved for joint repayment. For borrowers repaying jointly, payments will be applied to interest on both accounts prior to principal reduction in either.

Section 685.209 (ICR plan) contains provisions governing the two monthly payment calculations, namely the formula amount and the capped amount, available for repayment of Direct Loans under the ICR plan. Borrowers may choose to repay either the formula amount or the capped amount. (See Appendix A for detailed examples illustrating, for single borrowers and for married borrowers who are repaying under the ICR plan, the calculations of the formula and capped monthly repayment amounts.)

Formula Amount

Calculation of the ICR formula monthly payment amount is described in paragraph (b) of this section. In general, the borrower's annual repayment obligation is the borrower's AGI multiplied by a "payback rate" that is based on the borrower's debt. The monthly payment is the annual repayment obligation divided by 12. The "payback rate" varies from four to 15 percent, calculated as described in paragraph (b)(2). The payment amount cannot exceed 20 percent of discretionary income (AGI minus the annual poverty level appropriate to the family size) divided by 12. If the calculated monthly payment is less than $15, the borrower is not required to make a payment. When a borrower is not required to make a payment, interest on the principal accrues and will be capitalized until the limitation on capitalization is reached.

Capped Amount

Calculation of the capped monthly payment amount is described in paragraph (c), and equals the monthly amount the borrower would repay over 12 years using standard amortization schedules. If the formula amount exceeds the capped amount, the borrower may choose to pay the capped amount. If the borrower chooses to pay the capped amount, the borrower's repayment period may be longer than if the borrower chooses to pay the higher formula amount.

Joint Repayment By Married Borrowers

This section includes provisions for joint income contingent repayment of Direct Loans by married borrowers. Negative amortization is minimized by attributing joint repayments first to the interest due on each spouse's account and then to principal. A step-by-step calculation of a combined repayment amount is included as Example 2 in Appendix A.

Repayment Period

Provisions governing the repayment period under ICR are contained in paragraph (d)(2). The maximum period is 25 years, excluding periods of authorized deferment and forbearance under §§ 685.204 and 685.205, respectively, and periods in which the borrower made payments under a repayment plan other than the 10-year standard or 12-year extended plans. The Secretary believes the exclusion of repayment periods under all other extended and graduated plans is needed to prevent potential borrower repayment abuses.

If a borrower repays more than one loan under ICR and the loans enter repayment at different times, a separate repayment period for each loan begins when the loan enters repayment. This approach ensures that no loan will be repaid under ICR for more than 25 years. If loans enter repayment at the same time, a single repayment period applies.

To encourage borrowers to begin repaying their loans and to limit negative amortization at the beginning of the repayment period, a borrower must make monthly payments of accrued interest until the Secretary calculates the borrower's monthly payment on the basis of the borrower's income. A borrower who is unable to make monthly payments of accrued interest or is unable to qualify for a deferment under § 685.204, may request forbearance under § 685.205.

Limit on Capitalization of Interest

The Secretary believes a limit on the amount of interest that is added to principal (the capitalization of interest) is desirable to prevent an excessive increase in a borrower's debt burden when the borrower's income is insufficient to cover accruing interest. Paragraph (d)(3) permits capitalization of unpaid interest until the outstanding principal amount is 10 percent greater than the original principal amount, a decrease from the 50 percent proposed in the NPRM. Thereafter, unpaid interest accrues but is not capitalized.

Consent to Disclosure of Tax Return Information

In order to repay a Direct Loan under ICR, a borrower must consent, on a form provided by the Secretary, to the disclosure of certain tax return information by the Internal Revenue Service to agents of the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan. The information subject to disclosure is taxpayer identity information as defined in 26 U.S.C. 6103(b)(6) (including such information as name, address, and social security number), tax filing status, and AGI. Paragraph (d)(5) describes the procedures for providing written consent and requires that consent be provided for a period of five years. If a borrower selects ICR but fails to provide or renew consent, or withdraws consent without selecting a different repayment plan, the Secretary designates the 10-year standard repayment plan for the borrower.

III. Waiver of Rulemaking

In accordance with the Administrative Procedures Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties an opportunity to comment on proposed regulations. However, Pub. L. 103–66 permits the Secretary to publish a notice in lieu of regulations for the first year of the Direct Loan Program and exempts the contents of the notice from the rulemaking requirements of section 431 of the General Education Provisions Act (recently revised and renumbered by Pub. L. 103–382 as section 437). In developing this notice, the Secretary's representatives have consulted extensively with the other members of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee established to develop proposed regulations for the second and subsequent years of the program, and has taken into consideration the public comments submitted in response to the Secretary's invitation in the August 18, 1994 Direct Loan NPRM. The timely implementation of the ICR plan for borrowers entering repayment in academic year 1994–1995 does not permit the solicitation of further public comment. A public comment period would seriously delay operation of the Direct Loan Program and would prevent borrowers entering repayment during the first year of the program from receiving the same benefits as borrowers who enter repayment in the second year of the program. Therefore, the Secretary

finds that solicitation of public comments is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B). For the same reasons, the Secretary has decided to waive the 30-day delayed effective date under 5 U.S.C. 553(d).

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.268, William D. Ford Federal Direct Loan Program)

Dated: December 16, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary revises part 685 of title 34 of the Code of Federal Regulations as follows:

PART 685—STANDARDS, CRITERIA, AND PROCEDURES FOR THE DIRECT LOAN PROGRAM

1. The authority citation continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*

2. Section 685.208 is amended by revising paragraph (g) to read as follows:

§ 685.208 Repayment plans.

* * * * *

(g) *Alternative repayment.* (1) The Secretary may provide an alternative repayment plan for a borrower who demonstrates to the Secretary's satisfaction that the terms and conditions of the repayment plans specified in paragraphs (b) through (f) of this section are not adequate to accommodate the borrower's exceptional circumstances.

(2) The Secretary may require a borrower to provide evidence of the borrower's exceptional circumstances before permitting the borrower to repay a loan under an alternative repayment plan.

(3) If the Secretary agrees to permit a borrower to repay a loan under an alternative repayment plan, the Secretary notifies the borrower in writing of the terms of the plan. After the borrower receives notification of the terms of the plan, the borrower may accept the plan or choose another repayment plan.

(4) A borrower shall repay a loan under an alternative repayment plan within 30 years of the date the loan entered repayment, not including periods of deferment and forbearance.

(5) If the amount of a borrower's monthly payment under an alternative repayment plan is less than the accrued interest on the loan, the unpaid interest is capitalized until the outstanding principal amount is 10 percent greater than the original principal amount. After the outstanding principal amount is 10 percent greater than the original principal amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original principal amount is the amount owed by the borrower when the borrower enters repayment.

(Authority: 20 U.S.C. 1087a *et seq.*)

3. Section 685.209 is revised to read as follows:

§ 685.209 Income contingent repayment plan.

(a) *General.* (1) Under the income contingent repayment plan described in § 685.208(f), a borrower may choose to repay under the formula described in paragraph (b) of this section or may choose to have payments capped as described in paragraph (c) of this section. The amount calculated under paragraph (b) of this section is called the "formula amount," and the amount calculated under paragraph (c) of this section is called the "capped amount."

(2) Borrowers may choose to repay either the formula amount or the capped amount when they enter repayment and may change between the options one time each year.

(3) The Secretary may determine that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment to the borrower's repayment obligations.

(4) Married borrowers may repay their loans jointly if they meet the following requirements:

(i) The spouses have both chosen either the formula amount or the capped amount.

(ii) The spouses filed a joint Federal income tax return for the most recent year for which the Secretary has obtained income information.

(iii) The spouses submit a written request to the Secretary that includes their names and social security numbers.

(5) Examples of the calculation of monthly repayment amounts and tables that shows monthly repayment amounts for borrowers at various income and debt levels are included in appendix A to this part.

(b) *Formula amount.* (1) *General.* (i) If a borrower chooses to pay the formula amount under the income contingent repayment plan, the borrower generally makes monthly payments that are calculated using a percentage of the borrower's Adjusted Gross Income (AGI) called the "payback rate."

(ii) A borrower's monthly payment is equal to the borrower's AGI multiplied by the payback rate, divided by 12 months. However, a borrower's monthly payment is never larger than 20 percent of the borrower's discretionary income as defined in paragraph (b)(1)(iii) of this section, divided by 12 months. Additionally, if the monthly repayment amount is less than $15, the borrower is not required to make a payment.

(iii) For purposes of this section, discretionary income is defined as a borrower's AGI minus the amount of the "HHS Poverty Guideline for all States (except Alaska and Hawaii) and the District of Columbia" as published by the United States Department of Health and Human Services on an annual basis.[1] If a borrower provides documentation acceptable to the Secretary that the borrower has more than one person in the borrower's family, the Secretary applies the HHS Poverty Guideline for the borrower's family size.

(2) *Payback rate.* (i) A borrower's payback rate is based upon the borrower's Direct Loan debt when the borrower's first loan enters repayment and does not change unless the borrower obtains another Direct Loan or the borrower and the borrower's spouse obtain approval to repay their loans jointly under paragraph (a)(4) of this section. If the borrower obtains another Direct Loan, a new payback rate for all of the borrower's Direct Loans is calculated on the basis of the combined amounts of the loans when the last loan enters repayment. If the borrower and the borrower's spouse repay the loans jointly, the provisions under paragraph (b)(3) of this section apply.

(ii) If the total amount of a borrower's Direct Loans is less than or equal to $1,000, the payback rate is four percent. If the total amount of a borrower's Direct Loans is greater than $1,000, the payback rate is four percent plus an additional percent that begins at zero and increases at a rate of 0.2 percent for each additional $1,000 borrowed up to a maximum payback rate of 15 percent.

(iii) More specifically, if the total amount of a borrower's Direct Loans is greater than $1,000, the payback rate is the lesser of 0.15 or the following: 0.04 + (debt − 1,000) (0.000002).

[1] The HHS Poverty Guidelines are available from the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services (HHS), Room 438F, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201

(3) *Exception for certain married borrowers.* (i) The combined monthly payment amount for married borrowers who repay their loans jointly under paragraph (a)(4) of this section and who repay the formula amount is the total of the individual monthly payment amounts for each borrower calculated under paragraph (b)(1)(ii) of this section.

(ii) The payback rate for each borrower is calculated separately on the basis of the amount of the outstanding debt on the borrower's Direct Loans at the time the borrower enters into joint repayment with the borrower's spouse. For purposes of this paragraph, the Secretary assumes that the AGI for each borrower is proportionate to the relative size of the borrower's individual debt.

(iii) For purposes of determining whether a borrower's payment amount is larger than 20 percent of the borrower's discretionary income under paragraph (b)(1)(ii), a portion of the appropriate HHS Poverty Guideline for the borrowers' family size is applied to each borrower in proportion to the relative size of the individual borrower's debts.

(iv) If the combined monthly repayment amount is less than $15, the borrowers are not required to make a payment.

(v) The amount of a borrower's individual monthly payment is applied to the borrower's debt, except that the Secretary credits joint payments toward interest accrued on any loan before any payment is credited to principal.

(c) *Capped amount.* (1) *General.* If a borrower's monthly payments calculated under the formula amount as determined in paragraph (b) of this section are greater than the capped amount calculated under paragraph (c)(2), the borrower may choose to repay the capped amount.

(2) *Calculation of the capped amount.* (i) The capped amount is the amount that a borrower would repay monthly over 12 years using standard amortization or $15, whichever is greater.

(ii) The amount of the cap is recalculated on an annual basis to include changes in the variable rate.

(iii) After periods in which a borrower makes payments that are less than interest accrued on the loan, the amount of the cap is recalculated. If the new cap is larger than the existing cap, the new cap is applied. If the new cap is smaller than or equal to the existing cap, the existing cap is applied.

(3) *Exception to the calculation of the capped amount for certain married borrowers.* The capped amount for married borrowers who repay jointly under paragraph (a)(4) of this section is the same amount as calculated under paragraph (c)(2) of this section except that the amount is based on the combined Direct Loan debt of the borrowers.

(d) *Other features of the income contingent repayment plan.* (1) *Alternative documentation of income.* If a borrower's AGI is not available or if, in the Secretary's opinion, the borrower's reported AGI does not reasonably reflect the borrower's current income, the Secretary may use other documentation of income provided by the borrower to calculate the borrower's monthly repayment amount.

(2) *Repayment period.* (i) The maximum repayment period under the income contingent repayment plan is 25 years.

(ii) The repayment period includes periods in which the borrower makes payments under the standard repayment plan and under extended repayment plans in which payments are based on a repayment period that is up to 12 years. The repayment period does not include periods in which the borrower makes payments under the graduated and alternative repayment plans or periods of authorized deferment or forbearance. The repayment period also does not include periods in which the borrower makes payments under an extended repayment plan in which payments are based on a repayment period that is longer than 12 years.

(iii) If a borrower repays more than one loan under the income contingent repayment plan, a separate repayment period for each loan begins when that loan enters repayment.

(iv) If a borrower has not repaid a loan in full at the end of the 25-year repayment period under the income contingent repayment plan, the Secretary cancels the unpaid portion of the loan.

(v) At the beginning of the repayment period under the income contingent repayment plan, a borrower shall make monthly payments of the amount of interest that accrues on the borrower's Direct Loans until the Secretary calculates the borrower's monthly repayment amount on the basis of the borrower's income.

(3) *Limitation on capitalization of interest.* If the amount of a borrower's monthly payment is less than the accrued interest, the unpaid interest is capitalized until the outstanding principal amount is ten percent greater than the original principal amount. After the outstanding principal amount is ten percent greater than the original amount, interest continues to accrue but is not capitalized. For purposes of this paragraph, the original amount is the amount owed by the borrower when the borrower enters repayment.

(4) *Notification of terms and conditions.* When a borrower elects or is required by the Secretary to repay a loan under the income contingent repayment plan, the Secretary notifies the borrower of the terms and conditions of the plan, including—

(i) That the Internal Revenue Service will disclose certain tax return information to the Secretary or the Secretary's agents; and

(ii) That if the borrower believes that special circumstances warrant an adjustment to the borrower's repayment obligations, as described in § 685.209(a)(3), the borrower may contact the Secretary and obtain the Secretary's determination as to whether an adjustment is appropriate.

(5) *Consent to disclosure of tax return information.* (i) A borrower shall provide written consent to the disclosure of certain tax return information by the Internal Revenue Service (IRS) to agents of the Secretary for purposes of calculating a monthly repayment amount and servicing and collecting a loan under the income contingent repayment plan. The borrower shall provide consent by signing a consent form, developed consistent with 26 CFR 301.6103(c)-1 and provided to the borrower by the Secretary, and shall return the signed form to the Secretary.

(ii) The borrower shall consent to disclosure of the borrower's taxpayer identity information as defined in 26 U.S.C. 6103(b)(6), tax filing status, and AGI.

(iii) The borrower shall provide consent for a period of five years from the date the borrower signs the consent form. The Secretary provides the borrower a new consent form before that period expires. The IRS does not disclose tax return information after the IRS has processed a borrower's withdrawal of consent.

(iv) The Secretary designates the standard repayment plan for a borrower who selects the income contingent repayment plan but—

(A) Fails to provide the required written consent;

(B) Fails to renew written consent upon the expiration of the five-year period for consent; or

(C) Withdraws consent and does not select another repayment plan.

(v) If a borrower defaults and the Secretary designates the income contingent repayment plan for the borrower but the borrower fails to provide the required written consent, the Secretary mails a notice to the

borrower establishing a repayment schedule for the borrower.

(Approved by the Office of Management and Budget under control number 1840–0693)

(Authority: 20 U.S.C. 1087a *et seq.*)

4. Appendix B is removed, and Appendix A to part 685 is revised to read as follows:

APPENDIX A—INCOME CONTINGENT REPAYMENT

Examples of the Calculation of Monthly Repayment Amounts

Example 1. A single borrower with $12,500 of Direct Loans and an Adjusted Gross Income (AGI) of $25,000.

Step 1: Calculate the payback rate. Because the borrower's debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii), as follows:

- Subtract $1,000 from the total amount of the borrower's Direct Loans: ($12,500 − $1,000=$11,500).
- Multiply the result by 0.000002: ($11,500×0.000002=0.023).
- Add the result to 0.04: (0.04+0.023=0.063).
- The result is the payback rate.

Step 2: Compare the calculated payback rate (0.063) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the borrower's payback rate is 0.063.

Step 3: Calculate the annual repayment amount by multiplying the borrower's AGI by the payback rate: ($25,000×0.063=$1,575).

Step 4: Calculate the monthly repayment amount by dividing the annual repayment amount by 12 months: ($1,575÷12=$131.25).

Step 5: Calculate the borrower's discretionary income (AGI minus HHS Poverty Guideline for a family of one): ($25,000 − $7,360=$17,640).

Step 6: Multiply the borrower's discretionary income ($17,640) by 20 percent: ($17,640×.2=3,528).

Step 7: Divide the amount calculated in Step 6 by 12 months: ($3,528÷12=$294).

Step 8: Compare the amount calculated in Step 4 ($131.25) with the amount calculated in Step 7 ($294). The lower amount is the formula amount. The formula amount is $131.25. The borrower's monthly payment under the formula amount would be $131.25.

Step 9: Compare the monthly formula amount ($131.25) to the $15 floor repayment amount. Because the formula amount is greater than the $15 floor, the borrower's monthly formula amount is $131.25.

Step 10: Compare the formula amount calculated in Step 9 ($131.25) to the capped amount, which is the monthly amount the borrower would repay under a 12-year standard amortization schedule. If the interest rate is seven percent, the 12-year standard amortization amount is approximately $10.28 for every $1,000 of debt. In this example, since the borrower has $12,500 in debt, the capped amount is approximately $128.50 ($10.28×12.5). Because the formula amount ($131.25) exceeds the capped amount ($128.50), the capped amount is the minimum monthly repayment. The borrower has the option of paying the formula amount (or any higher amount).

Example 2. Married borrowers both repaying under the ICR plan with a combined Adjusted Gross Income (AGI) of $30,000. The husband has $5,000 of Direct Loans. The wife has $15,000 of Direct Loans. The couple has two children.

Step 1: Calculate the husband's payback rate. Because his debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii) as follows:

- Subtract $1,000 from the amount of the husband's loans: ($5,000 − $1,000=$4,000).
- Multiply the result by 0.000002: ($4,000×0.000002=0.008).
- Add the result to 0.04: (0.04+0.008=0.048).
- The result is the husband's payback rate.

Step 2: Compare the husband's calculated payback rate (0.048) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the husband's payback rate is 0.048.

Step 3: Calculate the husband's assumed AGI by multiplying the couple's total AGI ($30,000) by the amount of the husband's loans ($5,000), divided by the total amount of the couple's debt ($20,000): ($30,000×$5,000÷$20,000=$7,500).

Step 4: Calculate the husband's annual repayment amount by multiplying the husband's assumed AGI ($7,500) by his payback rate (0.048): ($7,500×0.048=$360).

Step 5: Calculate the husband's monthly repayment amount by dividing his annual repayment amount by 12 months: ($360÷12=$30).

Step 6: Calculate the couple's discretionary income (AGI minus HHS Poverty Guideline for a family of four): ($30,000 − 14,800=$15,200).

Step 7: Calculate the husband's portion of the couple's discretionary income by multiplying the couple's discretionary income ($15,200) by the amount of the husband's loans ($5,000) divided by the total amount of the couple's debt ($20,000): ($15,200×$5,000÷$20,000=$3,800).

Step 8: Multiply the husband's discretionary income by 20 percent: ($3,800 − .2=$760).

Step 9: Divide the amount calculated in Step 8 by 12 months: ($760÷12=$63.33).

Step 10: Compare the monthly amount calculated in Step 5 ($30) with the monthly amount calculated in Step 9 ($63.33). The lower amount is the formula amount. The formula amount is $30. If the borrowers choose to repay the formula amount, the husband's payment would be $30.

Step 11: Calculate the wife's payback rate. Because her debt is greater than $1,000, the payback rate is calculated on the basis of the formula in § 685.209(b)(2)(iii) as follows:

- Subtract $1,000 from the amount of the wife's loans: ($15,000 − $1,000=$14,000).
- Multiply the result by 0.000002: ($14,000×0.000002=0.028).
- Add the result to 0.04: (0.04+0.028=0.068).
- The result is the wife's payback rate.

Step 12: Compare the wife's calculated payback rate (0.068) to the maximum payback rate (0.15). Because the calculated rate is less than the maximum rate, the wife's payback rate is 0.068.

Step 13: Calculate the wife's assumed AGI by multiplying the couple's total AGI ($30,000) by the amount of the wife's loans ($15,000), divided by the total amount of the couple's debt ($20,000): ($30,000×$15,000÷$20,000=$22,500).

Step 14: Calculate the wife's annual repayment amount by multiplying the wife's assumed AGI ($22,500) by her payback rate (0.068): ($22,500×0.068=$1,530).

Step 15: Calculate the wife's monthly repayment amount by dividing the annual repayment amount calculated in Step 14 ($1,530) by 12 months: ($1,530÷12=$127.50).

Step 16: Calculate the wife's portion of the couple's discretionary income by subtracting the husband's portion of the couple's discretionary income calculated in Step 7 ($3,800) from the couple's total discretionary income calculated in Step 6 ($15,200): ($15,200 − $3,800=$11,400).

Step 17: Multiply the wife's discretionary income ($11,400) by 20 percent: ($11,400×.2=$2,280).

Step 18: Divide the amount calculated in Step 17 by 12 months: ($2,280÷12=$190).

Step 19: Compare the monthly amount calculated in Step 15 ($127.50) with the monthly amount calculated in Step 18 ($190). The lower amount is the formula amount. The formula amount is $127.50. If the borrowers choose to repay the formula amount, the wife's payment would be $127.50.

Step 20: Calculate the couple's combined monthly formula amount by adding the husband's monthly formula amount calculated in Step 10 ($30) and the wife's monthly formula amount calculated in Step 19 ($127.50): ($30+$127.50=$157.50).

Step 21: Compare the couple's combined monthly formula amount ($157.50) to the $15 floor repayment amount. Because the combined formula amount is greater than the $15 floor, the couple's combined monthly formula amount is $157.50.

Step 22: Compare the formula amount calculated in Step 21 ($157.50) to the capped amount, which is the amount the couple would repay under a 12-year standard amortization schedule. If the interest rate is seven percent, the capped amount is approximately $10.28 for every $1,000 of debt. In this example, since the couple has $20,000 in debt, the capped amount is approximately $205.60 ($10.28×20). Because the formula amount ($157 50) does not exceed the capped amount ($205.60), the couple's combined monthly repayment amount is the formula amount of $157 50

Note: The following tables will not appear in the Code of Federal Regulations

BILLING CODE 4000–01–P

Income Contingent Repayment Plan

Formula Amount: Sample First-year Monthly Repayment Amounts for a Single Borrower (Family of 1) at Various Income and Debt Levels

	Initial Debt																							
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9,000	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27	27
10,000	38	40	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44
12,500	45	50	55	60	66	71	76	81	86	86	86	86	86	86	86	86	86	86	86	86	86	86	86	86
15,000	54	60	66	73	79	85	91	98	104	110	123	127	127	127	127	127	127	127	127	127	127	127	127	127
17,500	63	70	77	85	92	99	106	114	121	128	143	158	169	169	169	169	169	169	169	169	169	169	169	159
20,000	72	80	88	97	105	113	122	130	138	147	163	180	197	211	211	211	211	211	211	211	211	211	211	211
22,500	81	90	99	109	118	128	137	146	156	165	184	203	221	240	252	252	252	252	252	252	252	252	252	252
25,000	90	100	110	121	131	142	152	163	173	183	204	225	246	267	288	294	294	294	294	294	294	294	294	294
30,000	108	120	133	145	158	170	183	195	208	220	245	270	295	320	345	370	375	375	375	375	375	375	375	375
35,000	125	140	155	169	184	198	213	228	242	257	286	315	344	373	403	432	438	438	438	438	438	438	438	438
40,000	143	160	177	193	210	227	243	260	277	293	327	360	393	427	460	493	500	500	500	500	500	500	500	500
45,000	161	180	199	218	236	255	274	293	311	330	368	405	443	480	518	555	563	563	563	563	563	563	563	563
50,000	179	200	221	242	263	283	304	325	346	367	408	450	492	533	575	617	625	625	625	625	625	625	625	625
55,000	197	220	243	266	289	312	335	358	380	403	449	495	541	587	633	678	688	688	688	688	688	688	688	688
60,000	215	240	265	290	315	340	365	390	415	440	490	540	590	640	690	740	750	750	750	750	750	750	750	750
65,000	233	260	287	314	341	368	395	423	450	477	531	585	639	693	748	802	813	813	813	813	813	813	813	813
70,000	251	280	309	338	368	397	426	455	484	513	572	630	688	747	805	863	875	875	875	875	875	875	875	875
75,000	269	300	331	363	394	425	456	488	519	550	613	675	738	800	863	925	938	938	938	938	938	938	938	938
80,000	287	320	353	387	420	453	487	520	553	587	653	720	787	853	920	987	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
85,000	305	340	375	411	446	482	517	553	588	623	694	765	836	907	978	1,048	1,063	1,063	1,063	1,063	1,063	1,063	1,063	1,063
90,000	323	360	398	435	473	510	548	585	623	660	735	810	885	960	1,035	1,110	1,125	1,125	1,125	1,125	1,125	1,125	1,125	1,125
95,000	340	380	420	459	499	538	578	618	657	697	776	855	934	1,013	1,093	1,172	1,188	1,188	1,188	1,188	1,188	1,188	1,188	1,188
100,000	358	400	442	483	525	567	608	650	692	733	817	900	993	1,067	1,150	1,233	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250

Capped Amount: Monthly Repayment Amounts Will Never Exceed the Values in the Following Line:

Initial Debt																							
$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$26	$53	$79	$105	$131	$158	$184	$210	$237	$263	$315	$368	$421	$473	$526	$578	$631	$683	$736	$789	$841	$894	$946	$1,051

Income Contingent Repayment Plan

Formula Amount: Sample First-year Monthly Repayment Amounts for a Borrower with a Family of 2 at Various Income and Debt Levels

	Initial Debt																							
Income	$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$1,000	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
2,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12,500	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44	44
15,000	54	60	66	73	79	85	86	86	86	86	86	86	86	86	86	86	86	86	86	86	86	86	86	86
17,500	63	70	77	85	92	99	106	114	121	128	128	128	128	128	128	128	128	128	128	128	128	128	128	128
20,000	72	80	88	97	105	113	122	130	138	147	163	169	169	169	169	169	169	169	169	169	169	169	169	169
22,500	81	90	99	109	118	128	137	146	156	165	184	203	211	211	211	211	211	211	211	211	211	211	211	211
25,000	90	100	110	121	131	142	152	163	173	183	204	225	246	253	253	253	253	253	253	253	253	253	253	253
30,000	108	120	133	145	158	170	183	195	208	220	245	270	295	320	336	336	336	336	336	336	336	336	336	336
35,000	125	140	155	169	184	198	213	228	242	257	286	315	344	373	403	419	419	419	419	419	419	419	419	419
40,000	143	160	177	193	210	227	243	260	277	293	327	360	393	427	460	493	500	500	500	500	500	500	500	500
45,000	161	180	199	218	236	255	274	293	311	330	368	405	443	480	518	555	563	563	563	563	563	563	563	563
50,000	179	200	221	242	263	283	304	325	346	367	408	450	492	533	575	617	625	625	625	625	625	625	625	625
55,000	197	220	243	266	289	312	335	358	380	403	449	495	541	587	633	678	688	688	688	688	688	688	688	688
60,000	215	240	265	290	315	340	365	390	415	440	490	540	590	640	690	740	750	750	750	750	750	750	750	750
65,000	233	260	287	314	341	368	395	423	450	477	531	585	639	693	748	802	813	813	813	813	813	813	813	813
70,000	251	280	309	338	368	397	426	455	484	513	572	630	688	747	805	863	875	875	875	875	875	875	875	875
75,000	269	300	331	363	394	425	456	488	519	550	613	675	738	800	863	925	938	938	938	938	938	938	938	938
80,000	287	320	353	387	420	453	487	520	553	587	653	720	787	853	920	987	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
85,000	305	340	375	411	446	482	517	553	588	623	694	765	836	907	978	1,048	1,063	1,063	1,063	1,063	1,063	1,063	1,063	1,063
90,000	323	360	398	435	473	510	548	585	623	660	735	810	885	960	1,035	1,110	1,125	1,125	1,125	1,125	1,125	1,125	1,125	1,125
95,000	340	380	420	459	499	538	578	618	657	697	776	855	934	1,013	1,093	1,172	1,188	1,188	1,188	1,188	1,188	1,188	1,188	1,188
100,000	358	400	442	483	525	567	608	650	692	733	817	900	983	1,067	1,150	1,233	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250

Capped Amount: Monthly Repayment Amounts Will Never Exceed the Values in the Following Line:

Initial Debt																							
$2,500	$5,000	$7,500	$10,000	$12,500	$15,000	$17,500	$20,000	$22,500	$25,000	$30,000	$35,000	$40,000	$45,000	$50,000	$55,000	$60,000	$65,000	$70,000	$75,000	$80,000	$85,000	$90,000	$100,000
$26	$53	$79	$105	$131	$158	$184	$210	$237	$263	$315	$368	$421	$473	$526	$578	$631	$683	$736	$789	$841	$894	$946	$1,05

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federal register

Thursday
December 22, 1994

Part VIII

Department of Health and Human Services

Public Health Service

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

[0905–ZA84]

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, PHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for grants under the Adolescent Family Life (AFL) Demonstration Projects Program. These grants are for community-based and community-supported demonstration projects to: (1) Find effective means of preventing pregnancy by encouraging adolescents to abstain from sexual activity through provision of age-appropriate education on sexuality and decision-making skills, and (2) establish comprehensive and integrated approaches to the delivery of services to pregnant adolescents, adolescent parents and their children. Funds are available for approximately 10–15 projects, which may be located in any State, the District of Columbia, the territories of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of Palau, Republic of the Marshall Islands and the Federated States of Micronesia.

DATES: To receive consideration grant applications must be received by the Grants Management Officer by March 22, 1995. Applications will be considered as meeting the deadline if they are either (1) received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

ADDRESSES: Requests for application kits may be faxed to (301) 594–5980. Application kits may also be obtained from and applications delivered by the U.S. Postal Service must be submitted to: Grants Management Office, OPA, East-West Towers, Suite 200, West Building, 5600 Fishers Lane, Rockville, MD 20857. Applicants hand-delivering a proposal or using a commercial carrier such as Federal Express should use the following address: Grants Management Office, OPA, East-West Towers, Suite 200, West Building, 4350 East-West Highway, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at (301) 594–4012 or Program Office at (301) 594–4004. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 93.995) Title XX authorizes grants for three types of demonstration projects: (1) Projects which provide "care services" only (*i.e.*, services for the provision of care to pregnant adolescents, adolescent parents and their families); (2) projects which provide "prevention services" only (*i.e.*, services to prevent adolescent sexual relations); and (3) projects which provide a combination of care and prevention services.

The Office of Adolescent Pregnancy Programs (OAPP) intends to make available approximately $4.5 million to support an estimated 10–15 new demonstration projects. An applicant may submit a proposal for a *local* care, prevention or combination care/prevention project *or* for a *national multi-site* prevention project with at least two sites in different States. The awards for care projects will range from $200,000 to $400,000. The awards for local prevention projects will range from $150,000 to $250,000. Funding for national multi-site prevention projects and for combination care/prevention projects may be higher, in proportion to the effort proposed. *These grants will be awarded for a period of one year, and the availability of funding for later years is uncertain. Therefore, we encourage applications from experienced organizations which are currently operating programs and which have the capability of expanding and enhancing these services to serve significant numbers of adolescents according to the guidelines specified in this announcement.* Additional funds may be available in Fiscal Year 1996 and following years. If funds do become available, grantees funded under this program announcement will be eligible to reapply for continued funding.

Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of a grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total cost of the project for the first year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including plant, equipment and services.

The specific services which may be funded under Title XX are listed below under Care Programs and Prevention Programs. Applicants who propose to provide a Combination of Care and Prevention Services Program must meet the requirements for each type of program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority area of Family Planning. A midcourse review of the objectives is presently ongoing, and the proposed revisions are contained in a draft. A notice of Availability and Request for Comment on the Healthy People 2000 Midcourse Revisions was published in the **Federal Register** on October 3, 1994 (59 FR 50253). Requests for copies of the *Draft for Public Review and Comment: Healthy People 2000 Midcourse Revisions* can be faxed to (301) 594–5980 or mailed to: OAPP/OPA, East-West Towers, Suite 200, West Building, 5600 Fishers Lane, Rockville, MD 20857. A new PHS report, *Healthy People 2000 Midcourse Review and Revisions*, featuring the final revisions and a status report on progress in achieving targets for the year 2000, will be published in 1995.

The following application requirements contain information collections subject to OMB approval under the Paperwork Reduction Act of 1980 (P.L. 96–511). These information collections have been approved by OMB under control number 0937–0189.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which are determined to demonstrate the capability of providing the proposed services and meet the statutory requirements.

Care Programs

Under this announcement, funds are available for local care demonstrations only and not for multi-site national projects. The project site must be identified in the application rather than selected after the grant is awarded.

Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents and adolescent parents under 19 years of age at program entry, with primary emphasis on unmarried adolescents who are 17 years old or younger and for their families. This includes young fathers and their families.

The OAPP encourages the submission of care applications which propose to do the following: (1) Add care services to supplement existing adolescent health services in school, hospital or other community settings, (2) provide care services to minority or other disadvantaged populations, (3) continue services to clients after the delivery of the baby to enable them to acquire good parenting skills and to ensure that their children are developing normally physically, intellectually and emotionally, (4) stress self-sufficiency skills, such as school completion (in mainstream or alternative schools and GED programs) and/or job training preparation and placement, and (5) involve males and promote male responsibility. Applicants should base their approaches upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration and linkages among such existing programs.

Applicants for care projects are required to provide, either directly or by referral, the following 10 core services:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventive health services, including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of venereal disease;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services;

(9) Mental health services and referral to mental health services and to other appropriate physical health services;

(10) Counseling and referral for family planning services.

Note: Funds provided under Title XX may not be used for the provision of family planning services other than counseling and referral services unless appropriate family planning services are not otherwise available in the community. In accordance with sec. 2006(a)(17) of Title XX (42 U.S.C. 300z–5(a)(17)), applicants must make maximum use of services available under the Title X Family Planning Program in providing this required core service.

In addition to the 10 required core services listed above, applicants for care projects may provide any of the following supplemental services:

(1) Referral to licensed residential care or maternity home services;

(2) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(3) Consumer education and homemaking;

(4) Counseling for the immediate and extended family members of the eligible person;

(5) Transportation; and

(6) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors.

Prevention Programs

Under this announcement, funds are available for both local and national projects. A national project must have at least two sites in different States.

The primary purpose of prevention programs is to find effective means of reaching adolescents, both male and female, before they become sexually active in order to encourage them to abstain from sexual activity. There is general agreement that early initiation of sexual activity brings not only the risk of unintended pregnancy but also substantial health risks to adolescents, primarily infection with sexually transmitted diseases (STDs), including HIV. Accordingly, applicants must provide services that help pre-adolescents and young adolescents acquire knowledge and skills that will instill healthy attitudes and encourage and support the postponement of early sexual activity. Such services must also include the provision of medically accurate information relating to reducing the risk of unintended pregnancy and disease for adolescents who may be or become sexually active.

Under this announcement, OAPP will not fund proposals to develop new prevention curricula. Applicants must propose to use existing and available educational materials/curricula which are consistent with this program announcement.

The OAPP encourages the submission of prevention applications which propose to do the following: (1) Add prevention services to supplement existing adolescent health education programs or health service programs in school or other community settings, (2) provide prevention services to minority or other disadvantaged populations, (3) use curricula which have been demonstrated and evaluated to be effective, (4) include medically accurate information on sexuality, contraception, sexually transmitted diseases (STDs) and HIV/AIDS, (5) offer educational services to parents to assist them in communicating with their children about sexuality, contraception, STDs and HIV/AIDS, and (6) involve males and promote male responsibility.

Applicants for prevention programs are not required to provide any specific array of services; a proposal may include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors;

(6) Pregnancy testing and maternity counseling;

(7) Nutrition information and counseling; and

(8) Referral for screening and treatment of venereal disease.

Combination Care and Prevention Services Programs

Applicants proposing to provide both care and prevention services must meet the requirements for both categories as described above. They must also propose to make a substantial effort in each of the two areas and indicate clearly in the application and budget the proportion of effort to be expanded in each component.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent but not more than five percent of the Federal funds received under Title XX on evaluation of the project. As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding level. All project evaluations should monitor program processes to determine whether the program has been carried out as planned and measure the program's outcomes. Waivers of the five percent limit on evaluation (see sec. 2006(b)(1)) may be granted in cases where a more rigorous or comprehensive evaluation effort is proposed.

Section 2006(b)(2) requires that an organization or an entity independent of the grantee providing services assist the grantee in evaluating the project. The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the intervention, development of the evaluation hypothesis(es), identification of the variables to be measured and a timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis.

Application Requirements

Applications must be submitted on the forms supplied (PHS 5161–1, Revised 7/92) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. *Applications sent by FAX will not be accepted.*

Applicants must be familiar with the entire statute, which is included in the application kit, to ensure that they have complied with all applicable requirements.

It should be noted that grantees may not teach or promote religion in their AFL project. Each grant project must be accessible to the public generally, not just to those of a particular religious affiliation.

Under section 2011(a) of the Act, AFL projects may not provide abortions or abortion counseling or referral either directly or through subcontract and may not advocate, promote or encourage abortion. However, if both the adolescent and her parents request abortion counseling, a project may provide referral for such counseling.

Additional Requirements

Applicants for grants must also meet the following requirements:

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Review Under Executive Order 12372.* Applications under this announcement are subject to the review requirements of E.O. 12372 State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR part 100 (Intergovernmental Review of Federal Programs). E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible the applicant (other than federally-recognized Indian tribal governments) should contact the Governor's Office in each state in the area to be served for information regarding the particular review process designed by the state. For proposed projects serving more than one State, the applicant is advised to contact the Governor's Office of each affected State. The State comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, East-West Towers, Suite 200, West Building, 5600 Fishers Lane, Rockville, MD 20857. Such comments must be received by the Office of Population Affairs by May 22, 1995 to be considered.

The application kit contains information to guide applicants in fulfilling the above requirements.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed by a multidisciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The capacity of the proposed applicant organization to provide rapid and effective use of resources needed to conduct the project, collect data and evaluate it. This includes personnel, time and facilities. (30 points)

(2) The applicant's rationale for use of the proposed approach and its worth for testing and/or replication based upon its previous demonstration, review of the literature and/or evaluation findings. (20 points)

(3) The applicant's presentation of an appropriate project design, consistent with the requirements of Title XX, including a clear statement of goals and objectives, reasonable methods for achieving the objectives, a reasonable workplan and timetable and a clear statement of results or benefits expected. (30 points)

(4) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical, technically sound approach to assessing the project's achievement of program objectives. (20 points)

Final grant award decisions will be made by the Deputy Assistant Secretary for Populations Affairs. In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants approved for funding will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and the other factors in sec. 2005, including consideration of:

(1) The applicant's capacity to administer funds responsibly;

(2) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;

(3) The population to be served;

(4) The community commitment to and involvement in planning and implementation of the demonstration project;

(5) The organizational model(s) for delivery of service;

(6) The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing adolescent health models;

(7) The reasonableness of the estimated cost to the government considering the anticipated results.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantees the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: November 1, 1994.

Felicia H. Stewart,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 94–31454 Filed 12–21–94; 8:45 am]

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federal register

Thursday
December 22, 1994

Part IX

Department of Justice

Bureau of Prisons

28 CFR Part 527

Designation and Transfer of D.C. Women Offenders; Rescission; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 527

[BOP-1024-F]

Designation and Transfer of D.C. Women Offenders; Rescission

AGENCY: Bureau of Prisons, Justice.

ACTION: Final Rule.

SUMMARY: In this document, the Bureau of Prisons is rescinding its regulations on Designation and Transfer of D.C. Women Offenders because it is no longer the routine policy of the District of Columbia Department of Corrections to place such inmates in the federal system. By joint agreement with the Bureau, the Department of Corrections is responsible for notifying D.C. women offenders being boarded in Bureau facilities of any applicable Department of Correction provisions previously contained in these regulations. Therefore, separate notification by Bureau regulations is no longer necessary.

EFFECTIVE DATE: December 22, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is rescinding its regulations on Designation and Transfer of D.C. Women Offenders (28 CFR 527, subpart F). A final rule on this subject was published in the **Federal Register** October 21, 1983 (48 FR 48969).

In accordance with E.O. 12866, the Bureau of Prisons is reviewing its regulations for the purpose of ensuring that it promulgates only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need. The Bureau has determined that provisions for the designation and transfer of D.C. women offenders are adequately covered through joint agreement with the District of Columbia Department of Corrections. The text of the joint agreement has been incorporated in its entirety into the Bureau's internal instructions to staff, and the Bureau believes that there is no need to restate these provisions in regulations.

In 1972, a civil suit (*Garnes v. Taylor*) was filed against the District of Columbia Department of Corrections seeking to have the court declare unconstitutional the practice of transferring female D.C. Code violators to federal facilities far from the District of Columbia. This suit was settled in 1975 by an agreement which established procedures for designating and transferring female D.C. Code violators to and from federal institutions. This agreement, known as the "Garnes Decree", became effective December 10, 1976. The Bureau of Prisons, recognizing that the District of Columbia Department of Corrections had no facilities for housing long-term female offenders, agreed to designate federal institutions for women with sentences of more than one year who are not within nine months of a parole eligibility, sentence expiration, or mandatory release date. The Bureau further agreed to refer to the District of Columbia, for further consideration, a District of Columbia woman confined within a Bureau institution provided that the inmate desires the referral and is within nine months of a parole eligibility, sentence expiration, or mandatory release date. Regulations on this subject were issued by the Bureau in 1983 as part of the general publication of Bureau rules relating to the control, custody, care, treatment, and instruction of inmates.

Since 1983, the number of female offenders transferred from the District of Columbia Department of Corrections has declined to the point where only five cases remain in Bureau custody. Pursuant to a joint agreement with the Bureau, the Department of Corrections is responsible for notifying these inmates of the pertinent designation and transfer procedures. This is similar to procedures applicable to State inmates boarded in Bureau facilities.

Because this rescission imposes no new restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 527

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 527 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 527—TRANSFERS

1. The authority citation for 28 CFR part 527 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3569, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4100-4115, 4161-4166 (Repealed as to offenses committed on or after November 1, 1987), 4201-4218, 5003, 5006-5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart F—[Removed]

2. Subpart F, consisting of §§ 527.50 through 527.54, is removed.

[FR Doc. 94-31485 Filed 12-21-94; 8:45 am]

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LIST OF PUBLIC LAWS

Note: The list of Public Laws for the 103d Congress, Second Session, has been completed and will resume when bills are enacted into law during the 104th Congress, First Session, which convenes on January 4, 1995.

A cumulative list of Public Laws for the 103d Congress, Second Session, was published in Part II of the **Federal Register** on Monday, December 19, 1994.

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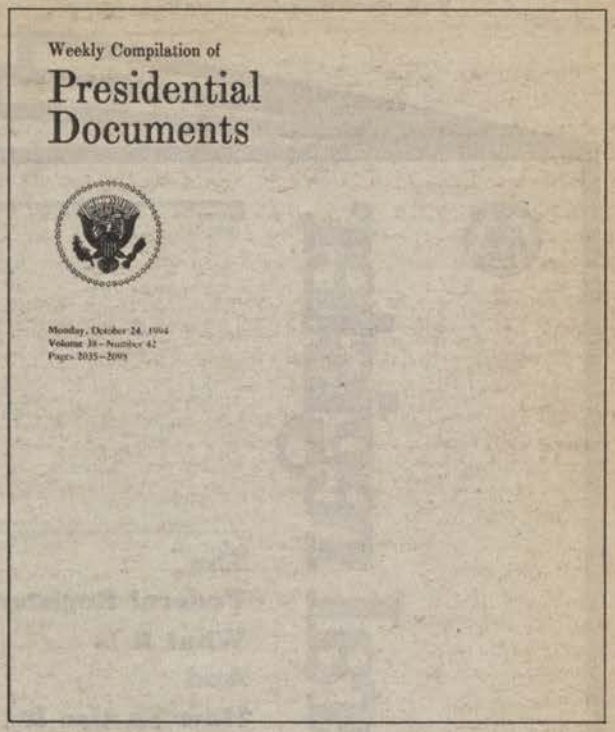

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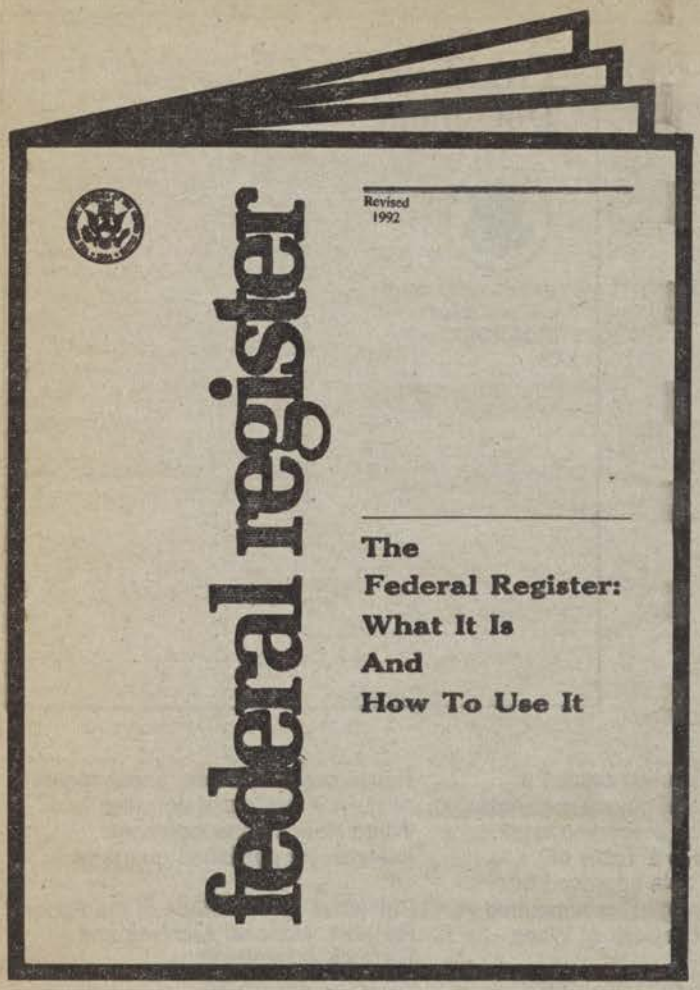

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